Article

THE RIGHT TO PRIVACY IN INQUIRIES IN AID OF LEGISLATION

Lemuel D. Lopez

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"In modern terms, the capacity to maintain and support this enclave of private life marks the difference between a democratic and a totalitarian society."

- Morfe v. Mutuc[1]

Legislative inquiry is a fundamental tool of democracy. It is through which that Congress gathers the necessary information to legislate vital laws that are to advance public interests, promote human dignity and enhance social development. In the same manner, it is intimately related with the public's right to know the dynamics of governance. As the congressmen and the senators in a republican system of government are the eyes and ears of the people, the venue provided by legislative inquiries gives the people the marketplace of information necessary in making choices of what rules they want to govern the Philippine society. Moreover, as heavy publicity is given to these inquiries, it could be a powerful means of participatory governance for it could mold public opinion and thus could compel leaders to act according to the will of the people.

But in this great forum of democracy, it is here that great clashes between government might and civil liberties happen. So much had the public saw how congressmen and senators force to reveal information from the witnesses invited in their inquiries under their power of compulsion and cite witnesses in contempt. So

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[1] GR No. L-20387, January 31, 1968, 22 SCRA 424,445 [1968]; citing Emerson, *Nine Justices in Search of a Doctrine*, 64 MICH. L. REV. 219, 229 (1965).

much had the public saw how witnesses hesitantly reveal information and evade queries to the point that they invoke their right against self-incrimination, freedom of association, right to due-process, right to be presumed innocent and their right to privacy.

This paper seeks to understand the dynamics of a legislative inquiry and how the right to privacy could be properly be invoked and thus protected. The first part discusses the legislative inquiries – its nature, scope, and limitations. The second briefly discusses the right to privacy. The third part looks into the clash between these two great forces. The tests provided by Philippine and American jurisprudence to reconcile the two are highlighted. The last part concludes the paper by providing the observations and the conclusions derived from the analysis.

I. THE POWER OF CONGRESS TO CONDUCT INQUIRIES IN AID OF LEGISLATION

The 1987 Constitution expressly recognizes the power of both houses of Congress to conduct inquiries in aid of legislation. Thus, Section 21, Article VI provides:

> The Senate or the House of Representatives or any of its respective committee may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

However, this power granted to the Legislature was only made explicit in the 1987 Constitution. In the 1935 and 1973 constitutions, no such express grant of power has been enunciated. It has always been assumed to be inherent, a power that is necessarily included in the power to legislate. As the court declared in *Arnault vs. Nazareno*: [2]

> [a]lthough there is no provision in the Constitution expressly investing either House of Congress with power to make investigations and exact testimony to the end that it may exercise its legislative functions advisedly and effectively, such power is so far incidental to the legislative function as to be implied.[3]

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[2] 87 Phil 29 [1950]
[3] *Id.* at 45.

Indeed, investigative power is "an essential and appropriate auxiliary to the legislative function."[4] Nevertheless, legislative investigations actually serve four purposes: law making, checking the executive branch, inquiring into internal matters of Congress, and formulating and molding public opinion.[5]

A. THE NATURE AND SCOPE OF LEGISLATIVE INQUIRIES

Though there is seeming unanimity in its necessity, there is so much latitude of opinions as to its nature.[6] The reason for this is attributed to its multifarious character especially since it assumes many different functions, purposes, or objectives.

Much of the present-day nature of Congress' legislative power and its multifarious character is defined by history. The origins of this power could be traced to the worldwide struggle waged by representative bodies against the authority of a King, or of an established church or religion.[7] This is illustrated by the struggle of the British Parliament for institutional supremacy where legislative inquiry was first used in reviewing elections and use of public funds for it was seen to be a necessary tool in the efficient performance of legislation. This power was also exercised pursuant to the judicial functions of the Parliament during the period when it was also a court of Law. The Parliament instituted investigations so as to guide its decisions. Furthermore, in its assent to institutional and political supremacy, the House of Commons specifically exercised this power as a political tool against the undue interference by the crown and the Church. For instance, it was exercised in determining who won the elections to the House and asserting its right to determine the conduct of civil and military officials.

Its use as a potent tool in the struggle for institutional supremacy by the Parliament led to the view that it could be a tool for political power. Its use to allow the Parliament to efficiently perform legislation underscored its efficacy as tool for gathering necessary information for legislation. In its use by the Parliament acting as a court of law, the investigative power could be seen as a tool of justice acquiring an adversarial character.

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[4] McGrain v. Daugherty, 273 U.S. 135 [1927]

[5] C. Beck, Contempt of Congress 12 (1959)

[6] See BECK, *id*; where the investigative powers of Congress has been characterized in the United States from being a Grand Jury to simply an information gathering committee. In the Philippines, many have considered it to be a grand inquest to reveal the crooks prying over public funds. Many have considered it simply "as an aid of legislation." Many view it with disgust and others, elation.

[7] U.P. Law Center. U.P. Law Center Constitution Revision Project, Quezon City: U.P. Law Center, 283 (1970)

The powers of the Parliament were transplanted to the American legislatures, where it was also understood to be a necessary and inherent part of legislative power.[8] The American Revolution however led to an ever-growing understanding that the investigative powers of Congress is limited and bounded. With an acknowledgment of the fundamental liberty of the individual, there was a growing consciousness and concern over the need to define the nature and scope of legislative power to investigate so as to abate or limit abuses and uphold private rights involved. The establishment of judicial review – the power by the courts to review the actions of co-equal branches, the Executive and the Legislative, for constitutional consistency – is likewise another factor. It heralded the capacity of courts to review legislative investigations and determine its consistency with the Constitution and the Bill of Rights. The 1987 Constitution's explicitly granting the power to investigate and explicitly limiting the bounds of this power are consistent to this tradition.

Like its nature, the scope of legislative inquiry is also not clearly understood. As the scope or subject matter of a legislative inquiry is left undefined, there is much debate as to what could be a valid subject matter of legislative inquiries. For one, the Constitution does not define the subject matter of the inquiry, it only uses the descriptive phrase, "in aid of legislation." There is also no statutory effort to define this. Even the Supreme Court admits that the Legislature's field of inquiry is practically unlimited. In *Arnault v. Nazareno*,[9] the court held:

> [T]he Congress of the Philippines has a wider range of legislative field than either the Congress of the United States or a state legislature, and the field of inquiry into which it may enter is also wider. It is difficult to define any limits by which the subject matter of its inquiry can be bounded. Suffice it to say that it must be coextensive with the range of legislative power.[10]

Moreover, the scope of inquiries as defined in the Senate Rules of Procedure Governing Inquiries in Aid of Legislation in Section 1 is vast:

> Such inquiries may refer to the implementation or reexamination of any law or appropriation or in connection with any proposed legislation or the formulation of, or in connection with any proposed legislation or the formulation of, or in connection with future legislation, or will aid in the review of formulation of a new legislative policy or enactment. They may

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[8] *See McGrain v. Daugherty*, *supra* note 3 at 175; See Landis, *Op. cit. supra* note 4 at 165-166;
[9] 87 Phil 29 [1950]
[10] *Id.* at 46

> also extend to any and all matters vested by the constitution in Congress and/or in the Senate alone.

In the United States, the growth of civil liberties and establishment of judicial review eroded the notion that defining the scope is only a Congressional concern. In *Kilbourn v. Thompson*, the court held that investigations cannot "simply a fruitless investigation into the personal affairs of individuals...could result in no valid legislation on the subject to which the inquiry referred...."[11] The Fifth Amendment containing the privilege against self-incrimination was also held in various cases as a legal limit upon the authority of the committee to require a witness to answer its questions.[12] In *United States v. Rumely*,[13] the court held that the mere semblance of legislative purpose would not justify an inquiry in the face of the Bill of Rights.

In *Watkins v. United States*,[14] the United States Supreme Court held that "[w]e cannot simply assume, however, that every Congressional investigation is justified by a public need that overbalances any private right affected." This imposes the duty on Congress to show a priori that a legislative inquiry has a legitimate purpose and does not unnecessarily intrude into the private rights of the witnesses. The same court made a keen observation as to the scope of legislative inquiries:

> [B]road as is this power of inquiry, it is not unlimited. There is no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress. This was freely conceded by the Solicitor General in his argument of this case. Nor is the Congress a law enforcement or trial agency. These are functions of the executive and judicial departments of government. No inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of the Congress. Investigations conducted solely for the personal aggrandizement of the investigators or to "punish" those investigated are indefensible.[15]

The need to define the nature and scope is further highlighted by the fact that private rights maybe involved in legislative inquiries and that Congress possesses the power of compulsion. It has both the power to issue subpoena[16] to

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[11] 103 U.S. 168, 195 [1881]

[12] Watkins v. United States, 254 U.S. 178 [1957]

[13] 345 U.S. 41 [1953]

[14] See note 11 *supra* at 198.

[15] *Id.* at 187.

[16] SENATE RULES OF PROCEDURE GOVERNING INQUIRIES IN AID OF LEGISLATION, sec. 17; *also* HOUSE OF REP. RULES OF PROCEDURE GOVERNING INQUIRIES IN AID OF LEGISLATION, sec. 11

compel testimony and production of documents and the power to cite witnesses in contempt.[17]

Hence, failure to present documents, take an oath or behave disorderly by not answering questions posed could lead to a citation of contempt. The records however state that Congress sparingly used this power to cite witnesses in contempt.

B. LIMITATIONS ON THE POWER TO INQUIRE

1. The Inquiry must be in Aid of Legislation

This limitation was highlighted as early as 1880 in *Kilbourn v. Thompson*[18] where the United States Supreme Court reversed the citation of a recalcitrant witness for contempt by Congress for refusing to answer questions put to him by a committee and to produce certain books and papers. This case established the idea of "legislative purpose" as a limitation on Congressional investigations.[19] The Court said:

> "The resolution...contains no hint of any intention of final action by Congress on the subject. In all the argument of the case, no suggestion has been made of what the House of Representatives or the Congress could have done in the way of remedying the wrong or securing the creditors of Jay Cooke & Co., or even the United States. Was it to be simply a fruitless investigation into the personal affairs of individuals? If so, the House of Representatives had no power or authority in the matter more than any other equal number of gentlemen interested for the government of their country. By "fruitless," we mean that it could result in no valid legislation on the subject to which the inquiry referred."[20]

2. The Inquiry must be in Accordance with its Duly Published Rules of Procedure

The Rules of the Senate on legislative inquiries are found on the Senate Rules of Procedure Governing Inquiries in Aid of Legislation.[21] These rules

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[17] SENATE RULES OF PROCEDURE GOVERNING INQUIRIES IN AID OF LEGISLATION, sec. 18; *also* HOUSE OF REPRESENTATIVES RULES OF PROCEDURE GOVERNING INQUIRIES IN AID OF LEGISLATION, sec. 13

[18] See note 10 *supra*

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

[20] *Kilbourn v. Thompson*, *supra* at 194-195.

[21] The process begins upon a filing of petition, or information given by any Senator or by any person or *motu proprio* if the matter itself is within the Senate or Committee's competence. If the petition were

enumerate the rights of the witnesses. Witnesses shall have the right to counsel at every hearing, public or executive and has a privilege against self-incrimination.[22] However, except as provided in the Internal Rules of the Committee on Ethics and Privileges, the participation of counsel during the course of any hearing and while the witness is testifying, shall be limited to advising said witness as to his legal rights.[23] Counsel shall not be permitted to engage in oral argument with the Committee, but shall confine his activity to the area of legal advice to his client.[24]

A witness can invoke his privilege against self-incrimination only when a question, which tends to elicit an answer that will incriminate him is propounded to him.[25] However, he may offer to answer any question in an executive session.[26] No person can refuse to testify or be placed under oath or affirmation on questions before an incriminatory question is asked.[27] His invocation of such right does not *ipso facto* excuse him from his duty to give testimony.[28] In such a case, the Committee, by a majority vote of the members present there being a quorum, shall determine whether the right has been properly invoked.[29] If the Committee decides otherwise, it shall resume its investigation and the question or questions previously refused to be answered shall be repeated to the witness.[30] If the latter continues to

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filed by a Senator, he or she must set forth facts upon which it is based but need not be accompanied by affidavit. Such petition shall be addressed to the President, who shall refer the same to the appropriate committee. Nevertheless, the Senator himself may directly refer to any committee any speech or resolution which in its judgment requires an appropriate inquiry in aid of legislation. Meanwhile, if the petition is by non-members, it must be under oath stating the facts, which it is based and shall be accompanied by supporting affidavits. If the President finds the petition or information to be in accordance with the above-mentioned requirements, he shall refer the same to the appropriate committee. After the filing of petition, the committee to which a speech, resolution, petition or information has been referred by the President, shall meet within five days after such referral.

A decision to conduct inquiry shall be made upon the concurrence of a majority of the members present provided there is a quorum. A decision, whether or not to conduct an inquiry, shall be reported to the Committee on Rules. The Committee on Rules shall then regularly inform the Senate of such action taken by the Committee. If an inquiry had been decided to be conducted, the committee has the power to summon witnesses and demand production of documents and other information it considers to be pertinent. Witnesses may be called by the Committee on its own initiative or upon the request of the petitioner or person giving the information or any person who feels that he may be affected by such inquiry. The Committee may hold the committee hearing in executive session when public hearing might endanger national security. Testimony taken or material presented in an executive session, or any summary thereof, shall not be made public, in whole or in part unless authorized by the Committee. Nevertheless, all witnesses at executive or public hearings who testify as to matters of fact shall give such testimony under oath or affirmation.

[22] SENATE RULES OF PROCEDURE GOVERNING INQUIRIES IN AID OF LEGISLATION, sec. 14 and sec. 19

[23] SENATE RULES OF PROCEDURE GOVERNING INQUIRIES IN AID OF LEGISLATION, sec. 14

[24] SENATE RULES OF PROCEDURE GOVERNING INQUIRIES IN AID OF LEGISLATION, sec. 14

[25] SENATE RULES OF PROCEDURE GOVERNING INQUIRIES IN AID OF LEGISLATION, sec. 19

[26] SENATE RULES OF PROCEDURE GOVERNING INQUIRIES IN AID OF LEGISLATION, sec. 19

[27] SENATE RULES OF PROCEDURE GOVERNING INQUIRIES IN AID OF LEGISLATION, sec. 19

[28] SENATE RULES OF PROCEDURE GOVERNING INQUIRIES IN AID OF LEGISLATION, sec. 19

[29] SENATE RULES OF PROCEDURE GOVERNING INQUIRIES IN AID OF LEGISLATION, sec. 19

[30] SENATE RULES OF PROCEDURE GOVERNING INQUIRIES IN AID OF LEGISLATION, sec. 19

refuse to answer the question, the Committee may punish him for contempt for contumacious conduct.[31]

The House of Representatives has similar set of rules of procedures governing inquiries in aid of legislation.[32]

The requirement on publishing rules of procedure is only consistent with the requirements of due process specifically the need to give notice to witnesses so that they may not be taken by surprise and to enable them to prepare for the protection of their rights. This is particularly important as legislative inquiries involve private rights of witnesses.

3. The Rights of Persons Appearing In or Affected by such Inquiries shall be Respected

Though creating no new constitutional right,[33] this emphasizes that any government action including legislative inquiries is subject to the limitations placed by the Constitution. Generally, the rights of persons guaranteed by the Bill of Rights must be respected, particularly the right to due process and the right not to be compelled to testify against one's self.[34] This likewise includes the right to be presumed innocent and thus, in all stages of inquiry, Congress must accord due process in their treatment of witnesses consistent with this right. If a charge of wrongdoing is made during a privilege speech, it is imperative for legislators in the interest of fairness to first establish a *prima facie* case and then show connection of the inquiry to the legislative process. The witness should not be required to prove his innocence, and all inquiries must be made in aid of legislation.

The express constitutional duty imposed on Congress to respect the rights of the witnesses appears at first impression to refer to the rights of witnesses not to be abused, insulted, harassed, or embarrassed, in short, the right to human dignity and the right not to be compelled to serve as witness against himself which of course is part of the right to privacy.

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[31] SENATE RULES OF PROCEDURE GOVERNING INQUIRIES IN AID OF LEGISLATION, sec. 19

[32] HOUSE OF REPRESENTATIVES RULES OF PROCEDURE GOVERNING INQUIRIES IN AID OF LEGISLATION

[33] J. BERNAS, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES* 680 (ed. 1996)

[34] *See* Bengzon, Jr. v. Senate Blue Ribbon Committee, G.R. No. 89914, November 20, 1991

II. THE RIGHT TO PRIVACY

The existence of a right to privacy is not in dispute. However, a brief discussion on this other great legal force is in order.

Several provisions of the 1987 Constitution recognize the right to privacy and its facets.[35] These are provided for in the Bill of Rights.[36] International law also recognizes the existence of a right to privacy. *The Universal Declaration of Human Rights*, adopted by the General Assembly of the United Nations, contains provisions dealing with the protection of privacy.[37] Moreover, *The Covenant on Civil and Political Rights*, adopted by the United Nations General Assembly on December 19, 1966, contains a provision for in similar terms in Article 17. Through the doctrine of incorporation, these laws become part of Philippine law. Philippine statutes also recognize the right to privacy.[38] Lastly, jurisprudence affirms the primacy of privacy as a fundamental right and thus has to be jealously protected.[39]

However, the right to privacy is not absolute in the sense that it is always subject to the rights of the public. As a member of society his right to privacy must be balanced against the interests of the community under the circumstances of each particular case. In addition, when a person exercises such right in an abusive manner, or in a manner prejudicial to other person's right, then it ceases to be covered by the mantle of constitutionally protected rights. Moreover, if the intrusion is allowable or permissible, the person cannot invoke one's right to privacy to thwart the exercise of other rights.

The demarcation line between what is private and what is public is not always vivid. At the threshold is a great gray area. It may involve public officers: due to trust and confidence accorded to their office, their conduct in their private affairs is inquired upon. "Lifestyle checks" may fall under this category wherein the

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[35] Ople v. Torres, GR No. 127685, July 23, 1998, 293 SCRA 141 [1998]

[36] *i.e.* CONST. Art. III, Sec. 1; CONST., Art III Sec. 2.; CONST. Art III, Sec. 3 (1); CONST. Art. III, Sec. 6; CONST, Art. III sec. 8.

[37] *E.g* UNIVERSAL DECLARATION OF HUMAN RIGHTS, art. 12 provides "No one shall be subjected to arbitrary interference with his privacy, family home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against interference or attacks."

[38] *See* CIVIL CODE art. 26; CIVIL CODE art. 32; CIVIL CODE, art. 723; *See also* REV. PEN. CODE art. 229; REV. PEN. CODE Art. 290-292; REV. PEN. CODE Art. 280; REV. PEN. CODE art. 128; *See also* Anti-Wire Tapping (Rep. Act No. 4200 [1965]), Secrecy of Bank Deposits Act (Rep. Act No. 1405 [1955]), and the Intellectual Property Code (Rep. Act No. 8293 [2001???]. REVISED RULES ON EVIDENCE Rule 130 [C], Section 24.

[39] *E.g.* Morfe v. Mutuc, GR No. L-20387, January 31, 1968, 22 SCRA 424 [1968]; Ople v. Torres, *supra*; Ayer Productions Pty. Ltd v. Capulong, G.R. No. L-82380, April 29, 1988, 160 SCRA 861[1988]

conduct of public officers of their private affairs has been scrutinized. It may also include private citizens who have been involved in matters of public interest including public figures. A "public figure has been defined as a person who, by his accomplishments, fame, or mode of living, or by adopting a profession or calling which gives the public a legitimate interest in his doings, his affairs, and his character, has become a 'public personage.' He is in other words, a celebrity. Obviously to be included in this category are those who have achieved some degree of reputation by appearing before the public, as in the case of an actor, a professional baseball player, a pugilist, or any other entertainer....It includes, in short, anyone who has arrived at a position where public attention is focused upon him as a person."[40]

III. FINDING THE MIDDLE GROUND: THE BALANCING ACT

Having discussed the nature, scope and limitations of both legislative inquiries and the right to privacy, this section seeks to unravel the dynamics of interaction between these two great legal forces. The first subsection would discuss the history of these interactions in the United States and here in the Philippines. The second subsection will discuss how the investigating body, Congress itself, resolves these clashes. Lastly, the third subsection will discuss the role and the manner of resolution by courts as regards to these clashes.

A. WHEN LEGISLATIVE MIGHT CLASHES WITH CIVIL LIBERTIES

1. The American Experience

America has a long experience of clashes between the legislative power to investigate and the right to privacy in any of its facets. The American legislatures have always encountered witnesses, vigilant of their rights, who had refused to answer the queries posed by the legislators. The questions posed on these recalcitrant witnesses range from involvement in communist party activities during the "McCarthy era" to propriety of conduct of public officials. And the reply to these queries had been refusal to answer on various grounds. Generally, the attack on investigations takes three forms: those who object to the necessity of the investigatory power, those who object to particular investigations, and those who object to the procedures utilized by the investigating committees.[41] Witnesses had

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[40] *Ayer Productions Pty. Ltd v. Capulong, supra* at 874-875 [1988]; citing PROSSER AND KEETON, *PROSSER AND KEETON ON TORTS* 859-861 (5th ed. 1984)

[41] BECK, *op. cit supra* note 15 at 9.

invoked their right against self-incrimination, their freedom of association, their freedom of speech and even their right to privacy.

In *Kilbourn v. Thompson,*[42] a Committee was created following the bankruptcy of Jay Cooke & Co., a depository of federal funds. The Committee was tasked to look into the financial relation between Jay Cooke & Co. and a real estate pool in which Kilbourn was the general manager. The authorizing resolution stated that Jay Cooke & Co., who were debtors of the United States, were creditors of the real estate pool and had dealt with it to the disadvantage of the Government.

Kilbourn was asked by the Committee: "Will you state where each of the five members reside, and will you please state their names?" which the committee considered to be a question pertinent and material to the subject of inquiry. Kilbourn however refused to answer. Moreover, when he, although ordered and commanded by the subpoena to bring with him and produce before the said committee certain records, papers, and maps relating to said inquiry, was asked by the said committee to produce the same, Kilbourn knowingly and willfully refused to produce them. The committee then reported this to the House and further stated:

> The committee are of opinion and report that it is necessary for the efficient prosecution of the inquiry ordered by the House that the said Hallet Kilbourn should be required to respond to the subpoena duces tecum and answer the questions which he has refused to answer, and that there is no sufficient reason why the witness should not obey said subpoena duces tecum and answer the questions which he has refused to answer, and that his refusal as aforesaid is in contempt of this House

The House then resolved and ordered that the speaker should issue his warrant, directed to the sergeant-at-arms, commanding him to take into custody the body of Kilbourn and bring him before the House, wherein he would then and there answer why he should not be punished as guilty of contempt. Kilbourn was arrested and was presented to the House wherein he was once again asked to answer the same question but still refused to answer and declined to produce the documents asked by the *subpoena duces tecum.* For his refusal, the House then resolved that Kilbourn would be considered in contempt of said House.

Kilbourn brought a suit for damages against the Sergeant at Arms. The court upheld him and declared that no recalcitrant witness could be convicted of contempt unless the matter investigated had a direct relation to the legislative functions of Congress. Justice Miller expressed the opinion of the Court that

[42] 103 U.S. 168 [1880]

Congress does not possess "the general power of making inquiry into the private affairs of the citizen."[43] Congress cannot undertake inquiry with the use of compulsion where the results could not lead to valid legislation on the subject to which the inquiry referred.

In *Re Chapman*,[44] the inquiry in question was conducted under a resolution of the Senate involving charges, published in the press, that Senators were yielding to corrupt influences in considering a tariff bill then before the Senate, and were speculating in stocks the value of which would be affected by pending amendments to the bill. Chapman appeared before the committee in response to a subpoena, but refused to answer questions pertinent to the inquiry, and was indicted and convicted under the Act of 1857 for his refusal. The Court sustained the constitutional validity of the Act of 1857, and, after referring to the constitutional provision empowering either house to punish its members for disorderly behavior and by a vote of two-thirds to expel a member, held that the inquiry related to the integrity and fidelity of Senators in the discharge of their duties, and therefore a matter "within the range of the constitutional powers of the Senate" and in respect to which it could compel witnesses to appear and testify. The court held that any question relating to attempted bribery of members of the Senate was valid and recalcitrance could be punished under the statute.

McGrain v. Daugherty[45] arose from the case of Mally S. Daugherty who was subpoenaed by a special committee investigating the role of the Attorney General's Office during the Teapot Dome Scandal. Daugherty, a brother of the ex-Attorney General, refused to appear. He was arrested by McGrain, the Deputy Sergeant at Arms. Daugherty appealed to a Federal District Court for a writ of *habeas corpus* which was granted. The Federal District Court upheld Daugherty by stating that the specific Congressional investigation was judicial rather than legislative, even though the committee was investigating the actions of a department of the Government.[46]

The Supreme Court overruled the Federal District Court decision in *McGrain v. Daugherty*. The court held that Congressional investigation is well within the exercise of its legislative functions:

> It is quite true that the resolution directing the investigation does not in terms avow that it is intended to be in aid of legislation; but it does show that the subject to be investigated was the administration of the

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[43] *Id.* at 190
[44] 166 U.S. 661 [1897]
[45] 273 U.S. 135 [1927]
[46] *Ex Parte Daugherty*, 299 Fed. 620 [1924]

> Department of Justice -- whether its functions were being properly discharged or were being neglected or misdirected, and particularly whether the Attorney General and his assistants were performing or neglecting their duties in respect of the institution and prosecution of proceedings to punish crimes and enforce appropriate remedies against the wrongdoers, specific instances of alleged neglect being recited. Plainly the subject was one on which legislation could be had and would be materially aided by the information which the investigation was calculated to elicit. This becomes manifest when it is reflected that the functions of the Department of Justice, the powers and duties of the Attorney General, and the duties of his assistants are all subject to regulation by Congressional legislation, and that the department is maintained and its activities are carried on under such appropriations as, in the judgment of Congress, are needed from year to year.[47]

The court then decided that the witness, Daugherty, wrongfully refused to appear and testify before the committee, and was lawfully attached. The Senate was therefore entitled to have him give testimony pertinent to the inquiry, either at its bar or before the committee, and that the district court erred in discharging him from custody under the attachment.

Sinclair v. United States[48] begun from a naval petroleum reserve, under the charge of the Secretary of the Navy under the Act of June 4, 1920, 41 Stat. 12, which was made the subject of an executive order purporting to give the administration and conservation of all oil and gas lands therein to the Secretary of the Interior under the supervision of the President. The two Secretaries, at the procurement of the Sinclair, leased lands in the reserve to a company, all the shares of which were owned by Sinclair. Questions arose as to the legality and good faith of the lease and other contracts, and also as to the future policy of the government regarding such matters. The Senate, by resolutions, directed its committee to investigate the entire subject of such leases, with particular reference to the protection of the rights and equities of the United States and the preservation of its natural resources. Its goal is to ascertain whether any additional legislation might be advisable, and to report its findings and recommendations to the Senate. Congress, also, by joint resolution, reciting that the lease and contract were illegal and apparently fraudulent, directed the President to cause suit to be instituted for their cancellation, and to prosecute such other actions, civil or criminal, as were warranted. After suit had been begun against Sinclair's company pursuant to this resolution, and while criminal action was pending against him, Sinclair appeared before the committee and was asked a question which sought the facts within his knowledge concerning a contract to pay certain persons for a release of rights in

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[47] *McGrain v. Daugherty, supra.* at 177-178.

[48] 279 U.S. 263 [1929]

lands embraced in his company's lease. Defendant refused to answer, not upon the ground of self-incrimination, but for the reason that the investigation and the question were unauthorized. He was prosecuted for contumacy, under Rev.Stats. § 102, and was convicted.

The Supreme Court ruled that witnesses who were subpoenaed must reply to valid questions and that the investigations into oil leases served a valid legislative purpose. The court held that neither the investigation authorized by the Senate's resolutions nor the question put by the committee related merely to the defendant's private affairs. The question propounded by the committee was pertinent to matters it was authorized to investigate, relating (a) to the right and equities of the United States as owner of the land leased to the defendant, and (b) to the effect of existing laws concerning oil and other mineral lands and the need for further legislation. It must be noted, however that in a prosecution for the offence of refusing to answer a question put to the accused as a witness before a committee of the Senate (R.S. § 102), the burden is upon the United States to show that the question was pertinent to a matter under investigation. Any presumption of regularity in that regard is overcome by the presumption of innocence attending the accused at the trial. Nevertheless, the fact that the accused acted in good faith on the advice of competent counsel in refusing to answer a question put by the committee is *not* a defense.

The end of Second World War and the beginning of Cold War marked the establishment of a permanent investigating committee to uncover subversive and un-American propaganda and activities. This committee has been the most active, powerful, and controversial investigating committee ever established by Congress.[49] The legislation under which the committee operates conveys very broad powers to it for the investigation of a nebulously defined subject. Rule IX, Powers and Duties of Committees, grants its power and defines matter and duties:[50]

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

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[49] BECK, *op. cit. supra* note 15 at 13.
[50] *Ibid.*

> The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in Session) the results of any such investigation, together with such recommendations as it deems advisable.
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> For the purpose of any such investigations, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such timed and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpoenas may be issued under the signature of the chairman of the committee or any subcommittee, or any member designated by any such chairman, or may be served by any person designated by any such chairman or member.

The resolution has two main features:[51] First, the committee has been given a great deal of latitude in determining the subject of its investigation. Second, the committee has been given the same authority to compel testimony as a grand jury, subject to the limitations imposed by the members of the committee, the Congress, and the courts.

In the period from 1945 to 1947, the committee held at least 230 public hearings, at which more than 3,000 persons testified, of whom over 100 were cited for contempt.[52] The hearing mostly focused on ferreting out communist and subversive influences in many aspects of societal life in the United States.[53] The cases of more than 100 witnesses cited in contempt had raised serious constitutional questions on the purpose of the committee in holding investigations and compelling testimony and of the relationship of the courts to Congress.

The contempt cases of 1947-1948 came from the refusal of witnesses to produce records of private organizations subpoenaed by the Committee on Un-American Activities.[54] During this period, thirteen persons were cited for contempt: three for refusing to appear and ten for refusing to tell whether they were or had been members of the Communist party. In each case, the witness challenged the power of the committee to inquire into political beliefs. The witnesses argued that their right of freedom of speech was violated by the nature of inquiry conducted into political beliefs.

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[51] *Id.* at 13-14
[52] *Id.* at 14.
[53] *Ibid.*
[54] *Id.* at 41.

Among these cases are those of Eisler, Josephson, and Dennis. Eisler, Josephson, and Dennis were charged with failure to testify, and Josephson was charged a second time with failure to appear before the committee. In all these cases, the citations for contempt were adopted overwhelmingly by the House. There was only one leading opponent of the resolutions. Meanwhile, the Supreme Court refused to grant certiorari to discuss three important issues:[55] the contention that the right to free speech implies the right to remain silent concerning political opinions and affiliations; the argument that Congress cannot do by publicity what it cannot do by statute; and the position that the clear and present danger doctrine should determine the limits of enforced testimony before an investigating committee.

The latter part of October 1947 witnessed the most flamboyant and widely publicized hearings. The committee began to investigate the influence of the Communist Party in the motion picture industry. Hollywood was the familiar location of the investigation and thus the name, Hollywood Ten. Ten refers to the ten witnesses subpoenaed and ultimately cited for contempt. They were John Howard Lawson, Albert Maltz, Dalton Trumbo, Alvah Bessie, Samuel Ornitz, Herbert Joseph Biberman, Edward Dmytryk, Adrian Scott, Ring Lardner Jr., and Lester Cole. Each had been mentioned by previous witnesses as being either a member of the Communist Party or sympathetic to the goals of the party. In each case, the staff of the committee testified as to the subversive affiliations of each witness and produced evidence that tended to demonstrate that they had at least been Party members.

The ten individuals were indicted by a grand jury. All waived trial by jury and all were found guilty. In these cases, the major constitutional issue raised was the argument that freedom of speech, including the right to remain silent, is impinged when a Congressional investigation requires, under threat of punishment, the disclosure of political opinions and affiliations.

The next string of contempt cases raised the issue of the witnesses' privilege against self-incrimination. The Fifth Amendment containing this right had been relied upon by witnesses to avoid stating whether they were or had ever been members of the Communist Party.[56] It was likewise invoked to avoid answering questions regarding alleged criminal conduct, and avoid complying with the *subpoena duces tecum*.[57] It was also pleaded by witnesses who were willing to tell about their own membership in the Communist Party but wished to avoid discussing the

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[55] *Id.* at 50.
[56] *Id* at 63.
[57] *Ibid.*

activities of others.[58] Lastly, it was also used in extreme instances by witnesses who have refused to divulge facts that were already public knowledge.[59]

The position of the committee as to the invocation of the Fifth Amendment right can be summarized as follows, according to Beck:[60] the committee recognized that the witness had the right to refuse to answer questions that might be incriminatory; the committee denied the questions that might be incriminatory; the committee denied that the questions that it asked were of that nature; further, the committee maintained that in all cases the Fifth Amendment plea must be clearly and precisely stated; lastly, the committee held that if a witness answered that he or she was a member of the Communist Party, he waived all future recourse to the self-incrimination plea.[61]

These various cases of contempt came to the courts. Three conclusions can be reached from these cases.[62] First, reliance on the self-incrimination clause is to be recognized when it appears that the witness so desires, it not being necessary that any set terminology be used to gain the privilege. The privilege should only be considered to be waived when there is clear and distinct evidence of waiver, and that presumption of waiver should not be taken lightly. Second, the investigatory committee must make a clear indication to the witness that his refusal to answer is not regarded as justifiable and that a more complete answer is demanded. Third, a question which appears or tends to incriminate whether it, of itself, is incriminatory, does not have to be answered.

The period of 1951-57 saw fifty-six citations for contempt being initiated by the House Committee on Un-American Activities. Twenty-two persons were finally cited for contempt. Each citation stemmed from the refusal of the witness to testify before the committee. Three of these citations were failure to produce documents subpoenaed by the committee. Seventeen individuals were cited for pleading the Fifth Amendment in response to questions which the committee considered to be innocent and therefore not protected. Two were cited for waiving the privilege by acknowledging that they were at one time members of the Communist party, then pleading self-incrimination in response to other questions.

The case of *Watkins v. United States*[63] was among the cases decided during this period. Watkins was convicted of a violation of 2 U.S.C. § 192,[64] which makes

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[58] *Ibid.*
[59] *Ibid.*
[60] *Id.* at 81.
[61] BECK, *op. cit. supra* note 15 at 82.
[62] Id. at 89.
[63] 354 U.S. 178 [1957]

it a misdemeanor for any person summoned as a witness by either House of Congress or any committee thereof to refuse to answer any question "pertinent to the question under inquiry." Summoned to testify before a Subcommittee of the House of Representatives Committee on Un-American Activities, he testified freely about his own activities and associations, but refused to answer questions as to whether he had known certain other persons to have been members of the Communist Party. He based his refusal on the ground that those questions were outside of the proper scope of the Committee's activities, and not relevant to its work. No clear understanding of the "question under inquiry" could be discerned from the resolution authorizing the full Committee, the legislative history thereof, the Committee's practices thereunder, the action authorizing the Subcommittee, the statement of the Chairman at the opening of the hearings or his statement in response to petitioner's protest.

The Court held that Watkins was not accorded a fair opportunity to determine whether he was within his rights in refusing to answer, and his conviction was invalid under the Due Process Clause of the Fifth Amendment. The court discussed on the abuses of the investigative process:

> Abuses of the investigative process may imperceptibly lead to abridgment of protected freedoms. The mere summoning of a witness and compelling him to testify, against his will, about his beliefs, expressions or associations is a measure of governmental interference. And when those forced revelations concern matters that are unorthodox, unpopular, or even hateful to the general public, the reaction in the life of the witness may be disastrous. This effect is even more harsh when it is past beliefs, expressions or associations that are disclosed and judged by current standards, rather than those contemporary with the matters exposed. Nor does the witness alone suffer the consequences. Those who are identified by witnesses, and thereby placed in the same glare of publicity, are equally subject to public stigma, scorn and obloquy.

Interestingly, the court had a chance to discuss the relationship of the witness' right to privacy to legislative investigations:

> Accommodation of the Congressional need for particular information with the individual and personal interest in privacy is an arduous and delicate task for any court. We do not underestimate the difficulties that

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[64] 2 U.S.C. § 192 is a penal statute which provides: "Every person who having been summoned 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 $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months."

> would attend such an undertaking. It is manifest that, despite the adverse effects which follow upon compelled disclosure of private matters, not all such inquiries are barred. *Kilbourn v. Thompson* teaches that such an investigation into individual affairs is invalid if unrelated to any legislative purpose. That is beyond the powers conferred upon the Congress in the Constitution. *United States v. Rumely* makes it plain that the mere semblance of legislative purpose would not justify an inquiry in the face of the Bill of Rights. The critical element is the existence of, and the weight to be ascribed to, the interest of the Congress in demanding disclosures from an unwilling witness. We cannot simply assume, however, that every Congressional investigation is justified by a public need that overbalances any private rights affected. To do so would be to abdicate the responsibility placed by the Constitution upon the judiciary to insure that the Congress does not unjustifiably encroach upon an individual's right to privacy nor abridge his liberty of speech, press, religion or assembly.[65]

The court further made a distinction as to exposures of public and private matters in legislative investigations. The court said that:

> We have no doubt that there is no Congressional power to expose for the sake of exposure. The public is, of course, entitled to be informed concerning the workings of its government. That cannot be inflated into a general power to expose where the predominant result can only be an invasion of the private rights of individuals.[66]

The Watkins court paid special attention to the question of pertinence of the questions propounded to the witness as the crime defined in 2 U.S.C. § 192 is refusal to answer "any question pertinent to the question under inquiry." The court imposes to Congress the obligation to provide the witness "the knowledge of the subject to which the interrogation is deemed pertinent"[67] especially that "[f]undamental fairness demands that no witness be compelled to make such a determination with so little guidance."[68] The court added:

> That knowledge must be available with the same degree of explicitness and clarity that the Due Process Clause requires in the expression of any element of a criminal offense. The "vice of vagueness" must be avoided here, as in all other crimes. There are several sources that can outline the "question under inquiry" in such a way that the rules against vagueness are satisfied. The authorizing resolution, the remarks of the chairman or members of the committee, or even the nature of the proceedings themselves, might sometimes make the topic clear. This case

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[65] Watkins v. United States, *supra* at 198-199.
[66] *Id.* at 200.
[67] *Id.* at 208.
[68] *Id.* at 214.

> demonstrates, however, that these sources often leave the matter in grave doubt.
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> The first possibility is that the authorizing resolution itself will so clearly declare 'question under inquiry' that a witness can understand the pertinency of questions asked him. The Government does not contend that the authorizing resolution of the Un-American Activities Committee could serve such a purpose. Its confusing breadth is amply illustrated by the innumerable and diverse questions into which the Committee has inquired under this charter since 1938. If the 'question under inquiry' were stated with such sweeping and uncertain scope, we doubt that it would withstand an attack on the ground of vagueness."[69]

The court ended its decision by emphasizing the need to establish rules of procedures in the conduct of these legislative investigations:

> The legislature is free to determine the kinds of data that should be collected. It is only those investigations that are conducted by use of compulsory process that give rise to a need to protect the rights of individuals. That protection can be readily achieved through procedures which prevent the separation of power from responsibility and the constitutional requisites of fairness for witnesses. A measure of added care of the House and the Senate in authorizing the use of compulsory process and by their committees in exercising the power would suffice. That is a small price to pay if it serves to uphold the principles of limited.[70]

The court found for Watkins and reversed the judgment and remanded the case to the District Court with instructions to dismiss the indictment.

Since 1949, the Committee on Un-American Activities has been confronted by hundreds of witnesses who have refused to answer questions, pleading their right against self-incrimination. Witnesses have pleaded the Fifth Amendment for a variety of reasons. Beck enumerates some of them: a challenge to the authority of the committee to conduct investigations into political affiliations, for fear that under the pressure of one-sided hearings, they would not be given the opportunity to adequately defend themselves, for fear that they would be prosecuted for perjury or for violation of the many federal and state statutes relating to subversion.[71]

Various cases on legislative investigations continue to come before the courts. However, the cases which arose from the events during the existence of

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[69] *Id.* at 209.
[70] *Id.* at 215.
[71] BECK, *op. cit supra.* note 15 at 124.

Committee on Un-American Activities provide the key doctrines in dealing with cases of clashes.

2. The Philippine Experience

In the Philippines, there are only two cases decided by the Supreme Court involving legislative inquiries. These are the cases of *Arnault v. Nazareno*[72] and *Bengzon, Jr. v. Senate Blue Ribbon Committee.*[73]

In 1950, Jean L. Arnault was invited by the special committee created to investigate the Buenavista and the Tambobong Estates deal. The intriguing question that the committee sought to resolve was the apparent irregularity of the Government's paying to Ernest H. Burt the total sum of P1,500,000 for his alleged interest of only P20,000 in the two estates, which he seemed to have forfeited anyway long before October 1949. The Committee sought to determine who were responsible for and who benefited from the transaction at the expense of the Government.

Arnault testified that two checks payable to Burt aggregating to P1,500,000 were delivered to him on the afternoon of October 29, 1949; that on the same date he opened a new account in the name of Ernest H. Burt with the Philippine National Bank in which he deposited the two checks; and that on the same occasion he drew on said account two checks; one for P500,000, which he transferred to the account of the Associated Agencies, Inc. with the Philippine National Bank, and another for P440,000 payable to cash, which he himself cashed. It was the desire of the committee to determine the ultimate recipient of this sum of P440,000.

At this point, Arnault claimed before the Committee:

> Mr. Chairman, for questions involving the disposition of funds, I take the position that the transactions were legal, that no laws were being violated, and that all requisites had been complied with. Here also I acted in a purely functional capacity of representative. I beg to be excused from making answer which might later be used against me. I have been assured that it is my constitutional right to refuse to incriminate myself, and I am certain that the Honorable Members of this Committee, who, I understand, are lawyers, will see the justness of my position.

In the subsequent session, Arnault was again asked series of questions as to whom he delivered the amount of P440,000. He was asked to give the name of the

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[72] 87 Phil 29 [1950]

[73] G.R. No. 89914, November 20, 1991, 203 SCRA 767 [1991]

person but instead told the committee that he was not sure of the name. For failure to reveal the name of the person, a resolution calling for the arraignment of Arnault for contumacious acts committed by him in the investigation of the Special Committee was subsequently filed. Thereupon, Arnault reiterated his allegation that the questions were incriminatory in nature and begging leave to be allowed to stand on his constitutional right not to be compelled to be a witness against himself. Senate deliberated and adopted a resolution whereby the petitioner was committed to the custody of the Sergeant-at-arms and imprisoned until "he shall have purged the contempt by revealing to the Senate or to the aforesaid Special Committee the name of the person to whom he gave the P440,000, as well as answer other pertinent questions in connection therewith."

Arnault filed an original petition for *habeas corpus* to relieve him from his confinement in the New Bilibid Prison. In his petition, Arnault raised three grounds for his unlawful commitment. First, he contends that the Senate has no power to punish him for contempt for refusing to reveal the name of the person to whom he gave the P440,000 because such information is immaterial and will not serve any intended or purported legislation, and his refusal to answer the question has not embarrassed, obstructed or impeded the legislative process. Second, he contends that Senate lacks authority to commit him for contempt for a term beyond its period of legislative session. Third, Arnault invoked his privilege against self-incrimination in his refusal to answer the question.

To resolve the first contention raised, the court said:

> Once an inquiry is admitted or established to be within the jurisdiction of a legislative body to make, we think the investigating committee has the power to require a witness to answer any question pertinent to that inquiry, subject of course to his constitutional right against self-incrimination. The inquiry, to be within the jurisdiction of the legislative body to make, must be material or necessary to the exercise of a power in it vested by the Constitution, such as to legislate, or to expel a Member; and every question which the investigator is empowered to coerce a witness to answer must be material or pertinent to the subject of the inquiry or investigation. So a witness may not be coerced to answer a qi estion that obviously has no relation to the subject of the inquiry. But from this it does not follow that every question that may propounded to a witness must be material to any proposed or possible legislation. In other words, the materiality of the question must be determined by its direct relation to the subject of the inquiry and not by its indirect relation to any proposed or possible legislation. The reason is, that the necessity or lack of necessity for legislative action and the form and character of the action itself are determined by the sum total of the information to be gathered as a result of

> the investigation, and not by a fraction of such information elicited from a single question.[74]

As a result, the court decided:

> [W]e find that the question for the refusal to answer which the petitioner was held in contempt by the Senate is pertinent to the matter under inquiry. In fact, this is not and cannot be disputed. Senate Resolution No. 8, the validity of which is not challenged by the petitioner requires the Special Committee, among other things to determine the parties responsible for the Buenavista an Tambobong estates deal, and it is obvious that the name of the person to whom the witness gave the P440,000 it is in fact the very things sought to be determined. The contention that the question is impertinent to the subject of the inquiry but that it has in relation or materiality to any proposed legislation. We have already indicated that it is not necessary for the legislative body to show that every question propounded to a witness is material to any proposed or possible legislation; what is required is that it be pertinent to the matter under inquiry.[75]

To resolve Arnault's second contention, the court stated that since Senate is a continuing body and which does not cease to exist upon the periodical dissolution of the Congress or of the House of the House of Representative, there is no limit as to the time to the Senate's power to punish for contempt in cases where that power may constitutionally be exerted. The court justifies this finding:

> By refusing to answer the questions, the witness has obstructed the performance by the Senate of its legislative function, and the Senate has the power to remove the obstruction by compelling the witness to answer the questions thru restraint of his liberty until he shall have answered them. That power subsists as long as the Senate, which is a continuing body, persists in performing the particular legislative function involved. To hold that it may punish the witness for contempt only during the session in which investigation was begun, would be to recognize the right of the Senate to perform its function but at the same time to deny to it an essential and appropriate means for its performance. Aside from this, if we should hold that the power to punish for contempt terminates upon the adjournment of the session, the Senate would have to resume the investigation at the next and succeeding sessions and repeat the contempt proceedings against the witness until the investigation is completed — an absurd, unnecessary, and vexatious procedure, which should be avoided.[76]

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[74] *Arnault v. Nazareno*, 87 Phil 29, 48 [1950]
[75] *Id.* at 49-50
[76] *Id.* at 66

On the third contention that Arnault had validly invoked his privilege against self-incrimination, the court was of the conclusion that the ground upon which the witness' claim is based is too shaky, infirm, and slippery to afford him safety. The court was likewise satisfied that the answers of the witness to the important question regarding the name of that person to whom he gave the P440,000 were false. The court further added that his insistent claim that if he should reveal the name he would incriminate himself, necessarily implied that he knew the name. The court concluded that it is unbelievable that he gave P440,000 to a person unknown to him.

The court then declared the test as regards to a valid invocation of his constitutional right against self-incrimination:

> As against witness's inconsistent and unjustified claim to a constitutional right, is his clear duty as a citizen to give frank, sincere, and truthful testimony before a competent authority. The state has the right to exact fulfillment of a citizen's obligation, consistent of course with his right under the Constitution. The witness in this case has been vociferous and militant in claiming constitutional rights and privileges but patently recreant to his duties and obligations to the Government which protects those rights under the law. When a specific right and a specific obligation conflict with each other, and one is doubtful or uncertain while the other is clear and imperative, the former must give way to the latter.

The court denied the petition of Arnault for *habeas corpus.*

The case of *Bengzon, Jr. v. The Senate Blue Ribbon Committee*[77] is a case filed to enjoin the Senate Blue Ribbon Committee from requiring the petitioners to testify and produce evidence at its inquiry into the alleged sale of equity of Benjamin "Kokoy" Romualdez to the Lopa Group in thirty-nine corporations. The investigation came about from a speech delivered by Senator Enrile before the Senate on the alleged "take-over" of SOLOIL Incorporated, the flagship of the First Manila Management of Companies (FMMC) by Rocardo Lopa. In his speech, Senator Enrile called upon the Senate to look into the possible violation of the law in the case, particularly with regard to Rep. Act 3019, the Anti-Graft and Corrupt Practices Act.

The matter was referred by the Senate to the Committee on Accountability of Public Officers (Blue Ribbon Committee). Thereafter, the Senate Blue Ribbon Committee started its investigation on the matter. Petitioners and Ricardo Lopa were subpoenaed by the Committee to appear before it and testify on "what they

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[77] G.R. No. 89914, November 20, 1991, 203 SCRA 767 [1991]

know" regarding the "sale of the thirty-six (36) corporations belonging to Romualdez."

At the hearing, Ricardo Lopa declined to testify on the ground that his testimony may "unduly" prejudice the defendants in the civil case before the Sandiganbayan. Bengzon likewise refused to testify invoking his constitutional right to due process, and averring that the publicity generated by the Committee's inquiry could adversely affect his rights as well as those of other petitioners who are his co-defendants in the civil case before the Sandiganbayan.

The Senate Blue Ribbon Committee, thereupon, suspended its inquiry and directed to file their memorandum on the constitutional issues raised, after which, it issued a resolution rejecting the petitioner's plea to be excused from testifying, and the Committee voted to pursue and continue its investigation of the matter.

On the ground that the Senate Blue Ribbon Committee is poised to subpoena them in excess of its jurisdiction and legislative purpose, in clear and blatant disregard of their constitutional rights, and to their grave and irreparable damage, prejudice and injury, the petitioners filed a petition for prohibition with a prayer for temporary restraining order and/or injunctive relief.

Petitioners raised the following issues: (1) the Senate Blue Ribbon Committee's inquiry has no valid legislative purpose, i.e., it is not done in aid of legislation; (2) the sale or disposition of the Romualdez corporations is a "purely private transaction" which is beyond the power of the Senate Blue Ribbon Committee to inquire into; and (3) the inquiry violates their right to due process.

On the first issue, the court held that the investigation has no valid legislative purpose:

> Verily, the speech of Senator Enrile contained no suggestion of contemplated legislation; he merely called upon the Senate to look into a possible violation of Sec. 5 of RA No. 3019, otherwise known as "The Anti-Graft and Corrupt Practices Act." In other words, the purpose of the inquiry to be conducted by respondent Blue Ribbon Committee was to find out whether or not the relatives of President Aquino, particularly Mr. Ricardo Lopa, had violated the law in connection with the alleged sale of the 36 or 39 corporations belonging to Benjamin "Kokoy" Romualdez to the Lopa Group. There appears to be, therefore, no intended legislation involved.[78]

[78] *Id.* at 781.

The court further held that what the Senate Committee was conducting was within the province of courts than of the legislature:

> It appears, therefore, that the contemplated inquiry by respondent Committee is not really "in aid of legislation" because it is not related to a purpose within the jurisdiction of Congress, since the aim of the investigation is to find out whether or not the relatives of the President or Mr. Ricardo Lopa had violated Section 5 of RA No. 3019, the "Anti-Graft and Corrupt Practices Act", a matter that appears more within the province of the courts rather than of the legislature."[79]

The court unfortunately did not decide on the last two issues. The court rather took judicial notice of the case pending before the Sandiganbayan. The court held that for the Committee to probe and inquire into the same justiciable controversy already before the Sandiganbayan, would be an encroachment into the exclusive domain of judicial jurisdiction that had much earlier set in. The court granted the petition of Bengzon, et. al., on the ground that the Senate Blue Ribbon Committee's inquiry is not in aid of legislation and, if pursued, would be violative of the principle of separation of powers between the legislative and the judicial departments of government, ordained by the Constitution. The court did not discuss whether or not the sale or disposition of the Romualdez corporations is a "purely private transaction" which is beyond the power of the Senate Blue Ribbon Committee to inquire into or the inquiry violates their right to due process.

B. RESOLUTION BY CONGRESS

This section will analyze the manner by which Congress resolved the conflict between them and the witness' refusal to reveal the information asked. In analyzing the Congressional resolution, Congress' interpretation or characterization of legislative inquiries will be highlighted, specifically the manner they define the nature, scope, and limitations of a legislative inquiry. Their interpretation is important in understanding their definition of pertinence and appropriateness of their queries such that refusal would be a ground for a citation of contempt.

Congress conducts hundreds of legislative investigations every year. Fortunately, the witnesses invited to such legislative inquiries are cooperative although hesitant in revealing information and documents which Congress asks. Moreover, Congress, unlike its American counterpart has sparingly used its power to cite witnesses in contempt.

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[79] *Id.* at 783.

The way that Congress interprets the nature of legislative inquiries reflects the general public's view of legislative inquiries—it's a political tool, an information-gathering tool, a tool of justice. Section 9 of the House Rules of Procedure on legislative inquiries specifically states the applicability of rules of procedure and evidence applicable in judicial proceedings, in the context that the committee could inquire on subjects involving the commission of a criminal offense which may affect the integrity and honor of any person. Congress however, in light of the 1987 constitutional limitations acknowledges the "limitedness" of its power to conduct inquiries. This is shown during a discussion on the need to draft rules and procedures regarding complaints against senators and employees of the Senate in the Committee on Ethics and Privileges:

> "Chairman (Senator Saguisag): I am not really sure whether we can ask people to come here, telling them that they are invited to assist us in aid of legislation. And then it seems to me, there is something unfair. Because, you know, if I come as a witness to assist you and then I say something that may be used against me, when I was not warned, I was not given the right to counsel, I think it is not proper.
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> Mr. Poca: In that case, you are required to testify, but your right should be protected. So, I think, in the course of the investigation or question and answer, if there are things that you believe may incriminate you, I think you have the right to refuse to answer.
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> Chairman: No. But you know, an innocent civilian comes here, he meant to be helpful. He may not have realized that it is against the law although he is presumed to know the law.
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> Mr. Poca: I think we should
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> Mr. Guyapa: And besides, Mr. Chairman, the way the proceedings are conducted, it appears to be questorial [sic].
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> Chairman: Because, you know, in the US for instance, take the case of Oliver North. Before he was presented in a public hearing, there was a lot of confidential committee hearing, and then if he has to say something that will incriminate him, arrangements for immunity are settled before hand.

> But you know, most people will be scared appearing before Senators. And when you become nervous, you say a lot of things; you contradict yourself; falsehood that you do not mean. Anyway, ayokong pakialaman ang ganuong mga nagyayari, but the feedback from the public is not good; especially if there are already pending parallel criminal prosecutions.
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> xxx
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> Chairman: Yes. Because what happens is, if something appears in the papers, someone pushes for an investigation they come here. We are not really well-briefed because of lack of time; lack of staff, lack of investigation. Anyway, I just tossed that because it came up this morning. I think, really, the Senate should set an example for being conscious and aware of the Constitutional rights of people whom we ask to assist us. Because otherwise, we have no power to investigate. Always, our excuse is in aid of legislation, but not to be the deputy of the Tanodbayan or the Minister of Justice."[80]

The scope of every legislative inquiry remains vast. Although based on the resolutions passed to empower a particular committee to conduct an investigation, like in the case of the Tambobong Estates Deal in the case of Arnault, there were attempts by Congress to limit its inquiry to a particular scope, i.e., questions directly related to the Tambobong Estate deal. However, the present procedure of initiating a legislative inquiry, for instance in Senate,[81] may translate to a virtual total empowerment of Senate Committees to do anything to investigate on the matters described in the petition, information or as the Committee see it. There is no need to define clear delineations or scope of a particular inquiry. As a consequence, a whole range of inquiries may be initiated without even an enabling resolution from its mother House.[82]

It seems that what Congress does is inquire now and justify through the resolutions or the pending bills later. It engages in what the Watkins court

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[80] RECORD OF SENATE COMMITTEE ON ETHICS AND PRIVILEGES 8-10 (16 December 1987)

[81] SENATE RULES OF PROCEDURE GOVERNING INQUIRIES IN AID OF LEGISLATION, Sec. 2.

[82] As illustrated in the case of *Bengzon, Jr. v. Senate Blue-Ribbon Committee* where the court ruled:

"It cannot, therefore, be said that the contemplated inquiry on the subject of the privilege speech of Senator Juan Ponce Enrile, i.e., the alleged sale of the 36 (or 39) corporations belonging to Benjamin 'Kokoy' Romualdez to the Lopa Group, is to be conducted pursuant to Senate Resolution 212, because firstly, Senator Enrile did not indict the PCGG, and secondly, neither Mr. Ricardo Lopa nor the herein petitioners are connected with the government but are private citizens." (Bengzon, Jr. v. Senate Blue Ribbon Committee, G.R. No. 89914, November 20, 1991, 203 SCRA 767 at 782-783 [1991])

describes as "retroactive rationalization."[83] The scope of inquiry may be left undefined and thus the witness is left to guess as to what he would answer when he is asked of what "he knows" on say, "sale of the thirty-six corporations belonging to Benjamin 'Kokoy' Romualdez." Although the witness is limited to a particular topic, i.e., "sale" the topic could assume many different dimensions, may branch out as to expand to unforeseen bounds. Witnesses may not see the extent of the information Congress expects from him to reveal.

Having a clear guideline as to the scope of the inquiry is important. This is necessary to guide the legislators in formulating their questions and their interpretation of what is a pertinent question. This is also important to guide witnesses as to what information the Congress may demand from him and the legal implications of the information he is to reveal.[84] Moreover, this is also important for the Committee since, over the course of its investigation, it may deviate from its original purpose. Borrowing again the language of the Watkins court:

> The more vague the committee's charter is the greater becomes the possibility that the committee's specific actions are not in conformity with the will of the parent House of Congress. [85]

How does Congress consider a question to be pertinent? Congress may consider it pertinent when the question falls squarely within the scope of the inquiry as determined by the resolution. As in the case of Arnault, where the basis was a resolution passed to investigate the Tambobong Estate deal, Congress considered a question on the name of the person to whom he gave the P440,000 as pertinent. On the case of Bengzon, Jr., et. al., where the basis of the inquiry was Sen. Enrile's speech on the possible violations of Rep. Act 3019 or the Anti-Graft and Corrupt Practices Act in the take-over of SOLOIL Inc., Congress considered the question on "what they know" regarding the "sale of the thirty-six (36) corporations belonging to Kokoy Romualdez" as pertinent.

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[83] *Watkins v. United States*, 354 U.S. 178 [1957]

[84] These implications are highlighted by the US Supreme Court in Watkins v. United States:

"The consequences that flow from this situation are manifold. In the first place, a reviewing court is unable to make the kind of judgment made by the Court in United States v. Rumely, supra. The Committee is allowed, in essence, to define its own authority, to choose the direction and focus of its activities. In deciding what to do with the power that has been conferred upon them, members of the Committee may act pursuant to motives that seem to them to be the highest. Their decisions, nevertheless, can lead to ruthless exposure of private lives in order to gather data that is neither desired by the Congress nor useful to it. Yet it is impossible in this circumstance, with constitutional freedoms in jeopardy, to declare that the Committee has ranged beyond the area committed to it by its parent assembly, because the boundaries are so nebulous." (Watkins v. United States, supra at 204-205)

[85] *Id.* at 201.

However, when the resolution is vague, especially in cases where a committee is simply commissioned to investigate something pursuant to a speech of a senator, what is pertinent then is hard to determine. This vagueness of scope translates into the vagueness of what questions are to be considered pertinent and therefore have to be answered by the witness. Witnesses may be cited in contempt for failure to reveal information that congress considers to be pertinent but according to the interpretation of the witness is not pertinent, and thus he is not compelled to reveal.

What has been considered so far is only the question of pertinence. This does not mean that Congress can only ask questions that are pertinent. Congressmen may very well ask questions that are not pertinent or directly related to the legislative inquiry. This may be used as a tactic to dismiss the credibility of the witness appearing before the committee. Thus, the questions thrown into the witness may not fall squarely within the scope of inquiry. After all, there is no direct sanction for legislators asking impertinent questions.

The present manner of resolution by Congress does not fully uphold Section 21, Article VI of the 1987 Constitution. The provision on legislative investigation was for the protection of the witnesses.[86] Fortunately, Congress has sparingly used its extreme power of contempt. At least only few persons' liberty were put in jeopardy. Nevertheless, it remains a fact that witnesses are subjected to personal incursions by Congress. Their personal lives are revealed into open and are subjected to public scrutiny especially in a heavily publicized inquiry. Added to the consequence of undue publicity is the possible embarrassment that they may suffer. Absent of any clear guidelines on the part of Congress, this seems to be a heavy price for witnesses to pay.

Perhaps one reason for Congress' not strictly living up to the Constitutional mandate of protecting witnesses is its being a political institution. It does not conscientiously consider the legal consequences of its acts and may act according to populist demands. Nevertheless, the mandate of the Constitution specifically the Bill of Rights must be upheld. To live up to this constitutional standard, it must provide clear definition of its scope of inquiry, establish the pertinence of questions asked, shield witnesses from undue consequences of their appearance as witnesses such as undue publicity or even embarrassment.

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[86] BERNAS, *op. cit. supra* note 32 at 676.

C. ROLE OF COURTS

Courts play an important role in resolving these conflicts. Aside from its traditional role of allocating constitutional boundaries,[87] the Judiciary is specifically mandated by the 1987 Constitution under the second paragraph of Section 1, Article VIII:

> Judicial Power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

However, this role to be played by the courts is difficult. While the 1987 Constitution mandates respect for the rights of persons appearing in and affected by legislative inquiries, at the same time, it also expressly recognizes legislative power to conduct investigations in aid of legislation. As stated in *Arnault vs. Nazareno*, the Court said:

> [It]...is the duty of every citizen to give frank, sincere, and truthful testimony before a competent authority.... When a specific right and specific obligation conflict with each other, and one is doubtful or uncertain while the other is clear and imperative, the former must yield to the latter. The right to life is one of the most sacred that the citizen may claim, and yet the state may deprive him of it if he violates his corresponding obligation to respect the life of others.[88]

Courts have been able to mark the boundaries between these two great legal forces—privacy and legislative inquiry. Together with the decisions of the American courts, the Judiciary has announced tests so as to guide legislators, witnesses, and judges in dealing with these cases of conflicts.

1. General Requirements in a Legislative Inquiry

A legislative inquiry must be in aid of legislation. The end must be legislation. As emphasized in *Watkins v. United States*, "no inquiry is an end in itself." "It must be related to and in furtherance of, a legitimate task of Congress." Thus, the inquiry, to be within the jurisdiction of the legislative body to make, must be material or necessary to the exercise of a power in it vested by the Constitution,

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[87] *Angara v. Electoral Commission*, 63 Phil. 139 [1936]

[88] *Arnault v. Nazareno*, 87 Phil 29, 66 [1950]

such as to legislate, or to expel a Member.[89] Hence, a legislative investigation is not a jury, is not an inquest, and is not court. It cannot act on a privilege speech when the purpose is merely to inquire on possible violations of the Anti-Graft and Corrupt Practices Act.[90] It cannot substitute for an ombudsman nor inquire into the same justiciable controversy already before a court of justice for such would mean an encroachment into the exclusive domain of other branches if the government.

Moreover, the subject matter in which the inquiry is conducted should bear fruit to a valid legislation. Congress cannot undertake inquiry with the use of compulsion where the results could not lead to valid legislation on the subject to which the inquiry if referred.[91]

A legislative inquiry must be also conducted in accordance with its duly published rules of procedure. This requirement does not forego the requirement that the duly published rules of procedure are intrinsically consistent with the constitution. Congress must not only conduct its legislative inquiries in a manner stated in its published rules but also the rules it formulate must be constitutionally consistent. The court will not cower from striking down an internal rule of procedure of Congress if such is found to be constitutionally unsound. The constitution only demands to conduct inquiries according to fair rules of procedure. For instance, the scope of inquiry must not suffer from vice of vagueness for such is contrary to the demands of due-process.

Moreover, the questions to be asked must be pertinent to the scope or subject of inquiry. Every question which the investigator is empowered to coerce a witness to answer must be material or pertinent.[92] The burden however of showing a question to be pertinent is imposed on the government.[93] Specifically, the court imposes to Congress the obligation to provide the witness "the knowledge of the subject to which the interrogation is deemed pertinent."[94] Any presumption of regularity in that regard is overcome by the presumption of innocence attending the accused at the trial.[95]

However, it does not follow that every question that may be propounded to a witness must be material to any proposed or possible legislation. "In other words, the materiality of the question must be determined by its direct relation to

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[89] *Id.*
[90] *See Bengzon, Jr. v. The Senate Blue Ribbon Committee, supra.*
[91] *Kilbourn v. Thompson, supra.*
[92] *Arnault v. Nazareno, supra.*
[93] *Sinclair v. United States,* 279 U.S. 263 (1929)
[94] *Watkins v. United States, supra*
[95] *Sinclair v. United States, supra*

the subject of the inquiry and not by its indirect relation to any proposed or possible legislation. The reason is, that the necessity or lack of necessity for legislative action and the form and character of the action itself are determined by the sum total of the information to be gathered as a result of the investigation, and not by a fraction of such information elicited from a single question."[96]

Congress must likewise respect the rights of the witnesses. Mere semblance of legislative purpose would not justify an inquiry in the face of the Bill of Rights.[97] One cannot simply assume that every Congressional investigation is justified by a public need that overbalances any private rights involved.[98] To do so would be to abdicate the responsibility placed by the constitution upon the judiciary to insure that Congress does not unjustifiably encroach upon an individual's right to privacy nor abridges his liberty of speech, press, religion or assembly.[99] The power to investigate cannot be inflated into a general power to expose where the predominant result can only be an invasion of the private rights of individuals.[100]

These are the general requirements for a valid legislative inquiry. These rules must be complied with regardless of subject matter of inquiry or person invited as witness. To deal with particular cases of inquiry, the court has likewise formulated rules or tests. The circumstances considered in this paper are when the inquiry is on private citizens involving strictly private matters, on public officers involving public matters, and the gray area, i.e., inquiries on private citizens involving public matters or interest, public officers involving private matters, and public figures.

2. Inquiries on Private Citizens Involving Strictly Private Matters

This situation contemplates a scenario wherein Congress invites a private citizen and the information asked from him involved strictly private matters, i.e., matters that are strictly well within the private domain. Examples of these are choice of spouse, things bought from personal income, choice of child to be adopted, choice of clothes and the like. It may also involve inquiries on personal relationships like friendship, nature of relationship with parents and siblings, nature of marital relationship, among others.

In the United States, these are the so-called zones of privacy which are outside government regulation. Among these zones of privacy are the choice a

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[96] *Arnault v. Nazareno, supra*
[97] *United States v. Rumely, supra*
[98] *Watkins v. United States, supra*
[99] *Ibid.*
[100] *Ibid.*

marriage partner,[101] use of birth control,[102] the choice of becoming a parent,[103] access to abortion services[104] and engagement in unregulated consensual sexual practices at home.[105] An individual acting within these zones of privacy cannot be interfered upon by government.

In this situation, if Congress cannot validly legislate into these areas, Congress has no business to conduct legislative inquiries and summon witnesses to such inquiries. This is an area of no government interference. These are the boundaries of police power. Since Congress cannot regulate even under Police Power these areas, and thus cannot validly produce a valid legislation, Congress cannot conduct inquiries on these areas.

It must be noted however that what is considered as areas that are strictly private evolve over time. Zones of privacy are subject to changes in society, to imminent societal concerns and culture. Since privacy is also a social construct, and is deeply rooted in culture, what is considered private evolves together with the society. In this sense, American pronouncements of zones of privacy may not apply in the Philippines. Nevertheless, there are areas, declared by the Constitution, statutes and jurisprudence that are domains of privacy and as long as these laws continue to operate, Congress could not conduct inquiries on these areas.

3. Inquiries on Public Officers Involving Public Duties and Offices

This situation contemplates a public officer summoned by Congress in a legislative investigation and was asked questions regarding the conduct of his duty and office. He may be asked question as to where the funds given to him were spent, how he spent the money and who benefited from such expenditure. He may be asked of his duties and responsibilities and his manner of performance. He may likewise be asked to bring documents involving his office and his duties.

Congress could inquire into the different branches of government—the Executive, Legislative and even the Judiciary. The ground for this is Section 27 of Article II of the Constitution which declare as a state policy that the State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption. Conduct in public office is most certainly

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[101] *Loving v. Virginia*, 388 U.S. 1 [1967]

[102] *Griswold v. Connecticut*, 381 U.S. 479 [1965]; *Eisendtadt v. Baird*, 405 U.S. 438 [1972]; *Carey v. Population Services International*, 431 U.S. 678 [1977].

[103] *Skinner v. Oklahoma*, 317 U.S. 535 [1942].

[104] *Roe v. Wade*, 410 U.S. 959 [1973].

[105] *Lawrence v. Texas*, 123 S.Ct. 2472 [2003]

subject to Congressional regulation. Furthermore, Section 1, Article XI declares that a public office is a public trust and that public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives. Congress, as representatives of the people has the mandate to therefore to look after the conduct of public officers. The public, through their representatives, is entitled to be informed concerning the workings of its government.[106]

In *McGrain v. Daugherty,* the US Supreme Court held that Congress could look after the administration of the Department of Justice—whether its functions were properly discharged or were being neglected or misdirected, and particularly whether the Attorney General and his assistants were performing or neglecting their duties in respect of the institution and prosecution of proceedings to punish crimes and enforce appropriate remedies against wrongdoers, specific instances of alleged neglect being recited. Congress could look after the functions, the powers and duties and even the duties of the assistants as such are all subject to regulation by Congressional legislation.

Congress may surely inquire also on the conduct of its own members. Sec 16(3), Article VI of the 1987 Constitution empowers Congress to punish members for disorderly behavior. Incidental to this power is the power to conduct an investigation to determine the grounds for punishment. Moreover, as held in *Re Chapman,* an inquiry related to the integrity and fidelity of Senators in the discharge of their duties may be conducted.

4. On the Great Gray Area

Confronted with the issue of legislative inquiry involving matters and individuals in the realm of the gray area, two points must be considered. First, the subject matter of inquiry must be imbued by public interest, i.e., those that are not strictly private matters. Example of these is the decision of the American Court that considered investigations between the government and private citizens on oil leases to be a valid subject of inquiry.[107] Another is Tambobong-Buenavista Estates deal with the government where the Philippine court held the investigation valid.[108]

Second, when a right is invoked to protect one's privacy, several tests enunciated by the court may be determinative. For example, when invoking the privilege against self-incrimination, the following rules may apply. First, reliance on

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[106] *Watkins v. United States, supra.*
[107] *Sinclair v. United States, supra.*
[108] *Arnault v. Nazareno, supra.*

the self-incrimination clause is to be recognized when it appears that the witness so desires, it not being necessary that any set of terminology be used to gain the privilege. The privilege should only be considered to be waived where there is a clear and distinct evidence of waiver, and the presumption of waiver should be not be taken lightly. Second, the investigatory committee must make a clear indication to the witness that his refusal to answer is not regarded as justifiable and that a more complete answer is demanded. Third, a question which appears or tends to incriminate whether it, of itself, is incriminatory, does not have to be answered.

Even though the right specifically invoked may differ, as to protect one's privacy, the ground for the invocation of that right must not be shaky, infirm or slippery.[109] If not, as against witness' inconsistent and unjustified claim to a constitutional right, the court will uphold his clear duty to give frank, sincere, and truthful testimony before a competent authority. When a specific right and a specific obligation conflict with each other, and one is doubtful or uncertain while the other is clear and imperative, the former must give way to the latter.[110]

Thus, if the right to privacy invoked is vague, doubtful, or uncertain while the testimony required is clearly necessary or indispensable for inquiries in aid of legislation, then claims to privacy must yield to the power to legislate. Respect of the right to privacy must not impede or obstruct the exercise of legislative inquiry in furtherance of public interest. The power of inquiry, with process to enforce it, is an essential and appropriate auxiliary to the legislative function. It is a necessary power to effect the legislative functions of Congress. Hence, "It is the duty of every citizen to give frank, sincere, and truthful testimony before a competent authority."[111]

IV. CONCLUSION

The Right to Privacy is a fundamental right. As shown, it is protected by the Constitution, statutes and jurisprudence. The right is complex for privacy is a complex concept. It assumes different forms. It has many dimensions. It may manifests from a personal level or the level of relationships. Thus, in order to protect one's privacy, he may invoke his other rights like his privilege against self-incrimination, his freedom to speak and not to speak, his freedom of association and his right to be presumed innocence. He may however explicitly invoke his right to privacy.

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[109] *Ibid.*
[110] *Ibid.*
[111] *Ibid.*

Being a fundamental right, the right to privacy is a zealously protected right. Being so, an individual has the fundamental right to be let alone. Any intrusions on the person made by the government is subject to strict scrutiny. As a result, the law carefully creates strict limitations on actions by the government. It demands requisites that it ought to follow so as not to disturb the person in his scope of privacy. It demands acknowledgment of rules of intervention, clear guidelines when crossing the fences into the domain of privacy. The right to privacy in a legislative inquiry would be rendered illusory if the guidelines or requisites are not complied with by Congress. The fence would be dismantled and the person be exposed naked and his right to privacy desecrated.

For Congress to interfere, it has to show that the legislative inquiry is in aid of legislation, consistent with its duly published rules of procedure and respects the rights of the persons invited before it. Necessarily, the subject matter of inquiry must be a valid subject of legislation. Moreover, the scope must not suffer from vice of vagueness. Nevertheless, the questions posed must be pertinent or germane to this subject matter. More importantly, witnesses must be treated with utmost dignity, and due-process. The rigidity of this rule would protect the witness' right to privacy from any undue interference by Congress.

Once Congress establishes compliance with the requisites, the individual then has the utmost duty to give frank, sincere, and truthful testimony before a competent authority like the Congress. However, the role of the individual will further determine the information that he is bound to reveal. If the subject matter of inquiry would involve private citizens and the matter asked are private matters, Congress must show that the subject matter of inquiry is within the areas that Congress could validly regulate in the exercise of its police power. Otherwise, it has no business to ask its witnesses to reveal information as to these areas. Meanwhile, if the witness is invited as a public officer to discuss about completely public matters like his performance of duty, Congress has the perfect right to inquire especially that public office is a public trust. To begin with, there is no privacy to speak of in such case and thus, the right to privacy does not lie.

The great gray area covers the situations wherein private citizens are involved in public matters, public officers in their conduct of private affairs and the case of public figures. The general rule is Congress must show a priori that the subject matter is imbued with public interest and it does not involve private matters which congress cannot validly regulate. This is a duty that Congress is bound to show and that there is no presumption of prior validity. If Congress has sufficiently shown the validity of its subject matter, it is now the duty of the witness to give frank and sincere answer. If the witness deems that his privacy is unfairly intruded,

he could invoke his right provided that the ground is not shaky, infirm or slippery. When a specific right and a specific obligation conflict with each other, and one is doubtful or uncertain while the other is clear and imperative, the former must give way to the latter.[112] In such case, the witness ought to answer.

Legislative Inquiry is a fundamental tool of democracy. It is through which that Congress gathers the necessary information to legislate vital laws that are to advance public interests, promote human dignity and enhance social development. Hence, to unduly impede such would defeat democracy itself. In the face of a recalcitrant witness, respect of the right to privacy must not impede or obstruct the exercise of legislative inquiry in furtherance of public interest. The power of inquiry, with prrocess to enforce it, is an essential and appropriate auxiliary to the legislative function. It is a necessary power to effect the legislative functions of Congress. Hence, "It is the duty of every citizen to give frank, sincere, and truthful testimony before a competent authority."[113]

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[112] *Ibid.*
[113] *Ibid*