RECENT DOCUMENT

JOINT MEMORANDUM OF AMICIE CURIAE IN THE CASE OF VIVO v. GANZON, ET AL.*

STATEMENT OF THE ISSUES

The issues upon which the resolution of the present case will turn, as the undersigned amicie curiae see them, are threefold. They are as follows:

First, *whether or not the Senate can delegate to its committees its implied power to punish for contempt;*

Second, *assuming that the first issue requires an affirmative answer, whether or not the authorization contained in Senate Resolution No. 50 which, while conferring upon the committees of the Senate plenary power "to punish for acts of contempt against (them) as contempt against the Senate," fails utterly: (a) to specify what act or acts should constitute contempt; (b) to define the penalties which may be imposed therefore; and (c) to prescribe the procedure to be followed for the prosecution of a charge of contempt, is adequate, valid and effective;* and

Finally, *assuming an affirmative answer to the first two issues, whether or not the authority so vested in the committee can be exercised by a chairman alone.*

We submit that as to each of these three issues the only correct answer is a negative one.

When we shall have finished with our argument, it will be seen that such answers are not only required by principle, but are compelled by the imperious demands of public policy.

In this connection, it might be well to preface our discussion with the observation that here we are once more witnesses to the subtle and relentless efforts of power, garbed in the raiments of authority, to undermine our civil liberties.

Whether our civil liberties will be vindicated here, as they have always been in the past, or will be allowed to be slowly eroded away, will ultimately depend upon this Honorable Tribunal.

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* Martiniano P. Vivo v. Hon. Rodolfo T. Ganzon, et al., (G.R. No. L-23453).

This is so for the reason that, in a very real sense—indeed, in a literal sense—this Court is the citizen's "tribunal of last resort." Beyond this Court the defenses afforded to him by the Constitution and the Law against the assaults of power—including power as institutionalized in government—are at an end. It is therefore in situations such as these that one sees most clearly that the oft-repeated tribute to this august Tribunal as "the last bulwark of democracy" is not merely an empty rhetoric. This, indeed, is the cause to whose service this Honorable Court is once more summoned in this case.

ARGUMENT

I

WHETHER OR NOT THE SENATE CAN DELEGATE TO ITS COMMITTEES ITS IMPLIED POWER TO PUNISH FOR CONTEMPT

Respondent Ganzon claims authority on the part of the Committee on Labor and Immigration to punish for contempt on the basis of Senate Resolution No. 50 which, insofar as pertinent, reads:

> "Resolved by the Senate, To authorize as it hereby authorizes, its special and standing committees to hold meetings, hearings, and/or conduct investigations within and outside the City of Manila, during the recess of Congress, and for this purpose, resolve testimonies, suggestions or memoranda relating to matters pertinent to the committees concerned; to issue subpoena or subpoena duces tecum to any person, corporation entity or its officers or employees and/or to produce such documents, data, records, papers, and similar evidence which may be needed by the committees in pursuance of their functions and duties; *to punish for acts of contempt against it as contempt against the Senate;* to require the assistance of any officers or employees of the Government or any of its sub-divisions or instrumentalities, or any other governmental agency or administration, in the performance of their duties and functions; and to continue performing such other powers and prerogatives necessary in the proper and effective discharge of their duties and functions."
>
> (Resolution No. 50, May 21, 1964, emphasis supplied.)

There is no question that Resolution No. 50 expressly empowers the "standing and special committees" of the Senate "to punish for acts of contempt against (them) as contempt against the Senate."

The question, however, is whether this delegation of that power is valid.

We submit that it is not. We submit that the Senate, or more generally, either house of Congress, cannot delegate its implied power

to punish for contempt to a legislative committee, and that any attempt to do so is invalid, futile and ineffectual.

This proposition is not only affirmed by the authorities but is the only one consistent with the theory upon which the recognition of an implied power on the part of either house to punish for contempt rests.

1. *The authorities affirm that neither house of Congress can delegate its implied power to punish for contempt to a legislative committee.*

The proposition that neither house of Congress can delegate its implied power to punish for contempt to a legislative committee has, among others, the support of the eminent authority of Judge Cooley. The rule on this point, which in his own words, he had merely "faithfully endeavored to state. . . as it has been settled by the authorities," is summarized by him as follows:

> "Each house must also be allowed to proceed in its own way in the collection of such information as may seem important to a proper discharge of its functions, and whenever, it is deemed desirable that witnesses should be examined, the power and authority to do so is very properly referred to a committee with any such powers short of final legislative or judicial action as may seem necessary or expedient in the particular case. Such a committee has no authority to sit during a recess of the house which has appointed it, without permission to that effect. [One branch of the legislature, acting alone, may appoint a committee to act during the session; but it would seem that it cannot, by its independent action, create a committee of investigation with power to sit after the legislature adjourns. Such authority can be conferred only by an act or a joint resolution of the legislature.] *A refusal to appear or to testify before such committee, or to produce books or papers, would be a contempt of the house; but the committee cannot punish for contempt; it can only report the conduct of the offending party to the house for its action.*"
>
> (Cooley's Constitutional Limitations, 8th ed., Vol. I, pp. 275-276; emphasis supplied.)

Judge Cooley's scrupulous "fidelity" to the "authorities" is attested by the fact that more than two decades later, the rule as formulated by him has not only been preserved but has in fact been reinforced. Thus, more recent authority could assert:

> "As a necessary incident to its power to investigate, a legislative body has of itself both the power to enforce attendance by a witness and the power to act on a witness for contempt. The proper procedure is to bring a recussant witness before the bar of the body, by force if necessary, and give him an opportunity to purge himself by agreeing to respond to

the questions put to him by a committee. If the witness does not purge himself the House may act on him by its own process. While this power is given and limited by the constitution in some states, it would exist by implication, in any event. When a recussant witness is confined until he is prepared to purge himself the contempt is civil in character, the purpose is to get the desired information and is not punitive.

"A committee does not have implied contempt power; necessity cannot be made out since the House can act. Whether a house could by resolution expressly delegate the power to a committee is doubtful not because the function is judicial but because of the seriousness and finality of contempt action."

(Read, MacDonald and Fordham, Cases and Other Materials on Legislation, 1959, pp. 435-436, citing Jurney v. MacCracken, 294, U.S. 125.)

Tracing the rule to the cases, the clearest and the amplest formulation of it may be found in the case of In re Davis, 49 Pac. 160:

"The power to punish as for a contempt resides in the houses separately, and while a refusal to testify before a committee duly appointed is a contempt of the house appointing such committee, and may be by it punished as such, the committee had no implied power to punish, and can only report the conduct of the offending party to the house for its action. Cooley, Const. Lim. 161. The power to punish, as for a contempt is not expressly given to the houses of the legislature by the constitution, but is taken by implication, because necessary to the independence and integrity of these bodies. The limits of the power so implied are not clearly marked. They arise from necessity, and cannot extend beyond the limits of necessity. 2 Bish. Cr. Law, 250.

"* * * *

"May the legislature confer on a committee the power to punish recussant witsesses, not judicially, but as a breach of the legislative department of the government? The claim that it might do so would be indeed a novel one. The houses of the legislature are vested with the lawmaking power of the state. . . . Aside from the special cases in which legislative powers are expressly allowed to be delegated, the legislature itself must exercise the legislative functions. Its power to punish for contempt of its authority comes as an incident to its power of legislation. Neither the Senate nor the house can delegate to a committee any legislative power. It may use committee to collect information, and aid it in many ways, but the power of final action and decision rests with the house."

(In re Davis, *supra*, at pp. 163, 164; emphasis supplied.)

In Texas where the power of the state legislature to punish for contempt is not merely implied but is expressly vested upon it by the state constitution, a delegation by that body of this power to its committees was held invalid. This, notwithstanding that the delegation was effected not solely by means of a resolution but by

a statute. (See Ex Parte Wolters, 144 S.W. 531, Ex Parte Gray, 144 S.W. 531, and Ex Parte Youngblood, 251 S.W. 509.)

We quote the following from the decision in the *Youngblood* case wherein the court also summarized the holdings in the earlier cases of Ex Parte Wolters, *supra,* and Ex Parte Gray, *supra.*

> "In the Wolters and Gray Cases the statute mentioned was ignored, and it was held that the clause of the Constitution quoted was the authority for punishment by the Legislature for contempt. *The constitutional provision* confers upon each house the power to punish for contempt. The statute upon which the present judgment rests confers upon a committee this power. This, it is claimed by the relator, offends against the general principle concerning the delegation of power. To the committee authorized by article 5517 of the Revised Statute is delegated the power to determine the propriety and pertinency of the questions propounded and to determine that the refusal to answer them is unauthorized and willful and to fix the punishment. The statute makes no restriction as to the number of members of any particular committee. It may be composed of a large number of members of the House and Senate or either, and have the power to enter a judgment of contempt conferred by statute upon the House or upon the Senate, as the case may be. Touching the validity of the statute, the decisions of the other states are not adequate as a guide, in that they deal with different facts and are under Constitutions variant from ours. In so far as they do furnish precedents, generally speaking, they declare that, *where a committee of investigation finds a witness unwilling to testify, the question of conviction and punishment should be referred to the body appointing the committee. This apparently is the procedure contemplated by article 3, section 15, of the Constitution, and is the procedure followed by the House on the proceedings against Wolters and Gray.*"
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> (Ex Parte Youngblood, *supra,* at 511-512, emphasis supplied.)

From the foregoing, it is clear that an investigating committee confronted with a recussant witness is powerless to punish the latter for contempt. Its remedy, however, is to refer the matter to the parent body which *alone* can adjudge the alleged contemnor guilty and impose the appropriate penalty.

The following statement from the concurring opinion in the same case is equally instructive on this point:

> "In our opinion under our Constitution, *while the Legislature may function through a committee, and, because of the refusal of any person to answer proper inquiries before the committee, the matter may be reported to the house appointing the committee for its action, and said house of the Legislature may by appropriate proceedings adjudge such person in contempt, and he be thereafter imprisoned for the time specified by the Constitution for such contempt, the committee itself has no such power because of the forbiddance of the Constitution.*"

(Ex Parte Youngblood, *supra*, Per Lattimore, J., concurring, at 513, emphasis supplied. See also quotation from Read, MacDonald and Fordham, *op. cit., supra.*)

It is of course true that there is authority from which some support may perhaps be derived to sustain a contrary view, *i.e.* that a house of the legislature may delegate its power to punish for contempt to its committees. But this view rests solely upon the slender crutch of two cases. And even now it may be asserted with confidence that the applicability of these cases to the present case is doubtful. In addition, as will also be seen presently, the validity of the holdings in both cases is at best dubious.

These two cases are Sullivan v. Hill, 79 S.E. 670, and Ex Parte Parker, 55 S.E. 122.

The rule announced in Sullivan v. Hill, *supra*, at p. 671, is as follows:

"We think the summons and order of arrest, so directed and executed, were valid exercises by the senate committee of the power given by the statute to enforce obedience to its summons. . . . So much for the regularity of the proceedings. Our conclusion, therefore, is that if the matter of inquiry was lawful, there was no want of power in the Senate committee as a means of enforcing obedience to its writ, to arrest and restrain the petitioner as was done, and to punish him by attachment and imprisonment for his disobedience and that first and fourth points relied upon must be overruled."

On the other hand the holding in the *Parker* case *supra*, at p. 122, is summarized in the headnote, thus:

"A committee appointed under resolution of Legislature, January 31, 1905, to investigate the affairs of the state dispensary were empowered to send for persons and papers and require answers to any questions relevant to such investigation. *Held*, that the committee had power to commit a witness for contempt on refusal to answer a question as to whether a person stated to him that he had had dealings with the state dispensary and had given rebates or money or had improperly influenced the board of directors in the purchase of liquor."

As stated earlier, assuming that these holdings are valid, nevertheless, we submit that they do not and cannot apply to the present case. This is so for the reason that in Sullivan v. Hill, *supra*, the authority of the committee in that case to punish for contempt was conferred upon it by a *statute*. Indeed, it is clear that the affirmation of the committee's authority to arrest and detain the petitioner there was sustained principally on this account. This is plain from

the statement of the court's holding which is quoted above. (*Supra*, p. 618.)

A similar objection may be addressed against the *Parker* case. The only difference between Sullivan v. Hill, *supra*, and the *Parker* case is that in the latter the authority of the committee to punish for contempt was vested upon it not by a statute but by a joint resolution of the legislature. In contrast, in the present case, the respondent's source of authority is traceable only to an "independent" act of a single house of the Congress, namely, Resolution No. 50 of the Senate.

We submit that this distinction between the *Sullivan* and *Parker* cases, on the one hand, and the present case, on the other, is crucial. This is so for the reason that, as pointed out by Judge Cooley, it is doubtful that either house of a legislative body can by "independent" action validly empower its committees to act during the period of adjournment.

> "One branch of the legislature, acting alone, may appoint a committee to act during the session; but it would seem that it cannot, by its independent action, create a committee of investigation with power to sit after the legislature adjourns. Such authority can be conferred only by an act or a joint resolution of the legislature."
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> (Cooley, *op. cit., supra*, citing Tipton v. Parker, 74 S.W. 298; Com. v. Costello, 21 Pa. Dist. R. 232; Com. v. McCall, 21 Pa. R. 238; Ex Parte Wolters, *supra*; Ex Parte Caldwell, 55 S.W. 910.)

Aside from the fact that the applicability of the holdings in these two cases to the present case is highly doubtful, the validity of such holdings is, to say the least, dubious.

On this point much instruction may be derived from the concurring opinion of Mr. Justice Hawkins in the case of Ex Parte Youngblood, *supra*.

In that opinion, while Mr. Justice Hawkins concedes that both cases may sustain the view "that a legislative committee may itself punish for contempt," he nevertheless warns that this proposition, particularly in the *Parker* case, was simply predicated on the mere "assumption" that the legislature had the right to delegate this power to a committee." And he goes on to point out that the validity of this "assumption" was there left largely unexamined.

And after a thorough re-examination of the *Parker* and *Sullivan* decisions, Mr. Justice Hawkins could confidently conclude that not

one of the authorities invoked in both cases supports the holding in either case. This, indeed, he demonstrates with devastating thoroughness.

We quote his opinion at length below:

"We are referred by respondent to only two cases holding that a legislative committee may itself punish for contempt. One is Ex parte Parker, 74 S.C. 466, 55 S.E. 122, 114 Am. St. Rep. 1011, 7 Ann. Cas. 874, the other Sullivan v. Hill, 73 W. Va. 49, 79 S.E. 670, Ann. Cas. 1916B, 1115. In the Parker Case the opinion rather assumes that the Legislature had the right to delegate this power to the committee and does not discuss the question at length. The opinion concludes with this statement:

'The conclusions reached as to the power of Legislative committees are sustained by the following authorities: Anderson v. Dunn, 6 Wheat (U.S.) 204; In re Chapman, 166 U.S. 661, 17 U.S. Sup. Ct. Rep. 677; Burnham v. Morrissey, 14 Gray (Mass.) 226, 74 Am. Dec. 676; People v. Keeler, 99 N.Y. 463, 2 N.E. Rep. 615; People v. Sharp, 107, N.Y. 427, 14 N.E. Rep. 319, 1 Am. St. Rep. 851; Matter of Gunn, 50 Kan. 155, 32 Pac. Rep. 470, 94h, 19 L.R.A. 519.'

"If the cases above enumerated were intended to present authority sustaining the right of the Legislature to delegate power to a committee to punish for contempt, they do not sustain the proposition. In Anderson v. Dunn, 6 Wheat, 204, 5 L. Ed. 242, the House of Representatives of the United States Congress had appointed a committee to make certain investigations. *This committee reported back to the House, which acted directly in holding the witness in contempt, not of the committee, but of the House of Representatives, and the warrant of commitment under the resolution was signed by Henry Clay, who was then Speaker of the House of Representatives.* In Chapman's Case, 166 U.S. 611, 17 Sup. Ct. 677, 41 L. Ed. 1154, he refused to answer questions propounded by a committee appointed by the United States House of Representatives. *The committee did not assume the right to punish him for contempt for such refusal, but he was prosecuted for a misdemeanor in the federal court under an Act of Congress making such refusal a violation of law, and this Act of Congress was attacked as being unconstitutional. The question of the right of the committee to punish for contempt was not discussed, and did not arise in that case.* In Burnham v. Morrissay, 14 Gray (Mass.) 226, 74 Am. Dec. 676, Burnham refused to answer questions propounded by the House of Representatives of the State of Massachusetts. The committee reported the refusal to the House, and *the House of Representatives adjudged him guilty of contempt, not the committee.* In People v. Keeler, 99 N.Y. 463, 2 N.E. 615, 52 Am. Rep. 49, Keeler, refused to answer questions propounded by a committee appointed by the Senate of the State of New York. *The committee reported to the Senate, and that body brought the witness before them and adjudged him guilty of contempt.* The other two cases of People v. Sharp, 107 N.Y. 427, 14 N.E. 319, 1 Am. St. Rep. 851, and Matter of Gunn, 50 Kan. 155, 32 Pac. 470, 948, 19 L.R.A. 519, *neither support the propositions that a committee appointed by the Legislature may itself hold a witness in contempt of such committee.* The case of Sullivan v. Hill, *supra,* recognizes that In re

Davis, 58 Kan. 368, 49 Pac. 160, is not in consonance with the holding of the West Virginia court, and cites People v. Learned, 5 Hun (N.Y.) 626, and Ex Parte Parker, *supra*, as supporting the holding in Sullivan v. Hill. *We have already shown that the authorities cited in the Parker Case do not support the proposition that a legislative committee may punish for contempt; neither do we understand the opinion in People v. Learned, supra, to support such holding.* Learned's case turned upon another point. . . . The question was the right of the Legislature of the State of New York to clothe the commission so appointed with quasi-judicial power to punish recalcitrant witnesses for contempt. This power might be conceded in the Legislature and still would not solve the question confronting us.

'In the case now being considered the Legislature has appointed its own members on the committee and undertaken to clothe that committee with larger judicial power than the Constitution (article 3, 15) conferred upon the Legislature itself. We quote from Cooley on Constitutional Limitations (6th Ed.) p. 161:

> 'Each house must also be allowed to proceed in its own way in the collection of such information as may seem important to a proper discharge of its functions, and, whenever it is deemed desirable that witnesses should be examined, the power and authority to do so is very properly referred to a committee, with any such powers short of final legislative or judicial action as may seem necessary or expedient in the particular case. * * * A refusal to appear or to testify before such committee, or to produce books or papers, would be a contempt of the house; but the committee cannot punish for contempts; it can only report the conduct of the offending party to the house for its action.'

"In Re Davis, 58 Kan. 368, 49 Pac. 160, in which the right of the legislative committee to punish for contempt is denied, we find the following language:

> 'That legislative bodies have the power to enforce obedience to their rules of order and to compel witnesses to give testimony upon matters calling for legislative action, though sometimes questioned, is well established, and should be regarded as the settled law. Story on the Constitution, vol. 1, 846 *et seq.*: Cooley's Constitutional Limitations (6th Ed.) 158 *et seq.*: Anderson v. Dunn, 6 Wheat. 204; In re Flavey, 7 Wis. 630; Ex parte McCarthy, 28 Cal. 395; Cushing's Law and Practice of Legislative Assemblies (9th Ed.) 655; In re Gunn, 50 Kan. 155. The power to punish as for a contempt resides in the houses separately; and, *while a refusal to testify before a committee duly appointed is a contempt of the house* appointing such committee, and may be by it punished as such, the committee has no implied power to punish, and can only report the conduct of the offending party to the house for it action. Cooley on Constitutional Limitations, 161. The power to punish as for contempt is not expressly given to the houses of the Legislature by the Constitution, but is taken by implication because it is necessary to the independ-

> ence and integrity of these bodies. The limits of the power so implied are not clearly marked.' "
>
> (Ex Parte Youngblood, *supra*, pp. 513-514, emphasis supplied.)

We submit that Mr. Justice Hawkins' conclusions on the validity of the holdings in both the *Parker* and *Sullivan* cases are completely unanswerable; that his observations have totally undermined whatever little value as precedents these holdings might have had. And even if this judgment as to the effect of Mr. Justice Hawkins' concurring opinion on both cases may be objected to as being rather extreme, certainly it cannot be doubted that what he has said has definitely rendered the holdings in both cases extremely dubious.

So much for the authorities. We shall now address ourselves to theory which underlies the recognition in each house of an implied power to punish for contempt. For once this is understood, it will be seen most clearly why such a power cannot, by reason of its nature, be delegated.

2. *Delegation by either house of Congress of its implied power to punish for contempt forbidden by the principle of non-delegation of legislative power.*

The overwhelming weight of authority in favor of the principle that neither house of a legislative body can delegate its implied power to punish for contempt is merely a recognition of the fact that to do so would be a violation of the principle "that the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority." (Cooley, *op. cit.*, p. 224). That this is so becomes immediately apparent upon a moment's reflection on the nature of the power of a legislative body, or of each of its branches, to punish for contempt. Upon this point there is unanimity among the authorities.

In the case of Arnault v. Nazareno, 87 Phil. 45, for instance, this Honorable Court explained that this power is not inherent in, nor expressly granted to, "either House of Congress," but inures to each merely as an "incident" "to the legislative function."

> "Although 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. In other words, the power of inquiry—with process to enforce—is an essential and appropriate auxiliary to the legislative functions.*"
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> (Arnault v. Nazareno, *supra*, emphasis supplied.)

There is no question then that the power of either house of Congress to punish for contempt arises merely as an "incident" to its primary "legislative function," as to which it is readily perceived as a needful and an "appropriate auxiliary." As put by the Supreme Court of Kansas in the *Davis* case, *supra:* "Its power to punish for contempt of its authority comes as an incident of its power of legislation." (At p. 164).

Being merely "incidental" to the primary "legislative power," the power to punish for contempt is, therefore, inextricable from this primary legislative power without which, indeed, it will not even spring into life. In view of this intimate relationship between these two powers, it follows that this "incidental" power to punish for contempt should partake of the same attributes as the primary "legislative power." Accordingly, if the primary "legislative power" is not susceptible of delegation, of necessity so too must the "incidental" power to punish for contempt be subject to a like inhibition. This precisely is the reasoning adopted in the *Davis* case.

> "The houses of the legislature are vested with the law-making power of the state. . . . Aside from the special cases in which legislative powers are expressly allowed to be delegated, *the legislature itself must exercise the legislative functions. Its power to punish for contempt of its authority comes as an incident to its powers of legislation. Neither the senate nor the house can delegate to a committee any legislative power. It may use committees to collect information, and aid it in many ways, but the power to final action and decision rests with the house.*"
>
> (In Re Davis, *supra*, 164; emphasis supplied.)

To make this point clear, and to show the logic of the reasoning in the *Davis* case, all that remains to be done is to explain away the puzzling rule which permits the delegation to legislative committees of the function of "gathering" or "collecting" information — or as this function is sometimes called, the "power of inquiry" or the "power of investigation."

This rule has occasioned some perplexity for the reason that while the "power of inquiry" or of "investigation," as well as the "power to punish for contempt," are alike in that both are considered merely "incidental," delegation is permissible as to the one but is anathema as to the other.

Some clues to the solution of this vexing puzzle are hinted at in the following statements:

> "Whether a house could by resolution expressly delegate the power to a committee is doubtful not because the function is judicial but *because of the seriousness and finality of contempt action.*"

(Read, MacDonald and Fordham, *op. cit., supra;* underscoring supplied.)

"Neither the senate nor the house can delegate to a committee any legislative power. It may use committees to collect information, and aid it in many ways, *but the power of final action and decision rests with the house.*

(In Re Davis, *supra*, emphasis supplied.)

". . . while the legislature may function through a committee, and, because of the refusal of any person to answer proper inquiries before the committee, the matter may be reported to the house appointing the committee for its action, and said house . . . *may* by appropriate proceeding adjudge such person in contempt. . . ."

(Per Lattimore, J., concurring, Ex Parte Youngblood, *supra*, 513, emphasis supplied.)

In the above statements, the key phrases to the puzzle noted are the following: (1) "the seriousness and *finality* of the contempt action"; (2) "the power of *final action* and *decision*"; and (3) "said house . . . may . . . adjudge such person in contempt."

To clarify the significance of these phrases, and thereby gain some insight into the *essential* difference between the so-called "power of inquiry" or "of investigation," and the "power to punish for contempt," it might be helpful to view the term "legislative power" not as a unified conceptual entity, but as a "process". Through such an approach we will be able to break up the legislative function into its distinct stages, and accordingly, analyze it with greater precision, and thereby achieve a more accurate understanding of the so-called "legislative power."

Viewing the "legislative power" or "function" as a "process" it should be easy enough to see that it has at least three distinct and severable stages. The "legislative" or "law-making" process logically begins with the "gathering" or "collection" of information as regards some felt problem, its causes, conditioning factors, its possible solutions, etc. This stage is succeeded by the second, at which a proposed solution is embodied in the form of a bill and is formally introduced into the legislative mill. The process then culminates in a final stage, the result of which may be the *enactment* of a proposed measure into law.

These distinct stages of the "legislative process" are familiar enough, but the perception of the differences between them, and their sharp delineation from each other, is an achievement of Professors Lasswell and McDougal. Indeed, for each of these stages they have coined distinctive labels which are designed to avoid ambiguity of reference and thereby achieve greater clarity of meaning. For the

first stage—the fact-gathering stage—they propose the term "intelligence" stage; for the second—which is highlighted by the formal introduction of the bill—they suggest the term the "recommending" stage; and for the final stage they proffer the suggestive term the "prescriptive" stage.

Examining each of these stages more closely it will be readily seen that it is at the first, namely, the "intelligence" or "information-gathering" stage, that legislative committees play their familiar role. And such figurative terms as: the "eyes and ears," the "arm," etc., of Congress, have been variously applied to them to describe their characteristic tasks. It will also be noted that at this stage, as during the second, the participation of the *whole* legislature or of each of its branches is *not* essential. In contrast, during the third stage, *i.e.*, the "prescriptive" stage, such participation *is indispensable.*

This difference should immediately indicate that there is a fundamental and a radical distinction between the merely "intelligence" and the "prescriptive" functions. Unfortunately, however, this distinction is frequently blurred by the fact that the performance of both involve the use of "discretion." And it is this similarity which has been chiefly responsible for generating and perpetuating the erroneous notion that both functions must of necessity be peculiarly "legislative" in character.

It is true, of course, that an investigating committee must make "choices" from among the various facts, data, information, etc., which are urged upon them for acceptance. For a committee must decide which of these are significant or relevant for its purposes and which of no value. These "choices" or "decisions" naturally involve the exercise of "discretion." In the same manner, the Congress or each of its branches, when confronted with a bill, is likewise faced with the task of having to make a "choice" or "decision" between enacting it into law, or turning it down. Such a "choice" or "decision" too naturally involves the exercise of "discretion."

But surely, it should be plain that there is a crucial difference between the "choices" or "decisions" made by an investigating committee in the performance of their fact-finding functions, and the "choices" or "decisions" taken by the legislature itself acting as a legislative body. This difference is simply this: *that the "decisions" or "choices" of a legislature acting as a legislative body are unavoidably attended by the exercise of authority, without which such "choices" or "decisions" would be devoid of any "law-creating" effect.*

In other words, such "choices" or "decisions" are not merely exercises of discretion but are in fact exertions of the "legislative power." This element is precisely what endows such "choices" or "decisions" with "binding" or "obligatory" force. And it is for this reason that such "choices" or "decisions" are appropriately characterized as "final," "conclusive," "serious."

The attribute of "authoritativeness" which attaches to the "decision" of Congress on whether or not to enact a bill into law flows from the grant of "legislative," i.e., the "law-making," power to it by the Constitution. And it is precisely this power—this unique law-making or law-creating authority—which Congress is forbidden from delegating. The reason for this prohibition is well known. It is merely the recognition of the fact that the grant of authority is at the same time the conferment of a trust. As explained by Judge Cooley:

> "One of the settled maxims of constitutional law is, that the power conferred upon the legislature to make laws can not be delegated by that department to any other body or authority. Where the sovereign power of the State has located the authority, there it must remain; and by the constitutional agency alone the laws must be made until the Constitution itself is changed. The power to whose judgment, wisdom, and patriotism this high prerogative has been intrusted cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom, and patriotism of other body for those to which alone the people have seen fit to confide this sovereign trust."
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> (Cooley, Const. Limitations, 8th Ed., Vol. I, p. 244.)

And by this Honorable Court:

> "This doctrine is based on the ethical principle that such a delegated power constitutes not only a right, but a duty to be performed by the delegate by the instrumentality of his own judgment, acting immediately upon the matter of legislation and not through the intervening mind of another."
>
> (U.S. v. Barrias, 11 Phil. 327, citing Cooley, *supra*.)

Coming back to the "intelligence" or "information-gathering" function it will be readily seen that its performance does not require the use of "authority" as this is not essential to its accomplishment. For the value of information as such cannot be enhanced by investing it with the attribute of "authoritativeness." In contrast, "prescription"—or if you will, the enactment of a law—without "authority" is a futility. It is for this reason that we speak of the act of "enactment" as "constitutive." In contrast, the "choices" or "decisions"

taken at the "intelligence" stage, while important, are never so characterized.

Accordingly, since the mere "gathering" or "collection" of information does not involve the exercise of the "prescriptive power"—of this unique law-making or law-creating power—this function may be delegated to a committee, or for that matter, even to private individuals, without offending against the principle of non-delegation. This also explains why even in the judicial process, the purely "intelligence" function, namely, the reception of evidence, is similarly susceptible of delegation.

Coming now to the power to punish for contempt, it is immediately manifest that the exercise of this power is more akin to the exercise of the "prescriptive" rather than to the merely "intelligence" or "information-gathering" function. This is plain from the fact that to effectively "adjudge" a person guilty of contempt, the decision-maker rendering such a "judgment" must possess *authority* to do so. And it is precisely to stress this idea—the necessary complimentarity between "authority" and the effective "adjudication" of a person in contempt—that the power so to punish a person is frequently insisted upon as being "judicial" in character. This is so for the reason that in the courts the power to punish for contempt is said to be "inherent." By this is meant simply that courts possess this authority without need of an explicit grant.

Earlier, we noted that the implied power of either house of Congress to punish for contempt inures to each house as an incident of its "legislative" power. Also, that this "incidental" power, like the *primary* "legislative" power, "resides" or is "vested" in each house. Hence, it may be said, quite logically, that like the *primary* legislative power, this implied power to punish for contempt is also "entrusted" to each house. Accordingly, this power may be exercised solely by each house, for to permit its delegation to another entity or person is not only to sanction an abdication of authority but also the betrayal of a trust.

3. *The claim that the committee's power to punish for contempt is required by the demands of "necessity" is untenable.*

We submit that enough has already been said to completely discredit the noxious doctrine that the houses of a legislature may lawfully delegate to their respective committees their implied power to punish for contempt. Now and then, however, efforts are exerted to purge this doctrine of its ill-repute, as the respondents are now

vainly seeking to do, by harnessing it to the service of "necessity," whatever that term might mean. Respondents, for instance, complain that to deny such a principle would stymie effective government, or at least render the performance of its functions more burdensome. And in the manner of professional doomsayers they add that in times of stress such a situation could lead to disaster.

Unquestionably, these arguments possess an arresting appeal. On closer scrutiny, however, this appeal is soon dissipated, for it should be easy enough to see that they are plainly specious. First of all, these arguments involve questions of fact about which there can be, to say the least, honest disagreement. For instance, it may be asked whether it is true that the denial of the power to punish for contempt to legislative committees would inevitably render such bodies completely useless. Also, that such committees by being denied such power would be unnecessarily exposed to the impudence and insolence of recalcitrant or defiant witnesses.

On the first question, we find the opinion of Mr. Chief Justice Warren in the *Watkins* case 77 S.C., 1173, at p. 1295, particularly instructive. He tells us that since World War II, the Congress of the United States has almost completely given over to the courts the task of dealing with recussant witnesses. This has been made possible by a statute making contempt against the authority of Congress a criminal offense. Now the vacuity of the claim that the denial of contempt powers to legislative committees would be subversive of the Congress itself is eloquently belied by the fact that the United States Congress has remained vigorous and, indeed, shows no signs of impairment whatsoever. Moreover, its voluntary abdication of its power to punish for contempt by its own processes does not seem to have affected the efficiency of its committees. Indeed, if there is a lesson to be learned from this American experience, it is that the prosecution of charges of contempt against Congress in the regular courts, rather than before the bar of each house, has had the beneficial effect of affording their citizens ampler protection against tyranny and oppression. For these are tendencies to which the political agencies are admittedly more susceptible, and these may be roused to the surface at any moment by the passions and the stresses of the hour.

As for the assertion that without its contempt power a committee would be rendered helpless before recalcitrant or defiant witnesses, this is so patently untrue that it requires but little refutation. It is

enough to remind the respondents that as the authorities cited above indicate, and as the procedure followed in the case of Arnault v. Nazareno, *supra*, suggests, when Congress is in session the committee's remedy is recourse to its parent body which is the body empowered to inflict the proper penalty. As for the claim that this is not available during the period of adjournment, this may be easily dismissed by pointing to the Revised Penal Code which penalizes contempts against legislative bodies as a criminal offense. (Articles 143, 144). As a matter of fact, this is a remedy which, we are told, respondent Ganzon has already invoked.

Finally, as for the subversive thesis that necessity is a sufficient source of power, it should suffice to remind the respondents that such a dogma is completely alien to our system of government as established by the Constitution. For this document solemnly proclaims that ours is a republican form of government under which sovereignty is recognized as residing solely in the people (Article II, Section 1). Accordingly, all assertions of authority must ultimately be traceable to the Constitution, which is the expression of the people's sovereign will. And all claims to power not so traceable must be firmly rejected lest we open the doors to despotism and dictatorship—or become unwitting accomplices to political vendetta.

Commenting on a similar argument advanced in the case of Travelers' Insurance Co. v. Marshall, 76 S.W. 2d 1007, the Texas Supreme Court very aptly said:

> "Necessity that is higher than the Constitution can safely have no place in American Jurisprudence. That principle is necessarily vicious in its tendency, and subversive of the Constitution. It should be, and is, limited by the constitutional inhibitions. * * * *The Constitution, and a controlling necessity antagonistic* to its requirements, cannot exist." 9 Tex. Jur. p. 421, S 10; Stockton v. Montgomery, 1 Dallam, Dig. 473; Youngblood v. State, 94 Tex. Cr. R. 330, 340, 251 S.W. 509; Snyder v. Baird Ind. School Dist., 102 Tex. 4, 111 S.W. 723, 113 S.W. 521; State v. Hatcher, 115 Tex. 332, 281 S.W. 192; Clino v. State, 36 Tex. Cr. R. 320, 345 36 S.W. 1099, 37 S.W. 722, 61 Am. St. Rep. 850."
>
> (At p. 1010; emphasis supplied.)

In the light of what has been said we submit that it is beyond question that the purported delegation by the Senate of its implied power to punish for contempt to its standing and special committees under Senate Resolution No. 50 is invalid, futile and ineffectual.

But, assuming, *arguendo*, that we have to yield on this first issue, we come now to the second, namely:

II

WHETHER OR NOT THE AUTHORIZATION CONTAINED IN SENATE RESOLUTION NO. 50 WHICH, WHILE CONFERRING UPON THE COMMITTEES OF THE SENATE PLENARY POWER 'TO PUNISH FOR ACTS OF CONTEMPT AGAINST (THEM) AS CONTEMPT AGAINST THE SENATE," FAILS UTTERLY: (a) TO SPECIFY WHAT ACT OR ACTS SHOULD CONSTITUTE CONTEMPT; (b) TO DEFINE THE PENALTIES WHICH MAY BE IMPOSED THEREFORE; AND (c) TO PRESCRIBE THE PROCEDURE TO BE FOLLOWED FOR THE PROSECUTION OF A CHARGE OF CONTEMPT, IS ADEQUATE, VALID AND EFFECTIVE

Once more we submit that this issue can only be answered in the negative, for the following reasons:

Firstly, the authority to punish for contempt which is conferred on the committees of the Senate by Senate Resolution No. 50 does not constitute a mere delegation but amounts to a total and complete abdication of that power.

Secondly, so sweeping and unrestrained a grant of authority is patently offensive to the right to due process which the Constitution accords to any person who is sought to be punished for contempt pursuant to its provisions.

1. *The delegation of the contempt power under Resolution No. 50 amounts to complete abdication.*

The power to punish contempt committed against the authority of the Senate lies in the Senate itself. Accordingly, if this power is to be exercised through its committees, such committees may do so only in the name and on behalf of the Senate. Also, being merely creatures of the Senate, the committees logically cannot exercise any power or authority in excess of what is specifically conferred upon them by the rules or special authorization of the parent body. In conferring power upon a committee, however, the parent body must observe certain requirements.

These requirements are explained in detail by Mr. Chief Justice Warren in *Watkins v. U.S.*, 354 U.S. 178, 200-202; 77 S. Ct. 1173, as follows:

> "The theory of a committee inquiry is that the committee members are serving as the representatives of the parent assembly in collecting information for a legislative purpose. Their function is to act as the eyes and ears of Congress in obtaining facts upon which the full legislature can act. To carry out this mission, committees and subcommittees, some-

times one Congressman, are endowed with the full power of the Congress to compel testimony.

"An *essential premise in this situation is that the House or Senate shall have instructed the committee members on what they are to do with the power delegated to them.* It is the responsibility of Congress, in the first instance, to insure that compulsory process is used only in furtherance of a legislative purpose. That requires that the instructions to an investigating committee spell out that group's jurisdiction and purpose with sufficient particularity. Those instructions are embodied in the authorizing resolution. That document is the committee's charter. Broadly drafted and loosely worded, however, such resolutions can leave tremendous latitude to the discretion of the investigators. 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."

(At 354 U.S. 178, 200-202; 77 S. Ct. 1173, 1291-1292; emphasis supplied.)

From the foregoing it is clear that for any delegation of authority to be valid, the precise extent and limits of the power granted must be stated with sufficient specificity. Analysis of the nature of a committee will reveal the reason for this requirement. A committee, it will be recalled, is merely an "arm" of the Senate. Its function is solely to carry out the "will" of the parent body. This, indeed, is the only justification for allowing an entity or body, other than the Senate itself, to exercise authority belonging to the Senate.

Under Resolution No. 50, since punishment for an alleged act of contempt against a committee is inflicted upon the theory that the act is offensive to the Senate itself, and since the authority which the committees would exercise in imposing the penalty is the authority of the Senate, it stands to reason that the Senate must at least first declare its will on: (1) what acts it considers as constituting contempt of its authority; (2) what penalties it regards as appropriate for such acts; (3) what procedure it deems appropriate for the prosecution of the alleged contemnor. For if the Senate has not yet expressed its "will" on these points—as is true in this case—in what sense can it be asserted that the committee is merely carrying out the "will" of the Senate which has expressed none so far?

In addition, the area of discretion and judgment which should be allowed to a committee must be reasonably circumscribed, precisely by delegating authority only with specific and precise limitations, in order that when the committee exercises the power it would be possible to determine whether or not such committee is in fact implementing the "will" of the Senate.

Scrupulous adherence to the requirement of precise specificity appears to be particularly urgent where the power sought to be delegated is the power to punish for contempt. This is so for the reason that when acted upon, its effect is "authoritative," "binding" and "final." Put differently, an adjudication for contempt is not merely "recommendatory." It is final and immediately executory.

Looking now at Senate Resolution No. 50, one finds that in delegating power to punish for contempt to the committees of the Senate, it confers this power upon them in its fullest scope—as it were, *carte blanche*. This is unmistakable from the sweeping language of the empowering clause: ". . . to punish for acts of contempt against it as contempt against the Senate."

Further examination also discloses that Senate Resolution No. 50 fails utterly to state, whether directly or by reference, what acts are considered as constituting contempt. One looks in vain for any guiding standards on this crucial point. But even more disturbingly, it fixes no limits on the penalty which the committees may impose. As to what such penalties may be, in view of the absence of any limiting restrictions, the scope of the authority of the committees on this vital point is equally susceptible of being given the amplest scope—thereby placing a witness who may be summoned by the committee wholly at the mercy of that body. As for the procedure to be followed in prosecuting a charge of contempt, there is likewise as to this a complete absence of any provision.

In short, the authorization contained in Resolution No. 50, in effect, empowers each committee to declare at whim what acts it shall regard as contemptuous, and also as to determine whether such acts have actually been committed. And thereafter, to impose whatever penalty may suit their fancy at the moment. And all these may be done with dispatch and with finality.

This, surely, is not merely delegation. Unquestionably, it constitutes a complete and a wanton abdication of authority and responsibility.

2. *The sweeping and unregistered grant of authority under Resolution No. 50 is violative of due process.*

As already intimated, where the power involved is the power to punish for contempt, the need for establishing precise limits upon its scope is imperative for the reason that its exertion can result in the deprivation of liberty. Recognizing the potency of this power for mischief and oppression the Bill of Rights has been held as im-

posing legal limitations on the authority granted to an investigating committee. Thus, the Fifth Amendment of the Constitution of the United States has been found as imposing such a limitation upon the authority of an investigating committee of the United States Congress. (Quinn v. U.S. 349 U.S. 155, 99 L. ed. 964; Emspak v. U.S. 349 U.S. 190, 99 L. ed. 997; Bart v. U.S. 349 U.S. 219, 99 L. ed. 1016; Starkovich v. U.S. 231 F 2d 411; Aiuppa v. U.S. 201 F 2d 287; U.S. v. Costello 198 F 2d 200). So too, the First Amendment (Barsky v. U.S. 167 F 2d 241; U.S. v. Rumely 345 U.S. 41, 97 L. ed. 770; Lawson v. U.S. 176 F 2d 49).

The "due process" clause has also been declared as producing a like effect. On this point the U.S. Supreme Court in the Watkins case, *supra,* explained:

> "The problem attains proportion when viewed from the standpoint of the witness who appears before a Congressional committee. He must decide at the time the questions are propounded whether or not to answer. As the Court said in Sinclair v. U.S., 279 U.S. 263, 73 L. ed. 692, 49 S. Ct. 268, the witness acts at his peril. He is . . . 'bound rightly to construe the statute' Id. 279 U.S. at 299. An erroneous determination on his part, even if made in the utmost good faith, does not exculpate him if the court should latter rule that the questions were pertinent to the question under inquiry.
>
> "It is obvious that a person compelled to make this choice is entitled to have knowledge of the subject to which the interrogation is deemed pertinent. *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' (U.S. v. Josephson [CA 2d N.Y.] 165 F 2d 82, 88) *must be avoided here as in all other crimes. . . .*"
>
> "* * * *
>
> "More important and more fundamental than that, however, it insulates the House that has authorized the investigation from the witnesses who are subjected to the sanctions of compulsory process. There is a wide gulf between the responsibility for the use of power. This is an especially vital consideration in assuring respect for constitutional liberties. Protected freedom should not be placed in danger in the absence of a clear determination by the House or the Senate that a particular inquiry is justified by a specific legislative need."

Indeed, while a contempt proceeding before the Senate is not in strict legal theory a criminal proceeding it is generally acknowledged that its effects in actual fact are undoubtedly penal in character. For who, indeed, will seriously deny that the total deprivation of liberty occasioned by commitment by reason of contempt is not in fact a penalty? This consideration alone should place beyond doubt and make particularly urgent the pertinency to such cases of

due process which abhors the "vice of vagueness" (Watkins v. U.S. *supra;* see also Conally v. General Construction Co., 269 U.S. 385), in the way that nature abhors a vacuum.

But the authority to punish for contempt under Resolution No. 50 does not only suffer from the "vice of vagueness." It is also afflicted with the "vice of inanity." Resolution No. 50, as previously indicated, does not define what acts it considers contemptuous. Neither does it specify what penalties may be imposed therefor. Nor has it provided for a procedure to be followed for the indictment of persons so charged. It says simply that the committees may punish for contempt.

As such, especially because of the absence of any provision in the Rules of the Senate on these points, a witness upon whom may befall the misfortune of being summoned to appear before a committee is transformed into a pitiful spectacle of a person who is completely in the dark as to what he must do, or refrain from doing, in order to avoid being found guilty of contempt. Not only that. He would also be utterly at a loss to anticipate what penalty or penalties would be inflicted upon him until the moment when it finally descends upon his head like a veritable sword of Damocles unleashed.

This, indeed, is the peril which presently threatens everyone, for no one is beyond the reach of the processes of these committees. Accordingly, it should not be surprising if Senate Resolution No. 50 should give cause for widespread fear and trembling.

By failing to fix definite limits upon the power to punish for contempt the delegation of this power under Senate Resolution No. 50 has created a situation which can unleash the floodtides of terror and tyranny and oppression. Indeed, already it has claimed its first victim—the petitioner.

Accordingly, we submit that even if the power to punish for contempt could validly be delegated by the Senate to its committees, the manner in which this was attempted under Senate Resolution No. 50 being so grossly lacking of even the most minimal requirements of due process is unquestionably inadequate, invalid and ineffectual.

Finally, assuming, *arguendo*, (1) that the Senate may authorize any of its committees during the recess of Congress to punish acts of contempt against the committees as contempt against the Senate; and (2) that the authorization contained in Resolution No. 50 is adequate, valid and effective, the remaining question is—

III

WHETHER OR NOT THE AUTHORITY SO VESTED IN THE COMMITTEE CAN BE EXERCISED BY A CHAIRMAN ALONE

Again, we submit that he can not. To acknowledge that he can do so would be to sanction his usurpation of the powers of the committee, without proper authorization either from the committee itself or from the Senate.

1. *Senator Ganzon was not the Committee on Labor and Immigration.*

As we understand respondents' claim and as stated by Senator Ganzon during the oral arguments, he was the Committee on Labor and Immigration when he ordered the arrest and detention of Commissioner Vivo. In other words, Senator Ganzon was not only acting for and in behalf of the Committee but he was the Committee itself exercising all its powers and prerogatives. We take it that this claim was made in order to avoid the suggestion that the delegated authority of the Committee had in turn been delegated to him. But how does this claim appear in the light of the law and the facts?

In *Watkins v. United States,* 354 U.S. 178, 77 S. Ct. 1173, the Supreme Court of the United States said:

> "The theory of a committee inquiry is that the committee members are serving as the representatives of the parent assembly in collecting information for a legislative purpose. Their function is to act as the eyes and ears of the Congress in obtaining facts upon which the full legislature can act. To carry out this mission, committees and subcommittees, sometimes one Congressman, are endowed with the full power of the Congress to compel testimony. . . . It is the responsibility of the Congress, in the first instance, to insure that compulsory process is used only in furtherance of a legislative purpose. That requires that the instructions to an investigating committee spell out that group's jurisdiction and purpose with sufficient particularity. These instructions are embodied in the authorizing resolution. That document is the committee's charter."

The membership and functions of the Committee on Labor and Immigration are stated in the Rules of the Senate as follows: ". . . seven members, to which committee shall be referred all questions affecting labor and capital and immigration." (Ch. XII, Sec. 18, as amended by S.R. No. 5, Feb. 6, 1958). And Resolution No. 50, earlier quoted insofar as pertinent, authorizes committees to do cer-

tain things during the recess of Congress. But there is nothing, either in the Rules or the Resolution, which authorizes the Chairman of the Committee on Labor and Immigration or any committee chairman for that matter, to constitute himself as the committee. This lack of authority becomes more manifest when it is remembered that the number of members of the Committee is specified and said members are enjoined to attend committee sessions as may be gleaned from Section 23 of the Rules of the Senate which provides:

> "It shall be the duty of the permanent and special committees to hold sessions in order to study all matters transmitted to them, and then submit to the Senate the report together with the recommendations agreed on by a majority of its members and the dissenting votes which have been registered in writing within the period fixed by the committees concerned."

The Chairman then cannot be the Committee. For if he can, the other members would be useless and the Chairman would then be like Louis XIV of France who said, *"L'etat, c'est moi."*

2. *There is no clear showing that Senator Ganzon had been authorized by the Committee to act for and in its behalf.*

Even when the Chairman conducts hearings alone, receives evidence and summons witnesses, it cannot be because he is the Committee but only because he is acting for and in behalf of the Committee with its consent.

In the case of Senator Ganzon there is no clear showing that he had been authorized by the Committee to conduct hearings alone, receive evidence and summon witnesses. There is no convincing proof to support the allegation made in the answer of the respondents that "it is a legislative practice long established in the Upper Chamber of the Philippine Congress that the Chairmen of standing committees are *ipso facto* authorized or vested with power to conduct committee hearings alone as if he is the whole committee itself with all its powers and prerogatives." (Answer, par. 11, p. 23). The "certification" dated September 14, 1964, on which more shall be said below, is inconclusive because it was not signed by Senators Diokno, Liwag, Rodrigo and Roxas who constitute the majority of the regular members of the Committee. And Senator Diokno has manifested that he was not present on July 24, 1964 or on any other date when Senator Ganzon purportedly discussed with the members of the Committee the details of the investigation of the reported illegal entry of foreigners.

3. *Even if Senator Ganzon had been authorized to act for and in behalf of the Committee, he was not conferred the power to punish for contempt either by the Senate or the Committee.*

But assuming, *arguendo*, that Senator Ganzon had been authorized by the Committee to conduct hearings alone, receive evidence and summon witnesses, it is pertinent to ask whether that authorization carried the power to punish acts of contempt against him (without conceding that Commissioner Vivo's acts were contumacious), as contempt against the Committee and then in turn as contempt against the Senate.

It is submitted that for Senator Ganzon to exercise alone the power to punish for contempt, he must have been given that power either by the Senate itself or by the Committee at the very least. There is no question that the Senate had not given to Senator Ganzon or to any committee chairman the power to punish contumacious acts.

(a) *There was neither express nor implicit power granted by the Committee.*

Was Senator Ganzon conferred such power by his Committee? In a case like this the possession of power cannot be presumed; its source must be clearly pointed out. Looking at the facts, we fail to see any clear grant of power. No express grant has been shown. Implicit authorization is claimed on the basis of "legislative practice long established in the Upper Chamber of the Philippine Congress." But no previous instance where a Chairman alone had declared a witness in contempt and ordered his arrest and detention has been cited and none can be cited for as Senator Ganzon himself admitted during the oral arguments, his action in respect of Commissioner Vivo had no precedent in the Philippines.

Legislative practice for the Chairman alone to conduct hearings—assuming that there is such a practice—cannot imply legislative practice for the Chairman alone to declare witnesses in contempt and punish them for it. For the authority to conduct hearings does not necessarily carry with it the authority to declare a witness in contempt. Fiscals are authorized to conduct preliminary investigations; commissioners are authorized by courts to receive evidence; and notaries public are authorized to take depositions. But none of these, not even fiscals who exercise quasi-judicial powers, had the

power to punish acts of contempt; they are all required to go to court for the proper sanction.

During the oral arguments, Senator Ganzon remarked that if he were slapped by a witness or if a witness were to fire his gun during a hearing, is he to wait for the other members of his Committee to hold his assailant in contempt? The insinuation is that unless it be recognized that he has the power to hold such a witness in contempt he would be helpless. But he is not. Even without the claimed power to punish for contempt, the Chairman has a plain, adequate and speedy remedy. He can order the arrest of the witness for disturbance of proceedings as defined and penalized by Art. 144 of the Revised Penal Code. And in addition to this step, the Chairman can cite the witness for contempt before the bar of the Senate as was done in the Arnault case.

(b) *Section 106 of the Rules of the Senate cannot furnish basis for possession of power.*

It cannot also be said that Chapter XLIV, Section 106 of the Rules of the Senate furnishes a basis for a claim to conferment by the Committee of power to the Chairman to punish for contempt. Authority is claimed to have been given when all the members of the Committee acquiesced to his conducting the hearings alone. But the lack of proof to show acquiescence, whether unanimous or not, has already been shown. And, as earlier stated, even if there had been consent, authority to conduct hearings alone does not imply authority to punish for contempt.

4. *The "certification" of Sept. 14, 1964 is invalid and ineffective on procedural and substantive grounds.*

The lack of authority of the Chairman alone to punish acts of contempt was not cured or ratified by the "certification" of September 14, 1964. We do not believe that what the Chairman had done was susceptible of ratification. But supposing it was, such ratification should be by action of the Committee as such, not by individual members stating their personal ratification of the acts of the Chairman. For the Committee is a deliberative body and action by it is valid only when taken at a formal meeting. (See Canon's *Procedure in the House of Representatives*, U.S. Govt. Printing Office, p. 87). And this requirement is not dispensed with by the provisions of Rule

106 because even that rule contemplates a gathering of those who are to give their explicit or implicit consent.

But the "certification" is vitiated not only by the procedural defect mentioned above but also by the substantive objection of giving a retroactive effect to it.

It is true that contempt proceedings in either house of Congress are different from punishment for crime. The power to punish for contempt is coercive in nature. The power to punish crimes is punitive in nature. The first is a vindication by the House of its own privileges. The second is a proceeding brought by the State before the courts to punish offenders. The two are distinct, the one from the other. (*Lopez v. De los Reyes*, 55 Phil. 170). Nonetheless, contempt proceedings in Congress as in the courts are penal in their effect. It is because the power to punish for contempt:

> ". . . is in derogation of the constitutional guarantee that no person shall be deprived of life, liberty or property without due process of law which, presupposes 'a trial in which the rights of the parties shall be decided by a tribunal appointed by law, which tribunal is to be governed by rules of law previously established.'" (Dissenting opinion of Justice Tuason in *Arnault v. Nazareno*, 87 Phil. 9, 73).

Accordingly, the power to punish for contempt must exist at the time the punishment is imposed. To hold otherwise will result in compelling every person to submit to a body despite its flagrant lack of authority and the absence of rules of law previously established to govern it because the deficiency may be cured *ex post facto*. This is repugnant to our scheme of government which has enshrined the principle that ours is a government of laws and not of men.

CONCLUSION AND RECOMMENDATION

In view of the foregoing, the undersigned amicie curiae respectfully urge this Honorable Court to declare and affirm clearly and emphatically:

That the Senate's power to punish for contempt which is vested in it is not only a grant of authority but is at the same time a responsibility entrusted solely to it;

That, accordingly, only the Senate may exercise such power; and

That, therefore, any attempt to delegate such power to its committees is invalid, that any effect on the part of such committees to

exercise it is futile and ineffectual and that any attempt by a chairman to usurp it is ludicrous and intolerable and should never be countenanced.

Diliman, Quezon City, October 7, 1964.

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