THE MODERN DAY SPANISH INQUISITION

JACINTO D. JIMENEZ*

I. INTRODUCTION

Whenever a sensational news item breaks into the media, the members of Congress immediately announce that they will investigate the matter. The power to conduct legislative investigation exists as an aid to the power to legislate. Often legislative investigations are conducted for the sake of sensationalism. Frequently, congressional inquiries are conducted to ferret out criminal liability.

In denouncing the investigation by the United States Senate of the Teapot Dome scandal, Dean John Henry Wigmore might have gone overboard when he wrote in disgust:

> The senatorial debauch of investigations -- poking into political garbage cans and dragging the sewers of political intrigue -- filled the winter of 1923-24 with a stench which has not yet passed away. Instead of employing the constitutional, manly, fair procedure of impeachment, the Senate flung self-respect and fairness to the winds. As a prosecutor, the Senate presented a spectacle which cannot even be dignified by a comparison with the persecutive scoldings of Coke and Scroggs and Jeffreys, but fell rather in popular estimate to the level of professional searchers of the municipal dunghill.[1]

Yet, there is some glint of truth in these acerbic observations. Through the years, legislators, like human nature have not changed. Legislative investigation are often conducted for self-aggrandizement of the lawmakers by publicly humiliating the witnesses being questioned.

It is the purpose of this article to examine the purpose and the scope of the power of legislative investigation, the limitations on it, and the

---

* Professor of Law, Ateneo School of Law; Partner, Romulo, Mabanta, Buenaventura, Sayoc & delosAngeles; Senior Editor, Ateneo Law Journal, 1967; LL.B., Ateneo de Manila School of Law, 1967.

[1] Wigmore, *Legislative Power to Compel Testimonial Disclosure*, 19 Ill. Law Rev. 453 (1925).

extent of the availability of judicial review.

II. HISTORICAL BACKGROUND

A. ENGLAND

In early times the bishops, the lords, the knights, and the burgesses met in an assembly called the High Court of Parliament. The High Court of Parliament exercised the highest functions of a court of judicature. While the High Court of Parliment enacted laws, it also rendered judgments in matters of private right which, when approved by the King, were recognized as valid.

During the reign of Henry II, about the time of the Battle of Enesham, the High Court of Parliament was divided into the House of Lords and the House of Commons. The judicial functions of reviewing on appeal the decisions of the courts of Westminister Hall passed to the House of Lords. To the House of Commons was left the power of impeachment and other judicial powers. Jointly, the House of Lords and the House of Commons exercised the power of enacting bills of attainder for treason and other high crimes, which imposed punishment for crimes judicially declared by the High Court of Parliament.

Because the House of Lords and the House of Commons exercised judicial powers, they were vested with the power of commitment for contempt.[2]

The earliest instances of punishment imposed by the House of Commons upon contumacious witnesses summoned before committees of inquiry related to disputed elections. The difficulty of ascertaining disputed facts required the delegation of such task to committees with power to subpoena witnesses.

On June 4, 1621, Robert Davenport was imprisoned for misinforming a committee before whom he was called to testify.

During the same period, committees deputized to conduct inquiries were armed with the powers to compel the appearance of witnesses and the production of papers, to administer oaths, and to report recalcitrant and untruthful witnesses to Parliament. The committees might be concerned with discovering facts for proposed legislation.

Sheriff Acton of London was found guilty by the House of Commons of lying before the Committee for the Examination of the Merchants'

[2] Lopez vs. De los Reyes, 55 Phil. 170, 177; Kilbourn vs. Thompson, 103 U.S. 168.

Business and was imprisoned in the Tower of London. Likewise, on April 21, 1664, a committee to which a bill for settling navigation along the River Wye had been referred, was empowered by the House of Commons to order the Warden of the Fleet to produce before the committee James Piston from time to time to be examined as the occasion required.

The power of Parliament to appropriate public funds also gave rise to the creation of committees to discover if the funds appropriated had been spent for the authorized purposes. One of the earliest instance of this involved a committee appointed "to inspect the several Accompts of the Officers of the Navy, Ordinance, and Stores."[3]

During the reign of Charles II, unrest developed when his brother James, who was next in line in succession to the throne, embraced the Catholic religion. Titus Oakes, a minister of the Church of England, stroked the flames of unrest by falsely swearing that he was present at a meeting at the White Horse Tavern at which a group of Catholic laymen and two Jesuit priests plotted to assassinate Charles II. Certain pamphlets started circulating. Parliament appointed a committee to trace the sources of the pamphlets. One of the pamphlets was entitled "The Grand Question Concerning the Prorogation of the Parliament for a Year and Three Months Stated and Discussed." A certain Doctor Carey admitted to the committee that he knew the author of this pamphlet, but he persisted in his refusal to divulge the name of the author. The House of Lords fined him L1,000 and committed him to the Tower of London.[4]

As the struggle for supremacy between Parliament and the King culminated in 1688, Parliament began making real use of committees as parts of the legislative process. By 1689 numerous committees existed to investigate the operations of the government. Because of dissatisfaction with the conduct of the war in Ireland, on June 1, 1689, Parliament created a committee "to inquire who has been the Occasion of the Delays in sending Relief over to Ireland, and particularly to Londonberry." Five months later, another committee was appointed to investigate "By what means the Intelligence came to be given to their Majesties Enemies, concerning the several Stations of Winter Guards of their Majesties Navy; and likewise into the Miscarriage in the Victualing of the Navy; and the Transportation of the Army; and all other Things relating to the War, both by Sea and Land, the Last Year."

On June 1, 1698, Christopher Lounan, who had been detained for

[3] Landis, *Constitutional Limitations on the Congressional Power of Investigation*, 60 Harv. Law Rev., 160-161 (1926).

[4] Watkins vs. United States, 354 U.S. 178,190.

refusing to appear before a committee to which a bill for the relief of the poor had been referred, was ordered discharged by the House of Commons on condition that he would appear before the committee that afternoon.

On June 14, 1689, a committee created to investigate what children were being sent abroad "to be educated in the Popish Religion" and who was sending them abroad, reported to the House of Commons that Katherine Overbury had failed to appear before it. The House of Commons ordered the sergeant-at-arms to arrest her "for her Contempt aforesaid."

Forty years later the use of investigations by committees as an instrument of the legislative process had become common. The *Common Journal* for February 17, 1728 contained the following entry:

> Ordered, that the committee, appointed to inspect what laws are expired, or near expiring, and to report their Opinion to the House, which of them are fit to be revived, or continued, and who are instructed to inspect the Laws relating to Bankrupts, and consider what Alterations are proper to be made therein, have Power to send for Persons, Papers, and Records, with respect to that Instructon."

On March 10, 1729, Mr. Oglethorpe:

> [from] the Committee, appointed to enquire into the State of the Goals of this Kingdom, acquainted the House, that he was directed by the Committee to move the House, that they may have Power to examine any Persons, they shall think fit, in the most solemn Manner.
>
> Ordered, That the said Committee be empowered to examine any Persons, they shall think fit, in the most solemn Manner.

On February 3, 1731, the complaint of the, "Proprietors of the Charitable Corporation, for Relief of Industrious Poor, by assisting them with small Sums, upon Pledges, at legal Interest" that their funds were embezzled by their officers, was referred to a committee. When the committee found that the witnesses were planning to flee the country, the House of Commons ordered their arrest.

In 1833 upon petition of several citizens from Liverpool, the House of Commons appointed a committee to investigate election briberies. On March 20, 1833, the committee reported that George Wrighton had refused to appear before it. The House of Commons ordered him to appear before the committee the next day Monday and discharged the order when the committee reported that George Wrighton had testified before it. On March

25, 1833, the committee reported that Elizabeth Robinson had refused to answer questions propounded to her by the committee. The Speaker of the House of Commons admonished her that even if she feared for her life, she must answer the question, for upon her refusal "she would be committed to the custody of the Sergeant at Arms for a breach of the privilege of the House."[5]

In 1835 the House of Commons appointed a committee to investigate "the origin, nature, extent and tendency of the Orange Institutions". This was a political-religious Protestant organization which strongly supported the expansion of the British Empire. The committee asked the Deputy Grand Secretary to produce all records of the organization. Because of his refusal to turn over a letter-book, which contained his answers to many communications regarding the affairs of the Orange Institutions, the House of Commons ordered his commitment to Newgate Prison.[6]

On February 24, 1848, James Dodgson was committed to prison for lying before a committee created to try the Lancaster Election Petition. On July 28, 1857, Charles Woolfen was similarly imprisoned. On April 23, 1866, Alfred Calburn was also detained.[7]

Thus, the power of the House of Commons to conduct legislative investigations became undisputed. When the existence of such power was challenged, Lord John Duke Coleridge ruled:

> That the Commons are, in the words of Lord Coke, the general inquisitors of the realm, I fully admit: it would be difficult to define any limits by which the subject matter of their inquiry can be bounded: it is unnecesary to attempt to state thay they may inquire into everything which it concerns the public weal for them to know; and they themselves, I think, are entrusted with the determination of what falls within that category. Coextensive with the jurisdiction to inquire must be their authority to call for the attendance of witnesses, to enforce it by arrest when disobedience makes that necessary.[8]

In modern times, legislative investigations have been assigned to Royal Commissions of Inquiry. These commissions are composed of experts

---

[5] Landis, *op. cit.*, pp. 160-164.

[6] Watkins vs. United States, 354 U.S. 178,191.

[7] Landis, *op. cit.*, p. 161.

[8] Howard vs. Gosset, 10 Q.B. 359, 379-380.

in the problem to be studied. They are insulated from the pressure of partisan politics. These commissions have seldom been given the power to compel the appearance of witnesses and the production of documents. The success of their investigations without having to resort to coercive measures is a tribute to their fairness in the treatment of witnesses and their close adherence to the subject matter assigned to them.[9]

B. America

1. The Colonial Era

Following the historical precedent of the House of Commons, the legislatures of the Thirteen colonies asserted for themselves the power to conduct legislative investigations and to cite for contempt.[10]

The Constitutions of Maryland and Massachussetts expressly conferred upon their legislatures the power of investigation. The absence of a similar provision in the constitutions of the other states reflected the belief that such power was inherent in the legislative power.[11]

In 1722, the House of Representatives of Massachussetts decided to investigate the failure of certain military operations in the field. It summoned Colonel Walton and Mayor Moody to appear before it. When the Governor tried to thwart the inquiry, the House of Representatives declared that it was "not only their Privilege but Duty to demand of any Officer in the pay and service of this Government an account of his Management while in the Public Employ."

The House of Delegates of Pennsylvania created a standing committee to audit and settle the accounts of the Treasurer and give it "full power and Authority to send for Persons, Papers and Records by the Sergeant at Arms of this House."

The legislature of North Carolina ordered the detention of the receiver of power money at Roanoke for his refusal, upon order of the Governor, to submit his accounts to it.

The House of Delegates of Pennsylvania investigated the charges of misconduct against Judge Moore of the Court of Common Pleas, who could be removed by the Governor alone. As a result of the inquiry, it petitioned

[9] Watkins vs. United States, 354 U.S. 178, 192.

[10] Fay, *Judicial Review of Legislative Investigations*, 29 Notre Dame Lawyer, 243-244 (1954); Landis, *op. cit.*, p. 165; *Congressional Investigations*, 45 Ill. Law Rev., 635 (1950).

[11] Fay, *op. cit.*, p. 244.

the governor to remove Judge Moore.[12]

2. The State Governments

In 1781, the House of Delegates of Virginia clothed its standing committees on religion, privileges and elections, courts of justice, and trade with the power" to send persons, papers, and records for their information."[13] In the same year, it authorized the committee on privileges and elections to use this power to investigate an armed opposition in Augusta to certain laws enacted by the previous legislature.

In 1824, the New York Assembly created a committee to investigate whether the charter of the Chemical Bank had been obtained by corrupt means and punished a witness named Coldwell for contumacy.

In 1837, two witnesses named Jacques and Slamm were cited for contempt for their refusal to testify before a committee of the New York Assembly which was investigating the use of funds by state banks. Slamm purged himself of the contempt when he was called to testify before the committee, but Jacques testified only after a period of imprisonment.

State courts generally recognized the power of state legislatures to conduct investigations. In 1859, in the case of *Burnham vs. Morrissey*,[14] Judge Hoar gave judicial sanction to the power of investigation of the legislature of Massachussetts.

In the case of *Briggs vs. Mackellar*,[15] Judge Daly of New York held:

> It is well-established principle of this parliamentary law, that either house may institute any investigation having reference to its own organization, the conduct or qualification of its members, its proceedings, rights, or privileges, or any matter affecting the public interest upon which it may be important that it should have exact information, and in respect to which it would be competent for it to legislate. The right to pass laws, necessarily implies the right to obtain information upon any matter which may become the subject of a law. It is essential to the full and intelligent exercise of the legislative function.[16]

[12] Landis, *op. cit.*, p. 166.

[13] Fay, *op. cit.*, p. 244; Landis, *op. cit.*, pp. 166-167.

[14] 14 Gray 226.

[15] 2 Abb. Pr. 30.

[16] Landis, *op. cit.*, p. 167-168.

3. The Federal Government

The Constitution of the United States does not contain a provision expressly granting the American Congress the power to conduct investigations. Presumably, because of historical precedents the delegates to the Constitutional Convention of 1787 believed it was inherent in legislative power.[17]

On March 27, 1792, the House of Representatives ordered the first congressional investigation. It created a special committee of seven members to inquire into the reasons for the defeat of the army led by Gen. Arthur St. Clair in an expedition against the Indians in Ohio. The investigation was justified on the basis of the power of Congress to appropriate public funds and to superintend the expenditure of public funds, which in this case involved the appropriation for the Army.[18]

The same year, a joint Senate-House Committee of Three, composed of the Speaker of the House of Representatives, a senator, and a congressman was created to invstigate why Alexander Hamilton had been giving money to a disreputable character. There was a suspicion that he was an agent of Alexander Hamilton and was speculating in doubtful claims against the United States on the basis of inside information. The committee called on Alexander Hamilton privately at night. Alexander Hamilton explained that he was being blackmailed by the husband of a friend. The committee kept the details of the sordid affair to itself and simply reported to Congress that the suspicions were baseless.[19]

On November 24,1800, the Speaker reported to the House of Representatives a letter from the Secretary of the Treasury Wolcott stating that the President had accepted his resignation and that he was submitting to any investigation the House of Representatives might deem fit to conduct because of criticisms of his administration. The next day, the letter was referred to a committee. After a thorough investigation, on January 28, 1801, the committee submitted its report clearing Secretary of the Treasury Wolcott of any misconduct.

That same year the House of Representatives appointed a committee to investigate the conduct of Winthrop Sargent, Governor of the Mississippi

[17] *Congressional Investigations*, 635.

[18] Landis, *op cit.*, p. 170; McGeary, *Congressional Investigations: Historical Development*, 18 Univ. Ch. Law Rev. 425 (1951); *Congressional Investigations*, 636.

[19] Smelser, *The Problem in Historical Perspective: The Grand Inquest of the Nation*, 29 Notre Dame Lawyer., 170 (1954).

Territory.

On February 3, 1809, the House of Representatives created a committee to investigate whether the War Department had made advances to the Commander-in-Chief of the Army in violation of the law.

On March 23, 1810, a committee was selected to examine the unsettled accounts of the Treasury, War and Navy Departments. The investigation revealed defects in the law on the accountability of officials for public funds. The committee reported a bill to amend the existing law.

In the same year, the House of Representatives appointed a committee to investigate the accusations against Brigadier General James Wilkinson, the Governor of the Missouri Territory.

The next decade, the House of Representatives created committees to investigate alleged misappropriation of public funds by Colonel James Thomas, Deputy Quartermaster General; the conduct of clerks and officials in the Executive Department; and violations of the Charter of the Bank of the United States.

On December 18, 1818, the Senate named a committee to investigate the reports of assumption of extraordinary powers by Gen. Andrew Jackson in waging the Seminole War. This was the first time a Senate committee acted under a grant of power to call for persons and papers. The next year the House of Representatives created a committee to investigate the use by Gen.Andrew Jackson of money appropriated for the support of the army to raise troops without congressional sanction. While the committee found that the accusation was true, it did not recommend any legislation, because "the faithful discharge of the duties of the several committees of the House furnish an adequate remedy against all abuses in the public expenditure."[20]

In 1827, the House of Representatives considered the revision of the tariff laws. Because of the clamor of the North for protection against the free trade of the South, the House of Representatives realized that it should take into consideration the economic condition of the country. For this purpose, it needed information as to the effect of the revision of the tariffs upon domestic manufacturers. The House of Representatives appointed a committee to conduct an investigation. The creation of this committee brought along with it two significant developments. This was the first time a committee was created to gather facts related to the enactment of a new statute. This was also the first time a committee was granted the power to compel the appearance of witnesses and the production of papers. Before, the various committees encountered no difficulty in obtaining the

[20] Landis, *op. cit.*, pp. 171-176.

appearance of witnesses.[21]

In 1836, the House of Representatives created a committee to investigate the introduction of the spoils system by President Andrew Jackson. The committee asked President Andrew Jackson and the heads of the departments to submit a list of the persons appointed without the consent of the Senate and the salaries paid them. President Andrew Jackson refused to comply on the ground that the request attempted to invade the rights of the Executive Department. The committee meekly reported to the House of Representatives that it had no power to conduct the investigation with which it had been tasked.[22]

In 1857, the Senate ordered a newspaper reporter who refused to divulge his source of information to a committee investigating corruption in Congress, to be detained by the sergeant-at-arms until he cooperated.[23]

That same year, Congress passed a law which punished a witness who, having summoned, refused to appear or to answer pertinent questions or to produce papers before a committee. The enactment of the law was precipitated by the refusal of J. W. Simonton to testify before a committee created to investigate charges of corruption against members of the House of Representatives. The law has remained in force up to the present with slight modifications.[24]

Because of charges of rampant corruption, congressional investigations intensified during the administration of President Ulysses Grant.[25]

Popular interest in legislative investigations reached its zenith during the investigation by the Senate of the Teapot Dome scandal during the administration of President Warren Harding.[26]

Legislative investigations took a new turn after the election of President Franklin Delano Roosevelt. They were undertaken in the spirit of partisan politics. Earlier investigations were aimed at embarrassing the administration and gaining political mileage with the voters. At the same time, sympathetic committees scheduled investigations that were designed to

[21] Watkins vs. United States, 354 U.S. 178, 193; Landis, *op. cit.*, pp. 177-178; Smelser, *op. cit.*, pp. 171-172.

[22] Landis, *op. cit.*, pp. 181-182; *Congressional Investigations*, 637.

[23] *Congressional Investigations*, 638.

[24] Landis, *op. cit.*, pp. 185-186; McGeary, *op. cit.*, p. 427; *Congressinal Investigations*, 638.

[25] McGeary, *op. cit.*, p. 430; Smelser, *op. cit.*, p. 172.

[26] McGeary, *op. cit.*, p. 430; Smelser, *op. cit.*, p. 175.

support the legislative proposals of President Franklin Delano Roosevelt.[27]

During the decade after the Second World War, public interest in legislative inquiries switched to concern for constitutional rights, such as, the right to privacy and the right against self-incrimination. This was the offshoot of the investigation of subversive activities of the Communist Party by the Committee on Un-American Activities.[28]

C. The Philippines

The early organic laws of the Philippines, namely, the Instructions of President William McKinley to the Second Philippine Commission, the Philippine Bill of 1902, and the Philippine Autonomy Act of 1916, did not contain any provision that expressly granted the legislature the power to conduct investigations in aid of legislation. However, on October 9, 1907, the Philippine Commission enacted Act No. 1755, which penalized any person who, being summoned to attend as a witness by the Phillipine Commission or any of its committees, should fail or refuse, without legal cause, to appear, wilfully refuse to be sworn or to answer any legal inquiry, or to produce any material documents or other evidence in his possession or under his control.

This same provision was incorporated in Section 102 of the Revised Administrative Code by the Philippine Legislature in 1917. However, it was repealed by Article 150 of the Revised Penal Code, which was enacted by the Philippine Legislature in 1930. Article 150 of the Revised Penal Code punished the acts penalized by section 102 of the Revised Administrative Code but also introduced some amendments.

Like the earlier organic laws, the 1935 Constitution did not contain any provision that expressly empowering Congress to conduct investigations in aid of legislation. However, despite this omission, in the case of *Arnault vs. Nazareno*,[29] the Supreme Court ruled that the possession of such power is implied in the grant of legislative power.

The 1973 Constitution expressly conferred upon the legislature the power to conduct investigation in aid of legislation. Section 12(2), Article VIII of the 1973 Constitution provided:

[27] McGeary, *op. cit.*, p. 431; Smelser, *op. cit.*, pp.179-180.

[28] Watkins vs. United States, 354 U.S. 178, 195-196; Smelser, *op. cit.*, p. 181-182.

[29] 87 Phil. 29, 45.

> The Batasang Pambansa or any of its committees 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.

This was reproduced in Section 21, Article VI of the 1987 Constitution, which reads:

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

III. SCOPE OF POWER OF LEGISLATIVE INVESTIGATION

A. Nature and Purpose

1. Subject Matter of the Investigation

The power of Congress to conduct investigation is intended to be in aid of the power to legislate. In the case of *Arnault vs. Nazareno*, the Supreme Court explained the reason for the existence of the power to legislate in the following terms:

> In other words, the power of inquiry -- with process to enforce it -- is an essential and appropriate auxiliary to the legislative function. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information -- which is not infrequently true -- resource must be had to the others who possess it.[30]

Thus, Congress does not have the power to conduct investigations merely for the sake of conducting investigations. Legislative investigation is not an end itself but is merely a means to an end. The power to conduct investigations is merely a tool to enable it to legislate wisely. It is

[30] 87 Phil. 29, 45.

coextensive with the power of Congress to legislate.[31] Hence, the subject matter of any legislative inquiry must be one on which Congress can legislate.[32]

The United States Supreme Court enumerated the subject matters of legislature inquiries as follows:

> It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them. It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste.[33]

Accordingly, it has been held that the legislature can investigate the following subject matters:

1. Irregular expenditure of public funds to purchase a parcel of land;[34]
2. Failure of the Government to prosecute violators of the law;[35]
3. Anomalous lease of oil reserves of the government;[36]
4. Subversive activities;[37]

[31] Arnault vs. Nazareno, 87 Phil. 29, 46; Barenblatt vs. United States, 360 U.S. 109, 111.

[32] United States vs. Owlett, 15 F. Supp. 736, 742; United States vs. Di Carlo, 102 F. Supp. 597, 601; Ex Parte Hague, 150 A. 322, 324; McGinley vs. Scott, 164 A.2d 424, 431; People *ex rel.* Sabod vs. Webb, 5 N.Y.S 855, 860; Ex Parte Woltrs, 144 S.W. 531, 535.

[33] Watkins vs. United States, 354 U.S. 178, 187. *See Also*, Shelton vs. United States, 404 F.2d 1292, 1296 *and* Suders vs. McClellan, 463 F.2d 894, 900.

[34] Arnault vs. Nazareno, 87 Phil. 29, 46.

[35] McGrain vs. Daugherty, 273 U.S 135, 177.

[36] Sinclair vs. United States, 279 U.S. 263, 294.

[37] Braden vs. United States, 365 U.S. 431, 435; Eastland vs. United States Servicemen's Fund, 421 U.S. 491, 507; United States vs. Josephson, 165 F.2d 82, 90; Barsky vs. United States, 167 F.2d 241, 247; Morford vs. United States, 176 F.2d 54, 57; Marshall vs. United States, 176 F.2d 473, 475; Grumman vs. United States, 294 F.2d 708, 713; United States vs. Buyan, 72 F. Supp. 58, 62; United States vs. Sacher, 139 F. Supp. 855, 858; In re Motion to Quash Subpoenas and Vacate Service, 146 F. Supp. 792, 794; United States vs. Deutch, 147 F. Supp. 89, 91; United States vs. Knowles, 148 F. Supp. 832, 836; United States vs. Shelton,

5. Possible violation of the Constitution by the Klu Klux Klan;[38]
6. Causes of violent civil disorder;[39]
7. Disposition of property acquired for national defense;[40]
8. Fraudulent procurement and misuse of passports;[41]
9. State of finances of labor unions;[42]
10. Criminal activities of labor unions;[43]
11. Maintenance of order and performance of university functions in a state university;[44]
12. Discriminatory trade practices;[45]
13. Expenditure of public funds for a contract;[46]
14. Elections;[47]
15. Frauds and irregularities in the government service;[48]
16. Probation records of juveniles;[49]
17. Corporate abuses;[50]
18. Conspiracy to restrain competition;[51]

148 F. Supp. 926, 934; Nelson vs. Wyman, 105 A.2d 756, 761; Laba vs. Newark Board of Education, 129 A.2d 273, 277; Wyman vs. Uphaus, 136 A.2d 221, 221; Mayward vs. De Gregory, 209 A.2d 712, 715; Withrow vs. Joint Legislative Committee to Investigate the Educational System of the State of New York, 28 N.Y.S 2d 223, 228; Ex Parte Coon, 112 P.2d 767, 774.

[38] Shelton vs. United States, 404 F.2d 1292, 1298.

[39] Sanders vs. McClellan, 463 F.2d 894, 900.

[40] United States vs. Fields, 6 F.R.D 203, 204.

[41] United States vs. Miller, 152 F. Supp. 781, 784.

[42] United States vs. Brewster, 154 F. Supp. 126, 132.

[43] United States vs. Cross, 170 F. Supp. 303, 306.

[44] Goldman vs. Olson, 286 F. Supp. 35, 43.

[45] General Electric Company vs. New York State Assembly Committee on Governmental Operations, 425 F. Supp. 909, 915.

[46] Camiel vs. Select Committee on State Contract Practices of the House of Representatives, 324 A.2d 862, 870.

[47] Keeler vs. McDonald, 2 N.E. 615, 627; State ex rel. Rosenheim vs. Frear, 119 N.W. 894, 895.

[48] Attorney General vs. Brissenden, 171 N.E. 82, 86; Ward vs. Peabody, 405 M.E. 2d 973, 978.

[49] Application of Hecht, 394 N.Y.S 2d 368, 370.

[50] Ex Parte Bunkers, 81 P. 748, 751.

[51] Ex Parte Battelle, 277 P. 725, 734.

19. Law enforcement;[52]
20. Criminal offenses;[53]
21. Receipts and disbursements of candidates for public office;[54]

Congress cannot investigate purely private affairs because it cannot legislate on them;[55] however, Congress can inquire into private affairs if they affect matters on which Congress can legislate.[56]

Since the power to conduct legislative inquiries is intended to be exercised merely in aid of legislation,Congress cannot hold an inquiry for the sake of making an exposure.[57] Neither can Congress conduct an investigation to find out if someone should be prosecuted criminally, to determine if someone is guilty or innocent of a crime, or to decide what are the rights of the parties to a controversy. Congress is not a law enforcement agency or a court. These are functions that fall exclusively within the domains of the Executive and the Judiciary.[58] Much less can Congress conduct an investigation to compel disclosures that will aid the prosecution

[52] Auippa vs. United States, 201 F. 287, 289; State ex rel. Hodde vs. Superior court of Thurston County, 244 P.2d 668, 675.

[53] State vs. Schoonover, 124 S.E. 2d 340, 343.

[54] Haganan vs. Andrews, 232 So. 2d 1, 8.

[55] Kilbourn vs. Thompson, 13 Otto 168, 190; Sinclair vs. United States, 279 U.S. 263, 292; Quinn vs. United States, 349 U.S. 155, 161; Watkins vs. United States, 354 U.S. 178, 187; Barenblatt vs. United States, 360 U.S. 109, 127; United States *ex rel.* Cunningham vs. Barry, 25 F.2d 733, 734; United States vs. Orman, 297 F.2d 148, 157; Shelton vs. United States, 404 F.2d 1292, 1297; In re Grand Jury Investigation of Ven-Fuel, 441 F. Supp. 1299, 1305; Ex Parte Hague, 147 A. 220, 222; Annenberg vs. Roberts, 2 A.2d 612, 617; Keeler vs. McDonald, 2 N.E. 615, 622; Attorney General vs. Brissenden, 171 N.Y. 82, 85; Sheridan vs. Garcher, 196 N.E. 2d 303, 310.

[56] Nelson vs. Wyman, 105 A.2d 756, 764.

[57] Watkins vs. United States, 354 U.S. 178, 200; United States vs. Grumman, 277 F. Supp 227, 238; Hentoff vs. Ichord, 318 F. Supp 1175, 1182.

[58] Kilbourn vs. Thompson, 13 Otto. 168, 194; Quinn vs. United States, 349 U.S. 155, 161; Watkins vs. United States, 354 U.S. 178, 187; Barenblatt vs. United States, 360 U.S. 109, 111-112; Shelton vs. United States, 404 F.2d 1292, 1297; United States vs. Bryan, 78 F. Supp. 58, 61; United States vs. Icardi, 140 F Supp 383, 389; United States vs. Deutch, 147 F. Supp. 89, 91; United States vs. Cross, 170 F. Supp. 303, 306; Ex Parte Hague, 147 A. 220, 222; Greenfield vs. Russell, 127 N.E. 102, 105; Attorney General vs. Brissenden, 171 N.E. 82, 86; Sheridan vs. Garcher, 196 N.E. 2d 303, 310.

of a pending case.[59]

However, the mere fact that a matter is involved in a case pending in court even if it be a criminal case, does not preclude the legislature from investigating.[60] The investigation by the legislature and the hearing by the court have different purposes. The fact that the legislative inquiry may result in the disclosure of information that may be useful in the case pending in court does not impair the power of Congress to conduct the investigation.[61]

2. Purpose of the Investigation

If the subject of a legislative investigation is one on which Congress can legislate and the information sought might aid in the enactment of a law, it will be presumed that the investigation is being conducted for a legitimate legislative purpose.[62] It is not therefore necessary that the resolution calling for a legislative inquiry should expressly specify its purpose.[63]

Because of the principle of separation of powers, the courts cannot inquire into motives of the lawmakers in conducting a legislative investigation.[64] If a legitimate legislative purpose is being met by a congressional investigation, the validity of the investigation will not be

[59] Sinclair vs. United States, 279 U.S. 263, 295.

[60] *Id*; Eggers vs. Kenny, 104 A.2d 10, 16; Nelson vs. Wyman, 105 A.2d 756, 762; Morss vs. Forees, 132 A.2d 1, 19.

[61] Sinclair vs. United States, 279 U.S. 263, 295.

[62] McGrain vs. Daugherty, 273 U.S. 135, 177; Townsend vs. United States, 95 F.2d 352, 361; Morford vs. United States, 176 F.2d 54, 58; United States vs. Orman, 297 F.2d 148, 157; United States vs. Emspak, 95 F. Supp. 1012, 1017; United States vs. Kamp, 102 F. Supp. 757, 758; United States vs. Miller, 152 F. Supp. 781, 784; United States vs. Cross, 170 F. Supp. 303, 306; Attorney General vs. Brissenden, 171 N.E. 82, 86; In re Joint Legislative Committee to Investigate Educational System of State of New York, 32 N.E. 2d 769, 771; Ex Parte Bunkers, 81 P. 748, 751; Robertson vs. Peeples, 115 Se 360, 362.

[63] In re Chapman, 166 U.S. 661; McGrain vs. Daugherty, 273 U.S. 135, 177.

[64] Eislen vs. United States, 170 F.2d 243, 249; Morford vs. United States, 176 F.2d 54, 58; United States vs. Orman, 207 F.2d 148, 157; Dombrowski vs. Ferbank, 358 F.2d 821, 825; In re Grand Legislative Committee to Investigate Educational System of State of New York, 32 N.E. 2d 769, 771; Herlands vs. Surpless, 16 N.Y.S. 2d 454, 459; Frank vs. Balog, 73 N.Y.S. 2d 285, 288; State ex rel. Hodde vs. Superior Court of Thurston County, 244 P.2d 668, 675.

impaired because of the improper motives of the lawmakers.[65]

The fact that Congress has already passed a law on a subject does not preclude Congress from investigating it, because the investigation may disclose the inadequacy of the law.[66] Likewise, the fact that one chamber of Congress has passed a bill dwelling on a subject does not prevent it from further investigating the subject. The investigation may show that the bill should be amended or withdrawn or that other measures should be adopted.[67]

However, in order that an inquiry may be considered to be in aid of legislation, it is not necessary that it result in the enactment of a law or the recommendation for legislation.[68]

B. Investigations in Connection with the Exercise of Other Powers of Congress.

Although Section 21, Article VI of the 1987 Constitution expressly mentions the power of Congress to conduct inquiries in connection with its exercise of the power to legislate, its power to investigate is not limited to the exercise of its legislative power. It can conduct any investigation in connection with any power for the exercise of which information may be necessary.[69]

Thus, the power of Congress to conduct investigation extends to the following matters:

[65] Watkins vs. United States, 354 U.S. 178, 200; Barenblatt vs. United States, 360 U.S. 109, 133; Wilkinson vs. United States, 365 U.S. 399, 412; United States vs. Kamin, 136 F. Supp. 791, 800.

[66] United States vs. Icardi, 140 F. Supp. 383, 385.

[67] Arnault vs. Nazareno, 87 Phil. 29, 50.

[68] In re Chapman, 166 U.S. 661, 670; Eastland vs. United States Servicemen's Fund, 421 U.S. 491, 509; Townsend vs. United States, 95 F.2d 352, 355; United States vs. Josephson, 165 F.2d 82, 89; United States vs. Shelton, 148 F. Supp. 926, 934.

[69] Reed vs. Delaware County, 277 U.S. 376, 388; Barry vs. United States ex rel. Cunningham, 279 U.S. 597, 613; United States vs. Norris; State ex rel. Rosenheim vs. Frear, 119 N.W. 894, 895; Willoughby, The Constitutional Law of the United States, 2nd ed., Vol. I, p. 620.

1. Punishment of a member of Congress for disorderly behavior;[70]
2. Confirmation of appointments;[71]
3. Declaration of the existence of a state of war;[72]
4. Declaration of the incapacity of the President to perform his duties;[73]
5. Review of the suspension of the privilege of the writ of *habeas corpus* or proclamation of martial law;[74]
6. Concurrence in the grant of amnesty;[75]
7. Concurrence in a treaty or international agreement;[76]
8. Impeachment proceedings;[77]
9. Amendment of the Constitution.[78]

C. Production of Documents

A witness may be ordered to produce papers, documents, and records, which are pertinent to the subject Congress is investigating.[79] A

[70] Section 16(3), Article VI of the 1987 Constitution: In re Chapman, 166 U.S. 661, 668; Burnham vs. Morrisey, 74 Am. Dec. 676, 679; Ex Parte Laurence, 48 P. 124, 125; Ex Parte Youngblood, 251 S.W. 509, 510; Willoughby, *op. cit.*, p. 620.

[71] Section 18, Article VI of the 1987 Constitution; Willoughby, *op. cit.*, p. 620.

[72] Section 23(1), Article VI of the 1987 Constitution.

[73] Section 11, Article VII of the 1987 Constitution.

[74] Section 18, Article VII of the 1987 Constitution.

[75] Section 19, Article VII of the 1987 Constitution.

[76] Section 21, Article VII of the 1987 Constitution; Willoughby, *op. cit.*, p. 620.

[77] Section 3, Article XI of the 1987 Constitution; United States vs. Haldeman, 559 F.2d 31, 95-96; Burnham vs. Morissey, 74 Am. Dec. 676, 679; McGinley vs. Scott, 164 A.2d 424, 430; Keeler vs. McDonald, 2 N.E. 615, 622; Attorney General vs. Brissenden, 171 N.E. 82, 86; Willoughby, *op cit.*, p. 620.

[78] Section 1, Article XVII of the 1987 Constitution; United States vs. Dennis, 72 F. Supp. 417, 420; Gibson vs. Florida Legislative Investigation Committee, 108 So. 2d 729, 740.

[79] Eastland vs. United States Servicemen's Fund, 421 U.S. 491, 504; Fields vs. United States, 164 F.2d 97, 99; Barsky vs. United States, 167 F.2d 241, 251; Morford vs. United States, 176 F.2d 54, 57; United States vs. O'Mara, 122 F. Supp. 399,400; United States vs. Brewster, 154 F. Supp. 126, 135; In re Joint Legislative Committee to Investigate Educational System of State of New York, 32 N.E. 2d

witness cannot refuse to produce a document simply because it is private.[80]

However, in order that a witness can be compelled to produce a document, it must be relevant to the subject being investigated. If it is not pertinent to the subject under inquiry, the witness can refuse to produce it.[81]

In an investigation of an association suspected of being engaged in subversive activities, the bank account of the association may be subpoenaed to determine the source of its funds.[82] In an investigation of the Klu Klux Klan to determine if it was engaged in activities in violation of the Constitution, it could be required to submit a list of its members.[83] The books and records of a labor union being investigated for improper activities may be ordered to be produced.[84] In an investigation of the control by criminal elements of boxing matches, a boxer could be ordered to produce records of his bank account, his checkbooks, and the bank statements.[85]Corporations undergoing investigations may be required to produce their records to determine if they have violated government policy.[86]

The Supreme Court of Illinois has ruled that if a subpoena for the production of records is unreasonably broad, it violates the constitutional guarantee against unreasonable searches and seizures. Thus, it pointed out:

> It is an established law that a subpoena which is unreasonably broad in its demand and general in its terms constitutes an unreasonable search and seizure in violation of the State and

769, 771; Ex Parte Batelle, 277 P. 725, 731.

[80] Burnham vs. Morrisey, 74 Am. Dec. 676, 680; National Assocition for the Advancement of Colored People vs. Committee on Offense against the Administration of Justice, 101 S.E. 2d 631,639.

[81] Ward vs. Peabody, 405 N.E. 2d 973, 978; People vs. Foster, 198 N.Y.S. 7, 9; State ex rel. Joint Committee on Good Government and Finance of West Virginia Legislature vs. Bonar, 230 S.E. 2d 629, 632.

[82] Eastland vs. United States Servicemen's Fund, 421 U.S. 491, 507.

[83] Shelton vs. United States, 404 F.2d 1292, 1299.

[84] United States vs. Presser, 292 F.2d 171, 174.

[85] Alfaro vs. Joint Legislative Committee On Professional Boxing, 224 N.Y.S. 2d 164, 165.

[86] General Electric Company vs. New York State Assembly on Governmental Operations, 425 F. Supp. 909, 913; Buell vs. Superior Court of Maricopa County, 391 P.2d 919, 922.

Federal constitutions.[87]

In this particular case, in an investigation of the housing rental expenditures of a recipient of public aid, the witness was required to produce the contract to purchase, deed, trust agreement, mortgage, mortgage note, closing statements, title escrow documents, monthly statements of receipts and disbursements, notices of violations from the Building Department, income tax returns, check stubs, bank statements, cancelled checks, rent rolls, leases, insurance policies, secondary financing, and other documents pertaining to the acquisition of the property.

D. The Question of Relevance

In order that a witness may be compelled to answer a question, it must be relevant to the subject matter of the legislative investigation.[88] The test of relevance of a question in a legislative investigation is different from the criterion of relevance of evidence in a court hearing. Thus, in explaining the standard of relevance in legislative inquiries, the Supreme Court of New Jersey pointed out:

> A judicial inquiry relates to a case, and the evidence to be admissible must be measured by the narrow limits of the pleadings. A legislative inquiry anticipates all possible cases which may arise thereunder and the evidence admissible must be responsive to the scope of the inquiry, which generally is very broad.[89]

The test of relevance of a question in a legislative inquiry is its connection to the subject matter under investigation and not its relation to any possible legislation. On this point, the Supreme Court explained:

---

[87] People vs. Keefe, 223 N.E. 2d 144, 146.

[88] Arnault vs. Nazareno, 87 Phil. 29, 48; McGrain vs. Daugherty, 273 U.S. 135, 176; Sinclair vs. United States, 279 U.S. 263, 292; Scull vs. Virginia, 359 U.S. 344, 349; Barenblatt vs. United States, 360 U.S. 109, 123; Deutch vs. United States, 367 U.S. 456, 468; Russell vs. United States, 369 U.S. 749, 756; Gojack vs. United States, 384 U.S. 702, 708; United States ex rel. Cunningham vs. Barry, 29 F.2d 817, 827; United States vs. Lamont, 8 F.R.D. 27, 32; Cole vs. Loew's, Inc., 8 F.R.D. 508, 518; United States vs. Bryan, 72 F. Supp. 58, 61; United States vs. Sacher, 139 F. Supp. 855, 859; United States vs. Tobin, 195 F. Supp. 588, 602; Wyman vs. Sweezy, 121 A.2d 783, 787.

[89] Morss vs. Forbes, 132 A.2d 1, 7. *See also* Townsend vs. United States, 95 F.2d 352, 361; United States vs. Brewster, 154 F. Supp. 126, 133.

> 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 selfincrimination. 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 question that obviously has no relation to the subject of the inquiry. But from this 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 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.[90]

The guidelines for the relevance of a question have been summarized by Nowak, Rotunda and Young as follows:

> There are generally five methods by which pertinency can be shown: (1) from the definition of the inquiry found in the authorizing resolution or statute; (2) from the opening remarks of the committee chairman; (3) from the nature of the proceeding; (4) from the question itself; and (5) from the response of the committee to a pertinency objection.[91]

When a witness objects to a question on the ground that it is irrelevant, unless the subject matter of the investigation is clear, due process demands that the relevance of the question be explained to him. On this point, the United States Supreme Court ruled:

---

[90] Arnault vs. Nazareno, 87 Phil. 29, 48.

[91] Nowak, Rotunda and Young, **Constitutional Law**, 2nd ed., p. 251, citing Watkins vs. United States, 354 U.S. 178, 209-214.

> Fundamental fairness demands that no witness be compelled to make such a determination with so little guidance. Unless the subject matter has been made to appear with undisputable clarity, it is the duty of the investigative body, upon objection of the witness on grounds of pertinency, to state for the record the subject under inquiry at the time and the manner in which the propounded questions are pertinent thereto. To be meaningful, the explanation must describe what the topic under inquiry is and the connective reasoning whereby the precise questions asked relate to it.[92]

E. Investigations of Executive Officials

The United States Supreme Court has not ruled squarely on whether the Executive Department can refuse to divulge information Congress is demanding. In the case of the *Senate Select Committee on Presidential Campaign Activities vs. Nixon*,[93] the United States Circuit Court of Appeals found no necessity to rule on the matter. It simply held that the Senate could not subpoena the tapes of the conversations between President Richard Nixon and his aides, because there was no more need for the subpoena. Copies of the tapes were already in the custody of Congress, since copies of the tapes had been turned over to the possession of the House of Representatives.

In the case of the *United States vs. Tobin*,[94] a United States District Court tried to make a balancing of interests. The court tried to weigh the need of Congress for the documents it was asking for and the need of the Executive to keep them confidential. The court ruled that in the absence of any showing for a need to keep the documents confidential, they must be produced.

On the other hand, in the case of the *United States vs. American Telephone and Telegraph Company*,[95] the United States District Court held that the Executive Department could refuse to reveal matters involving national security, foreign affairs, or national defense if the President should determine that the disclosure would be inimical to those interests. At the same time, the court claimed for itself the authority to decide whether the

[92] Watkins vs. United States, 354 U.S. 178, 214-215. *See also* Deutch vs. United States, 367 U.S. 456, 468.

[93] 498 F.2d. 725, 733.

[94] 195 F. Supp. 588, 612 - 613.

[95] 419 F. Supp. 454, 459 - 460.

information demanded by the congressional committee was essential to the fulfillment of its functions, whether there was any alternative method of obtaining the required information, and whether the assertion of executive privilege was justified under the circumstances.

Thus, in the last two cases, the courts did not lay down any absolute rule. They rather left it to the courts to decide ultimately whether the Executive Department could withhold the information demanded by Congress on a case-to-case basis.

In the Philippines, Section 22, Article VI of the 1987 Constitution is supposed to govern the matter. This provision reads:

> The heads of departments may upon their own initiative, with the consent of the President, or upon the request of either House, as the rules of each House shall provide, appear before and be heard by such House on any matter pertaining to their departments. Written questions shall be submitted to the President of the Senate or the Speaker of the House of Representatives at least three days before his scheduled appearance. Interpellations shall not be limited to written questions, but may cover matters related thereto. When the security of the State or the public interest so requires and the President so states in writing, the appearance shall be conducted in executive session.

Under this provision, there are two situations under which a member of the Cabinet may appear before Congress to be questioned. It may be upon his own initiative, or it may be upon the request of either chamber of Congress. Should the member of the Cabinet take initiative to appear before Congress for questioning, he needs the consent of the President.[96] At the same time, Congress can refuse to entertain his initiative.[97]

On the other hand, while Congress can request a member of the cabinet to appear before it to be questioned, it cannot compel him to do so. Section 22, Article VI of the 1987 Constitution uses the word "may", which is merely permissive. This is clear from the following explanation of Commissioner Jose Suarez:

> "Mr Davide : There is indeed a happy blending of the pertinent section of the 1935 Constitution and the section on the Question Hour of the 1973 Constitution.

[96] Record of the Constitutional Commission, Vol. II, pp. 149-150.

[97] *Ibid.*, pp. 134 and 150.

However, we would like to find out from the proponent if the appearance of the head of the department may be made mandatory.

Mr. Suarez : No, that is why we are utilizing the wording of the 1935 Constitution which says: 'may appear.'

Mr. Davide : In other words, he cannot be required to appear, and if he will not appear, he cannot be compelled to do so?

Mr. Suarez : That is correct."[98]

While Congress may not have the power to compel a member of the Cabinet to appear before it to be questioned, it can make use of its power to appropriate public funds to persuade a member of the cabinet to heed its request.

III. DELEGATION OF THE POWER TO COMMITTEES

A. Authority to Delegate

Each chamber of Congress can delegate to a committee the power to conduct legislative investigation, since it is impractical for the entire house to conduct the investigation.[99] Section 21, Article VI of the 1987 Constitution recognizes this when it states that the committees of the Senate and the House of Representatives may conduct investigations in aid of

[98] *Ibid.*, p. 133.

[99] Quinn vs. United States, 349 U.S. 155, 160; Adams vs. Maryland, 347 U.S. 179, 183; Barry vs. United States ex rel. Cunningham, 279 U.S. 597, 613; Dennis vs. United States, 171 F.2d 986, 988; United States vs. Fitzpavock, 96 F. Supp. 491, 493; United States vs. Di Carlo, 102 F. Supp. 597, 601; United States vs. Kamin, 136 F. Supp. 791, 801; United States vs. Miller, 152 F. Supp. 781, 794; Liveright vs. Joint Committee of the General Assembly of the State of Tennessee, 279 F. Supp. 205, 214; Annenberg vs. Roberts, 2 A.2d 612, 616, Morss vs. Forbes, 132 A.2d 1, 8; Fergus vs. Russell, 110 N.E. 130, 146; In re Joint Educational Committee to Investigate Educational System in State of New York, 32 N.E. 2d 769, 771; State vs. Morgan, 133 N.E. 2d 104, 109; State vs. Raley, 136 N.E. 2d 295, 302-303; Answer of the Justices to the House of Representatives, 378 N.E. 2d 554, 556; In re Gordon, 252 N.Y.S. 858, 859, Bloor vs. State, 403 N.Y.S. 2d 983, 988; In re Southard, 90 P.2d 304, 308; State vs. Yello, 185 P.2d 723, 727; National Association for the Advancement of Colored People vs. Committee on Offenses against the Administration of Justice, 101 Se. 2d 631, 638; ASP Inc. vs. Capital Bank and Trust Company, 174 So. 2d 809, 813; Ex Parte Youngblood, 251 S.W. 509, 512.

legislation.

To comply with the requirements of due process, the resolution authorizing a committee to conduct an investigation must not be vaguely phrased and broadly worded.[100] Thus, the United States Supreme Court explained:

> 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' must be avoided here as in all other crimes.[101]

B. Scope of Authority

In conducting the investigation, the committtee must act within the scope of the authority delegated to it.[102] In order that a committee may be considered as acting within the scope of its authority, the investigation must pertain to the subject it was authorized to investigate, the investigation must be for a valid legislative purpose, and the question asked must be pertinent to the subject matter.[103]

Thus, if the question asked a witness is outside the scope of the authority of the committee, he cannot be compelled to answer it. In parallel, because it is not pertinent to the subject of the inquiry, he may not be compelled to answer it.[104]

With respect to the production of documents, a United States

[100] Sweezy vs. New Hampshire, 354 U.S. 234, 235.

[101] Watkins vs. United States, 354 U.S. 178, 208-209. *See also* Wilkinson vs. United States, 365 U.S. 399, 408.

[102] Cole vs. Loew's Inc., 8 F.R.D. 508, 518; United States vs. Lamont, 15 F.R.D. 27, 33; United States vs. Kamin, 135 F. Supp. 382, 387; United States vs. Kamin, 136 F. Supp. 791, 804; United States vs. Shelton, 148 F. Supp. 926, 934; United States vs. Patterson, 206 F. Supp. 433, 434; Wyman vs. Uphaus, 130 A.2d 278, 283; Morss vs. Forbes, 132 A.2d 1, 8; Costiglio vs. Strelzin, 414 N.Y.S. 2d 430, 435.

[103] Wilkinson vs. United States, 365 U.S. 399, 408-409; United States vs. Seeger, 303 F.2d 478, 482; Ashland Oil, Inc. vs. Federal Trade Commission, 409 F. Supp. 297, 305.

[104] United States vs. Rumely, 345 U.S. 41, 47; Sacher vs. United States, 356 U.S. 576, 577.

District Court defined the requirement for its pertinency in the following terms:

> Materials subpoenaed by a Congressional committeee in connection with an investigation must be produced in cases where (1) Congress has the power to investigate; (2) the committee or subcommittee has a proper grant of authority to conduct the investigation; and (3) the materials sought are pertinent to the investigation and within the scope of the grant of authority.[105]

Thus, if the documents a witness was asked to produce are outside the scope of the authority vested in the committee, he cannot be compelled to produce them.[106]

In *Barenblatt vs. United States*,[107] a divided United States Supreme Court stated in a five-to-four majority decision that the scope of the authority of a committee is for the legislature and not for the witness to determine, subject to ultimate review by the courts. This distinction seems to be purely academic, since in the final analysis it is the courts who will decide whether or not a committee acted within the scope of its authority.

In any event, the fact that another congressional committee also has authority to investigate the subject under inquiry by a committee does not render the investigation by the latter committee unlawful.[108]

IV. SANCTIONS FOR DISOBEDIENCE

A. Contempt

If a witness refuses to answer a question which was propounded to him or to produce documents which he was ordered to present, he can be cited for contempt. Although the 1987 Constitution does not expressly vest upon Congress the power to cite for contempt, the existence of this power is implied from its power to conduct legislative investigations. If a witness refuses to answer a question or to produce a document, Congress must have

[105] Bergman vs. Senate Special Committee on Aging, 389 F. Supp. 1127, 1130.

[106] United States vs. Rumely, 345 U.S. 41, 47.

[107] 360 U.S. 109, 124.

[108] United States vs. O'Connor, 135 F. Supp. 590, 595.

the power to compel him to obey.[109]

In the case of *Arnault vs. Nazareno*, the Supreme Court explained the basis for the power of Congress to cite for contempt in the following words:

> The principle that Congress or any of its bodies has the power to punish recalcitrant witnesses is founded upon reason and policy. Said power must be considered implied or incidental to the exercise of legislative power, or necessary to effectuate said power. How could a legislative body obtain the knowledge and information on which to base intended legislation if it cannot require and compel the disclosure of such knowledge and information, if it is impotent to punish a defiance of its power and authority?[110]

Of course, in order that a witness may be subjected to punishment for contempt, his testimony must pertain to a subject which is within the authority of Congress to investigate.[111] Thus, the Supreme Court held:

> But no person can be punished for contumacy as a witness before either House, unless his testimony is required in a matter into which that House has jurisdiction to inquire.[112]

In addition, the question asked the witness must be relevant to the subject matter of the investigation.[113]

If it is a committee that is conducting the investigation, it must act within the scope of the authority granted to it. Thus, a witness cannot be cited for contempt for failing to produce documents which are beyond the

[109] Arnault vs. Nazareno, 87 Phil. 29, 45; Arnault vs. Nazareno, 97 Phil. 358, 370; McGrain vs. Daugherty, 243 U.S. 135, 175; Marshall vs. Gordon, 243 U.S. 521, 542; Sinclair vs. United States, 279 U.S. 263, 291; Jurney vs. McCracken; 294 U.S. 125, 148; United States vs. Norris, 300 U.S. 564, 573; Watkins vs. United States, 354 U.S. 178, 187; Burnham vs. Morrissey, 74 Am. Dec. 676, 681; Keeler vs. McDonald, 2 N.E. 615, 624; Opinions of the Justices, 102 N.E. 2d 79, 86; Ex Parte Battele, 277 P. 725, 731.

[110] 97 Phil. 358, 370.

[111] Kilbourn vs. Thompson, 13 Otto 168, 190; McGrain vs. Daugherty, 273 U.S. 135, 176; Sinclair vs. United States, 279 U.S. 263, 292; Quinn vs. United States, 349 U.S. 155, 161.

[112] Arnault vs. Nazareno, 87 Phil. 29, 45.

[113] *Id.* at 52

authority delegated to the committee to investigate.[114]

If the committee conducting the investigation has no quorum, a witness cannot be cited for contempt for disobedience. If the committee has no quorum, it is not competent to transact business and to conduct the investigation.[115]

To comply with the requirements of due process, before a witness can be punished for contempt, he must be notified of the charge against him and be given the chance to be heard.[116]

No punishment can be imposed upon a witness for contempt except imprisonment or fine.[117]

The power of Congress to cite a recalcitrant witness for contempt is based on its power of self-preservation.[118] Hence, when a house of Congress orders the imprisonment of a witness for contempt, the imprisonment cannot extend beyond the lifetime of that house.[119] When that house ceases to exist, there is nothing to preserve.

Under Section 2, Article XVIII of the 1987 Constitution, the term of office of the incumbent senators and congressmen will uniformly expire on June 30, 1992. After that, the congressmen will serve office for a term of three years.[120] On the other hand, of the twenty-four (24) senators to be elected in 1992, the first twelve (12) obtaining the highest number of votes will serve for six (6) years and the remaining twelve (12) will serve for three (3) years.[121] Thereafter, twelve (12) senators will be elected every three (3) years.[122]

If either the House of Representatives or the Senate of the present

---

[114] United States vs. Patterson, 206 F.2d 433, 434.

[115] Christoffel vs. United States, 338 U.S 84, 88; Meyers vs. United States, 171 F.2d 800,811; Fleischman vs. United States, 174 F.2d 519, 520. *See contrary rulings in* United States vs. Bryan, 339 U.S. 329-333 *and* United States vs. Fleischman, 339 U.S. 349, 352.

[116] Groppi vs. Leslie, 404 U.S. 496, 502.

[117] Anderson vs. Dunn, 6 Wheaton 204, 229; Marshall vs. Gordon, 243, U.S 521, 542; In re Davis, 49 P 160, 163.

[118] Lopez vs. De los Reyes, 55 Phil. 170, 178; Arnault vs. Nazareno, 87 Phil. 29, 62.

[119] Vivo vs. Ganzon, 57 SCRA 255, 258; Quinn vs. United States, 349 U.S 155, 169.

[120] Section 7, Article VI of the 1987 Constitution.

[121] Section 2, Article XVIII of the 1987 Constitution.

[122] Section 4, Article VI of the 1987 Constitution.

congress were to order the imprisonment of a witness for contempt, he can be detained until the final adjournment in 1992 of the house which cited him for contempt. Similarly, after June 30, 1992, if the House of Representatives were to order the imprisonment of a witness for contempt, he can be detained until its final adjournment.[123]

Originally, the Supreme Court ruled that a person cited for contempt by the House of Representatives could be detained only for the duration of the session in which he committed the act of contumacy.[124] Later on, the Supreme Court modified this pronouncement. The Supreme Court explained:

> Had said resolution of commitment been adopted by the House of Representatives, we think it could be enforced until the final adjournment of the last session of the Second Congress in 1953. We find no sound reason to limit the power of a legislative body to punish for contempt to the end of every session and not to the end of the last session terminating the existence of that body. The very reason for the exercise of the power to punish for contempt is to enable the legislative body to perform its constitutional function without impediment or obstruction. Legislative functions may be and in practice are performed during recess by duly constituted committees charged with the duty of performing investigations or conducting hearing relative to any proposed legislation. To deny to such committees the power of inquiry with process to enforce it would be to defeat the very purpose for which that power is recognized in the legislative body as an esential and appropriate auxiliary to its legislative function. It is but logical to say that the power of self-preservation is co-existent with the life to be preserved.[125]

Of course, the new House of Representatives can resume the investigation started by the previous one and imprison again a witness who persists in his refusal to cooperate with the investigaton.[126]

On the other hand, if it is the Senate who will order the commitment of a recalcitrant witness for contempt after June 30, 1992, he can be detained indefinitely until he answers the question which was

---

[123] Arnault vs. Nazareno, 87 Phil 29, 62.

[124] Lopez vs. De los Reyes, 55 Phil. 170, 181.

[125] Arnault vs. Nazareno, 87 Phil. 29, 62.

[126] Bernas, The Constitution of the Republic of the Philippines, 1st. ed., p. 134.

propounded to him or produces the document which he was required to produce. After June 30, 1992, the Senate will become a continuing body, as only twelve (12) of the twenty-four (24) senators are to be elected every three (3) years.[127]

Thus, in the case of *Arnault vs. Nazareno*, the Supreme Court held:

> But the resolution of commitment here in question was adopted by the Senate, which is a continuing body and which does not cease to exist upon the periodical dissolution of the Congress or of the House of Representatives. There is no limit as to time to the Senate's power to punish for contempt in cases where that power may constitutionally be exerted as in the present case.[128]

American decisions are split as to whether or not a legislature may delegate to a committee the power to punish a witness for contempt. According to one line of decisions, the power cannot be delegated.[129]

Thus, the Supreme Court of Kansas ruled:

> 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 committees to collect information, and aid it in many ways, but the power of final action and decision rests with the house.[130]

Other decisions hold that the legislature may delegate the power to cite for contempt to a committee, as nothing in the Constitution prohibits it.[131] For its part, the Supreme Court of the Philippines seems to have conceded that a committee may be authorized to cite a witness for contempt.[132]

[127] McGrain vs. Daugherty, 273 U.S. 135, 181-182.

[128] 87 Phil. 29, 62.

[129] In re Davis, 49 P 160, 164; Ex Parte Youngblood, 251 S.W. 509. 512.

[130] In re Davis, 49 P. 160, 164.

[131] Ex Parte Parker, 55 Se. 122, 124; Sullivan vs. Hell, 79 Se. 670, 672.

[132] Arnault vs Nazareno, 87 Phil. 29, 52 and 62.

B. Criminal Prosecution

Aside from being cited for contempt, a recalcitrant witness can also be criminally prosecuted for violation of Article 150 of the Revised Penal Code, which provides:

> The penalty of *arresto mayor* or a fine ranging from two hundred to one thousand pesos, or both such fine or imprisonment, shall be imposed upon any person who, having been duly summoned to attend as a witness before the National Assembly, its special or standing committees and sub-committees, the Constitutional Commissions and its committees, sub- committees or divisions, or before any commission or chairman or member authorized to summon witnesses, refuses, without legal excuse, to obey such summons, or being present before any such legislative or constitutional body or official, refuses to be sworn or placed under affirmation or to answer any legal inquiry or to produce any books, papers, documents, or records in his possession, when required by them to do so in the exercise of their functions. The same penalty shall be imposed upon any person who shall restrain another from attending as a witness, or who shall induce disobedience to a summon or refusal to be sworn by any such body or official.

A witness who has been imprisoned for contempt cannot complain that his prosecution under this provision will place him in double jeopardy.[133] In the case of *Lopez vs. De los Reyes,* the Supreme Court explained the reason for this:

> The implied 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.[134]

[133] United States vs Kelly, 35 Phil. 419, 587; Lopez vs. De los Reyes, 55 Phil. 170, 179; In re Chapwan, 166 U.S. 661, 672; Jurney vs. MacCracken, 294 U.S. 125, 151; In re Grand Jury Investigation of Ven-Fud, 441 F. Supp. 1299, 1308; ASP, Inc. vs. Capital Bank and Trust Company, 174 So. 2d 809, 814.

[134] 55 Phil. 170, 180.

V. LIMITATIONS ON POWER OF LEGISLATIVE INVESTIGATION

A. Legislative Purpose

As earlier explained, in order that Congress may have the power to investigate a certain subject, the matter must be one which can be the subject matter of legislation. The investigation must be conducted in aid of legislation. The questions propounded to the witness must be relevant to the subject matter.

B. Publication of Rules of Procedure

Section 21, Article VI of the 1987 Constitution requires that legislative investigations be conducted in accordance with duly published rules of procedure. It is therefore mandatory that the Senate and the House of Representatives adopt rules of procedure for the conduct of legislative inquiries and the rules of procedure be published.[135]

C. The Bill of Rights

The power of Congress to conduct investigation is limited by the Bill of Rights, which serves as a restriction upon all forms of governmental action.[136]

1. Right against Self-Incrimination

Congress cannot compel a witness to answer a question during an investigation if it calls for an answer which is self- incriminatory.[137] For this

[135] United States vs. Reinecke, 524 F.2d 435, 439; Bernas, *op. cit.*, pp. 133-134.

[136] Watkins vs. United States, 354 U.S. 178, 188; Barenblatt vs. United States, 360 U.S. 109, 112; Hutcheson vs. United States, 369 U.S. 599, 610.

[137] Section 17, Article III of the 1987 Constitution; Blau vs. United States, 340 U.S. 159, 161; Emspak vs. United States, 349 U.S. 190, 195; Quinn vs. United States., 349 U.S. 155, 161; Bart vs United States, 349 U.S. 219, 223; Watkins vs. United States, 354 U.S. 178, 196; Peretto vs. United States, 196 F.2d 392, 396; Marcelo vs. United States, 196 F.2d 437, 442; United States vs. Costello, 198 F.2d 200, 202; Auippa vs. United States, 201 F.2d 287, 289; Carlson vs. United States, 209 F.2d 209, 212; Jackins vs. United States, 231 F.2d 482, 491; United States vs. Haldeman, 559 F.2d 31, 96; United States vs Yukio Abe, 95 F. Supp. 991-991;

right to be available, it is not necessary that the proof of all the elements of a crime be elicited from the lips of a witness. It is sufficient if the evidence will constitute a link in the chain of evidence needed to prosecute the witness criminally.[138]

However, where a witness claimed that the transaction about which he was being questioned was legal, he was estopped from refusing to answer on the ground that he would incriminate himself.[139]

A witness who is being interrogated by Congress may waive his right against self-incrimination.[140] Thus, if he was advised that he could invoke his right against self-incrimination but he voluntarily testified, his testimony could be used against him.[141] Likewise, where the witness refused to answer a question on other grounds, he could not in case of criminal prosecution invoke his right against self-incrimination as a justification for his refusal to answer.[142]

United States vs. Emspak. 95 F. Supp. 1012, 1018; United States vs. Fitzpatrick, 96 F. Supp. 491, 193; United States vs. Raley, 96 F. Supp. 495, 498; United States vs. Joffe, 98 F. Supp. 191, 197; United States vs. Cohen, 101 F. Supp. 906, 908; United States vs. Di Carlo, 102 F. Supp. 597, 602; United States vs. Auippa, 102 F. Supp. 609, 612; United States vs. Nelson, 103 F. Supp. 215, 218; United States vs. Pechart, 103 F. Supp. 417, 420; United States vs. Fischetti, 103 F. Supp. 296, 298; United States vs. Singer, 139 F. Supp. 847, 852; Raphael vs. Conrad, 371 F. Supp. 256, 285; United States vs Kim, 471 F. Supp. 467, 469; Emery's Case, 9 Am. Rep. 22, 25; Ex Parte hague, 150 A. 322, 324; Nelson vs. Wyman, 105 A. 2d 756, 764; Wyman vs. De Gregory, 121 A.2d 805, 807; State vs. Spindel, 132 A.2d 291, 296; Doyle vs. Hofstader, 177 N.E. 489, 496; Ward vs. Peabody, 405 N.E. 2d 973, 978; State vs. James, 221 P.2d 482, 491; In re hearing before Joint Legislative Committee of House and Senate Created by Joint Resolution No. 622, 196 S.E. 164, 167; Kellum vs. State, 194 So. 2d 492, 493.

[138] Isabela Sugar Company, Inc. vs. Macadaeg, 93 Phil. 995, 1000; Fernando vs. Maglanoc, 95 Phil. 431, 434; Emspak vs. United States, 349 U.S. 190, 199; United States vs. Auippa, 201 F.2d 287,299; United States vs Doto, 205 F.2d 416, 417; United States vs. Cohen, 101 F. Supp. 906, 908; United States vs. Di Carlo, 102 F. Supp. 597, 602; United States vs. Auippa, 102 F. Supp. 609, 612; United States vs. Nelson 103 F. Supp. 215, 216; United States vs. Fishetti, 103 F. Supp. 796, 798; United States vs. Hoag, 142 F. Supp. 667, 673; Doyle vs. Hofstader, 177 N.E. 489, 493.

[139] Arnault vs. Nazareno, 87 Phil. 29, 65.

[140] Quinn vs. United States, 349 U.S. 155, 164-165; Emspak vs. United States, 349 U.S. 190, 195; United States vs. Singer, 139 F. Supp. 847, 852.

[141] United States vs. Baker, 189 F. Supp. 796, 803.

[142] Hutcheson vs. United States, 369 U.S. 599, 611.

According to previous American decisions, a witness must positively invoke his right against self-incrimination. Otherwise, he will be deemed to have waived it.[143] However, according to the latest ruling of the United States Supreme Court, the testimony of a witness before a legislative committee cannot be used as evidence against him even if he did not invoke his right against self-incrimination. The protection is already afforded by the Constitution.[144]

The United States Supreme Court has also ruled that once a witness has waived his right against self-incrimination, he cannot refuse to divulge further details on the basis of his right against self-incrimination.[145] There seems to be no reason why a witness who has waived his right against self-incrimination cannot reassert his right by refusing to answer further incriminatory questions.

A witness cannot invoke his right against self-incrimination before any question is propounded.[146] It cannot be presumed in advance that he will be asked an incriminatory question. He must wait until he is asked an incriminatory question.[147] A United States District Court has explained:

> The privilege may only be asserted when there is reasonable apprehension on the part of the witness that his answers would furnish some evidence upon which he could be convicted of a criminal offense against the United States, or which would lead to a prosecution of him for such offense, of which would reveal sources from which evidence could be obtained that would lead to such conviction, or to prosecution therefore.[148]

When a witness objects to a question because of his right against self-incrimination, he is not required to prove that the question is incriminatory. If he were to be required to show why he will incriminate himself, this will defeat the very right which he is invoking. It is sufficient that it be evident from the implications of the question that a responsive

---

143 United States ex rel. Vajtaner vs. Commission on Immigration 273 U.S. 103, 113; United States vs. Murdock, 284 U.S. 141, 148; United States vs. Monia, 317 U.S. 424, 427; Rogers vs. United States, 340 U.S. 367, 370.

144 Adams vs. Maryland, 347 U.S. 179, 181.

145 Brown vs. Walker, 161 U.S. 591, 597; Rogers vs United States, 340 U.S. 367, 373.

146 Marcelo vs. United States, 196 F.2d 437, 441.

147 In re Petition of Graham, 104 So.2d 16, 18.

148 United States vs. Raley, 96 F. Supp. 495, 496.

answer would result in incriminatory disclosure.[149]

If the law grants a witness immunity, he can be compelled to testify even if his testimony may incriminate him.[150] Immunity statutes may be classified into two. One type grants use immunity, while the other one grants transactional immunity. Use immunity allows the criminal prosecution of the witness that prohibits the use of the compelled testimony against him or information obtained through his compelled testimony. Transactional immunity completely prohibits the criminal prosecution of the witness for an offense to which his compelled testimony relates.[151]

Even if a law grants a witness immunity, if the legislative committee investigating him informed him that he could invoke his right against self-incrimination, and he availed of such right, he cannot be criminally prosecuted because of his refusal to answer. His prosecution will violate due process, as it was unfair for the committee to mislead and entrap him.[152]

The right against self-incrimination applies only to testimonial evidence.[153] It does not apply to the production of documents.[154] Hence, a witness may not refuse to produce documents subpoenaed by a congressional committee even if they may incriminate him.[155]

The right against self-incrimination is available to natural persons only. It cannot be invoked by juridical persons like corporations and partnerships, which are creatures of the State.[156]

If the testimony which a witness is being compelled to give pertains to a crime which has prescribed, he cannot invoke his right against saelf-incrimination. Since the crime has prescribed, he is no longer exposed

---

149 Hoffman vs. United States, 341 U.S. 479, 486-487; Jackins vs. United States, 231 F.2d 405, 410.

150 Ullman vs. United States, 350 U.S. 422, 431; United States vs. Fitzpatrick, 96 F. Supp. 491, 494; People vs. Sharp, 14 N.E. 319, 330; State vs. Morgan, 133 N.E. 2d 104, 114.

151 Galman vs. Pamaran, 138 SCRA 294, 325.

152 Raley vs. Ohio, 360 U.S. 423, 425.

153 United States vs Tan Teng, 23 Phil. 145, 152; United States vs. Ong Siu Hong, 36 Phil. 735, 736.

154 Fisher vs. United States, 425 U.S. 391, 408.

155 United States vs. White, 322 U.S. 694, 699; Rogers vs. United States, 340 U.S. 367, 372; McPhaul vs. United States, 364 U.S. 372, 380.

156 Bataan Shipyard and Engineering Company, Inc. vs. Presidential Commission on Good Government, 150 SCRA 906, 910.

to the risk of prosecution.[157]

Likewise, if a witness was previously convicted or acquitted and cannot be prosecuted again because of the rule on double jeopardy, he cannot invoke his right against self-incrimination.[158]

The same rule should apply if the witness has been granted amnesty.

2. Other Constitutional Rights

The power of Congress to order the production of documents in connection with a legislative inquiry is limited by the protection against unreasonable searches and seizures.[159] Thus, if the subpoena issued for the production of documents is unreasonably broad, it is void.[160] Likewise, if certain documents were confiscated as a result of an illegal search and seizure and Congress learned of them because of the illegal search and seizure, Congress cannot subpoena those documents.[161]

Congressional investigations should not invade the right to privacy.[162]They should also respect freedom of religion and political belief.[163]

Legislative inquiries should not impair the freedom of association.[164] This can happen if disclosure of the members of an organization may

[157] Brown vs. Walker, 161 U.S. 591, 598; Hale vs. Henkel, 201 U.S. 43, 67; United States vs. Auippa, 102 F. Supp. 609, 613.

[158] Wyman vs. De Gregory, 121 A.2d 805, 807.

[159] Section 2, Article III of the 1987 Constitution, Watlkins vs. United States, 354 U.S. 178, 188; ASP, Inc. vs. Capital Bank and Trust Company, 174 So. 2d 809, 816; Willoughby, *op. cit.*, Vol. I, p. 620.

[160] Garcher vs. Massachussetts Turnpike Authority, 199 N.E. 2d 186, 192; People vs. Keefe, 223 N.E. 2d 144, 146.

[161] United States vs. McSurely, 473 F.2d 1178, 1193; McSurely vs. McClellan, 553 F.2d 1277, 1287-1288.

[162] De Gregory vs. United States, 383 U.S. 825, 829; United States vs. Peck, 164 F. Supp. 603, 606.

[163] Section 5 and Section 18(1), Article IV of the 1987 Constitution; Watkins vs. United States, 354 U.S. 178, 188; United States vs. Peck, 164 F. Supp. 603, 606.

[164] Section 8, Article III of 1987 Constitution, Watkins vs. United States, 354 U.S. 178, 188; Sweezy vs. New Hampshire, 354 U.S. 234, 251; Eastland vs. United States Servicemen's Fund, 421 U.S. 491, 510; Marshall vs. United States, 176 F.2d 473, 475; United States vs. Peck, 154 F. Supp. 603, 605.

constitute an effective restraint on its membership.[165] However, freedom of association does not preclude Congress from probing an organization if it involves matters on which Congress can legislate, such as, subversive activities.[166]

Likewise, legislative investigations should not abridge freedom of speech of expression, and of the press.[167] However, this does not bar Congress from conducting an investigation if a speech or a publication dwelt on matters on which it can legislate, like subversion.[168] The same rule applies to academie freedom.[169]

Thus, the United States Supreme Court explained:

> But this does not mean that the Congress is precluded from interrogating a witness merely because he is a teacher. An educational institution is not a constitutional sanctuary from inquiry into matters that may otherwise be within the constitutional legislative domain merely for the reason that inquiry is made of someone within its walls.[170]

VI. UNAVAILABLE DEFENSES

A. Exposure to Embarrassment

A witness cannot refuse to answer a question simply because it will expose him to public embarrassment, it will damage his reputation, it will

[165] Gibson vs. Florida Investigation Committee, 372 U.S. 539, 546; In re North End Democratic Club, 222 N.Y.S. 2d 9, 13.

[166] Uphaus vs. Wyman, 360 U.S. 72, 78; Eastland vs. United States Servicemen's Fund, 421 U.S. 491, 510; Grumman vs. United States, 294 F.2d 708, 713; United States vs. Yukio Abe, 95 F. Supp. 991, 992; United States vs. Fitzpatrick, 96 F. Supp. 491, 493; United States vs. Knowles, 148 F. Supp. 832, 836.

[167] Section 4, Article III of the 1987 Constitution; Watkins vs. United States, 354 U.S. 178, 188; Sweezy vs. United States, 354 U.S. 234, 250.

[168] United States vs. Josephson, 165 F.2d 82, 91; Lawson vs, United States, 176 F.2d 49, 52; Marshall vs. United States, 175 F.2d 473, 474; United States vs. Orman, 207 F.2d 148, 158; United States vs. Sacher, 139 F. Supp. 855, 861; Wyman vs. Sweezy, 121 A.2d 783, 791; State vs. James, 22 P.2d 482, 490.

[169] Section 4(2), Article XIV of 1987 Constitution; Sweezy vs. New Hampshire, 354 U.S. 234, 250.

[170] Barenblatt vs. United States, 360 U.S. 109, 112.

result in monetary loss, or it will impair his ability to earn a living.[171]

B. Privileged Communications

There is a dispute as to whether or not a witness can be compelled to disclose privileged communication between a lawyer and his client.

The view has been advanced that a witness may not refuse to answer a question during a congressional investigation on the ground that it will involve disclosure of communication which is privileged under Section 21, Rule 130 of the Rules of Court.[172] However, in an *obiter dictum*, the Supreme Judicial Court of Massachusetts stated that a witness may invoke the confidentiality of communication between a client and his lawyer.[173]

C. Trade Secrets

Neither can a witness refuse to answer a question simply because it will entail the disclosure of a trade secret. It must be presumed that Congress will act responsibly and will keep the trade secret inviolate.[174]

D. Destruction of Records.

The subsequent destruction of the documents which a witness failed to produce after the service upon him of a subpoena does not extinguish his liability for the corresponding sanctions. The fact that the obstruction of the legislative inquiry has become irremediable is not a defense.[175]

VII. JUDICIAL REVIEW

If a witness is cited for contempt, he may seek judicial review of the legality of the citation for contempt, because it involves his rights and

[171] Brandhove vs. Tenney, 183 F.2d 121, 124; Nelson vs. Wyman, 105 A. 2d 756, 766; *Congressional Investigations*, p. 651; Lashley, *The Investigating Power of Congress: Its Scope and Limitations*, 40 American Bar Association Journal, 811, (1954).

[172] *Congressional Investigations*, 647; Lashley, *op. cit.*, p. 810.

[173] Ward vs. Peabody, 405 N.E. 2d 973, 978.

[174] Exxon Corporation vs. Federal Trade Commission, 589 F.2d 582, 590; *Congressional Investigation*, 647.

[175] Jurney vs. McCracken, 294 U.S. 125, 148.

liberties.[176] In fact, Section 1, Article VIII of the 1987 Constitution provides:

> 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 a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

Because of the separation of powers, the courts cannot restrain in advance a legislative inquiry or quash a congressional subpoena before the investigation.[177] The courts cannot enjoin a co-equal department. Judicial review must be stayed until a witness is cited for contempt or is criminally prosecuted. Only then will a judicial controversy arise that is ripe for judicial determination.[178]

The scope of judicial review is quite narrow. Undisputably, the courts can review whether either house of Congress or any of its committees acted within the purview of its authority and whether or not it overstepped the limitations on its power of inquiry. However, if the subject which Congress is investigating is one on which it can legislate, it will be presumed that it is conducting the investigation for a legitimate legislative purpose.[179] Neither can the courts inquire into the motives of the legislators.[180]

The courts can review whether or not the questioned propounded to a witness is relevant to the subject matter of the legislative investigation. On this point, the Supreme Court held:

> So we are of the opinion that where the alleged immateriality of the information sought by the legislative body from a witness is relied upon to contest its jurisdiction, the court is in duty bound

[176] Kilbourn vs. Thompson, 13 Otto 168, 200-201; McGrain vs. Daugherty, 278 U.S. 135, 176; Jurney vs. McCracken, 294 U.S. 125, 150.

[177] Eastland vs. United States Servicemen's Fund, 421 U.S. 491, 503; Mins. vs. McCarthy, 209 F.2d 307, 307; Pauling vs. Eastland, 288 F.2d 126, 129; Ansara vs. Eastland, 442 F.2d 751, 754; Sanders vs. McClellan, 463 F.2d 894, 899; Exxon Corporation vs. Federal Trade Commission, 589 F.2d 582, 590; Fischler vs. McCarthy, 117 F. Supp. 643, 648.

[178] Fischler vs. McCarthy, 117 F. Supp. 643, 649.

[179] *See* note 59.

[180] *See* note 61.

> to pass upon the contention. The fact that the legislative body has jurisdiction or the power to make the inquiry would not preclude judicial intervention to correct a clear abuse of discretion, in the exercise of that power.[181]

However, it is presumed that the ruling of Congress on the relevance of the question to the subject under investigation is correct.[182]

Should a house of Congress or any of its committees find that the answer of a witness is false and that therefore he has not given the information being demanded from him, the courts cannot review its ascertainment of the truthfulness of the answer of the witness.[183] The separation of powers preclude the courts from reviewing such determination of a co-equal department.

Neither can the courts review the sufficieny of the information gathered during the legislative investigation. Thus, the courts cannot determine whether a legislative committee has acquired sufficient information for legislative purposes.[184] Neither may a congressional committee be stopped from obtaining cumulative testimony to check the accuracy of the information it has obtained.[185]

VIII. CONCLUSION

While the exercise of the power of legislative investigation is subject to judicial review, the scope of the power of judicial review is narrow. It is not the same as in the case of an appeal from the decision of a trial court. It is much more restricted.

In a court proceeding the issues to be resolved are defined through the pleadings filed by the parties. The presentation of evidence is thus limited to the issues raised in the pleadings. The Rules of Court clearly define what evidence is admissible and is not admissible. This is not true in the case of legislative investigations.

To a great extent, the prevention of abuses in legislative investigations must depend upon the sense of fairness, propriety and self-restraint of the legislators conducting the investigation. This safeguard

[181] Arnault vs. Nazareno, 87 Phil. 29, 49.

[182] *Ibid.*

[183] Arnault vs. Nazareno, 97 Phil. 358, 365.

[184] Hutcheson vs. United States, 369 U.S. 599, 619.

[185] United States vs. Deutch, 147 F. Supp. 89, 92.

is dubious and has not been effective. It is self-imposed. Experience has shown that reliance upon this safeguard does not offer any basis for optimism.

The check upon the excesses in legislative investigations must come from the pressure of public opinion emanating from vigilant citizens and an alert media. Participation in democratic processes is not confined to casting one's ballot every election time. It entails active involvement in the day-to-day running of the government.