FOR RELEASE ON DELIVERY

"REMEDY FOR ABUSE OF CONSTITUTIONAL PRIVILEGE AGAINST SELF-INCRIMINATION"

ADDRESS

BY

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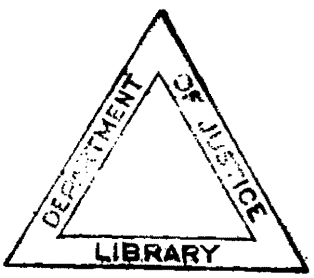

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Apart from the World Series, perhaps there has been no more publicized topic of news coverage in recent months than those fourteen magic words, "I refuse to answer upon the ground that it might tend to incriminate me." Today this is the topic of my discussion.

The Fifth Amendment to the Federal Constitution provides that no person "shall be compelled in a criminal case to be a witness against himself." The courts have construed this provision to mean that a person may remain mute before a Congressional Committee, a grand jury or trial court, if a criminal charge, no matter how remote, may possibly be asserted against him with respect to any matters as to which he is questioned. Subversives and criminals have not been slow to rely upon this provision which was written into our Constitution to protect law-abiding citizens against tyranny and despotism. Can we afford to permit these wrongdoers to try to destroy the institutions of freedom by hiding behind the shield of this constitutional privilege?

It is my opinion that the interests of justice and the Nation's safety will best be served, without loss or impairment of constitutional privileges, if testimony of witnesses can be compelled, upon grant of immunity from criminal prosecution.

In discussing this important problem with you, I plan first to deal with the history of constitutional privilege and the exchange of immunity for it. Second, the function of Congressional investigations and how they have been thwarted by abuse of the privilege. Third, pending proposals before Congress for an exchange of immunity for privilege and my suggestions for improvement of these proposals.

First, a few words about the history of the privilege.

Strangely enough, the privilege against self-incrimination has never been a part of any of the English fundamental laws such as the Magna Carta or English Bill of Rights. Yet the privilege has deep roots in early English history. The tyranny of Charles I during the years 1629 to 1640 in dealing with non-conformists, the Star Chamber proceedings in which innocent persons were tortured into confession of crimes which they did not commit, engendered such hostility among the people that strong demands were made to end compulsory testimony as far back as 1647.[1/] By early 1650, more than 300 years ago, the privilege against self-incrimination was so well established in the common law of England that it was never even thought necessary by any English Parliament to pass an act touching the matter.[2/]

With this heritage, it was not surprising that the early settlers in America fiercely resisted attempts of the Governors of the Royal provinces to resort to compulsory testimony for coercing confessions.[3]

By the time of the formation of the Union, the principle that no person could be compelled to be a witness against himself had become deeply fixed in the common law. It was regarded then as now, as a protection to the innocent as well as to the guilty, and an essential safeguard against unfounded and tyrannical prosecution.[4]

The privilege was not included in the Federal Constitution as originally adopted. Subsequently it was placed in one of the group of ten Amendments recommended to the States by the First Congress, and by them adopted. Since then, all the States of the Union have included the privilege in their Constitutions except New Jersey and Iowa where the principle prevails as part of the common law.[5]

During the development of the privilege against self-incrimination, there was experimentation with statutes granting immunity in exchange for compulsory testimony. In 1857, an act was passed by Congress granting a complete legislative pardon for any fact or act as to which the witness was required to testify.[6] This provision of the bill was amended five years later when it was found to have worked greater evil

than good, in that it operated to discharge from prosecution and punishment the worst criminals who appeared before the investigating committees to obtain immunity.[7]

Shortly thereafter an immunity statute was enacted which provided in part that "no * * * evidence obtained from a party or witness * * * shall be * * * used against him * * * in any criminal proceeding."[8] This statute provided merely that the testimony itself could not later be used in any criminal proceeding against the witness. This partial immunity statute was soon challenged in the case of Counselman v. Hitchcock,[9] and the Supreme Court agreed that it was invalid for failing to provide the same complete protection as the constitutional privilege which the witness was required to surrender.

To meet the objection raised in the Supreme Court's decision in the Hitchcock case a clause was thereafter included in the Act relating to proceedings before the Interstate Commerce Commission, in terms broad enough to furnish absolute immunity from prosecution in the Federal courts.[10]

Sustaining the validity of this immunity statute, the Supreme Court in Brown v. Walker[11] in the year 1896 ruled that it fully accomplished the object of the privilege, and therefore it was adequate to prevent the witness from asserting his right to claim immunity.

Thereafter, the Immunity Act relating to the Interstate Commerce Commission was incorporated in temporary wartime measures and in virtually all of the major regulatory enactments of the Federal Government.[12/] To guard against unwise use of their authority, these regulatory agencies have followed the practice of consulting the Attorney General and getting his approval before granting immunity to witnesses.

From what has been said, you can readily see that there is nothing novel about immunity legislation. Indeed, many States have also enacted laws which provide immunity from prosecution where a witness is compelled to testify.

This shift from privilege to immunity statutes reflected in part the view of some attorneys and legal scholars that privilege against self-incrimination was somewhat outmoded and should be strictly limited.[13/] As great a guardian of individual rights and liberty as Mr. Justice Cardozo observed in speaking of the privilege of immunity from compulsory self-incrimination: "This, too, might be lost, and justice still be done. Indeed today as in the past there are students of our penal system who look upon the immunity as a mischief rather than a benefit, and who would limit its scope, or destroy it altogether. No doubt there would remain the need to give protection against torture, physical or mental. (Brown v. Mississippi, Supra)

Justice, however, would not perish if the accused were subject to a duty to respond to orderly inquiry."[14] There are other jurists and legal commentators of distinction who feel that it would be abhorrent to principles of a free government to compel a person to testify even upon an exchange of full immunity.[15]

With this background before us, I come now to the need for exchanging immunity for compulsory testimony in light of our recent experience with Congressional investigations into subversion, crime and corruption.

Congressional investigating committees have traditionally been regarded as having these principal functions:[16] to secure information by which Congress may exercise an informed judgment in legislating wisely; and to check administrative agencies for determining whether they are properly enforcing the law and judiciously spending the public funds. For these purposes, Congressional Committees may summon witnesses and require their testimony under penalty of contempt proceedings.

In recent years many of these investigating committees have been particularly concerned in alerting the American people to the nature of subversive and other criminal activities; the many forms that these activities take; and how they threaten the democratic processes.

Some persons have been critical of these investigations, claiming that they restrict freedom of speech by stigmatizing expressions of unpopular views.[17] Freedom of speech, they say, implies freedom not to speak at all. Since wide publicity is given to these proceedings by newspapers, radio and television, the complaint is also that these persons investigated are exposed to possible insult, ostracism and loss of employment. It is urged that mere mention of a person's name in connection with an investigation that has wide-spread news value may create a distorted and unfair public impression.[18] Another point made is that "proof of innocence may never catch up" with public "assertions of guilt."[19] It is also said that if these persons decline to profess any statement of belief before a committee they invite punishment for contempt.[20]

Unquestionably, every effort should be exerted to protect the right of our people to speak and think freely. We should dread the day when the people could justifiably become wary of expressing unorthodox or unpopular opinions.

As against these threats to our precious liberties we must also weigh the possible harm to the public safety and welfare, without which there can be no liberty for anyone.

In his time, Abraham Lincoln expressed the problem in these distressed words: "Must a government, of necessity, be too strong for the liberties of its own people, or too weak to maintain its own existence?" 21/ The same problem is with us today. Obviously, if Congress is to legislate wisely with respect to subversion, and other crime and corruption, it must not be obstructed from learning who are its leaders, organizers and members; the nature and scope of their activities; the character and number of their adherents.

I know of no constitutional right of privacy which immunizes a person from giving evidence where an inquiry is conducted by a legally constituted congressional committee. The person owes this duty as a citizen just as he owes the duty to furnish relevant and truthful testimony in a court of law. He violates his duty as a citizen when he suppresses the facts concerning criminal activity known to him. So long as the questions are pertinent and germane to a lawful inquiry of Congress, the individual is not relieved from answering because they delve into his private affairs, his previous utterances, or his affiliations, political or otherwise. 22/ The constitutional guarantee of freedom to express one's views does not include immunity from Congressional inquiry as to what one has said, subject to one's privilege against self-incrimination.

Reference to several cases within the last few years demonstrate how effectively Congressional Committees have been blocked in their efforts to uncover subversion, as well as other criminal activities because of reliance by witnesses upon their privilege.

In one case the witness upon ground of privilege refused to answer questions before a grand jury as to whether she knew the names of the state officers of the Communist Party of the state, what its table of organization was; whether she was employed by it; whether she ever had possession of Communist books; and whether she turned the books over to any particular person. At the time, the Smith Act was in effect, making it a crime for any person to organize or be a member of any group which advocates the overthrow of the Government. Upon the refusal of the witness to testify, she was found to be in contempt of court and sentenced to imprisonment for one year. The Court of Appeals affirmed. However, the Supreme Court unanimously reversed upon the ground that "prior decisions of this Court have clearly established that under such circumstances, the Constitution gives a witness the privilege of remaining silent." 23/

In the same way, a Federal grand jury was prevented from obtaining information in its investigation of narcotic and White

Slave traffic as well as bribery, perjury and other serious Federal violations. The witness stood upon his privilege against self-incrimination in refusing to respond to questions as to what he did for a living and whether he knew certain named persons. Here again, judgment of imprisonment for contempt was upheld by the Court of Appeals, but reversed by the Supreme Court with one judge dissenting.[24/] upon the ground that any other conclusion would seriously compromise an important constitutional liberty.

These decisions could be multiplied. Almost every heinous crime on the law books, committed by individuals or by groups, remains uncovered because of the privilege against self-incrimination. But it is in the area of subversion and disloyalty particularly that the privilege has a "field day." It is here that Legislative Committees and grand juries are held at bay for years from learning who are plotting the country's destruction, merely because witnesses are relieved of giving essential information upon the ground of privilege.

It is little wonder that law-abiding citizens frequently are heard to say that subversives and other wrongdoers are unduly coddled by existing law. They find it difficult to understand why the privilege against self-incrimination should operate as a license to disloyal persons and criminals to prey upon a democratic society.

They express amazement that the Congress and the Courts should continue to put up with subterfuge and concealment in place of truth at a time when the peril from Communism is so great and when crime is so rampant. They earnestly urge upon us the vital need for modernizing the legal weapons for fighting subversion and crime.

These pleas of the people for more drastic action against subversion and other misconduct have not gone unheeded. Some states and municipalities have passed statutes requiring affidavits of public employees that they are not and have never been Communists.[25/] Some states make incligible to teach in any public school a person who was a member of an organization which advocates the overthrow of the Government by force.[26/] These statutes have been upheld as valid by the Supreme Court.[27/] The Supreme Court has also sustained the provision of the New York State law which provides that membership by a person in an organization listed as subversive by the Board of Regents shall constitute prima facie evidence of disqualification for employment in the public schools.[28/]

The Federal Government also has taken effective measures to protect the interests of national security. One long step forward in that direction was to enact legislation requiring non-Communist affidavits from trade union leaders whose unions wanted to resort to the advantages of the Taft-Hartley Act.[29/] The purpose

of this requirement was to prevent disruption of industry in obedience to Communist Party orders. [30] If the union leader's affidavit was false, he could be sent to jail.

The Federal Government has also tried its best to "clean its own house." On April 27, 1953, the President by Executive Order established his security requirements for employment so that persons employed by the Federal Government will be reliable, trustworthy, of good character and loyal to the United States. [31] This morning the President amended his Executive Order so as to provide that where a government employee refuses to testify before a Congressional Committee regarding charges of his disloyalty or misconduct, an agency may take this factor into consideration in determining whether the person's continued employment is inconsistent with the national security. This amendment to the President's Executive Order is in accord with my opinion that a government employee who claims privilege in a Congressional investigation may be too much of a risk to be retained in Federal service.

In my mind there is no room in Federal service for an employee who refuses upon the ground of privilege to answer a Congressional committee's inquiry dealing with his loyalty or other conduct affecting the Nation's security. Suppression of truth in any case is bad enough. In no event can it be justified by a Government

employee or applicant for Government employment in the face of a Congressional inquiry where the interests of the national security are at stake. No one denies that the Government employee or applicant for such employment may constitutionally claim his privilege against self-incrimination. But on the other hand, no one has a constitutional right to a Government job.[32/]

It is one thing to find a person unworthy of trust where he has no opportunity to be heard. It is still another thing where an opportunity is afforded to a person to be heard for the purpose of erasing suspicion of his loyalty or misconduct but he stands mute under cover of his privilege against self-incrimination. Is it not reasonable to believe that a person who refuses to explain his actions and disprove charges of disloyalty or other grave misconduct is a person whose employment would be inconsistent with the interests of national security? The question carries with it its own answer.

There is no law which requires the Government to sit supinely by until the suspected employee has been convicted of disloyalty or other similar misconduct inconsistent with the interests of the national security before it can separate him from the Government service. There is no law which requires the Government to assume or endure such a risk. As was pointed out by the Supreme Court in

American Communications v. Douds, [33/] speaking through the beloved late Chief Justice Vinson,

> "That (first) amendment requires that one be permitted to believe what he will. It requires that one be permitted to advocate what he will unless there is a clear and present danger that a substantial public evil will result therefrom. It does not require that he be permitted to be the keeper of the arsenal."

In reaching this opinion I have not overlooked the fact that the loyalty and honesty of the overwhelming majority of all Government employees is beyond question. But their good reputations and character are far better protected from unwarranted criticism when we root out the few who are unreliable and disloyal. The Communists have infiltrated some adherents and sympathizers in Government agencies. Their capacity for espionage, obstruction and sedition are well known to us. To these persons many opportunities are afforded for conduct which may be destructive of the vital interests of the Nation. With that knowledge before us we would be remiss in our duty if we did not assert every effort to keep out and ferret out from Federal service any person who is disloyal or whose conduct is not clearly consistent with the national security. This we intend to do.

Thus you can see that the Federal Government is fully alert to its responsibility of protecting the people from bad security risks. But the measures taken by the Federal Government, as well as by some states and cities, still fall far short of the mark. In the first place, public employees cover only a small segment of the people. Second, dismissal from employment, whether it be government or private, does not go far enough, if vital information of subversion or other serious crimes continues to be withheld.

What the critical situation of our time calls for is a law compelling testimony within the framework of the Constitution. The answer to this

need is immunity legislation which will be as broad as the privilege which is supplanted.[34] Then if a person is adjudged in contempt for refusing to testify before a Congressional committee, he will know that the judgment of contempt will more likely stand up on appeal free from constitutional challenge.

There are already two proposals pending in Congress which seek to compel the answer by witnesses of questions put to them before Congressional Committees, grand juries or courts.[35] In exchange for this compulsory testimony, the witnesses will obtain complete immunity from prosecution.

One Bill is Senate 565.[36] This proposal grants immunity to witnesses before a grand jury or court of the United States when in the discretion of the Attorney General it is necessary to do so in the public interest. In exchange for this immunity the witness is compelled to testify and to produce his books, papers or records. S. 565 uses broad immunity language in stating that the witness shall not be prosecuted on account of any transaction, matter, or thing concerning which he is compelled, after claiming his privilege, to testify or produce evidence.

In this respect, S. 565 is almost identical to the immunity provision sustained as valid by the Supreme Court as far back as 1896.[37] This Bill does not extend the immunity to witnesses before Congressional Committees.

There is another bill pending. This is Senate 16,[38] with the House counterpart, H. R. 2737,[39] with equally broad immunity authority. Both these bills grant immunity to witnesses before Congressional Committees.[40]

However, the discretionary power to grant the immunity is not vested in the Attorney General but lies with the body conducting the investigation. If the proceeding is one before one of the Houses of Congress, then a majority vote of the members present is necessary. If it is a proceeding before a committee, two-thirds of the members must vote to grant the immunity. In that event the two-thirds vote must include at least one member of each of the two political parties having the largest representation on such committee. This legislation will only be resorted to where full disclosure by witnesses is deemed of greater importance than the possibility of punishing them for past offenses. It is hoped that by permitting one or several criminals to escape prosecution, the larger public peril contained in a gang of criminals or in their leaders may be uncovered, and the guilty brought to justice.

The legislative proposals mentioned have much to commend them. In my opinion, S. 16 would better achieve its purposes if it authorized the Attorney General to participate in the granting of any immunity to a witness by a Congressional committee or either House committee. The Attorney General is the chief legal officer of the Government of the United States. As such, it is his responsibility to prosecute persons who offend the criminal laws of the United States. This responsibility must be coupled with adequate authority to permit its discharge. It would seem to be inadvisable for others who may lack immediate knowledge of a criminal's background and propensities to provide immunity for such a person. To allow the Attorney General to

participate in a decision as to whether immunity should be granted would not impair Congressional investigations in the fields of internal security, crime and corruption. Nor would it discourage witnesses from providing information of importance to the investigation if the Attorney General were permitted to cooperate with the Congressional Committees in this matter.

On the other hand, if S. 16 were enacted in its present form, it might subject members of Congress to undue pressures for granting immunity to criminals who are ineligible to receive it. Also, it could very easily cause embarrassment to Congress by impeding or blocking prosecutions planned by the Department of Justice on any matter even incidentally testified to upon these investigations.[41/] The witness might readily turn this division of authority between Congress and the Department of Justice to his advantage by obtaining an immunity from the legislative committee. Thereafter he would be free to testify concerning a broad area of activities without fear that he could be held to account criminally for other violations however unrelated to the matter under investigation.

Thus for example, a Congressional Committee might furnish immunity to a person to obtain his testimony about his illicit traffic in slot machine operations between states. Unbeknown to the Committee, this person may also be guilty either of espionage or subversion or of selling narcotics to youngsters as to which an indictment is soon to be obtained. To foreclose prosecution on these more serious crimes, the witness would be glad to volunteer information on his other activities if he knew in advance that

immunity would follow for all of them. Therefore, greatest care must be exercised in granting immunity, and then only upon a fully informed judgment of all the facts. The Department of Justice would of course, through the F.B.I., the Criminal and Tax Divisions and the United States Attorneys' offices, be most likely to know the facts and the plans for prosecution.

For these reasons, it is my opinion that if any measure is to be enacted permitting the granting of immunity to witnesses before either House of Congress, or its committees, it should vest the Attorney General, or the Attorney General acting with the concurrence of appropriate members of Congress, with the authority to grant such immunity.

There remains for discussion two principal objections to this proposed legislation which may be briefly considered here. One objection is that when a witness is compelled to testify, even under the protection of immunity from criminal punishment, he is not relieved from personal disgrace which attaches to the exposure of his crime. The answer to this objection is contained in a land mark decision of the Supreme Court in Brown v. Walker:[12/]

> "The design of the constitutional privilege is not to aid the witness in vindicating his character, but to protect him against being compelled to furnish evidence to convict him of a criminal charge. If he secure legal immunity from prosecution, the possible impairment

> of his good name is a penalty which it is reasonable he should be compelled to pay for the common good."

The reasoning of this decision has never been questioned, and has only recently been approved by the Supreme Court.[43]

The other chief objection to the proposed legislation is that while a witness may receive immunity from federal prosecution, he may still be subject to prosecution under state law. The Supreme Court has held that this is not a valid objection to federal immunity laws. In United States v. Murdock,[44] the Court said on this point:

> "This court has held that immunity against state prosecution is not essential to the validity of federal statutes declaring that a witness shall not be excused from giving evidence on the ground that it will incriminate him, and also that the lack of state power to give witnesses protection against federal prosecution does not defeat a state immunity statute. The principle established is that full and complete immunity against prosecution by the government compelling the witness to answer is equivalent to the protection furnished by the rule against compulsory self-incrimination."

In full recognition of the fact that the privilege against self-incrimination is one of the most valuable prerogatives of the citizen, its object is in my opinion fully accomplished by the statutory immunity which I have proposed.

Accordingly, the Department of Justice will recommend to the Congress in January an immunity bill of the type I have described, which protects the contitutional privileges of witnesses but will at the same time aid materially in stamping out criminal and subversive activities.

Footnote References to Address Entitled
"Remedy for Abuse of Constitutional Privilege"

1/ R. Carter Pittman, "The Colonial and Constitutional History of the Privilege against Self-Incrimination in America", 21 Va. L. R. 763, 764, 770-773; Corwin, "The Supreme Court's Construction of the Self-Incrimination Clause", 29 Mich. L. R. 1, 5-12.

2/ Pittman, Id. p. 774.

3/ Id. p. 787.

4/ Twining v. New Jersey, 211 U. S. 78, 92 (1908).

5/ Id. at 91.

6/ 34th Cong., 3d sess., Globe p. 427, 433, 445. See Eberling, "Congressional Investigations", pp. 304-315.

7/ Eberling, Id. pp. 320-323. An example of the abuses under the Immunity Act of 1857 is as follows:

Mr. Turnbull, Senator from Illinois, told the Senate that the Act of 1857 had operated so as to discharge from prosecution and punishment persons who were brought before these committees and testified touching matters for which they might have been prosecuted. In fact, he claimed this Act offered inducement for the worst criminals to appear before an investigating committee. "Here is a man who stole two millions in bonds, if you please, out of the Interior Department. What does he do? He gets himself called as a witness before one of the investigating committees, and testifies something in relation to that matter and then he cannot be indicted." He showed how that very case occurred; the very clerk who purloined two millions in bonds from the Interior Department was discharged and the indictment against him quashed because he had made some statement in reference to the matter before an investigating committee.

8/ This Act of 1862 revised an old statute into two new sections by an amendment which sought to insure that a witness who testified before a federal grand jury or court (Rev. Stat. # 860 (1875)) or a Congressional Committee (Rev. Stat. # 859 (1875)) would not be later subjected to the use of his testimony in any criminal proceeding against him. Section # 860 of the amendment dealing with grand juries and courts came under attack in Counselman v. Hitchcock, 142 U. S. 547 and was held to be

invalid. Since this part of the immunity provision failed to accomplish its purpose, Congress repealed it in 1910 (36 Stat. 352 (1910)). Congress apparently felt that Section 859 applying to Congressional Committees was still of value and left it in force to this date (Rev. Stat. # 859 (1875)), as amended 52 Stat. 943 (1938), 18 U.S.C. # 3486 (Supp. V, 1952); see, "The Privilege Against Self Incrimination versus Immunity: Proposed Statutes", 41 Georgetown L. J., 511, 514; United States v. Bryan, 339 U. S. 323, 335-337 (1950).

9/ Counselman v. Hitchcock, 142 U. S. 547 (1892).

10/ It read in part as follows:

> "No person shall be prosecuted *** for or on account of any transaction, matter or thing concerning which he may testify or produce evidence. * * * "

Act of Feb. 11, 1893, C. 83, 27 Stat. 443, 49 U.S.C.A. Section 46; See too, Smith v. United States, 337 U. S. 137, 146-7 (1949). Note, "Denying the Privilege against Self-Incrimination to Public Officers", 64 Harv. L. R. 987, 988 (1951).

11/ 161 U. S. 591 (1896).

12/ Shapiro v. United States, 335 U. S. 1, 6-7 (1948), where various statutes are collated in the footnote. The customary provision in these statutes provides as follows: "No person shall be excused from complying with any requirements of this section because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893 * * * shall apply with respect to any individual who specifically claims such privilege."

13/ Rapacz, "Limiting the Plea of Self-Incrimination", 20 Georgetown L. J. 329, 353; see footnote 3 of Palko v. Connecticut, 302 U. S. 319, 326 (1937) which indicates that compulsory self-incrimination is part of the established procedure in Continental Europe.

14/ Palko v. Connecticut, 302 U. S. 319, 326 (1937).

15/ See, dissents of Mr. Justices Shiras, Gray and White in Brown v. Walker, supra, 161 U. S. 610-628; and dissent of Mr. Justice Field in Brown v. Walker, supra, 161 U. S. at 630-638. Cf. dissent of Mr. Justice Black in Rogers v. United States, 340 U. S. 367, 376 (1950).

16/ McGeary, "The Developments of Congressional Investigative Power", p. 23 (1940).

17/ Galloway, "Congressional Investigations, Proposed Reforms", 18 U. of Chicago L. R. 478, 479-481 (1951).

18/ New York City Bar Ass'n Committee on the Bill of Rights, Report on Congressional Committees presented December 14, 1948, p. 1.

19/ Dilliard, "Congressional Investigations: The Role of the Press", 18 U. of Chicago L. R. 585, 587 (1951).

20/ Edgerton, J., dissenting in Barsky v. United States, 167 F. 2d 241, 252 (D.C. Cir., 1948); cert. denied 334 U. S. 843 (1948); petition for rehearing denied 339 U. S. 971 (1951).

21/ 6 Richardson, "Messages and Papers of the Presidents", p. 23, July 4, 1861.

22/ See, McGrain v. Daugherty, 273 U. S. 135 (1927); United States v. Josephson, 165 F. 2d 82 (2 Cir., 1947), cert. denied 333 U. S. 838 (1948). Lawson v. United States, 176 F. 2d 49 (D.C. Cir., 1949), cert. denied 339 U. S. 934 (1950).

23/ Blau v. United States, 340 U. S. 159 (1950).

24/ Hoffman v. United States, 341 U. S. 479 (1951); see, too, Aiuppa v. United States, 201 F. 2d 287 (6 Cir. 1952); see too, United States v. Rosen, 174 F. 2d 187 (2 Cir. 1949) cert. denied 338 U. S. 351 where the witness balked at giving testimony relating to title of a car. This testimony was sought to resolve a conflict of testimony between Alger Hiss and Whittaker Chambers.

25/ Garner v. Los Angeles Board, 341 U. S. 716 (1951): Gerende v. Board of Supervisors, 341 U. S. 56 (1951); but compare Wieman v. Updegraff, 73 S. Ct. 215 (1952).

26/ Adler v. Board of Education, 342 U. S. 485 (1951).

27/ See footnotes 26 and 27.

28/ Adler v. Board of Education, 342 U. S. 485 (1951).

29/ Sec. 9(h) of the Labor Management Relations Act of 1947, 29 U.S.C.A. Supp. III, Sec. 141, Sec. 159(b).

30/ American Communications Association v. Douds, 339 U. S. 382 (1950), sustaining the validity of Sec. 9(h) against the challenge that it violated the First Amendment, Ex Post Facto Laws and other fundamental rights.

31/ Executive Order No. 10450, issued April 27, 1953 (18 F. R. 2489).

32/ See, Bailey v. Richardson, 182 F. 2d 46 (D.C. 1950) aff'd. by an evenly divided court 341 U. S. 918 (1951); Washington v. McGrath, 182 F. 2d 375 (D.C. 1950) aff'd. 341 U. S. 923 (1951); Orloff v. Willoughby, 345 U. S. 83, 91 (1953); Mr. Justice Douglas concurring in Anti-Fascist Committee v. McGrath, 341 U. S. 123, 182-183 (1951).

33/ 339 U. S. 382, 412 (1950).

34/ Hoffman v. United States, 341 U. S. 479 (1951), suggests such legislation if Congress concludes the need is great enough.

35/ See, comment, "The Privilege Against Self-Incrimination Versus Immunity; Proposed Statutes", 41 Georgetown L. J. 511 (1953).

36/ 83d Cong., 1st sess., 1953. Also known as the Kefauver Bill. There is a House counterpart of this Bill in H. R. 2829, 83d Cong., 1st sess. (1953).

37/ Brown v. Walker, supra.

38/ 83d Cong., 1st sess., 1953.

39/ H. R. 2737, 83d Cong., 1st sess., 1953.

40/ S. 16 amends Sec. 3486 of Title 18. Sec. 3486 presently furnishes witnesses immunity from prosecution for testimony before either House or their Committees. It appears to suffer from the same deficiency present in a similar statute condemned in Counselman v. Hitchcock, 142 U. S. 547 (1892). S. 16 is intended to supply the omission in the Hitchcock case. It provides not only that a witness' testimony may not be used against him, but that such witness shall be immune with respect to "any transaction, matter, or thing concerning which" he has been compelled to testify. Thus, the immunity extends not only to testimony given, but to other matters to which this testimony may indirectly lead.

41/ See, Comment, "The Privilege Against Self-Incrimination Versus Immunity: Proposed Statutes", 41 Georgetown L. J. 511, 523 (1953).

42/ Brown v. Walker, 161 U. S. 591, 605, 606 (1896).

43/ See, e.g., Smith v. United States, 337 U. S. 137, 146-7 (1949).

44/ 284 U. S. 141, 149 (1931); see also Feldman v. United States, 322 U. S. 487, 491-492 (1944).