

## Sec. 1—The Congress

## Legislative Powers

to consider as a committee his request for a closed session.<sup>249</sup> As regard rules of quorum, the Court has blown hot and cold on the issue, and no firm statement of a rule is possible, although it seems probable that no quorum is ordinarily necessary.<sup>250</sup>

***Protection of Witnesses; Constitutional Guarantees.***—Just as the Constitution places limitations on Congress' power to legislate, so it limits the power to investigate. "[T]he Congress, in common with all branches of the Government, must exercise its powers subject to the limitations placed by the Constitution on governmental action, more particularly in the context of this case, the relevant limitations of the Bill of Rights."<sup>251</sup> The most extensive amount of litigation in this area has involved the privilege against self-incrimination guaranteed against governmental abridgment by the Fifth Amendment. Observance of the privilege by congressional committees has been so uniform that no court has ever held that it must be observed, though dicta are plentiful.<sup>252</sup> Thus, the cases have explored not the issue of the right to rely on the privilege but rather the manner and extent of its application.

There is no prescribed form in which one must plead the privilege. When a witness refused to answer a question about Communist Party affiliations and based his refusal upon the assertion by a prior witness of "the first amendment supplemented by the fifth," the Court held that he had sufficiently invoked the privilege, at least in the absence of committee inquiry seeking to force him to adopt a more precise stand.<sup>253</sup> If the committee suspected that the witness was being purposely vague, in order perhaps to avoid the stigma attached to a forthright claim of the privilege, it should have requested him to state specifically the ground of his refusal to testify. Another witness, who was threatened with prosecution for his Communist activities, could claim the privilege even to some questions

<sup>249</sup> Failure to follow its own rules was again an issue in *Gojack v. United States*, 384 U.S. 702 (1966), in which the Court noted that, although a committee rule required the approval of a majority of the committee before a "major" investigation was initiated, such approval had not been sought before a subcommittee proceeded.

<sup>250</sup> In *Christoffel v. United States*, 338 U.S. 84 (1949), the Court held that a witness can be found guilty of perjury only where a quorum of the committee is present at the time the perjury is committed; it is not enough to prove that a quorum was present when the hearing began. But, in *United States v. Bryan*, 339 U.S. 323 (1950), the Court ruled that a quorum was not required under the statute punishing refusal to honor a valid subpoena issued by an authorized committee.

<sup>251</sup> *Barenblatt v. United States*, 360 U.S. 109, 112 (1959).

<sup>252</sup> 360 U.S. at 126; *Watkins v. United States*, 354 U.S. 178, 196 (1957); *Quinn v. United States*, 349 U.S. 155, 161 (1955). The privilege against self-incrimination is not available, however, as a defense to an organizational officer who refuses to turn over organization documents and records to an investigating committee. *McPhaul v. United States*, 364 U.S. 372 (1960).

<sup>253</sup> *Quinn v. United States*, 349 U.S. 155 (1955).