Congressional Investigations:

THE ROLE OF THE PRESS

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The public has been much abused, the time of legislative bodies uselessly consumed and the rights of the citizen ruthlessly invaded under the now familiar pretext of legislative investigation. . . . Courts and grand juries are the only inquisitions into crime in this country. I do not recognize that Congress is the grand inquest of the nation.³

These words seem to reflect present-day dislike if not disgust at the excesses of congressional investigations. Yet they are not new words. They go back more than seventy years. They were written privately by Samuel Freeman Miller, second of Lincoln's five appointees to the United States Supreme Court, who delivered the unanimous decision in Kilbourn v. Thompson.² Since the impact of that ruling and its subsequent fate are discussed fully by Professor McGeary in this symposium,* it is enough here to say that the 1880 court held that the Constitution did not vest in either branch of Congress a general power to punish for contempt.

But the problem of excesses in congressional investigations was already an old one in 1880. A half-century earlier, the Seventeenth Congress, which sat from 1821 to 1823, had gone to such lengths in conducting inquiries as to merit criticism in these quite modern terms: "Committees pointed out little items, peeped behind curtains and under beds, not so eager, it would appear, to correct abuses as to collect campaign material for damaging some candidate."³

Even so, by the time the first serious doubts arose the congressional investigation was established in practice and proved in value. For from the very start of congressional government in 1789, it was taken for granted that the power to legislate included the power to inquire.

As early as 1792, a committee of the House of Representatives em-

† Editorial Page Editor, St. Louis Post-Dispatch.
* Consult McGeary, Historical Development, page 425 supra.
³ 103 U.S. 168 (1880).

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ployed the power to send for persons and papers in an investigation of Gen. Arthur St. Clair's deplorable defeat the preceding year in the Ohio wilderness. A Senate committee used the same power in an inquiry in 1818 into the administration of the Seminole War in Florida. Alexander Hamilton, first Secretary of the Treasury, asked for a congressional investigation as an answer to criticism brought against him for the conduct of his office.

So it is clear that the investigative activities of Congress are as old as Congress itself. No less clear is the fact that great social and political good has come from congressional investigations. The record of 160 years shows that time after time the congressional inquiry has been the means for throwing light into dark corners, for demonstrating the need for legislative action, for informing the public and opening the way to improvement and reform.

My part of this symposium, however, is not to defend the congressional investigation against its detractors and misusers, but to consider the relations between the congressional investigation and the press. In particular, my part is to examine the extent to which the press is responsible for the character of the congressional inquiry, including its procedure and tone as well as its purpose.

Since this assignment puts me inevitably in the critic's seat let me say that I believe the press of the United States, notwithstanding its many faults, to be the most informed and most informing press in the world. To the best of my knowledge only the British press is comparable. But our press is not nearly so good as it should be or could be and one of the respects in which it needs to improve itself is in its relation to congressional investigations.

Many of the faults which characterize the handling of inquiries by congressional committees today are faults which are common to the operation of our daily newspapers generally. Some of these shortcomings are chargeable to the owners and publishers. My own opinion is that these faults to a very large degree can be chalked up against those of us who write and edit the editorial pages and our brethren of the news columns, the news and telegraph editors.

Let us first consider congressional investigations in the news columns. News still is the unusual. The ancient definition of news in terms of "man bites dog" continues in the main to hold good. That is why charges of disloyalty receive immediate attention. It would be a sad day, indeed, in the United States were disloyalty ever to become so common that it would no longer be regarded as news.
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So far so good. Where the trouble begins is in the presentation of this news in a relatively large number of papers. With an eye on circulation, disloyalty charges, for example, are played up in sensational headlines, especially if the charges involve a government employee whose loyalty is a matter of particular importance. As costs of publishing mount, the proportion of advertising space is high with the result that space for news is frequently reduced. So it is that the direct news from congressional investigations always gets printed. As a rule, denials receive less attention than the charges. Even proof of innocence may never catch up with assertions of guilt. Indeed, proof of innocence may come so late as to be almost unrelated to the original charges.

For a long time sensational display of news was explained, if not justified, in terms of the competition among newspapers for readers. It was often said by editors and publishers that they were driven to bigger and bigger headlines against their own instincts and desires. Perhaps this explanation had a certain validity at one time. But now competition within the newspaper field has declined as community after community has seen the merging of newspaper interests. The publisher of the only newspaper in a city can hardly say today that competition requires him to match in his newspaper the irresponsibility of some utterly unrestrained congressional "investigator"!

Yet even the most devoted editor is not entirely a free agent on the side of truth. I can best illustrate this by quoting the late Oliver Kirby Bovard, managing editor of the *St. Louis Post-Dispatch*, from 1908 to 1938. He called my attention to a modest news item below the fold on page one of the latest edition, just arrived on his desk from the press room.

"Here," said the managing editor, as he circled the item with his pencil, "is a lie. I know it is a lie, but I must print it because it is spoken by a prominent public official. The public official's name and position make the lie news. Were the source some unknown person I could and would gladly throw it in the waste basket. I have done what I can to show that I know that the statement is untrue by putting it under a small headline and printing only enough of it to make an entry in the record of the day's news. Printing these lies, even this way, is one of the hardest things I have to do."

Admittedly there are not many Bovards at the desks of our managing editors. Were there more, the presentation of news of reckless, unsupported charges from the halls of Congress would have been substantially different this past year.

The managing editor manifestly may not label each news item with a tag either "true" or "untrue." First of all, he cannot possibly know where truth is in all cases. Second, it is not his duty as a presenter of the news
to deal also in opinion. He must leave this sorting of the lies, in part at least, to those under attack. By printing the denials and the evidence to support the denials he can help bring truth to light.

Meantime, responsibility falls on the editorial writers. It is their professional duty to take up the news and tell the readers what fairly can be thought of it. The editorial writers can express doubts if doubts they hold. They can ask questions if they do not know and cannot readily find out the answers. They can say they do not believe without proof and give the reason for their disbelief. They can say a statement is untrue if they have the means to prove it so. They can make it plain what the newspaper itself thinks about news which it is compelled to print because of its official origin. They can expressly take the name of the paper away from one piece of news just as they can put the paper's name to other news. They can declare the paper's position again and again, in both words and cartoons until they are sure that their readers are informed as to where truth and falsehood reside.

This sharp line between news and comment on the news—and news and comment on congressional investigations are no different from news and comment on other public matters—is a vital protection of the best interests of the newspaper reader.

Consider the still unproved charges of widespread infiltration of Communists into the Department of State as made early in 1950 by United States Senator Joseph R. McCarthy of Wisconsin. To their credit, many editorial pages criticized the technique of the unproved accusation. *The Milwaukee Journal*, the largest newspaper in Senator McCarthy's own state, was one of the very first to disavow not only what he had to say, but also his method. Yet because the source was a United States Senator from Wisconsin and because his charges were directed at the highest-ranking cabinet officer, the Secretary of State, *The Milwaukee Journal* printed the accusations prominently on page one. However, all too many newspapers seemed much more interested in exploiting the charges in black, scare-type headlines than they were in setting these charges in perspective by means of informative editorials.

Is not a newspaper inconsistent when it presents prominently in its leading news columns charges it disavows on its editorial page? The old question comes up again in connection, for example, with the indiscretions of the House Un-American Activities Committee.

Inconsistency or not, I see no safe course but to follow this practice, providing that the news presentation is within reasonable bounds. My own conviction, based on substantial observation, is that adequate dis-
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avowal on an editorial page which makes a rule of having something to say and, hence, gathers a solid field of readers is not at serious disadvantage with page one. Certainly, it would inject a dangerous principle into the operation of our free press if an attempt were made to produce a direct correspondence between news presentation and editorial opinion.

Still another question concerns the proper treatment by a newspaper of a minority report concerning congressional investigation. Assuming there are dissenters on the committee, shall their views obtain equal treatment with the views of the majority? Are the minority members justified in seeking to dramatize their views and otherwise attract public attention to their position?

Actually such extraordinary efforts should be unnecessary. In a newspaper whose editors seek to evaluate news fairly, a minority report on a congressional investigation will be judged on its own merits. Quite conceivably the report of the minority may be of greater interest than the report of the majority. The test should be the news value of the report, not its origin.

A worthwhile, constructive investigation by a congressional committee may be a reflection on the press. It may mean that a committee of Congress has undertaken an inquiry into a problem which the press itself should have held up to public light. But a valuable investigation may also mean that an alert newspaper called attention to matters which needed a congressional inquiry and persisted until the investigation was obtained. Then a newspaper may identify itself with an inquiry and help the investigators with sound suggestions and extensive reporting of its hearings and findings.

It may be speaking the obvious to say that the press should encourage beneficial investigations and oppose those which are harmful. This needs saying nonetheless. Among the newspapers which take this responsibility seriously, The Washington Post, it seems to me, deserves special notice. Published where it can be read easily every day by official Washington, that vigilant daily does an excellent job of counseling Congress in the matter of investigations, actual and contemplated. Marquis W. Childs stands out in the large company of columnists as one who watches congressional investigations closely, reports on them for a national audience and seeks to influence them for the public good.

Upon occasion a newspaper has misjudged a congressional investigation and attributed wrong motives to its chief proponent. When the late Senator Thomas J. Walsh of Montana dug into the Teapot Dome oil scandals of the '20's one of the most responsible and respected news-
papers in the country belittled his undertaking and sought to discredit his intentions. In the end, Senator Walsh was widely applauded for performing an outstanding public service.

Inevitably the quality of congressional investigations will reflect the quality of Congress. If the voters elect men of high purpose and scrupulous regard for the rights of others to the House and Senate, the inquiries of House and Senate will show these characteristics. Senator McCarthy's immediate predecessor in his seat was Robert M. LaFollette, Jr., who conducted a notable investigation into the violation of civil rights of citizens. It would be hard to select a more striking contrast in senators, in interests in congressional investigations and in methods than is afforded by these two successive senators from the same state and the same electorate.

Thus, the press can make a major contribution to the improvement of congressional investigations by doing its part to nominate and elect qualified men to Congress. Had the nation's press been fully alert and influential in this activity last year it could be questioned whether some one hundred representatives would be, as this is written, seeking seats on the House Un-American Activities Committee. Of all the suggestions with respect to the press in this necessarily limited part of the symposium, none can be of greater influence for wise use of the investigative power than that the press shall weigh and decide among candidates, not by the test of factional and party affiliation, but by the test of capacity for public service. I say this recognizing that some citizens may still regard Senator McCarthy as a public servant and his performance as a help to the country. Surely words have a more precise meaning for most people.

By way of summary then let me say that in my judgment Congress itself is only immediately responsible for the character and quality of congressional investigations. In any broad sense, it is the duty of the press, as guardian of the public interest and purveyor of public opinion, to see that these official inquiries serve the needs of the great rank and file of citizens. Thus, it is up to the newspapers to guide the voters in nominating and electing to Congress men and women who will make constructive use of the investigative function. It is up to the newspapers to hold members of Congress, once they are elected, stanchly on this course of public service. Insofar as that they are not doing this, the custodians of our free press are defaulting on a major responsibility. When democratic institutions are under attack around the world, our newspapers can default only at their own peril.