Grand Inquest. By Telford Taylor. New York: Simon & Schuster, 1955. Pp. xviii, 358. $4.50.

Congressional investigations, like the weather, have become the subject matter for much talk and little action. If, however, one *wanted* to do something about the uses and abuses of the investigative arm of Congress, this book provides all the necessary ammunition.

I don't think that Mr. Taylor would classify himself as a civil libertarian, and there are several instances where I think he has departed from the libertarian norm. He evidences, rather, a concern for sound government, a desire for an understanding of the doctrine of separation of powers, and an anxiety for the political frailties of Congress.

Mr. Taylor starts with the history of legislative investigations. He goes back beyond the traditional jumping-off place (the investigation of General St. Clair for his failure to quell the Indians) and presents a good thumbnail sketch of the origins of such investigations in the House of Commons. His treatment of colonial and early congressional history is more exhaustive. One fact stands out from the historial discussion: Although legislative investigations originated because of a need for obtaining facts in order to legislate, Congress from the very beginning has spent part of its time investigating the executive branch of the government. The first case in point concerned the sad saga of General St. Clair. While this investigation was conducted with impeccable fairness (there is even evidence that General St. Clair was permitted to give his side of the story), the fact remained that Congress did not investigate to legislate, but rather publicly to "pin the rap" for a military debacle.

The historical discussion, however, serves only to provide a background for the major emphasis of the book—why it is dangerous for Congress to investigate for other than legislative purposes.[1] The failure of the St. Clair investigation is the first case in point. The investigation neither quelled any Indians nor did it conclude that St. Clair was at fault. It did, however, raise for the first time serious constitutional questions concerning the extent of congressional power to act like the executive. The Committee requested that all papers relating to the St. Clair expedition be turned over to it. Washington called a cabinet meeting to discuss the request, and it was agreed that the President only ought to disclose such papers "as the public good would permit." Shades of Yalta!

The author then launches into a survey of the investigative process in the 20th century, and he poses a dilemma where a distinction might better be drawn. Mr. Taylor depicts as inconsistent the "liberal" who vigorously defended the New Deal investigations of the 30's and who now attacks the McCarthy investigations with equal vigor. This seems unfair, since Mr. Tay-

[1] See Fulbright, Congressional Investigations, Significance for the Legislative Process, 18 U. of Chi. L. Rev. 440 (1951), for quite a different conclusion. In fact, see the whole issue for some very interesting contrasts with Mr. Taylor's approach.

lor's own account of the New Deal investigations makes it clear that the ultimate end of such investigations was legislation. It may be true that the investigation was used to obtain public support for legislation which the President wanted passed. It may be equally true that the legislators already knew the "facts" that they were theoretically searching for in their investigations. But legislation did come out of such investigations. Their purpose was not to punish individuals, nor to "enforce" existing laws. One cannot dismiss the sincerity of today's "liberal" critics by saying it is a question of "whose ox is being gored."

Analytically, congressional investigations may be put into three categories. First, there is the fact-finding-for-legislation investigation. Everyone agrees that this type is both useful and necessary. While there are frequent abuses of personal (and even corporate) liberties in such hearings, no one suggests doing away with the investigations. The second category might be termed the "enforcement-of-laws-against-the-individual" investigation. This may be illustrated by the typical investigation of the Un-American Activities Committee. An investigation of "Communism in the New York area" will be undertaken to focus the "spotlight of publicity" on communists and fellow-travelers. Possibly the Committee can pick up a recalcitrant witness who can be sent to jail for contempt. Possibly a witness might perjure himself and go to jail. At the very least, the alleged communist or fellow-traveler can be forced out of his job as a teacher or defense-worker. This type of investigation is most easily recognized by the singular absence of resulting legislation. The author makes it clear that such investigations are not a proper function of legislative committees.

It is the third category of investigations which creates the hardest problems —investigations of the executive branch of government. The most obvious difficulty is the similarity of this type of investigation to the one described immediately above. Was the investigation of Owen Lattimore an attempt to punish him personally, or an attempt to determine how the Department of State was functioning? It is true that it was Owen Lattimore who was indicted and not the Department, but it is equally true that the Department has fired a lot of people since McCarthy first made his witch-hunts a national pastime. The more important difficulty with this kind of investigation, however, is the strain it puts on the doctrine of separation of powers. The executive power is vested in the President. When Congress investigates the use of that power, it invariably is seeking to influence executive decisions. To put it more bluntly, Congress never investigates the executive because of a cherubic curiosity to find out what is going on. Rather, Congress (or some element in Congress) does not like what the Executive is doing and seeks to alter its course of conduct by investigation. Mr. Taylor has ambivalent feelings as to how such investigations can be reconciled with an independent executive. On the one hand he chastens President Eisenhower for not dealing firmly with the McCarthy-

Army fiasco; on the other hand he recognizes the legitimacy of congressional scrutiny of the executive. The author is keenly aware that whenever Congress "scrutinizes" the Executive, whether to determine how appropriations have been spent or whether an Army dentist is pulling teeth in a Bolshevik manner, there is a threat that the powers separated by the Constitution may become badly snarled. The book suggests only two "answers": first, that a strong President can and must resist congressional onslaught; second, that Congress itself must not use the power either to destroy the executive or as a cloak for enforcing the law against individuals. It cannot be denied that such forcefulness on the part of the President and such restraint on the part of Congress could have prevented the television orgies of recent years. It also cannot be denied that it has been a long time since we have had the combination of a forceful executive and a restrained Congress.

Previous mention has been made of Mr. Taylor's disinclination to take a doctrinaire approach to the civil liberties problems presented by congressional investigations. Specifically, Mr. Taylor, while rejecting the use of the term "Fifth Amendment Communist" as anathema, does state that "[i]nvoking the privilege means that there is *some* evidence of Communist associations. . . ." The author would not entrust national defense secrets to one who invoked the privilege, but he insists that he would enforce this stricture only against persons in sensitive positions.[2] And while he recognizes that the line he has suggested is difficult to draw, he does not provide any specific guideposts for drawing it. Perhaps the answer is that if congressional investigations were conducted in the manner that Mr. Taylor suggests, the people he seeks to protect would not be inclined to invoke the privilege. Perhaps there is no answer. In any event, the author's discussion is certainly provocative.

Mr. Taylor is aware that the subject matter of his book did not arise in a vacuum. His analysis of the causes and effects of what he terms the "cold civil war" is worth the price of admission in itself. He has a section on the difficulties with immunity procedures, as well as a note for lawyers on the bad draftsmanship of the most recent immunity statute. They demonstrate that Mr. Taylor is a first-rate lawyer. The book is a compilation of various lectures he has given; usually an attempt to convert a lecture series into a book results in a disjointed effort, but not so here.

There is one technical criticism that can be made, and which has been made of many other books by many other authors. The use of footnotes at the end of the book rather than at the bottom of the page ought to be outlawed. Footnotes are bad enough; rearnotes are impossible. Fortunately, the book has more than enough body to overcome this minor flaw.

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[2] Griswold, in his recent book The Fifth Amendment Today, would seem to have the better of whatever argument there is between Taylor and him.

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