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COMMENTS

FEDERAL IMMUNITY—COURT ORDER OR RUBBER STAMP

This note touches the history of federal immunity legislation and discusses the interplay of the compulsory testimony acts and the constitutional privilege against self-incrimination. To a limited extent it also attempts to answer some ambiguities present in the Compulsory Testimony Act of 1954.¹ 1) what or where is the controlling source of immunity power; 2) are there actually adverse litigants; 3) is the court requested to act in an advisory capacity, or to solve a political question; 4) does the court possess an absolute veto; 5) has the separation of powers doctrine been abrogated?

The Privilege

The privilege against self-incrimination, contained in the Fifth Amendment,² can be traced to the resistance offered by Englishmen to the *ex officio* oath administered in the Star Chamber Courts.³ At an early date the privilege found its way into the American Colonies and eventually became imbedded in our State Constitutions.⁴ Though not mentioned in the Federal Constitution as originally drafted,

¹ 68 Stat. 745 (1954), 18 U.S.C. § 3486 (Supp. II 1954). In order to halt the overwhelming parade of witnesses invoking the constitutional privilege against self-incrimination, Congress passed the Compulsory Testimony Act. "Senator McCarran's bill was avowedly stimulated by the large number of witnesses before the Internal Security and Un-American Activities committees who had invoked the privilege rather than answer questions and accusations relating to communism." TAYLOR, GRAND INQUEST 218 (1955).

² U.S. CONST. AMEND. V: "nor shall be compelled in any criminal case to be a witness against himself."

³ 8 WIGMORE, EVIDENCE § 2250 (3d ed. 1940). Wigmore, *The Privilege Against Self-Crimination; Its History*, 15 Harv. L. Rev. 610 (1902). Soon after the tyrannical reign of Charles I (1629-1640), "In the early 1650's this privilege was so well established in the customary law of England that it was never even thought necessary by an English Parliament to pass an act or resolution touching the matter." Pittman, *The Colonial and Constitutional History of the Privilege Against Self-Incrimination Clause*, 21 Va. L. Rev. 763, 774 (1935). For a detailed study of the history of the privilege see Corwin, *The Supreme Court's Construction of the Self-Incrimination Clause*, 19 Mich. L. Rev. 1 (1930). Morgan, *The Privilege Against Self-Incrimination*, 34 Minn. L. Rev. 1 (1949). Dean Griswold of Harvard has said that the privilege is "one of the great landmarks in man's struggle to make himself civilized." GRISWOLD, THE FIFTH AMENDMENT TODAY, 7 (1955).

⁴ Pittman, *supra* note 2, at 775-83. Since the first ten amendments all the states of the union have included the privilege in their constitutions except New Jersey and Iowa where it became a part of their existing law: N.C. (1776), Pa. (1776), Va. (1776), Mass. (1780), N.H. (1784). There are different theories propounded as to the origin and develop-

the privilege did appear in the Bill of Rights. As Justice Moody said, it was recognized, "as a privilege of great value, a protection to the innocent though a shelter to the guilty, and a safeguard against unfounded or tyrannical prosecutions."⁵ Equally important is the concept expressed by Lord Chancellor Hardwicke that, "the public has a right to every man's evidence and that no man can plead exemption from this duty to his country."⁶ In attempting to reconcile these traditional policies Congress bartered immunity for compulsory testimony.

Federal Immunity Statutes

The first federal immunity statute dates back to 1857 when Congress was probing the alleged corruptness of the House.⁷ To induce witnesses to testify fully they were guaranteed protection against future prosecutions, and in effect given *immunity baths*.⁸ In the first case involving the issues of self-incrimination and an immunity statute the Court declared the Act unconstitutional, Justice Bradley speaking for the majority announced:

Illegitimate and unconstitutional practices get their first footing in that way, namely by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed . . . and any compulsory discovery by extorting the party's oath . . . is abhorrent to the instincts of an American. It may suit despotic power but it cannot abide the pure atmosphere of political liberty and personal freedom.⁹

ment of the privilege in the Colonies. See: Williams, *Problems of the Fifth Amendment*, 24 Ford. L. Rev. 19 (1955).

⁵ *Twining v. New Jersey*, 211 U.S. 78 (1908).

⁶ 12 COBBETT'S PARLIAMENTARY HISTORY 675, 693 (1742); quoted in 8 WIGMORE, EVIDENCE § 2192 (3d ed. 1940). See also Brownell, *Immunity From Prosecution Versus Privilege Against Self-Incrimination*, 27 Tul. L. Rev. 1, 5 (1953).

⁷ 11 Stat. 155 (1857) amended 18 U.S.C. 3486 (Supp. II 1954). For the subsequent statutory history see *United States v. Bryan*, 339 U.S. 323, 327 (1950).

⁸ Dixon, *The Fifth Amendment and Federal Immunity Statutes*, 22 Geo. L.J. 447, 450 (1954). Congressman Wilson of Iowa remarked that "every day persons are offering to testify before the investigating committees of the House in order to bring themselves within the pardoning power of the Act of 1857." Cong. Globe, 37th Cong., 2nd Sess. 364 (1862).

⁹ *Boyd v. United States*, 116 U.S. 616, 631, 632, 635 (1886). This section authorized the court in revenue cases on motion by the Attorney General to require the claimant to produce his private books, invoices and papers or else the Attorney's allegations were to be taken as confessed. The *Boyd* case dealt with the fifth section of the Act of June 22, 1874 entitled an Act to amend the customs revenue laws. 15 Stat. 37 (1868): "No testimony given by a witness before either House, or before any committee of either House . . . shall be used as evidence in any criminal prosecution against him in any court, except in a prosecution for perjury committed in giving such testimony." Note that the appellant's counsel in remarking on compulsory self-incrimination said, "It is the result of a long struggle between the opposing forces of the spirit of individual liberty on the one hand and the collective power of the state on the other." Others share this same view today. See GRISWOLD, *THE FIFTH AMENDMENT TODAY*, (1955).

Thereafter in *Counselman v. Hitchcock*,¹⁰ a witness refused to answer questions regarding a violation of the Interstate Commerce Acts.¹¹ The Court foresaw that under the immunity Act of 1868¹² compelled testimony might serve as a lead to other evidence which could be used in a future federal prosecution against Counselman. Holding § 860¹³ unconstitutional, the Court said, "the privilege is limited to criminal matters but it is as broad as the mischief against which it seeks to guard."¹⁴ Justice Blatchford declared that the protection must be coextensive with the privilege¹⁵ and "... a mere act of Congress cannot amend the Constitution."¹⁶

Later the classic decision in *Brown v. Walker*¹⁷ established that the privilege can be asserted before a congressional committee and in federal courts but not in state courts.¹⁸ Brown had refused to answer questions pertaining to railroad "kick-back" practices and had invoked the privilege against self-incrimination. The Court, found that the broad language of the Act¹⁹ insured absolute immunity against prosecution. The case was a 5-4 decision and hinged on the narrow thread of Justice Brown's logic that "if his testimony operate as a complete pardon for the offence to which it relates . . . a statute absolutely securing to him such im-

¹⁰ *Counselman v. Hitchcock*, 142 U.S. 547 (1892).

¹¹ 25 Stat. 855 (1887).

¹² 15 Stat. 37 (1868).

¹³ Section 860 was repealed by 36 Stat. 352 (1910); § 859 dealing with congressional committees remained on the books until the present act.

¹⁴ *Counselman v. Hitchcock*, 142 U.S. 547, 562 (1892).

¹⁵ *Id.* at 585. "... (N)o statute which leaves the party or witness subject to prosecution after he answers the criminating question put to him, can have the effect of supplanting the privilege conferred by the Constitution of the United States."

¹⁶ *Id.* at 565. It is very important to examine the almost identical language used by Justice Galston in *United States v. Ullmann*, 221 F.2d 760, 763 (2nd Cir. 1955): "If this matter were one of first impression I could easily reach the conclusion that the immunity statute in question is in effect a circuitous attempt to circumvent the Constitution by a short cut legislative statute amending the Fifth Amendment."

¹⁷ *Brown v. Walker*, 161 U.S. 591 (1896). This case also involved the Interstate Commerce Commission. Congress in 1893 had hurriedly passed another immunity statute following the *Counselman* decision. 27 Stat. 443 (1893), 49 U.S.C. § 46 (1953).

¹⁸ This restriction has been closely followed for some sixty years. For a listing of the various acts incorporating the *Brown* language see *Shapiro v. United States*, 335 U.S. 1, 6 n.4 (1948). See also *United States v. James*, 60 Fed. 257 (7th Cir. 1894), where the district court of Illinois had overruled the new statute basing its opinion on a broad interpretation of *Counselman v. Hitchcock*.

¹⁹ 27 Stat. 443 (1896), 49 U.S.C. § 46 (1953): "No person shall be excused from attending and testifying or from producing books, paper, tariffs, contracts, agreements and documents before the Interstate Commerce Commission, or in obedience to the subpoena of the Commission . . . or in any cause or proceeding, criminal or otherwise, based upon a growing out of any alleged violation of the act of Congress, entitled, "An act to regulate commerce" . . . on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to criminate him or subject him to a penalty or forfeiture. But no person shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter nor thing, concerning which he may testify, or produce evidence, documentary or otherwise, before said Commission, or in obedience to its subpoena . . . or in any such case or proceeding: Provided, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying."

munity from prosecution would satisfy the demand of the clause in question.”²⁰ The serious question of state prosecution was adeptly waived away with a sweeping sentence when Justice Brown quoting from *Queen v. Boyes* said, that it was “a danger of an imaginary and unsubstantial character, having reference to some extraordinary and barely possible contingency, so improbable that no reasonable man would suffer it to influence his conduct.”²¹ The extra-legal aspects of the statute such as public opprobrium and defamation were held not to be controlling. And securing immunity to third persons was shelved for fear of extending the *Counselman* decision.²²

Brown v. Walker Re-Examined

Many thought that the Compulsory Testimony Act of 1954 was literally constitutional, while others gave various grounds for doubting its constitutionality.²³ In

²⁰ *Brown v. Walker*, 161 U.S. 591, 595 (1896). The same stand is taken by Whelan, *Punishment For Crimes: The Supreme Court and the Constitution*, 35 Minn. L. Rev. 109, 152 (1951). But see *Ullman v. United States*, 350 U.S. 422, 437 (1956). Justice Frankfurter made note of James C. Carter leader of the American bar who presented appellant's arguments in *Counselman v. Hitchcock*. Carter stated that the immunity statute was an attempt to exercise the power of pardon which was not a power delegated to Congress. Note also the words of Justice Field dissenting in the *Brown* case. “Congress cannot grant a pardon. That is an act of grace which can only be performed by the President.” See also Holmes' decision in *Heike v. United States*, 227 U.S. 131, 142, (1913): “Of course there is a clear distinction between an amnesty and the Constitutional protection of a party from prosecution and punishment for perjury committed in so testifying.

²¹ *Queen v. Boyes*, 1 B & S 311 (1861).

²² *Brown v. Walker*, *supra* at 610 and 628. Justices Field, Gray, White and Shiras dissented, and with acute foresight anticipated some of the difficulties involved in the present immunity act. Since *Brown v. Walker* only seven cases dealing with immunity statutes have been before the Supreme Court. *Jack v. State of Kansas*, 109 U.S. 372 (1905), held that possible incrimination under a Kansas Anti-Trust law was not a bar to federal prosecution for the testimony so compelled. *Heike v. United States*, 227 U.S. 131 (1913), decided that immunity did not extend to corporate records which the witness could have been compelled to produce without such an immunity statute. In *United States v. Monia*, 317 U.S. 424 (1943), the Court said that a witness appearing before a grand jury did not have to invoke the privilege against self-incrimination as he already had that protection under the immunity act of 1893. *Feldman v. United States*, 322 U.S. 487 (1944), held that testimony compelled under a state immunity statute could be introduced in a federal criminal prosecution without depriving defendant of the privilege. *Shapiro v. United States*, 335 U.S. 1 (1948), presented a problem similar to the one in the *Heike* case, *supra*, and the Court disposed of the case by relying on the rationale of the earlier decision, coupled with a reference to the public's interest in the corporate records. In *Smith v. United States*, 337 U.S. 137 (1949), a subpoenaed witness was held to be immune from prosecution based on his testimony when he claimed the privilege at the outset before answering any questions. Finally in *Adams v. State of Maryland*, 347 U.S. 179 (1954), the Court held constitutional a federal statute precluding the use in a state prosecution testimony previously compelled before a congressional committee. The Court rejected the interpretation that “in any court” referred to the Federal Judiciary.

²³ For a treatment of the defects and criticism of the immunity statute see TAYLOR, *GRAND INQUEST*, 215-221, 296-300 (1955), GRISWOLD, *THE FIFTH AMENDMENT TODAY* 80-81 (1955), Dixon *The Fifth Amendment and Federal Immunity Statutes*, 22 Geo. Wash. L. Rev. 447, 554 (1953-54), Dixon, *The Doctrine of Separation of Powers and Federal Immunity Statutes* 23 Geo. Wash. L. Rev. 501, 627 (1954-55), Boudin, *The Immunity Bill*, 42 Geo. L.J. 497 (1953-54). For a view upholding the immunity act see Hofstadter,

*United States v. Ullmann*²⁴ the Supreme Court was faced with re-examining *Brown v. Walker* "in the light of new circumstances which have arisen."²⁵ The proceedings concerned only the grand jury and fell under subsection (c) of the Act.²⁶ By a 7-2 decision the Court found that the immunity granted was equivalent to the constitutional guarantee. Speaking for the Court Justice Frankfurter broke Ullmann's main contentions into four questions: 1) Is the immunity provided by the Act sufficiently broad to displace the protection afforded by the privilege against self-incrimination? Answering affirmatively the Court relied on its earlier decision in *Brown v. Walker* where a similar statute guaranteeing absolute immunity from federal prosecution was upheld as an adequate substitute for the privilege.²⁷ 2) Assuming that the statutory requirements are met, does the Act give the district judge discretion to deny an application for an order requiring a witness to answer relevant questions put by the grand jury, and, if so, is the Court thereby required to exercise a function that is not an exercise of "judicial power"? Literally, the function of the district court judge does not involve any discretion: subsection (c) merely requires that "upon order of the court such witness shall not be excused

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²⁴ *Ullmann v. United States*, 350 U.S. 422 (1956). The defendant, a former Treasury Department employee, upon being subpoenaed before a federal grand jury refused to answer certain questions involving national security on grounds of self-incrimination under the Fifth Amendment. The United States Attorney pursuant to 68 Stat. 745, felt that the testimony was for the public interest presented the order to the district court which reviewed the order and granted the immunity preventing the obtained testimony from being used against the defendant in any criminal proceeding in any court, and directed the witness to answer the questions put forth. Defendant claimed that the immunity was not as broad as the privilege and that the Act was unconstitutional, violating the separation of powers doctrine.

²⁵ *United States v. Ullmann*, 221 F. 2nd 760 (1955).

²⁶ "(c) Whenever in the judgment of a United States attorney the testimony of any witness, or the production of books, papers, or other evidence by any witness, in any case or proceeding before any grand jury or court of the United States involving any interference with or endangering of, or any plans or attempts to interfere with or endanger, the national security or defense of the United States by treason, sabotage, espionage, sedition, seditious conspiracy, violations of Chapter 115 of title 18 of the United States Code, violations of the Internal Security Act of 1950 (64 Stat. 987), violations of the Atomic Energy Act of 1946 (60 Stat. 755), as amended, violations of sections 212 (a), (27), (28), or (29) or 241 (a) (6), (7) or 313 (a) of the Immigration and Nationality Act (66 Stat. 182-186; 204-241, and conspiracies involving any of the foregoing, is necessary to the public interest, he, upon the approval of the Attorney General, shall make application to the court that the witness shall be instructed to testify or produce evidence subject to the provisions of this section, and upon order of the court such witness shall not be excused from testifying or from producing books, papers, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except prosecution described in subsection (d) hereof) against him in any court." 18 U.S.C. § 3486 (Supp. II 1954).

²⁷ *Brown v. Walker*, 161 U.S. 591, 610 (1896). "While the constitutional provision in question is justly regarded as one of the most valuable prerogatives of the citizen, its object is fully accomplished by the statutory immunity, and we are, therefore, of opinion that the witness was compellable to answer."

from testifying.”²⁸ The court is not asked to act beyond the scope of its judicial powers; hence the separation of powers doctrine is not abrogated.²⁹ 3) Did Congress provide immunity from state prosecution for crime, and if so, is it empowered to do so? Earlier³⁰ the Court said compelled testimony was inadmissible in state or federal prosecutions. Here the Court found that Congress went further by barring *any prosecution* involving compelled testimony.³¹ Even though less immunity would be a sufficient substitute for the privilege, the extended protection is desirable and does not exceed constitutional limitations on federal activities. It is justified as a reasonable method for discharging its duty to provide for national security.³² 4) Does the Fifth Amendment prohibit compulsion of what would otherwise be self-incriminating testimony no matter what the scope of the immunity statute? The Court refused to overrule *Brown v. Walker*³³ and declared that the 1893 statute has become completely enmeshed in our constitutional fabric. Justice Douglas, dissenting, took the position that the Fifth Amendment granted a right of silence “beyond the reach of government”:

It is no answer to say that a witness who exercises his Fifth Amendment *right of silence* and stands mute may bring himself into disrepute. If so, that is the price he pays for exercising the right of silence granted by the Fifth Amendment . . . the Fifth Amendment stands between the citizen and his government.³⁴

²⁸ “. . . (M)ay be issued by the district court judge.” 68 Stat. 745, 18 U.S.C. § 3486 (Supp. II 1954).

²⁹ Following its traditional policy, the Court did not decide whether subsection (c) would be constitutional as requiring an exercise of discretion. *United States v. Ullmann*, *supra* at 431, 432. See p. 456 for discussion of subsection (a) and (b). The Court agreed with Judge Weinfeld’s interpretation that “The Supreme Court has repeatedly warned if a serious doubt of constitutionality is raised, it is a cardinal principle that this court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.” *United States v. Ullmann*, *supra*.

³⁰ There was some doubt, however, as evidenced by the Report of the Committee on the Judiciary of the House of Representatives: “Even though the power of Congress to prohibit a subsequent State prosecution is doubtful, such a constitutional question should not prevent the enactment of the recommended bill.” H.R. Rep. No. 2606, 83d Cong., 2d Sess. 7 (1954). The Attorney General had expressed the same viewpoint. Brownell, *Immunity From Prosecution versus Privilege Against Self-Incrimination*, 28 Tulane L. Rev. 1 (1953-54).

³¹ *Adams v. Maryland*, 347 U.S. 179 (1954). But a conviction might be sustained on other evidence . . .

³² U.S. CONST. Art. I, § 8. In an analogous case the Federal Smith Act was held to preclude state prosecutions under the Pennsylvania Sedition Act. *Pennsylvania v. Nelson*, 350 U.S. 497 (1956).

³³ *Brown v. Walker*, 161 U.S. 591 (1896). Here the Court upheld the constitutionality of a statute which provided complete immunity against federal prosecution. See footnote 17 *supra*.

³⁴ *Ullmann v. United States*, 350 U.S. 422, 454 (1956). On the right to silence see, Drinan S.J., *The Right to Silence*, 95 No. 4 America 106 (April 1956); For an excellent

Subsections (a) and (b)

The congressional committee has a right to conduct an appropriate investigation³⁵ but it must scrupulously observe the Fifth Amendment.³⁶ Under subsection (a) when a witness claims his privilege,³⁷ applicable to federal civil cases³⁸ and grand jury proceedings,³⁹ in a legislative hearing, upon the application of an authorized Representative of Congress, the district court *may* issue an order compelling the witness to testify. Before immunity is granted, however, the Attorney General must be notified and given an opportunity to be heard by the Court. Thus the problem is whether legislative and judicial functions are now vested in different branches of the federal government. It is true, there have been inroads upon this constitutional absolute such as the so-called "quasi-legislative" bodies (like the ICC, FTC, CAB, SEC, AEC, et al.) and legislative courts. The legislative history of this immunity Act definitely indicates that the makers were in a quandary as to where the immunizing power should lie.⁴⁰ Two possible theories can be used to describe the process of allowing the district court to approve the grant of immunity. 1) The immunity is either given by the Committee subject to the veto power of the court or 2) it is given by the court on application of the committee. This can be further reduced to two simple hypotheses. The immunity is either a "court approval" or a "court order." Since Article III vests the judicial power in the Supreme Court "and in such inferior courts as the Congress may from time to time ordain and establish,"⁴¹ the judiciary can examine only cases and controversies.⁴² For a case and controversy there must be adverse litigants,⁴³ yet *ex parte* proceedings may fall within this category, and naturalization has been recognized as a "case."⁴⁴

discussion see *Problems of the Fifth Amendment in Modern Times*, Connery S.J., *The Right to Silence*, 30 Marq. L. Rev. 180 (1955-56), GRISWOLD, *THE FIFTH AMENDMENT TODAY*, *id.* at 191, Williams, *The Fifth Amendment in Non-Criminal Proceedings*, *id.* at 205.

³⁵ *McGrain v. Daugherty*, 273 U.S. 135 (1927), *Sinclair v. United States*, 279 U.S. 263 (1929), *In Re Chapman*, 166 U.S. 661 (1897).

³⁶ *Hoffman v. United States*, 341 U.S. 479 (1951).

³⁷ For the view of one author who argued that because an immunity statute could validly compel testimony before a grand jury or regulatory agency it does not follow a congressional committee can exercise similar compulsion. See Boudin, *The Immunity Bill*, 42 Geo. L. J. 497, 511-512 (1953-54). There seems to be no clear authority in the States, 87 A.L.R. 435 (1935) but see *In Re Doyle*, 257 N.Y. 224, 264 Mr. Justice Cardozo saying, "The power to immunize from prosecution is a sovereign legislative power."

³⁸ *McCarthy v. Arndstein*, 266 U.S. 34 (1924).

³⁹ *United States v. Ullmann*, 350 U.S. 422 (1956), *Counselman v. Hitchcock*, 142 U.S. 547 (1892), *United States v. Monia*, 317 U.S. 424 (1943), *Hale v. Henkel*, 210 U.S. 43 (1906), *Blau v. United States*, 340 U.S. 159 (1950).

⁴⁰ For the debates on the vesting of immunity power in the Congress see 99 Cong. Rec. 4737-43, 8340-57 (1953).

⁴¹ U.S. CONST. Art. III, § 1.

⁴² *Muskrat v. United States*, 219 U.S. 346 (1911).

⁴³ *Ibid.*

⁴⁴ *Hines v. Davidowitz*, 312 U.S. 52 (1941).

In the *Ullmann* case Justice Frankfurter cited *Interstate Commerce Commission v. Brimson*⁴⁵ to the effect that the proceedings met the statutory requirement under subsection (c). Finality, however, must lie in the district court.⁴⁶ It is possible then, that if the language of subsection (a) of the Act⁴⁷ is interpreted as forcing the court to act in a discretionary capacity they would possess an absolute veto power. This is substantially different from subsection (c) in that the language used there indicated that the court will not look into the order but that if it meets the statutory requirements they shall grant it.

The question of adverse litigants is partially solved because the witness has to claim his privilege first. A different situation arises if the witness is not included as an adverse party. The non-adversary character of the proceedings would then involve the Attorney General, the Committee and the Court. It is theoretically possible for the Attorney General to thwart the congressional intent by desiring certain matters of national security to remain secret while the committee wishes to bare them. If this situation arose it appears that the court is acting in an arbiter's role, electing between the Attorney General and Committee—a dispute between the legislative and executive branches without the faintest indicia of a legal issue. It is quite dubious that the court could be called upon to do this since they have consistently frowned upon answering political questions.⁴⁸

If the Act is read as it was in the *Ullmann* case, the court merely grants the order, but this is unique also. When the witness has been properly subpoenaed before the committee, invokes the privilege and is granted immunity he answers only to that which the order requires. Nowhere in the Act is the scope of the order explained. If it is too narrow probably the whole mechanical process of gathering information will be a cumbersome hodgepodge of running between the court and the committee for new grants of immunity with each new series of questions propounded. If not, then the court order may be very broad, so extensive in fact that the witness may "white wash" his past sins in a glorious rapprochement of the 1857 immunity bath fiasco. In summary it is highly improbable that subsections (a) and (b) will get the same treatment as subsection (c) received in the *Ullmann* decision. Rather, it is conjectured that the coup de grace will fall upon subsections (a) and (b) of the Act.

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⁴⁵ *Interstate Commerce Commission v. Brimson*, 154 U.S. 447 (1894).

⁴⁶ *Hayburn's Case*, 2 Dall. 409 (U.S. 1792).

⁴⁷ See footnote 28.

⁴⁸ *Coleman v. Miller*, 307 U.S. 433 (1939).