

RULES ADOPTED BY THE 93D CONGRESS

H. Res. 6, January 3, 1973

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RULE XI

POWERS AND DUTIES OF COMMITTEES

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11. Committee on Internal Security.

(a) Communist and other subversive activities affecting the internal security of the United States.

(b) The Committee on Internal Security, acting as a whole or by subcommittee, is authorized to make investigations from time to time of (1) the extent, character, objectives, and activities within the United States of organizations or groups, whether of foreign or domestic origin, their members, agents, and affiliates, which seek to establish or assist in the establishment of a totalitarian dictatorship within the United States, or to overthrow or alter, or assist in the overthrow or alteration of, the form of government of the United States or of any State thereof, by force, violence, treachery, espionage, sabotage, insurrection, or any unlawful means, (2) the extent, character, objectives, and activities within the United States of organizations or groups, their members, agents, and affiliates, which incite or employ acts of force, violence, terrorism, or any unlawful means, to obstruct or oppose the lawful authority of the Government of the United States in the execution of any law or policy affecting the internal security of the United States, and (3) all other questions, including the administration and execution of any law of the United States, or any portion of law, relating to the foregoing that would aid the Congress or any committee of the House in any necessary remedial legislation.

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ANALYSIS OF HISC MANDATE by PROFESSOR THOMAS I. EMERSON (1967). (excerpts)

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The new formulation of the Committee's jurisdiction is subject to the same constitutional objections as previously. It empowers the Committee to investigate areas where Congress is forbidden by the First Amendment to legislate, and it couches the Committee's mandate in language that is unconstitutionally broad and vague.

Delegation of power to the Committee to probe into areas protected by the First Amendment runs throughout the resolution. Subsection(a) authorizes the Committee to investigate all matters "relating to Communist and other subversive activities affecting the internal security of the United States." The mandate is not limited to activities involving the use of force or violence, or similar methods. It extends to every phase of Communist activities, or activities considered by the Committee to be "Communist", whether that conduct is legal or illegal, legitimate or illegitimate. And it includes investigation into everything "subversive," or called "subversive" by the Committee, even though the conduct involved might be constitutionally protected political expression.

In *Baggett v. Bullitt* the Supreme Court clearly excluded much of the area covered by subsection (a) from the power of the government to control. Stating its objection to an oath imposed by the State of Washington on government employees, the Court said:

"The Washington oath goes beyond overthrow or alteration by force or violence. It extends to alteration by "revolution" which, unless wholly redundant and its ordinary meaning distorted, includes any rapid or fundamental change. Would, therefore, any organization or any person supporting, advocating or teaching peaceful but far-reaching constitutional amendments be engaged in subversive activity? Could one support the repeal of the Twenty-second Amendment or participation by this country in a world government?"

Similar objections apply to subsection (b) of the Resolution. The first part of clause (1) authorizes the Committee to investigate "organizations or groups", including "their members, agents and affiliates," which "seek to establish, or assist in the establishment

of, a totalitarian dictatorship within the United States." Again the Committee's area of inquiry is not limited to the use of force or violence or other unlawful methods. It covers all forms of political activity, legal as well as illegal. Indeed, it is not limited to action at all. It includes all forms of speech, assembly, or other expression. And the use of the word "assist" extends the Committee's power to all action or expression on the fringes, including that of persons simply holding a common view on a single subject with a group alleged to seek the establishment of a dictatorship.

The second part of clause (1) empowers the Committee to employ its full powers to investigate groups or persons who seek to "overthrow or alter, or assist in the overthrow or alteration of, the form of Government of the United States or of any State" by "treachery." The word "treachery" has no legal meaning. It would seem to convey the same notion as "un-American," thus slipping back into the Committee's mandate the very term the resolution purports to jettison. In any event, such authority would seem to extend to a wide area of unpopular, but legitimate, public expression, such as a critical comment on the effects of U.S. bombing in Viet Nam.

Clause (2) of subdivision (b) goes even further. It gives the Committee power to investigate groups, including members, agents and affiliates, "which incite...any unlawful means, to obstruct or oppose the lawful authority of the Government of the United States in the execution of any law or policy affecting the internal security of the United States." This opens up vast opportunities for the Committee to harass persons or groups who oppose any aspect of official "policy," so long as they can be charged with "inciting" some form of "unlawful means." Civil rights demonstrators, peace pickets, housewives protesting high prices, groups counseling young men about conscientious objection, and many others become vulnerable under this provision to Committee attention and attack.

If there remains any doubt that the Committee's mandate would extend far into constitutionally protected areas, it is eliminated by clause (3). This gives the Committee jurisdiction over "all other questions...relating to the foregoing." Under this provision all limits are off.

These objections to the resolution based upon infringement of First Amendment rights are compounded by the excessive vagueness of the proposed new mandate. All of the terms quoted above are extraordinarily broad and indefinite. Who can say with any certainty what "subversive" means? What are the limits of "assist" or "oppose"? How does one define "treachery"?

Other grants of authority to the Committee are equally vague. For instance, it is given jurisdiction to investigate the "character" of certain organizations or groups and their members. There is no logic or limit to such a power.