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Constitutional Law - Privilege Against Self-Incrimination -Effect of Immunity Statute

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CONSTITUTIONAL LAW—PRIVILEGE AGAINST SELF-INCRIMINATION—EFFECT OF IMMUNITY STATUTE—Petitioner was brought before a federal grand jury and questioned as to his and other persons' membership in the Communist Party. After petitioner refused to answer the questions on the ground that the answers would be self-incriminating and therefore his refusal was privileged under the Fifth Amendment,[1] the United States attorney,

[1] U.S. CONST., Amend. V.

proceeding under the provisions of the Immunity Act of 1954,[2] filed an application in the United States district court requesting that petitioner be required to answer the questions. The district court, upholding the constitutionality of the act, ordered petitioner to answer the questions,[3] and petitioner's appeal from this order was dismissed by the court of appeals. Upon petitioner's stipulated refusal to answer the questions, the district court held him in contempt and sentenced him to six months' imprisonment unless he should purge himself of the contempt. The court of appeals affirmed.[4] On certiorari to the Supreme Court, *held,* affirmed, two justices dissenting. The intent of the Fifth Amendment was to prevent the government from forcing a person to testify to matters which would make him liable for criminal prosecution. Once the threat of criminal prosecution is removed, the purpose of the amendment has been served and the witness has no right to refuse to testify. *Ullmann v. United States,* 350 U.S. 422 (1956).

Statutes requiring a person to testify as to certain facts within his knowledge and granting immunity from prosecution as to any matters about which he may testify are common both at the federal and state level and have been almost uniformly upheld against claims that they violate the Fifth Amendment or similar provisions in state constitutions.[5] The instant case reaffirms the initial Supreme Court decision upholding the constitutionality of these acts.[6]

2 18 U.S.C. (Supp. III, 1956) §3486. The immunity given is very broad, the act reading: "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 . . . to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding . . . against him in any court." (Italics added.) The act is extensively commented on in 55 COL. L. REV. 631 (1955).

3 In re Ullmann, (S.D. N.Y. 1955) 128 F. Supp. 617.

4 Ullmann v. United States, (2d Cir. 1955) 221 F. (2d) 760.

5 For an extensive list of these statutes, see 8 WIGMORE, EVIDENCE, 3d ed., §2281, n. 11 (1940). See Brown v. Walker, 161 U.S. 591 (1896), to the effect that an immunity act does not violate the Fifth Amendment if it protects the witness from criminal prosecution for the "transaction, matter or thing" which he was compelled to testify to. In the principal case the Court construed the Immunity Act of 1954 as prohibiting prosecution in any court, state or federal, although earlier court decisions indicate that a federal immunity statute need not provide immunity from state prosecution in order to be constitutional. United States v. Murdock, 284 U.S. 141 (1931); Jack v. Kansas, 199 U.S. 372 (1905). Cf. United States v. DiCarlo, (N.D. Ohio 1952) 102 F. Supp. 597; United States v. Licavoli, (N.D. Ohio 1952) 102 F. Supp. 607.

6 Justices Douglas and Black, dissenting, urged the Court to adopt a literal reading of the Fifth Amendment which would invalidate all immunity acts or else to hold that the immunity granted is not broad enough to safeguard sufficiently the witness who is required to testify. The dissenters argue that the Fifth Amendment should serve a broader purpose than merely preventing prosecution of a witness who gives self-incriminating evidence since the social excommunication which follows self-incriminating testimony is just as harmful as prosecution. Cf. 52 Stat. 942 (1938), 2 U.S.C. (1952) §193, which states that no witness may refuse to testify before congressional committees on the ground that his testimony may tend to disgrace him or render him infamous. In addition, they argue that it is morally unjustifiable to compel a person to become an informer against his associates.

More difficult problems will probably arise in connection with the act in the future of an interpretive rather than constitutional nature. The language of the Court indicates that the only immunity required is immunity from future prosecution.[7] However, the act also provides for immunity from any "penalty or forfeiture."[8] A host of problems can arise as to what constitutes a penalty or forfeiture. It seems apparent that a person compelled under the Immunity Act to reveal his membership in the Communist Party could not be prosecuted under the Internal Security Act for having worked in a defense facility while he was a member of the Communist Party.[9] This is precisely the type of immunity which the act is intended to give. It is not so easy a problem, however, if a similarly situated witness is denied a passport because of his party membership.[10] In an action to force the government to grant him his passport there would be serious interpretive problems if the government were to defend its passport denial on the grounds that the petitioner was a Communist Party member and a security risk. The court would have to determine whether the words "penalty or forfeiture" as used in the act immunize the witness from this kind of penalty. Another problem which may arise frequently involves the government or defense worker who may have rights under civil service laws or union seniority clauses in collective bargaining contracts and cannot be fired except for just cause. If such a person were fired at government request subsequent to his testimony because he had been a member of a subversive organization, some of his rights would clearly have been forfeited. Certainly the language of the act could support the argument that the immunity extends to all these cases and many others which may arise under the various acts regulating communist activity.[11] If it does, then regulatory legislation relating to defense work, passport issuance, and similar security areas would be inapplicable to these avowed communists. Under these circumstances it would appear that the government should be extremely wary in its use of the power given it by the Immunity Act.

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[7] Brown v. Walker, note 5 supra, and principal case.

[8] Note 2 supra.

[9] The Internal Security Act of 1950, 64 Stat. 987, 50 U.S.C. (1952) §784 (1) (D) makes it a substantive crime for any member of a communist-action organization, as defined in §782 of the act, to hold employment in any defense facility.

[10] The Internal Security Act of 1950, 64 Stat. 987, 50 U.S.C. (1952) §785 makes it unlawful for a government employee to issue or renew the passport of a person who is a member of a communist-action organization.

[11] Presumably there would be no problem if the government action were taken because of communist activities subsequent to the forced testimony, but very serious problems could arise if the witness' activities all occurred prior to testifying.