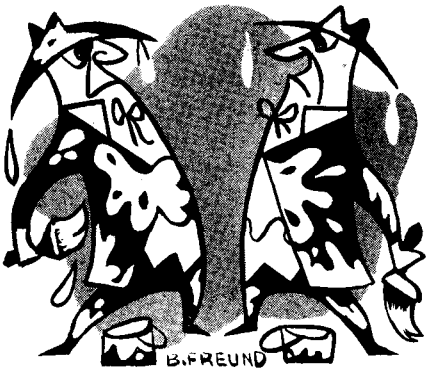
# Some Queensberry Rules For Congressional Investigators

REPRESENTATIVE JACOB K. JAVITS

THIRTY YEARS AGO Congress was considered to have done quite a lot of investigating if as many as twenty-five investigations were conducted in any one session. Last year there were 236 separate Congressional investigations, and this year the total will probably be even higher. The legislative work of Congress is often pushed onto the back pages by news from Representative Harold Velde's House Un-American Activities Committee, Senator William Jenner's Internal Security Committee, or Senator Joseph R. McCarthy's Permanent Subcommittee on Investigations of the Senate Committee on Government Operations.

It is too little known that as matters now stand there are no standard rules to govern the operations of these investigating committees. It is true that several of the committees have adopted their own rules: The House Committee on Un-American Activities adopted a set of rules as recently as July 15 to protect the rights of witnesses called before it; Senator McCarthy's subcommittee also has a set of rules; and Representative Keating's Subcommittee of the House Judiciary investigating the Justice Department has a modern and complete set of rules that have earned it a high reputation for fairness. But it is largely a hit-or-miss matter, and there are no over-all standards to protect the reputations of witnesses who may be called.

THERE ARE, for instance, no rules of evidence like those in a court of law, and although some committees have adopted rules of their own, treatment of witnesses is generally dependent upon the attitude of the chairman and the members of the committee. Often Congressional investigation committees do not offer a witness the elementary protection that would be available to him in court—to have advance notice of the charge, to be represented by counsel, to be confronted by the witnesses against him and entitled to cross-examine them, to call witnesses in his own behalf, and to be presumed innocent until proven guilty. Unless the committee adopts its own rules, witnesses before Congressional committees have only the Constitutional




right to refuse to answer on grounds of self-incrimination and to answer only questions having some ultimate purpose to further legislation—which is a pretty broad latitude.

There is solid and growing support for the effort to get the Senate and the House of Representatives to adopt rules of standard procedure that would bind all investigating committees. The effort is backed by a widespread desire to change the climate of these investigations to one that will be helpful to legislation and to avoid the use of investigations to attack social, economic, or political views so long as they are consistent with our Constitution.

As long ago as January, 1947, a report of the Senate Judiciary Committee, then headed by Senator Alexander Wiley of Wisconsin, stated that "much confusion and ill-feeling might well be avoided by the adoption in each house of the Congress of standard rules and procedures for the guidance of committees conducting investigations."

Suggestions for rules have been made recently by Senators Paul Douglas (D., Illinois) and Estes Kefauver (D., Tennessee) in the Senate, and in the House by Representative Martin Dies, who himself had a stormy career as chairman of the House Un-American Activities Committee from 1938 to 1945.

The suggestions for rules made by Senator Douglas include one that "witnesses reflecting adversely upon other persons should be called to testify only after they have been examined in executive session and their relative credibility established."

Interestingly enough, Representative Dies is in agreement with Senator Douglas on the need for private hearings before public ones. The rules already put out by Chairman Velde of the Un-American Activities Committee call for a registered-mail notice to people mentioned adversely in public hearings, but they get no advance notice.

### 'Wicked Tool'

In the set of rules contained in my bill HR 4123, under consideration by a subcommittee of the House Rules Committee, I was particularly concerned with the problem of preventing the release of information from a committee file by an employee or a member of the committee except with the vote of a majority of the committee. The wording is

taken from the text of the policy statement on Congressional investigations of Communism in education adopted by the General Board of the National Council of the Churches of Christ in the U.S.A. and seeks to deal with the particular matter that Bishop G. Bromley Oxnam criticized during his appearance before the House Committee on Un-American Activities. In his extraordinary ten-hour hearing Bishop Oxnam asserted that although the committee files, which were made available to anyone who sought information about him, showed his connection with forty-odd allegedly "Communist-front" organizations, he had not joined some of the organizations at all and had quit others after learning of their leanings. He said that the practice of releasing such information created a "wicked tool" for the use of "irresponsible" persons.

J. Edgar Hoover, head of the FBI, also emphasized the need for remedial legislation before a Senate subcommittee in March, 1950:

"Should a given file be disclosed, the issue would be a far broader one than concerns the subject of the investigation. Names of persons who by force of circumstance entered into the investigation might well be innocent of any wrong. To publicize their names, without explanation of their associations, would be a grave injustice. Even though they were given an opportunity to later give their explanation, the fact remains that truth seldom, if ever, catches up with charges. I would not want to be a party to any action which would smear innocent individuals for the rest of their lives. We cannot disregard the fundamental principles of common decency and the application of basic American rights of fair play."

ANOTHER important point with which I was concerned is the fixing of responsibility in the body which has authorized the investigating committee—the Senate or the House of Representatives as the case may be—for what the committee does. I have proposed that the Rules Committee of the House of Representatives shall have legislative oversight of the operations of all House investigating committees. As the Rules Committee is generally considered to be the instrument of the leadership of the House of Representatives, responsibility would be established at the highest echelon of authority. Representative Dies has come to somewhat the same conclusions on this point as I have, and he further suggests that members of Congress should be entitled to complain to the Rules Committee if investigating committees are charged with being unfair.

IN THE FINAL analysis, of course, the public must be the judge of excesses charged against Congressional investigating committees. In that mysterious way in which American public opinion takes form, crystallizes, and then becomes irresistible, there is more and more agreement that hunting out subversives without destroying the individual rights and values we are seeking to protect can


best be done through the reform of the procedures of Congressional committees.

To that end, I invite the readers of *The Reporter* to consider the following rules of procedure I have proposed. The text was largely the work of the Committee on the Bill of Rights of the Association of the Bar of the City of New York. The work of a similar committee of the New York County Lawyers Association was also very helpful.

## RULES OF PROCEDURE

**(1) No major investigation shall be initiated without approval of a majority of the committee. Preliminary inquiries may be initiated by the committee staff with the approval of the chairman of the committee.**

**(2) The subject of any investigation in connection with which witnesses are summoned shall be clearly stated before the commencement of any hearings, and the evidence sought to be elicited shall be relevant and germane to the subject as so stated.**

**(3) All witnesses at public or executive hearings who testify as to matters of fact shall be sworn.**

**(4) Executive hearings shall be held only with the approval of a majority of the members of the committee, present and voting. All other hearings shall be public.**

**(5) Attendance at executive sessions shall be limited to members of the committee and its staff and other persons whose presence is requested or consented to by the committee.**

**(6) All testimony taken in executive session shall be kept secret and shall not be released or used in public session without the approval of a majority of the committee.**

**(7) Any witness summoned at a public session and, unless the committee by a majority vote determines otherwise, any witness before an executive session, shall have the right to be accompanied by counsel, who shall be permitted to advise the witness of his rights while on the witness stand.**

**(8) Every witness shall have an opportunity, at the conclusion of the examination by the committee, to supplement the testimony which he has given, by making a brief written or oral statement, which shall be made part of the record; but such testimony shall be confined to matters with regard to which he has previously been examined. In the event of dispute, a majority of the committee shall determine the relevancy of the material contained in such written or oral statement.**

**(9) An accurate stenographic record shall be kept of the testimony of each witness, whether in public or in executive session. In either case, the record of his testimony shall be made available for inspection by the witness or his counsel; and, if given in public session, he shall be furnished with a copy thereof at his expense if he so requests; and, if given in executive session, he shall be furnished upon request with a copy thereof, at his expense, in case his testimony is subsequently used or referred to in a public session.**

**(10) Any person who is identified by name in a public session before the committee and who has reason-**

able grounds to believe that testimony or other evidence given in such session, or comment made by any member of the committee or its counsel, tends to affect his reputation adversely, shall be afforded the following privileges:

(a) To file with the committee a sworn statement, of reasonable length, concerning such testimony, evidence, or comment, which shall be made a part of the record of such hearing.

(b) To appear personally before the committee and testify in his own behalf, unless the committee by a majority vote shall determine otherwise.

(c) Unless the committee by a majority vote shall determine otherwise, to have the committee secure the appearance of witnesses whose testimony adversely affected him, and to submit to the committee written questions to be propounded by the committee or its counsel to such witnesses. Such questions must be proper in form and material and relevant to the matters alleged to have adversely affected the person claiming this privilege. The committee reserves the right to determine the length of such questioning; and no photographs, moving pictures, television, or radio broadcasting of the proceedings shall be permitted while such person or such witness is testifying without the consent of such person or witness.

(d) To have the committee call a reasonable number of witnesses in his behalf, if the committee by a majority vote determines that the ends of justice require such action.

(11) Any witness desiring to make a prepared or written statement in executive or public sessions shall be required to file a copy of such statement with the counsel or chairman of the committee twenty-four hours in advance of the hearing at which the statement is to be presented.

(12) No report shall be made or released to the public without the approval of a majority of the committee.

(13) No summary of a committee report or statement of the contents of such report shall be released by any member of the committee or its staff prior to the issuance of the report of the committee.

(14) No committee shall circulate on its letterhead or over the signature of its members or its employees charges against individuals or organizations except as the committee by a majority vote shall so determine.

# The British Labour Party: A Recent Portrait by a Member

HUGH GAITSKELL, M.P.

On June 17, the day Berlin witnessed the first big trade-union demonstrations against a Communist dictatorship, the British Labour Party published a new statement of policy entitled "Challenge to Britain."

Party political manifestoes are not generally distinguished for precision or originality. The pursuit of power compels vagueness, since potential governments must have elbow room; and the need to attract as many voters as possible produces popular platitudes rather than original ideas.

Nevertheless, this pronouncement by the Labour Party was awaited in Britain with more than usual interest. In the years of power after the war, virtually the whole of Labour's 1945 program—the fruits of many years in opposition—had been carried into effect, and the time had come for the party to present a new program. The annual conference at Morecambe last October had asked the National Executive Committee to chart the new course. "Challenge to Britain" was the reply.

But curiosity about this document was greatly enhanced because of something else that had happened at Morecambe. In elections to the National Party Executive Committee, those who had sided with Aneurin Bevan after his resignation from the Labour Government in the spring of 1951 won six of the seven seats to be filled by the exclusive votes of the Constituency Labour Parties. Although still a small minority in a Committee of twenty-seven, the Bevanites had certainly increased their influence.

The Labour Party is still the child of the trade unions that set it up in 1900. But at the annual conference the local Labour Parties in each Parliamentary constituency now have a higher vote than ever before—more than one million. The unions muster among them nearly five million members who pay the political levy.

The local Labour Parties frequently claim that the vote of the unions is disproportionately powerful. They claim that they are the active members and do all the work in the constituencies, while the real power lies with a few trade-union executives who, however important in the industrial field, are not in the political front line. The unions, on the other hand, reply that they have the large affiliated membership which, even if not very active, includes far more Labour supporters than the local parties and furthermore provides most of the party funds.

After the war, with Labour in power, there was an increasing tend-