NOTES

CONSTITUTIONAL LAW

APPLICATION OF THE SELF-INCRIMINATION CLAUSE TO THE COMPULSORY PRODUCTION OF BOOKS AND PAPERS REQUIRED TO BE KEPT BY STATUTE

The provisions of the Emergency Price Control Act[1] empowered the price administrator to make rules and regulations regarding the compulsory submission of books and records. The administrator issued an order which required the keeping of such records as are customarily kept by those firms coming within the purview of the Act.[2] Shapiro, the owner of a non-corporate wholesale fruit and produce business, was served with a subpoena *duces tecum* requiring him to appear before the price administrator with certain of his books and records. Shapiro complied with the subpoena but claimed constitutional privilege before submitting his books and records to the administrator. He was later tried and convicted for violating the Price Control Act. Conviction was affirmed in the Circuit Court of Appeals.[3] On appeal Shapiro contended that the administrator used certain evidence obtained from his books and records to search for the existence of violations that resulted in his conviction. In a five to four decision[4] the conviction was affirmed by the Supreme

1. 56 STAT. 23 (1942), as amended, 60 STAT. 664, 50 U. S. C. App. § 901 (1946): " . . . The Administrator is further authorized, by regulation or order, to require any person who is engaged in the business of dealing with any commodity, or who rents or offers for rent or acts as broker or agent for the rental of any housing accommodations, to furnish any such information under oath or affirmation or otherwise, to make and keep records and other documents, and to make reports, and he may require any such person to permit the inspection and copying of records and other documents, the inspection of inventories, and the inspection of defense area housing accommodations. The administrator may administer oaths and affirmations and may, whenever necessary, by subpoena require any such person to appear and testify or to appear and produce documents, or both, at any designated place."

2. Maximum Price Regulation No. 426, § 14, 8 Fed. Reg. 9546 (1943).

3. Shapiro v. United States, 159 F.2d 890 (2d Cir. 1947).

4. The dissenting opinions of Mr. Justice Frankfurter, Mr. Justice Jackson and Mr. Justice Rutledge take issue with the majority on the question of the extent of the immunity granted by § 202(g) of the Price Control Act. The majority are confirmed to the view that the immunity granted by the Act is no greater than that afforded by the Constitution. This rule is based on the holding of Mr. Justice Holmes in Heike v. United States, 227 U. S. 131, 142 (1913): "It shall be construed, so far as its words fairly allow the construction, as coterminous with what otherwise would have been the privilege of the person concerned." The

Court on the ground that the records which he was compelled to produce were records required by law, thus precluding any constitutional privilege on Shapiro's part. *Shapiro v. United States*, 335 U. S. 1 (1948).

The application of the self-incrimination clause of the Fifth Amendment[5] to the compulsory submission of books and papers before courts, administrative boards, and congressional committees has often proved to be a stumbling block to a rapid order of proceedings before these bodies.[6] It is clear that a defendant or a witness, if he claims it, has an absolute privilege against self-incrimination insofar as oral declarations are concerned.[7] This is also true of private books and papers, but the determination of a proper definition for private books and papers has plagued the courts for many years past.[8]

The maxim, "no person shall be compelled to be a witness against himself," was first introduced by Coke in 1589 in assailing forced testimony taken from non-conforming clergymen.[9] As first introduced, the privilege applied only

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dissenting judges take the view that the constitutional issues involved here would have been avoided if the immunity provisions of the Price Control Act were construed to grant something more than the immunity afforded under the Fifth Amendment. They state that there would be no purpose to a statutory immunity provision unless it were construed to grant immunity broader than that afforded by the Constitution. Shapiro v. United States, 335 U. S. 1, 36, 70, 71 (1948). The result of this interpretation would be to overrule the settled construction of a statutory immunity clause, and it would hamper to a very great extent the proper enforcement of the Price Control Act as required records must necessarily be the basis of all enforcement. If the Act could not have been properly enforced, the resulting inflation would have seriously impeded the war effort. In view of this it cannot be said that Congress intended to protect the individual interest at the expense of the national interest when the very existence of our country was in jeopardy.

5. U. S. CONST. AMEND. V: ". . . (no person) shall be compelled in any criminal case to be a witness against himself . . . "

6. *E.g.*, United States v. White, 322 U. S. 694 (1944); Wilson v. United States, 221 U. S. 361 (1911); Ballmann v. Fagin, 200 U. S. 186 (1906); Boyd v. United States, 116 U. S. 616 (1886).

7. *E.g.*, Counselman v. Hitchcock, 142 U. S. 547 (1892); United States v. Weisman, 111 F.2d 261 (2d Cir. 1940); United States v. Weinberg, 65 F.2d 394 (2d Cir. 1933), 34 COL. L. REV. 173 (1934).

8. Corporate records have been held to be without the privilege in Essgee Co. v. United States, 262 U. S. 151 (1923); Wilson v. United States, 221 U. S. 361 (1911). *Contra:* 8 WIGMORE, EVIDENCE § 2259(b) (3d ed. 1940). See also United States v. Austin-Bagley Corp., 31 F.2d 229 (2d Cir. 1929); 26 HARV. L. REV. 560 (1913); 25 *id* 96 (1911); 14 MICH. L. REV. 157 (1915). It is now well settled that the records of bankrupts are not privileged after they have been given to the trustee in bankruptcy: Ex parte Fuller, 262 U. S. 91 (1923); 37 HARV. L. REV. 140 (1923); 25 *id* 573 (1912); 19 ILL. L. REV. 290 (1924).

9. Cullier v. Cullier, Cro. Eliz. 201, 78 Eng. Rep. 457 (1589).

to oral declarations sought to be extorted from witnesses,[10] but was subsequently extended to include an individual's private books and papers.[11] The English courts adopted a broad construction of the phrase "private books and papers" for they included within the terms of the privilege custodians of public records required to be kept by law,[12] and custodians of corporate records.[13]

The privilege against self-incrimination as adopted in our Constitution is merely an echo of the common law as it existed in England.[14] However, one fundamental difference soon became evident. The idea that the constitutional privilege is personal was not inherent in the common law. Thus the privilege at common law was allowed an individual ordered to produce the books and papers, even though they were not his private records.[15] On the other hand, our law holds the privilege to be purely personal, thereby imposing a condition that the records be the claimant's personal property.[16] Con-

10. The first statute on the subject was passed in 1662: "No one shall administer to any person whatsoever the oath usually called ex officio, or any other oath, whereby such persons may be charged or compelled to confess any criminal matter." 13 CAR. II, c. 12 (1662).

11. Rex. v. Dixon, 3 Burr. 1687, 97 Eng. Rep. 1047 (1765); Entick v. Carrington, 2 Wils. K. B. 275, 95 Eng. Rep. 807 (1765); Regina v. Mead, 2 Ld. Raym. 927, 92 Eng. Rep. 119 (1704).

12. Rex v. Purnell, 1 Wils. K. B. 239, 95 Eng. Rep. 595 (1748); Crew v. Saunders, 2 Strange 1005, 93 Eng. Rep. 997 (1727); Rex v. Worsenham, 1 Ld. Raym. 705, 91 Eng. Rep. 1370 (1701).

13. Pritchett v. Smart, 7 C. B. 625, 137 Eng. Rep. 247 (1849); King v. Heydon, 1 Black. W. 351, 96 Eng. Rep. 195 (1762); Rex v. Cornelius, 2 Strange 1210, 93 Eng. Rep. 1133 (1744).

14. For a concise history of the common law on the subject of self-incrimination see Corwin, *The Supreme Court's Construction of the Self-incrimination Clause*, 29 MICH. L. REV. 1, 191 (1930); Wigmore, *The Privilege Against Self-incrimination; Its History*, 15 HARV. L. REV. 610 (1902); Wigmore, *Nemo Tenetur Seipsum Prodere*, 5 *id* 71 (1891).

15. In Rex v. Worsenham, 1 Ld. Raym. 705, 91 Eng. Rep. 1370 (1701), the keepers of custom house books were granted immunity "because the said books are a private concern, in which the prosecutor has no interest; and therefore, it would be in effect, to compel the defendants to produce evidence against themselves." See also notes 12 and 13 *supra*.

16. Davis v. United States, 328 U. S. 582 (1946) (custodian of public records not privileged as to incriminating matter contained therein). Dier v. Banton, 262 U. S. 147 (1923) (bankrupt not privileged once his books are given to the trustee in bankruptcy); Burdeau v. McDowell, 256 U. S. 465 (1921) (documents obtained by a trespasser not a Federal officer are not privileged); Perlman v. United States, 247 U. S. 7 (1918) (documents offered by defendant in a civil suit are no longer privileged in a criminal case against him); Wilson v. United States, 221 U. S. 361 (1911) (custodian of corporate records not privileged as to incriminating matter contained therein).

sequently the books of a corporation,[17] an unincorporated association,[18] and public records[19] are not private books and papers of the person producing them.

This distinction between the English and the American view was set out by the first Congress when it passed the Revenue Act of July 31, 1789,[20] which made it the duty of a ship's master to present to the collector of customs the ship's manifest before he was allowed to enter port. Thus the ship's manifest, which is ordinarily a private record and therefore personal to the ship owners, was made a record required by statute if the ship's master desired to enter a United States port. Many subsequent statutes required the keeping and submission of records to facilitate their enforcement.[21] From 1789 to 1863 the record-keeping provisions of these statutes were not questioned, and it was assumed that they did not come within the self-incrimination clause of the Fifth Amendment.[22]

In 1863 an amendment to the Revenue Act of 1789[23] was passed which empowered a court to subpoena the private books and records of a person thought to be involved in frauds on the revenue; for the purpose of using the information contained therein as evidence against him. For a number of years the validity of the requirement was upheld by the lower federal courts.[24] However, in 1886 the United States

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17. *E.g.*, Essgee Co. v. United States, 262 U. S. 151 (1923); Heike v. United States, 227 U. S. 131 (1913); Grant v. United States, 227 U. S. 74 (1913); Dreier v. United States, 221 U. S. 394 (1911); Wilson v. United States, 221 U. S. 361 (1911).

18. *E.g.*, United States v. White, 322 U. S. 694 (1944); Brown v. United States, 276 U. S. 134 (1928).

19. *E.g.*, Davis v. United States, 328 U. S. 582 (1946); Langdon v. People, 133 Ill. 382, 24 N. E. 874 (1890); Louisville & Nashville Railroad Co. v. Commonwealth, 51 S. W. 167 (Ky. 1899); People v. Coombs, 158 N. Y. 532, 53 N. E. 527 (1899); State v. Donovan, 10 N. D. 203, 86 N. W. 709 (1901); State v. Farnum, 73 S. C. 165, 53 S. E. 83 (1905). *See* Wilson v. United States, 221 U. S. 361 (1911).

20. 1 STAT. 29 (1789).

21. 1 STAT. 199 (1791) (all distillers of spirits required to keep a record of spirits sold); 1 STAT. 397 (1794) (auctioneer required to keep record of sales made). See also the following statutes to the same effect: 1 STAT. 627 (1799); 3 STAT. 729 (1823); 5 STAT. 548 (1842); 12 STAT. 737 (1863); 13 STAT. 202 (1864); 14 STAT. 178 (1866); 14 STAT. 546 (1867); 18 STAT. 186 (1874).

22. *See* Boyd v. United States, 116 U. S. 616, 623, 624 (1886).

23. 12 STAT. 737 (1863).

24. United States v. Hughes, 26 Fed. Cas. 417, No. 15,417 (C. C. S. D. N. Y. 1875); In re Platt, 19 Fed. Cas. 815, No. 11,212 (S. D. N. Y. 1874); Stockwell v. United States, 23 Fed. Cas. 116, No. 13,466 (C. C.

Supreme Court in the case of *Boyd v. United States*,[25] its first decision on the subject, reversed the lower federal courts and distinguished between records required to be kept which are incorporated in the revenue act itself, and the submission of a person's private books and records for the sole purpose of gathering evidence in connection with the prosecution of the violators of these laws.[26] Only those statutes which required the submission of private books and records not required to be kept by law, for the purpose of securing evidence to be used against the accused, were held to be unconstitutional.[27] Thus the court impliedly upheld the validity of record-keeping provisions incorporated into statutes prior to 1863.

The rationale of the "required records" exception inherent in the *Boyd* case was clearly enunciated by way of dictum in *Wilson v. United States*.[28] In that case Mr. Justice Hughes said that the privilege does not apply "to records required by law to be kept in order that there may be suitable information of transactions which are the appropriate subjects

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D. Me. 1870) (Cases held statutes valid on ground that no greater objection can be taken to a warrant to search for books, invoices and other papers appertaining to an illegal importation than to one authorizing a search for the imported goods). United States v. Three Tons of Coal, 28 Fed. Cas. 149, No. 16,515 (E. D. Wis. 1875); In re Chadwick, 5 Fed. Cas. 401, No. 2,570 (D. Mass. 1870) (Cases held statutes valid on ground proceedings were civil and not criminal). United States v. Mason, 26 Fed. Cas. 1189, No. 15,735 (N. D. Ill. 1875); United States v. Distillery No. Twenty Eight, 25 Fed. Cas. 868, No. 14,966 (D. Ind. 1875) (Cases held statutes valid on ground proceedings were in rem and not in personam).

25. 116 U. S. 616 (1886).

26. Boyd v. United States, *supra* note 25 at 623, 624: After holding that books and records seized in an illegal search and seizure could not be used as evidence against the accused in violation of his rights under the Fifth Amendment the Court went on to say: ". . . the supervision authorized to be exercised by officers of the revenue over the manufacture or custody of excisable articles and the entries thereof in books required by law to be kept for their inspection are necessarily excepted out of the category of unreasonable searches and seizures. . . . Whereas, by the proceeding now under consideration, the court attempts to extort from the party his private books and papers to make him liable for a penalty or to forfeit his property."

27. In the Shapiro case the mere fact that the price administrator did not specifically name the records required to be kept is not a sufficient ground to take the case out of the records-required-by-law exception to the constitutional privilege. As long as the duty is created before the criminal act occurs the custodian of the record is not being obliged to incriminate himself. The type of statute held unconstitutional in the Boyd case, which directs the submission of private books and papers on order of the court requires that these documents be produced after the act is done. 8 WIGMORE, EVIDENCE § 2252, n.3 (3d ed. 1940); *See*, Davis v. United States, 328 U. S. 582, 590 (1946).

28. 221 U. S. 361 (1911).

of governmental regulation. . . ."[29] Subsequent cases have adopted this theory in their holdings.[30]

Although not clearly enunciated by the majority opinion in the *Shapiro* case, inherent in it is the theory that a correlation exists between the "required records" exception to the self-incrimination clause of the Fifth Amendment, and the validity of economic regulation under the due process clause of the Fourteenth Amendment. Both are dependent upon the interests of the public being superior to those of the individual.[31] As records are usually required to be kept only in conjunction with a regulatory statute,[32] the finding of sufficient public interest to sustain the validity of the regulation should thereby establish the basis for the exception to the Fifth Amendment.

Justice Frankfurter, dissenting in the *Shapiro* case, attempts to limit the scope of the "required records" doctrine by taking the position that the "required records" exception as set forth by Justice Hughes in the *Wilson* case should be limited to public records in the strict sense of the word, i.e., records kept by an activity historically considered

29. Wilson v. United States, *supra* note 28 at 380.

30. *E.g.*, Oklahoma Press Publishing Co. v. Walling, 327 U. S. 186 (1946); United States v. White, 322 U. S. 694 (1944); Essgee Co. v. United States, 262 U. S. 151 (1923); Wheeler v. United States, 226 U. S. 478 (1913); Interstate Commerce Commission v. Goodrich Transit Co., 224 U. S. 194 (1912); Amato v. Porter, 157 F.2d 719 (10th Cir. 1946); United States v. Jones, 72 F. Supp. 48 (D. Miss. 1947); Bowles v. Misle, 64 F. Supp. 835 (D. Neb. 1946).

31. As to compulsory production of books and records: "The amendment . . . cannot be applied to regulations which require reports and disclosures in respect to a business which is affected with a public interest so far as such disclosures may be reasonably necessary for the due protection of the public." Bartlett Frazier Co. v. Hyde, 65 F.2d 350, 351, 352 (7th Cir. 1933); In action by Civil Aeronautics Board plaintiff requested an inspection of defendant's private books to determine whether defendant was engaged in interstate commerce. The court held that "permitting the broad discovery herein is the element of public interest." Civil Aeronautics Board v. Canadian Colonial Airways, 41 F. Supp. 1006, 1009 (S. D. N. Y. 1940); See also Holcombe v. State, 240 Ala. 590, 200 So. 739 (1941); American Sumatra Tobacco Co. v. Security & Exchange Commission, 110 F.2d 117 (App. D. C. 1940).

As to due process: "When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created." Munn v. Illinois, 94 U. S. 113, 126 (1876); "The phrase 'affected with a public interest' can mean no more than that one industry, for adequate reason, is subject to control for the public good." Nebbia v. New York, 291 U. S. 502, 536 (1934); See also Olson v. Nebraska, 313 U. S. 236 (1941).

32. See notes 1 and 21 *supra*.

to be public.[33] In support of this position Justice Frankfurter analyzed the cases cited in the *Wilson* opinion supporting the "required records" exception, and showed that all the records involved in those cases would fit into his definition of public records.[34] From this he concluded that the exception to the Fifth Amendment set out in the *Wilson* dictum was necessarily confined to custodians of public records.[35]

What Justice Frankfurter fails to consider is that today statutory regulations extend far beyond loan companies and druggists, and include the farmer and the small fruit wholesaler.[36] Those cases upon which Justice Frankfurter relied necessarily were concerned only with the requirement of public records in the narrow sense, because they were decided when economic regulation was held to a minimum by a now out-moded interpretation of the due process clause.[37] Only statutes which regulated a small number of activities considered to be affected with great public interest survived due

33. Shapiro v. United States, 335 U. S. 1, 65 (1948).

34. Langdon v. People, 133 Ill. 382, 24 N. E. 874 (1890) (Seizure pursuant to search warrant of official state documents unlawfully in appellant's possession constituted reasonable search. Justice Frankfurter declared they were not private papers); State v. Smith, 74 Iowa 580, 38 N. W. 492 (1888) (Pharmicist has no privilege as to monthly reports of liquor sales that he had made to the county auditor pursuant to a statutory reporting requirement. Justice Frankfurter declared these reports in the auditor's office are open to the inspection of all and may be used in evidence in all cases between the parties. Shapiro's records were in his possession and not open for public inspection); State v. Davis, 108 Mo. 666, 18 S. W. 894 (1892) (Druggist has no privilege as to prescriptions he filled for sales of intoxicating liquor. Justice Frankfurter declared these constituted public records in the pure Wilson sense as the prescriptions belonged to the physicians and their patients and the druggist was merely their custodian). For other cases cited and comments by Justice Frankfurter see Shapiro v. United States, 335 U. S. 1, 61, 62 (1948).

35. Shapiro v. United States, *supra* note 34 at 62.

36. Daniel v. Family Security Life Insurance Co., 69 Sup. Ct. 550 (1949) (insurance companies recognized as a valid subject of regulation); Olson v. Nebraska, 313 U. S. 236 (1941) (employment agencies); Mulford v. Smith, 307 U. S. 38 (1939) (farmers); Geele v. State, 202 Ga. 381, 43 S. E.2d 254 (1947) (hotels); Fitzpatrick v. State, 316 Mich. 83, 25 N. W.2d 118 (1946) (bartenders).

37. Justice Frankfurter relied on the relationship of a particular business to the public interest in determining whether a record was a public record. "Different considerations control where the business of an enterprise is, as it were, the public's. . . . Here the subject matter of petitioner's business was not such as to render it public. Surely there is nothing inherently dangerous, immoral, or unhealthy about the sale of fruits and vegetables." Shapiro v. United States, 335 U. S. 1, 65 (1948).

process,[38] and presented the problem of self-incrimination in their enforcement. Today, in effect, all economic activities are considered to be affected with sufficient public interest to take them out from under the due process clause of the Fourteenth Amendment.[39] It is singular that it has never been held that records required by a statute for the purpose of facilitating its enforcement, were protected by the Fifth Amendment when the regulatory provisions of the statute were held valid under the due process clause.[40]

Subject to the limitations of due process,[41] it would seem that Justice Frankfurter is correct when he said that the majority makes the phrase " 'required to be kept by law' . . . a magic phrase by which the legislature opens the door to inroads upon the Fifth Amendment."[42] Clearly, the Congress should not be allowed to legislate away the Fifth Amendment. Equally undesirable, however, are limitations upon valid

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38. Statutes held constitutional under the due process clause: Olson v. Nebraska, 313 U. S. 236 (1941) (statute fixing maximum charges of employment agencies); Missouri Pacific Railway Co. v. Humes, 115 U. S. 512 (1885) (statute requiring the erection and maintenance of fences and cattle guards); Munn v. Illinois, 94 U. S. 313 (1876) (statute fixing maximum charges for the storage of grain in grain elevators).

Statutes held unconstitutional under the due process clause: New State Ice Co. v. Liebmann, 285 U. S. 262 (1932) (statute regulating the sale and distribution of ice); Williams v. Standard Oil Co., 278 U. S. 235 (1929) (statute fixing the selling price of gasoline); Tyson & Bro. v. Banton, 273 U. S. 418 (1927) (statute limiting the resale price of theater tickets).

39. "It is at least fair to say that in the past few years the Due Process Clause has ambled right out of the U. S. Reports, at least so far as economic legislation is concerned. . . ." Braden, *Umpire to the Federal System*, 10 U. OF CHI. L. REV. 27, 48 (1942); "The due process clause may be dead so far as it may be a device by which the Court will overturn legislation in the economic field." Comment, 26 TEX. L. REV. 47, 56 (1947); See also 24 IND. L. J. 451 (1949).

40. Neither the Boyd case nor any subsequent case ever held that records required by statute for the purpose of facilitating its enforcement were private records and thus subject to the constitutional privilege. They are "quasi-public records" for they are subject to inspection by those charged with the duty of enforcing the statute and they may be used for the purpose of enforcing the very statute that requires them to be made. See, Amato v. Porter, 157 F.2d 719, 721 (10th Cir. 1946); Bowles v. Imsel, 148 F.2d 91, 93 (3d Cir. 1945); Bowles v. Glick Bros. Lumber Co., 146 F.2d 566, 571 (9th Cir. 1945); Bowles v. Misle, 64 F. Supp. 835, 843 (D. Neb. 1946); Bowles v. Stitzinger, 59 F. Supp. 94, 96 (W. D. Penn. 1945); Bowles v. Kirk, 59 F. Supp. 97 (W. D. Penn. 1945); For a history of the doctrine of "quasi-public records" see Note, 47 COL. L. REV. 838 (1947).

41. See note 39 *supra*. Another limitation is that the records must be relevent to "any matter under investigation or in question." Goodyear Tire & Rubber Co. v. National Labor Relations Board, 122 F.2d 450, 453 (6th Cir. 1941).

42. Shapiro v. United States, 335 U. S. 1, 65 (1948).

legislative regulation through the application of the self-incrimination clause when the reasons behind that clause are not applicable.

Of late, much opposition has been expressed towards a tendency to over-extend the privilege by many courts. In many instances the primary purpose of the privilege, to protect the innocent from official oppression, has been overlooked.[43] Apparently in the *Shapiro* case a majority of the Supreme Court felt that the reasons behind the privilege were not strong enough to outweigh the interest in efficient regulation.[44] The courts should prevent a continued abuse of the privilege against self-incrimination by uniting to keep it "strictly within the limits dictated by historic fact, cool reasoning, and sound policy."[45]

TRADE MARKS AND TRADE NAMES

THE EXTENSION OF TRADE NAME PROTECTION TO NON-COMPETITIVE AREAS

Triangle Publications held a registered trade-mark "Seventeen" under which it published a fashion magazine appealing to teen-age girls. Shortly after this name was registered, Rohrlich and others began marketing girdles under the trade-name "Miss Seventeen." Triangle Publications sought to enjoin the use of the word "Seventeen" and asked for an accounting, alleging both statutory trade-mark infringement and unfair competition. The federal district court enjoined the use of the word "Seventeen" on the ground that such use constituted unfair competition and allowed an accounting. In so ruling, the court found that "Seventeen" had acquired secondary meaning through Triangle's advertis-

43. "In the past generation and especially in a few Courts, this practical difference of effect is plainly apparent; for, under the guise of reasoning and interpretation, the privilege has by them, in a spirit of implicit favor, been so extended in application beyond its previous limits as almost to be incredible, certainly to defy common sense." 8 WIGMORE, EVIDENCE § 2251 (3d ed. 1940); See also 7 BENTHAM, RATIONALE OF JUDICIAL EVIDENCE 452 (Bowring ed. 1843); STEPHEN, HISTORY OF THE CRIMINAL LAW 342, 441, 535, 542, 565 (1883); Wigmore, *Nemo Tenetur Seipsum Prodere*, 5 HARV. L. REV. 71, 86 (1891).

44. See, Davis, *The Administrative Power of Investigation*, 56 YALE L. J. 1111 (1947).

45. 8 WIGMORE, EVIDENCE § 2251 (3d ed. 1940).