



MEMORANDUM

March 20, 2014

To: House Committee on Oversight and Government Reform
Attention: [REDACTED]

From: [REDACTED] Legislative Attorney, [REDACTED]

Subject: Prosecutions for Contempt of Congress and the Fifth Amendment

This memorandum responds to your request for information about invocation of the Fifth Amendment privilege against self-incrimination in congressional hearings and contempt of Congress. Specifically, you asked for previous instances in which a witness before a congressional committee was voted in contempt of Congress and then prosecuted for refusing to answer the committee's questions or produce documents pursuant to a subpoena after invoking the Fifth Amendment privilege against self-incrimination. Additionally, you asked for information on whether any subsequent convictions for contempt of Congress under 2 U.S.C. §§ 192, 194 were upheld or overturned.

The table below provides the requested information based on searches of federal court cases in the LexisNexis database.¹ Although a number of search terms were used, it is possible that some relevant cases were missed. Additionally, other relevant cases may be unpublished, and therefore, not searchable in an available database. Cases involving witnesses who asserted other constitutional privileges, not including the Fifth Amendment privilege against self-incrimination, and were subsequently held in contempt of Congress are not included in the table. The cases are organized first by court authority (Supreme Court, followed by circuit courts and district courts) and then in chronological order.

¹ Several searches using different combinations of the following search terms were conducted: "2 U.S.C. 192," 192, committee, contempt, "contempt of Congress," "Fifth Amendment," subpoena, and subpena. Additionally, relevant cases appearing on the Shepard's report for 2 U.S.C § 192 were searched.

Table I. Published Cases of Prosecutions for Contempt of Congress Following a Fifth Amendment Privilege Assertion

Case	Court and Date	Congressional Committee	Was the Witness Convicted?	Disposition of Convictions	Case Excerpt
Quinn v. United States, 349 U.S. 155 (1955).	Supreme Court May 23, 1955	Comm. on Un-American Activities	Yes	Overtured	"...we must hold that petitioner's references to the Fifth Amendment were sufficient to invoke the privilege and that the court below erred in failing to direct a judgment of acquittal." <i>Quinn</i> , 349 U.S. at 165.
Emspak v. United States, 349 U.S. 190 (1955).	Supreme Court May 23, 1955	Comm. on Un-American Activities	Yes	Overtured	"...in the instant case, we do not think that petitioner's "No" answer can be treated as a waiver of his previous express claim under the Fifth Amendment." <i>Emspak</i> , 349 U.S. at 197.
Bart v. United States, 349 U.S. 219 (1955).	Supreme Court May 23, 1955	Comm. on Un-American Activities	Yes	Overtured	"Because of the consistent failure to advise the witness of the committee's position as to his objections, petitioner was left to speculate about the risk of possible prosecution for contempt; he was not given a clear choice between standing on his objection and compliance with a committee ruling. Because of this defect in laying the necessary foundation for a prosecution under § 192, petitioner's conviction cannot stand under the criteria set forth more fully in <i>Quinn v. United States</i> ..." <i>Bart</i> , 319 U.S. at 223.
McPhaul v. United States, 364 U.S. 372 (1960).	Supreme Court Nov. 14, 1960	Comm. on Un-American Activities	Yes	Upheld	"The Fifth Amendment did not excuse petitioner from producing the records of the Civil Rights Congress, for it is well settled that "books and records kept 'in a representative rather than in a personal capacity cannot be the subject of the personal privilege against self-incrimination, even though production of the papers might tend to incriminate [their keeper] personally.'" <i>McPhaul</i> , 364 U.S. at 380.

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Marcello v. United States, 196 F.2d 437 (1952).	Fifth Circuit April 22, 1952	Special Committee on Organized Crime in Interstate Commerce (The Kefauver Committee)	Yes	Overtured	“We are clear that there was no waiver by the appellant of the privilege against self-incrimination in this case. The judgment appealed from is reversed, and a judgment of acquittal here rendered.” <i>Marcello</i> , 196 F.2d at 445.
Jackins v. United States, 231 F.2d 405 (1956).	Ninth Circuit March 8, 1956	Comm. on Un-American Activities	Yes	Overtured	“Jackins’ claim of privilege must be sustained since in the setting here described ‘it was not ‘perfectly clear, from a careful consideration of all the circumstances in the case, that the witness (was) mistaken, and that the answer(s) cannot possibly have such tendency’ to incriminate.’... The judgment is reversed with directions to enter a judgment of acquittal upon all counts.” <i>Jackins</i> , 231 F.2d at 410.
Fagerhaugh v. United States, 232 F.2d 803 (1956).	Ninth Circuit April 24, 1956	Comm. on Un-American Activities	Yes	Overtured	“We believe that <i>Quinn v. United States</i> requires a reversal of this conviction as it appears that the Committee did not indicate its refusal to accept the claim of privilege against self-incrimination, and did not ‘demand’ that the witness answer the question... The judgment is reversed with directions to enter a judgment of acquittal.” <i>Fagerhaugh</i> , 232 F.2d at 805.
Shelton v. United States, 404 F.2d 1292 (1968).	D.C. Circuit August 14, 1968	Comm. on Un-American Activities	Yes	Upheld	“...the subpoena did not call upon Mr. Shelton to produce any personal papers, but only those of Klan organizations... The privilege accordingly was not available to him as a basis for refusing to produce.” <i>Shelton</i> , 404 F.2d at 1301.

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United States v. Jaffe, 98 F. Supp. 191 (1951).	District Court for the D.C. Circuit May 28, 1951	Senate Comm. on Foreign Relations	No	n/a	"...having claimed the privilege granted to him by the Fifth Amendment to the Constitution, he should not have been required to give such testimony, and, therefore, it is the judgment of the Court that, in refusing to do so, he is not guilty of contempt." <i>Jaffe</i> , 98 F. Supp. at 198.
United States v. Fischetti, 103 F. Supp. 796 (1952).	District Court for the D.C. Circuit March 11, 1952	Senate Special Comm. to Investigate Organized Crime in Interstate Commerce (The Kefauver Committee)	No	n/a	"...the Court is of the opinion that it is required to grant the defendant's motion for judgment of acquittal." Fischetti, 103 F. Supp. at 799.
United States v. Hoag, 142 F. Supp. 667 (1956).	District Court for the D.C. Circuit July 6, 1956	Senate Committee on Government Operations	No	n/a	"...I reach the conclusion that the defendant did not waive her privilege under the Fifth Amendment and therefore did not violate the statute in question in refusing to answer the questions propounded to her. Therefore, I find that she is entitled to a judgment of acquittal on all counts." <i>Hoag</i> , 142 F. Supp. at 673.

Source: Searches of LexisNexis database