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Constitutional Law -- Limits on Power of Congressional Investigation

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sports.[35] The hearings of the subcommittee have been completed, but as of this writing, no report has been published of its recommendations.

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Constitutional Law—Limits on Power of Congressional Investigation

In *Watkins v. United States*[1] the Supreme Court of the United States again considered the constitutional limits on the power of congressional investigation. In that case a labor union organizer was questioned by a subcommittee of the House Committee on Un-American Activities. The Committee's authorizing resolution[2] directed it to investigate "un-American propaganda activities." The witness was willing to and did divulge his past political activities and the activities of those whom he believed were still members of the communist party. However, while disclaiming the privilege against self-incrimination, he refused to tell whether he knew certain named persons (some of whom were not connected with labor) to have been members of the communist party, because he believed that they were not members at the time of the investigation. He was indicted and convicted for "contempt of Congress."[3] The Court of Appeals for the District of Columbia affirmed[4] the conviction and held that it was proper for the trial court to exclude evidence[5] offered by the defendant to prove that the Committee claimed a power of exposure independent of the legislative function and was interrogating him pursuant to this claimed power. The Supreme Court reversed the court of appeals on other grounds.[6]

In the trial court and in the court of appeals the defendant argued

[35] H.R. 6876, 6877, 8023, 8124, 85th Cong., 1st Sess. (1957). These four sports are baseball, football, basketball, and hockey.

[1] 354 U.S. 178 (1957).

[2] Act of Aug. 2, 1946, c. 753, 60 STAT. 812 (codified in scattered sections of 2, 5, 15, 31, 33, 34, 40, 44 U.S.C.).

[3] 52 STAT. 942 (1938), 2 U.S.C. § 192 (1952).

[4] 233 F.2d 681 (D.C. Cir. 1956).

[5] The trial court excluded statements from house committee reports, house committee hearings, the Congressional Record, and newspapers to the effect that the Committee asserted an independent power of exposure. Also excluded was evidence offered to prove that the Committee already had in its possession the information that it sought to acquire from defendant.

[6] There were two principal reasons for reversal. First, the vagueness of the Committee authorizing resolution inadequately safeguarded against the dissipation of constitutional freedoms because of the impossibility of: (1) weighing congressional need against private rights; (2) determining pertinency; (3) the Committee's limiting its questioning to statutory pertinency. Second, the vagueness of the authorizing resolution denied the witness notice of the subject of the investigation with the same degree of exactness required by the due process clause in the expression of any element of a criminal offense.

This latter reason raises a question of comparing investigating committee hearings with criminal trials for purposes of the due process requirement of certainty in criminal statutes. See 26 GEO. WASH. L. REV. 98 (1957); 106 U. PA. L. REV. 124 (1957).

that the exposure motive of the committee negated a valid legislative purpose for investigation. This theory has been argued in the lower federal courts with conflicting results, raising the questions of whether: (1) a congressional investigation may have exposure as its principal goal;[7] (2) a court has authority to scrutinize congressional or committee motives;[8] (3) a legitimate purpose is conclusively presumed when the subject of the investigation is one concerning which Congress may validly legislate;[9] (4) the validity of the legislative purpose can be determined by committee motives;[10] (5) a committee investigation is invalidated by an improper committee purpose.[11]

The *Watkins* case only partially answered these questions. In commenting on the exclusion of the evidence, the Court indicated that although there is no power in Congress to expose for exposure's sake, the purpose of Congress is not to be tested by examining committee motives. The Court then asserted that committee "motives alone would not vitiate an investigation which had been instituted by a House of Congress if that assembly's legislative purpose is being served."[12] The statement by its terms applies only when the legislative purpose is served. Thus it sheds little light on the problem of determining whether the Supreme Court will recognize improper committee motivation as being so gross that the legislative purpose is not being served. The historical development of limitations on the power of investigation may illuminate this problem.

More than three quarters of a century ago in *Kilbourn v. Thompson*[13] the Court pointed out that Congress does not "possess the general power of making inquiry into the private affairs of the citizen."[14] Thus if a witness is to be compelled to answer there must be a valid legisla-

[7] In United States v. Josephson, 165 F.2d 82, 89 (2d Cir. 1947), the court refused to decide "whether a congressional investigation may have exposure as its principal goal."

[8] In Eisler v. United States, 179 F.2d 273 (D.C. Cir. 1948), *cert. dismissed per curiam,* 338 U.S. 883 (1949), the court ruled that it had no authority to scrutinize congressional or committee motives.

[9] In Morford v. United States, 176 F.2d 54 (D.C. Cir. 1949), the court ruled that a legitimate purpose is presumed when the subject of investigation is one concerning which Congress can validly legislate. *Cf.* Barenblatt v. United States, 240 F.2d 875 (D.C. Cir. 1957), *rev'd per curiam,* 354 U.S. 930 (1957), where the court ruled that evidence of a committee exposure motive, which does not negate other legitimate purposes of inquiry, does not rebut the presumption that congressional investigations have valid legislative purposes.

[10] In United States v. Icardi, 140 F. Supp. 383 (D.C. Cir. 1956), the Committee called a witness for an improper purpose and the court held that the Committee was not pursuing a valid legislative purpose and directed a verdict of acquittal.

[11] See Watkins v. United States, 354 U.S. 178 (1957).

[12] *Id.* at 200.

[13] 103 U.S. 168 (1880).

[14] *Id.* at 190.

tive purpose,[15] and questions asked must be pertinent to the matter under inquiry.[16] When the investigation is by committee, the pertinency of questions is "determined by reference to the scope of the authority vested in the committee"[17] by its authorizing resolution. Also, the congressional need for the information sought must be weighed against rights secured to the witness by the first amendment.[18]

It seems logical that there would be no congressional need for an investigation if the principal goal of the committee were public exposure of the individual's political beliefs or past associations. Since Congress has no power to expose for exposure's sake, *this should be true* because Congress ought not to be able legally to conduct an investigation by committee which it could not legally conduct itself. Congress could have no legitimate need for information which it could not legally acquire. By this view, *Watkins* might have been decided on the ground that the evidence of improper committee motivation should have been admitted in order to give the defendant an opportunity to prove that he was convicted pursuant to an invalid investigation.

GASTON H. GAGE

Criminal Law—Offense of Driving Under the Influence of Intoxicating Liquor When Vehicle Is Motionless

In 1955, 1,165 persons met death by accident on North Carolina highways.[1] This placed North Carolina eighth in the nation in total highway accident deaths, and eleventh in deaths per vehicle-miles traveled[2]—figures which are representative of North Carolina's accident rate for recent years.[3] Of these 1,165 accidental deaths, approximately ten per cent may be attributed to the effects of alcohol.[4] These simple figures indicate the gravity of North Carolina's highway "alcohol-accident" problem and the pressing need for some effective corrective action. It will be the purpose of this Note to consider one area of the

[15] Sinclair v. United States, 279 U.S. 263 (1929); Barry v. United States *ex rel.* Cunningham, 279 U.S. 597 (1928); McGrain v. Daugherty, 273 U.S. 135 (1926); *In re* Chapman, 166 U.S. 661 (1896).

[16] McGrain v. Daugherty, 273 U.S. 135 (1926).

[17] Sinclair v. United States, 279 U.S. 263, 299 (1929); Barry v. United States *ex rel.* Cunningham, 279 U.S. 597, 613 (1928) (dictum).

[18] Bridges v. California, 314 U.S. 252 (1941); Thornhill v. Alabama, 310 U.S. 88 (1939); Cantwell v. Connecticut, 310 U.S. 296 (1939); Abrams v. United States, 250 U.S. 616 (1919); Shenck v. United States, 249 U.S. 47 (1918).

[1] NEW YORK HERALD TRIBUNE, THE WORLD ALMANAC 367 (1957).

[2] *Ibid.*

[3] *Id.*, 1945-55.

[4] The ingestion of enough alcohol to give a blood content of between 0.10 and 0.15 per cent alcohol (which is for most people five or six cocktails) multiplies the chances of a person's having an accident by three. If the blood content of alcohol goes above 0.15 per cent, a person's chances of having an accident are multiplied by ten. Traffic Review & Digest, Aug. 1954, p. 2.