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Constitutional Law -- Resolutions Authorizing State Legislative Investigations

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Constitutional Law—Resolutions Authorizing State Legislative Investigations

The power of a legislature to inform itself through investigation is a valuable tool in the legislative process. A legislative investigation has been described as neither bird, beast nor fish.

> Its proceedings are not judicial, for no issues are brought before it for decision. It is not a grand jury, for its object is not to indict. It is not legislative for its recommendations do not have the force of law until they have passed through regular legislative channels. Yet it has some of the characteristics of all three . . . .[1]

Perhaps this curious mixture of characteristics has made the legislative investigation susceptible to misuse. Despite periodic challenges, the courts have consistently upheld the basic authority of legislatures to conduct investigations.[2] When not properly conducted and controlled they can be a source of great danger to the personal liberties of all who come in their path.

Particularly threatened are the rights of speech and association guaranteed by the first and fourteenth amendments.[3] The danger may be *direct* by threat of compulsory exposure of one's associations and beliefs,[4] or it may be *indirect*—the fear that one might face compulsory disclosure in the future discourages and inhibits the exercise of first amendment rights.[5] This indirect threat is the so-called "chilling" effect on the free exercise of the constitutionally protected rights of free speech, expression, and association.[6]

The courts have been generally reluctant to interfere with the conduct of legislative investigations,[7] often relying on the doctrine of separation

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[1] State v. Superior Ct., 40 Wash. 2d 502, 508, 244 P.2d 668, 671 (1952).

[2] Sinclair v. United States, 279 U.S. 263 (1929); McGrain v. Daugherty, 273 U.S. 135 (1927); Anderson v. Dunn, 19 U.S. (6 Wheat.) 204 (1821); *Ex parte* Battelle, 207 Cal. 227, 277 P. 725 (1929).

[3] U.S. CONST. amends. I & XIV.

[4] Scull v. Virginia, 359 U.S. 344 (1959).

[5] Gibson v. Florida Leg. Invest. Comm'n, 372 U.S. 539 (1963).

[6] *Id.* at 556-57.

[7] Braden v. United States, 365 U.S. 431 (1961); Wilkinson v. United States, 365 U.S. 399 (1961); Barenblatt v. United States, 360 U.S. 109 (1959); Jordan v. Hutcheson, 323 F.2d 597 (4th Cir. 1963); Mins v. McCarthy, 209 F.2d 307 (D.C. Cir. 1953); Hearst v. Black, 87 F.2d 68 (D.C. Cir. 1936); Goldman v. Olson, 286 F. Supp. 35 (W.D. Wis. 1968); Fischler v. McCarthy, 117 F. Supp. 643 (S.D.N.Y. 1954); ASP, Inc. v. Capital Bank & Trust Co., 174 So. 2d 809 (La. Ct. App.), *cert. denied*, 247 La. 724, 174 So. 2d 133 (1965).

of powers as justification for abstention,[8] but they have recognized an obligation to protect the actual or threatened infringement of the rights of individuals.[9] As the concept of what is encompassed in the first amendment has broadened, the United States Supreme Court has articulated certain requirements which legislative investigations must meet in order to be constitutional.

First, there must be a lawful legislative purpose.[10] Usually the courts presume that any legislative investigation is for a valid legislative purpose and place the burden of showing otherwise on anyone who opposes the investigation.[11] Second, the exposure of private affairs is not permitted unless justified by a valid legislative purpose.[12] Third, there must be a nexus between the information sought and the valid legislative purpose;[13] the questions asked and the information sought must be pertinent to the subject under inquiry.[14] In short, to meet constitutional requirements the investigation must not be vague in purpose or overly broad in scope.

The Court has suggested three means by which vagueness and overbreadth may be avoided: (1) a resolution authorizing the investigation clearly defining the scope of the inquiry and the powers of the committee; (2) remarks made by the chairman or by committee members; and (3) the nature of the proceedings themselves.[15]

Early challenges to the fundamental authority of legislative bodies to investigate asserted that there was a difference between congressional investigations and those conducted by state legislatures.[16] There are

[8] Kilbourn v. Thompson, 103 U.S. 168 (1880); ASP, Inc. v. Capital Bank & Trust Co., 174 So. 2d 809, 816 (La. Ct. App.), *cert. denied*, 247 La. 724, 174 So. 2d 133 (1965).

[9] DeGregory v. Attorney Gen. of New Hampshire, 383 U.S. 825 (1966); Sweezy v. New Hampshire, 354 U.S. 234 (1957); and cases cited note 7 *supra*.

[10] Kilbourn v. Thompson, 103 U.S. 168 (1880).

[11] Scull v. Virginia, 359 U.S. 344 (1959); Watkins v. United States, 354 U.S. 178 (1957); McGrain v. Daugherty, 273 U.S. 135 (1927); *but see* Thomas v. Collins, 323 U.S. 516, 529-30 (1945), for an indication that under some circumstances the presumption will not be entertained when first amendment rights are threatened because of the preferred position these rights hold in the constitutional framework. *See also* Liveright v. Joint Comm., 279 F. Supp. 205 (M.D. Tenn. 1968), holding that no such presumption will be entertained when state legislative investigations are involved.

[12] Watkins v. United States, 354 U.S. 178, 198 (1957), *noted in* 36 N.C.L. REV. 320 (1958).

[13] Gibson v. Florida Leg. Invest. Comm'n, 372 U.S. 539, 543-46 (1963).

[14] Watkins v. United States, 354 U.S. 178, 206 (1957).

[15] *Id.* at 209.

[16] McGrain v. Daugherty, 273 U.S. 135 (1927). The appellee argued that prin-

numerous state court decisions in which it was assumed that there were no distinctions based on the United States Constitution,[17] and the Supreme Court has upheld this view.[18] It is suggested, however, that there are significant non-constitutional differences in legislative investigations on the two levels.

First, the principles of federalism and the preëmption doctrine make some fields of inquiry exclusively the province of Congress[19] and others exclusively that of the state legislatures.[20] Although these investigative powers may overlap, a legitimate legislative purpose for a state legislature may not be a legitimate one for Congress. For example, it is admitted that congressional committees have no direct authority over schools and colleges while such institutions are clearly proper subjects for state investigations.[21]

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ciples supporting the authority of state legislatures to investigate were inapplicable to the federal government. He contended that state legislatures possessed all legislative power not expressly or impliedly denied them by the state constitutions, while in contrast, Congress had only those legislative powers expressly granted to it. Therefore, as the power of investigation was not expressly granted, it must not have been conferred upon Congress. *Id.* at 147. On the other hand, appellant recognized a similar distinction existed within the states, *i.e.*, that some states had constitutions that granted all legislative power and only those powers specifically reserved were forbidden, while others had constitutions that reserved to the people all powers not expressly granted, but argued that such a distinction was not applicable to the powers of Congress under the United States Constitution. *Id.* at 141-42. Though the Court did not specifically discuss these contentions, it is apparent from its decision upholding the power of Congress to investigate and to compel the appearance of witnesses that it did not consider them to be significant. In those several states that view their constitutions as expressly granting legislative power, this distinction has been urged as grounds for rejecting the power of legislative investigation. There is no evidence that it has been accepted by any state court.

[17] *E.g.*, *Ex parte* Battelle, 207 Cal. 227, 277 P. 725 (1929); State v. Superior Ct., 40 Wash. 2d 502, 244 P.2d 668 (1952). *See* Schwartz, *Legislative Powers of Investigation*, 57 DICK. L. REV. 31, 43 (1952).

[18] Gibson v. Florida Leg. Invest. Comm'n, 372 U.S. 539, 544-45 (1963). *See generally* Bendich, *First Amendment Standards for Congressional Investigations*, 51 CALIF. L. REV. 311 (1963); McKay, *Congressional Investigations and the Supreme Court*, 51 CALIF. L. REV. 267 (1963); Moreland, *Congressional Investigations and Private Persons*, 40 S. CAL. L. REV. 189 (1967).

[19] *E.g.*, Pennsylvania v. Nelson, 350 U.S. 497 (1956), holding that federal anti-subversive legislation preëmpts the states from legislating in this area. *But see* Uphaus v. Wyman, 360 U.S. 72 (1959), which held that preëmption does not extend to state action against activities subversive to the *state*.

[20] "As Congress is without power to legislate upon subjects exclusively within the power of the states, it cannot investigate those subjects, except as they may affect matters within the scope of the powers granted to the federal government. . . ." Annot., 97 L. Ed. 782, 786 (1953).

[21] R. CUSHMAN, CIVIL LIBERTIES IN THE UNITED STATES 83 (1956). However, the authority of Congress may manifest itself in other ways. *Cf.* Slochower v. Board of Educ., 350 U.S. 551 (1956).

Second, there are obvious structural and procedural differences between the state and federal levels. Most congressional investigations are initiated and conducted within the framework of the existing permanent committee structure in the Congress. The duties and powers of these committees are defined by the organizational and procedural rules of Congress. Even though an investigation may be initiated by formal resolution of one or both houses, the general procedure seems to be for an investigation to be initiated by the particular committee or subcommittee responsible for the area to be investigated. Thus, the role of a resolution authorizing an investigation[22] is minimal in contrast to the actual conduct of the investigation. Once the authority of congressional committees to investigate had been clearly established, the controversy shifted to the conduct of the investigation itself, and challenges were based on the narrower grounds of personal immunity and defects in committee procedure.[23]

In contrast, the typical procedure in the initiation of a state investigation is for one or both houses of the legislature to pass an authorizing resolution or statute *creating* a committee to inquire into a particular subject.[24] Generally, this resolution sets forth the purpose of the investigation, designates committee membership—or alternatively who is to appoint the members—provides for subpoena power, for reports to the creating legislative body, and for the compensation, if any, of committee members. The scope of the powers of the investigating committee and the subjects that it may investigate are primarily determined by the creating act or resolution.[25] Thus, the resolution is a logical point of attack by those wishing to challenge the validity of a state legislative investigation. Historically these attacks have been based on procedural or state constitutional grounds and have often relied upon distinctions peculiar to the

[22] Such a resolution is to be contrasted with a resolution authorizing or creating a particular committee, which resolution may itself limit what the committee can investigate. Bowers v. United States, 202 F.2d 447 (D.C. Cir. 1953).

[23] Watkins v. United States, 354 U.S. 178, 195 (1957); Comment, *Congressional Investigations*, 45 ILL. L. REV. 633, 642 (1950).

[24] Some states, from time to time, have provided for standing investigating committees or commissions, perhaps the most notable being New Hampshire, which conferred upon the state attorney general the power to investigate subversive activities in the state. See Sweezy v. New Hampshire, 354 U.S. 234 (1957). Other legislatures have vested similar powers in a legislative council to conduct investigations into various subjects. *E.g.*, State v. Aronson, 132 Mont. 120, 314 P.2d 849 (1957); State v. Yelle, 29 Wash. 2d 68, 185 P.2d 723 (1947).

[25] 49 AM. JUR. *States, Territories and Dependencies* § 42 (1943).

particular state.[26] Recently attacks have centered on the constitutional vices of vagueness and overbreadth. Two recent cases[27] brought in federal district courts, seeking to have state legislative investigations enjoined, demonstrate the importance of resolutions authorizing state investigations.

A federal district court awarded injunctive relief in *Liveright v. Joint Committee of the General Assembly of the State of Tennessee.*[28] A resolution passed by the General Assembly of Tennessee reported that:

> the Highlander [Educational and] Research Center of Knox County, and persons and organizations affiliated therewith, may be involved in activities subversive to the government of our State, and it is in the interest of the State and the people that a committee of this General Assembly be constituted for the purpose of investigating such reports . . . .[29]

The Center, a non-profit corporation actively engaged in civil rights activities, sought through its principal directors and officers to have the investigation enjoined. The plaintiffs alleged that the vagueness and overbreadth of the resolution rendered it unconstitutional both on its face and in its application.[30]

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[26] Some state constitutions require a bill to be duly passed by both houses before it can have the force of law. In these states anything less than a statute will be insufficient to authorize an investigation. *E.g.*, Dickenson v. Johnson, 117 Ark. 582, 176 S.W. 116 (1915). Other states consider a concurrent resolution to be the equivalent of a bill and therefore it can be the source of a lawful investigation. Many of the early decisions conceded the right of one house of the legislature to investigate while the legislature was in session, but challenged the right of a committee authorized by one house (or, in some instances, both) to continue to operate after adjournment *sine die*. *E.g.*, State v. Fluent, 30 Wash. 194, 191 P.2d 241 (1948); *Ex parte* Caldwell, 61 W. Va. 49, 55 S.E. 910 (1906). Other miscellaneous challenges include: State v. Anderson, 180 Kan. 120, 299 P.2d 1078 (1956) (special session authorized to consider only budget matters cannot pass provision authorizing legislative investigation); Annenberg v. Roberts, 333 Pa. 203, 2 A.2d 612 (1938) (title of authorizing act alleged not sufficient as it provided for "study" and not for "investigation"); Gilbreath v. Willett, 148 Tenn. 92, 251 S.W. 910 (1923) (governor did not sign act creating investigating committee when his signature was required); *Ex parte* Wolters, 64 Tex. Crim. 238, 144 S.W. 531 (1911) (special session authorized to consider only budget matters cannot pass provision authorizing legislative investigation).

[27] Goldman v. Olson, 286 F. Supp. 35 (W.D. Wis. 1968); Liveright v. Joint Comm., 279 F. Supp. 205 (M.D. Tenn. 1968), *noted in* 1968 WIS. L. REV. 587.

[28] 279 F. Supp. 205 (M.D. Tenn. 1968).

[29] *Id.* at 219.

[30] *Id.* at 208. The plaintiffs also alleged the unconstitutionality of certain Tennessee statutes that conferred powers and authority upon legislative committees. The court rejected these allegations as insubstantial and frivolous. *Id.* at 211.

The events preceding passage of the resolution are germane to understanding the plaintiff's challenge. The Center is the successor to another organization, the Highlander Folk School, which was chartered in 1934 and was concerned with promoting the cause of organized labor. After World War II its emphasis shifted to racial problems. These civil rights activities brought the Folk School under the disapproving eye of the community, and in 1959 it was investigated by the General Assembly. Later it was raided by the police and arrests were made, but no convictions obtained. The Tennessee Supreme Court sustained the subsequent revocation of the School's charter on the grounds that the School sold liquor without a license and was operated for the profit of the president.[31] The Highlander Center was chartered in 1961 with virtually the same officers and staff as the defunct Folk School.

Plaintiffs introduced evidence of the Center's unpopularity in the community and of an earlier, unsuccessful resolution that directed law enforcement agencies "to use all legal means to cut this cancerous growth from our state."[32] The same resolution alleged that the Center was a haven for "Communists, extreme leftists, fellow travelers and those who advocate the violent overthrow of our government . . . ."[33]

In granting the injunction, the court acknowledged the general authority of the legislature to investigate, but it also noted the possible abuse of the investigative power in infringing upon first amendment freedoms. Plaintiffs had alleged that they were engaged in first amendment activities, that such activities had made them unpopular in the community, and that exposure of their beliefs and associations would result in a chilling effect on the exercise of these freedoms.[34]

The resolution, as the controlling charter of the committee's powers, was found to be vague and too broad on its face. The term "subversive" was so indefinite that it conferred a virtual license upon the committee to roam about in protected areas, and the resolution was not sufficiently specific to inform plaintiffs of the nature of the information sought by the legislature. The court thus found the plaintiffs doubly threatened with irreparable harm. First, the threat of later disclosure might dis-

[31] The state had also alleged that the School was being operated in violation of certain compulsory segregation statutes and that the School harbored lewd and immoral conduct. The state supreme court held the segregation statutes unconstitutional, but sustained the revocation on the grounds indicated. *Id.* at 208-09.

[32] *Id.* at 209.

[33] *Id.*

[34] *Id.* at 217.

courage them from speaking and associating freely. And second, should the investigation be allowed to proceed without a clearly defined legislalative purpose and the plaintiffs subsequently be called as witnesses, they would be faced with the unacceptable alternative of either complying fully and risking exposure, or of refusing and being cited for contempt. Once plaintiffs had been forced to choose either of the alternatives, judicial review would be ineffective to alleviate the harm. The evidence produced by the state tended to indicate that it was "ridding itself of an unpopular rather than a subversive interest."[35]

A federal district court in Wisconsin dealt with a similar situation in *Goldman v. Olson*.[36] The plaintiff Goldman was a student at the University of Wisconsin and president of the Madison chapter of Students for a Democratic Society (SDS). On October 18, 1967, as part of a demonstration protesting on-campus recruiting by the Dow Chemical Company, access to certain university buildings was blocked. The violence, hysteria and police action that followed was widely publicized. Two days later the Wisconsin State Senate passed a resolution declaring that members of the SDS and the W.E.B. DuBois Club appeared to be the leaders of the demonstration, and called for an investigation of "the riotious situation occurring on the campus during the week of October 16th . . . [including] . . . the possible involvement . . ." of the two organizations.[37]

Subsequently, the plaintiffs sought a declaration that the resolution was unconstitutional on its face as a violation of the first and fourteenth amendments, again by reason of vagueness and overbreadth, and that the resolution was unconstitutional as applied to plaintiffs by forcing them to disclose constitutionally protected beliefs and associations. They alleged that there was no legitimate legislative purpose in the investigation and sought appropriate injunctive relief.[38] Defendants were members of the committee that, prior to the institution of this action, had held a hearing in which Goldman was called. He had testified as to his personal activities in connection with the demonstration, but had refused to tell the committee about the activities of others.

The court recognized the general authority of legislative investigations and the appropriateness of the subject under investigation—the maintenance of order on the campus—and then cited two constitutional

[35] Note, 1968 WIS. L. REV. 587, 589.
[36] 286 F. Supp. 35 (W.D. Wis. 1968).
[37] *Id.* at 38.
[38] *Id.* at 37-38.

limitations upon state legislative investigations: (1) the concept of due process in the fourteenth amendment that requires the subject matter of a particular inquiry to be defined with sufficient explicitness and clarity to provide a reasonable basis for a witness to decide if a particular question put to him is pertinent; and (2) the first amendment concept that prohibits any invasion of freedom of speech, opinion or association unless justified by a showing of a substantial nexus between the information sought and some overriding, compelling state interest.[39]

Although finding the resolution "peripherally vague," the court chose to examine the resolution, not as it was written, but as it was applied, or threatened to be applied.[40] It was clear the primary purpose of the investigation had been understood by Goldman in the hearing already conducted, and the inquiry had not ranged beyond permissible limits. In spite of the failure of the committee to ensure that any future questions would be similarly limited, the court did not allow the due process challenge.

In examining the first amendment limitation the court found that no connection between the primary subject (the demonstration) and the secondary subject (the identity of members of the SDS and the DuBois Club) had been shown. However, the court recognized that the legislature must have some leeway and that often investigations must "proceed step by step"[41] in order to show the nexus. As yet, permissible bounds had not been exceeded.

The three-judge court[42] refused declaratory and injunctive relief,[43] but appeared to warn the committee as to its future conduct by stating that to date no nexus between the primary and secondary subjects had been shown and no compelling state interest had been demonstrated to justify the invasion of first amendent freedoms.[44]

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[39] *Id.* at 43.

[40] *Id.* at 49.

[41] Barenblatt v. United States, 360 U.S. 109, 130 (1959).

[42] The two resolutions offer an instructive contrast as to what constitutes a "state statute" within the meaning of 28 U.S.C. § 2281 (1964), and the two cases contain excellent discussions of when a three-judge federal court will be required. *See generally* Currie, *The Three-Judge Court in Constitutional Litigation*, 32 U. CHI. L. REV. 1 (1964); Note, *Federal Jurisdiction—Three-Judge Court—Meaning of "State Statute,"* 30 N.C.L. REV. 423 (1952); Note, 1968 WIS. L. REV. 587.

[43] 286 F. Supp. at 47-49. One reason given was the traditional reluctance of courts to interfere with legislative investigations. However, the court noted a recent abatement in this reluctance (citing Jordan v. Hutcheson, 323 F.2d 597 (4th Cir. 1963) and *Liveright*) but did not choose to join the trend.

[44] 286 F. Supp. at 47.

If properly drafted, an authorizing resolution or statute should contain a clear and concise statement of the purpose of the investigation, the scope of the inquiry and the extent of the powers conferred upon the committee.[45] The resolution reflects the will of the legislature as a whole and not merely the chairman's personal interpretation of that will. As a written document, it is available to potential witnesses before hearings commence. The other means suggested for avoiding vagueness and overbreadth—the remarks of the chairman or committee members and the nature of the proceedings—may come too late to aid a prospective witness.

As one commentator has pointed out, certain procedural objections—lack of a quorum, the clarity of a particular question, the particular subject matter under inquiry, sufficient foundation to show nexus between primary and secondary subject—can often be met by effective committee administration and operation.[46] However, once a broad, vague resolution is passed, its constitutional defects are not easily remedied.

The decision in *Liveright* may be taken to indicate that there is no remedy short of declaring the resolution unconstitutional. To the district court in Tennessee the constitutional vice was the *existence* of a resolution authorizing an unbridled investigation and the consequent inhibitions imposed on the exercise of first amendment rights. In *Goldman* the court chose to interpret the resolution as applied and not as written. By overlooking its "peripheral vagueness" and by finding no unconstitutional application to date, the court in effect ignored any indirect threat of "chilling." Further, it found that the actual proceedings, as yet, posed no direct threat.

It could be argued that, in spite of contrary holdings, the two decisions will have the same practical effect. In *Liveright* the court protected first amendment rights by enjoining the investigation. In *Goldman* the court precluded any actual infringement of such rights by limiting future inquiry until a nexus between the demonstration and the two organizations

[45] In order to abridge first amendment freedoms the state must show a valid and legitimate interest that outweighs or overbalances those of the individual. The courts may turn to the authorizing resolution to determine the existence and extent of any state interest in an investigation. If the resolution is unclear, even though not to the point of being unconstitutionally vague, it may fail to show the legitimate state interest. In the balancing process the investigation will thus fall to superior first amendment rights. See Sweezy v. New Hampshire, 354 U.S. 234 (1957), where an authorization for a standing investigation was found not to show a legitimate state interest.

[46] McKay, *Congressional Investigations and the Supreme Court*, 51 CALIF. L. REV. 267, 290 (1963).

had been shown, and by indicating an injunction would issue if first amendment rights were invaded without a showing of sufficient state interest. To explain away the differences in the cases in this manner, however, would be a mistake, for such a disposition fails to recognize that the decisions represent two distinct judicial viewpoints on legislative investigations.

The view taken by the *Goldman* court is the older and currently prevailing one. Traditionally courts have abstained from interfering with legislative investigations.[47] They have emphasized that the legislature must be allowed leeway in exercising its powers, that investigations must be allowed to proceed step by step, and that a legitimate legislative purpose will be presumed. The general effect of this philosophy has been to deny injunctive relief.

On the other hand, the granting of the injunction in *Liveright* perhaps indicates a more modern approach.[48] This view is based on the concept of enlarged first amendment rights, which the courts have a duty to protect. It emphasizes that legitimate legislative purpose will not be presumed when first amendment rights are threatened. A threat may only be indirect, but the courts may still respond by enjoining the investigation itself.

One additional explanation is offered to explain the different results in the two cases. The object of investigation in *Liveright* was a private organization operating under a lawful charter. The subject in *Goldman* was the maintenance of order at a state supported and operated institution. The legitimacy of investigations of state agencies and institutions has long been recognized.[49] Neither court specifically stated the existence of

[47] See notes 7 & 8 *supra*. The argument has been advanced that the courts have abstained in order to avoid unnecessary constitutional decisions. Normally a federal court will not rule on the constitutionality of a state statute until a state court has interpreted it. The state court may interpret the statute in such a way that a constitutional decision is not required. "However, in the free speech area, vagueness, the very ambiguity which [normally] justifies abstention, is the unconstitutional vice that is the object of the complaint." Note, 1968 WIS. L. REV. 587, 591. Thus any reason for abstention on the grounds of avoidance vanishes with the realization that such abstention will not protect first amendments rights against the vagueness of the resolution or statute. *See* Dombrowski v. Pfister, 380 U.S. 479 (1965), where abstention was held to be improper on the grounds that the very threat of prosecution under vague provisions inhibits the free exercise of first amendment rights.

[48] *Compare* Barenblatt v. United States, 360 U.S. 109 (1959), *with* Watkins v. United States, 354 U.S. 178 (1957). *See also* Gibson v. Florida Leg. Inves. Comm'n, 372 U.S. 539, 576 (1963) (dissenting opinion).

[49] *E.g.*, Dickenson v. Johnson, 117 Ark. 582, 176 S.W. 116 (1915).

a public-private distinction,[50] but it is possible that a stronger showing of legitimate legislative purpose will be required, and a stricter test of the authorizing resolution applied, when the subject of the investigation is private, rather than public, in character.

Judicial reluctance to enjoin legislative investigations will likely remain the rule. Nevertheless, the recent exceptions can be considered to be healthy, for they will encourage courts to grant injunctive relief in those situations where it is appropriate. Possibly *Goldman* presented just such an opportunity. The exercise of first amendment rights is fundamental to academic freedom and the educational process. The mere existence of a vague and overbroad resolution is likely to discourage the exercise of these rights. Such an inhibition strikes at the very heart of the academic community.[51] In light of the special danger of great harm, the injunction sought in *Goldman* would seem to have been appropriate relief. If the legislature required further information, an investigation could still be authorized by a carefully drafted resolution that clearly articulated the scope and purpose of the investigation and the powers of the committee.

The cases illustrate that high standards of precision and clarity are required of authorizing resolutions because of the constitutional dangers posed by legislative investigations. Unfortunately, many investigations are instigated in the heat of emotion rather than in the light of purposeful legislative reasoning. Perhaps the heightened possibility that vague and overbroad resolutions may be enjoined will encourage careful and precise legislative draftsmanship.

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Contracts—Interpretation of Contracts When There Are No Terms As to Duration

When a contract, otherwise definite and binding, contains no terms as to its duration, many attorneys would surmise that the contract would be

[50] The distinction is recognized in R. CUSHMAN, CIVIL LIBERTIES IN THE UNITED STATES 71-72 (1956).

[51] Sweezy v. New Hampshire, 354 U.S. 234 (1957).

> The essentiality of freedom in the community of American universities is almost self-evident. . . . No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. . . . Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.

Id. at 250.