Florida Law Review

Volume 6 | Issue 1 Article 4

March 1953

Congressional Investigations: Judicial Limitations on Their Power

Paris G. Singer

CASE COMMENTS

CONGRESSIONAL INVESTIGATIONS: JUDICIAL LIMITATIONS ON THEIR POWER

United States v. Kleinman, 107 F. Supp. 407 (D.D.C. 1952)

Defendants were indicted for contempt of Congress for refusing to answer questions posed by the Senate Crime Committee.[1] Their refusal was not based upon the privilege against self-incrimination[2] but on the general ground that their "constitutional rights" were being violated by the use of television, newsreel cameras, and other apparatus. HELD, the defendants were not guilty of contempt; their refusal to answer was justified, since the truth as a necessary objective of the hearings could not be elicited in such surroundings. In so holding, the court stated that no constitutional question was involved.

It is well settled that Congress has the power of investigation as a necessary adjunct of its general legislative powers.[3] The boundaries of this investigative power have not been explicitly defined but it includes (1) the fact finding function necessary for informed legislation,[4] (2) supervision of the adequacy and administration of legislation,[5] and (3) possibly the power to inform the public.[6] Some critics of extensive Congressional inquisitorial powers have suggested that Congress has, in an indirect and circuitous manner, usurped prosecutorial powers in its attempts to aid in the prosecution or punishment of criminals, when it clearly has no such power.[7]

---

[1]Special Committee to Investigate Organized Crime in Interstate Commerce, SEN. RES. 202, 81st Cong., 2nd Sess. (1950).

[2]U.S. CONST. Amend. V.

[3]Kilbourn v. Thompson, 103 U.S. 168 (1880); Anderson v. Dunn, 6 Wheat. 204 (U.S. 1821).

[4]See note 3 *supra.*

[5]United States v. Norris, 300 U.S. 564 (1937).

[6]U.S. CONST. Art. I, §5, cl. 3; *see* Electric Bond and Share Co. v. Securities Exchange Commission, 303 U.S. 419, 437 (1938); Railroad Labor Board v. Robertson, 3 F.2d 488, 494 (N.D. Ill. 1925).

[7]See Loew's, Inc. v. Cole, 185 F.2d 641 (9th Cir. 1950), *cert. denied,* 340 U.S. 954 (1951) (employee's action against employer for dismissal resulting from alleged degradation of employer by refusal of employee to testify before the Un-American Activities Committee); Gelhorn, *Report on a Report of the House Committee on Un-American Activities,* 60 HARV. L. REV. 1193 (1947); Stamps, *The Power of Congress to Inquire and Punish for Contempt,* 4 BAYLOR L. REV. 29 (1951).

The power of Congress to investigate is implemented by its contempt powers, when acting as the forum itself[8] or through the judiciary by statute[9] or both.[10] Congressional contempt powers against obstructions, even past ones,[11] are limited to imprisonment of the offender for the term of the session, and it can levy no fines.[12] Most of the recent contempt cases have been prosecuted through the judiciary to obviate the necessity of action by the entire chamber and to be able, indirectly, to subject the defendant to fines and determinate sentences. Both courses of action have led to much litigation because of the necessarily delicate balancing of private against public interests.

The constitutional safeguards against infringment of free speech,[13] protection from unreasonable searches and seizures,[14] and the right to refuse to bear witness against oneself[15] are the only constitutional rights which have heretofore been invoked by witnesses while testifying before Congressional committees. Of these, only the right against self-incrimination has been particularly successful.[16] Vague limits of pertinency have been imposed on unreasonable searches and seizures,[17] and the protection of free speech can only be invoked when there is no "potential" danger of a threat to national welfare.[18] Safeguards

[8]McGrain v. Daugherty, 273 U.S. 135 (1927); *In re* Chapman, 166 U.S. 661 (1897).

[9]REV. STAT. §102 (1875), as amended, 52 STAT. 942 (1938), 2 U.S.C. §192 (1946). See SEN. RES. 119, 82d Cong., 1st Sess. (1951), which cited defendants in the instant case to the judiciary for prosecution.

[10]Jurney v. McCracken, 294 U.S. 125 (1935); *In re* Chapman, 166 U.S. 661 (1897).

[11]Jurney v. McCracken, 294 U.S. 125 (1935).

[12]Marshall v. Gordon, 243 U.S. 521 (1917). In Kilbourn v. Thompson, 103 U.S. 168 (1880), the Court said that Congress is not exerting a judicial power when committing persons for contempt. If it had not so held, the commitment would not have been subject to collateral attack and therefore not subject to judicial review.

[13]U.S. CONST. Amend. I.

[14]U.S. CONST. Amend. IV.

[15]U.S. CONST. Amend. V.

[16]United States v. Costello, 198 F.2d 200 (2d Cir. 1952); Marcello v. United States, 196 F.2d 437 (5th Cir. 1952); United States v. Di Carlo, 102 F. Supp. 597 (N.D. Ohio 1952); United States v. Emspak, 95 F. Supp. 1012 (D.D.C. 1951); United States v. Yukio Abe, 95 F. Supp. 991 (D. Hawaii 1950).

[17]Oklahoma Press Publishing Co. v. Walling, 327 U.S. 186 (1946).

[18]Lawson v. United States, 176 F.2d 49 (D.C. Cir. 1949), *cert. denied*, 339 U.S. 994 (1950); Barsky v. United States, 167 F.2d 241 (D.C. Cir. 1947), *cert. denied*, 334 U.S. 843 (1948); for a review of recent developments in the law of free speech see Kittleson and Smith, *Free Speech (1949-1952): Slogans v. States' Rights*, 5 U. OF FLA. L. REV. 227 (1952).

against undue Congressional inquisitorial powers which have been invoked under "procedural due process"[19] have been strictly limited by recent decisions.

Procedural safeguards which have been invoked are: (1) the empowering resolution is invalid if too broad in scope; (2) the questions asked must be pertinent to the inquiry; (3) "wilfulness" in the contempt-of-Congress statute contemplates a criminal intent; and (4) an investigating committee is not legally constituted unless a quorum is present.

The empowering resolution must have a definite legislative purpose,[20] though it need not be expressly stated.[21] Since Congress has the power to determine (1) its authority to legislate in a given area, (2) the existence of a need for legislation, and (3) the desirable action, if any,[22] there can be little help in a plea that the empowering resolution is unconstitutional because too broad in scope.[23] The questions asked of the witnesses must be pertinent to the subject under inquiry.[24] The pertinency of the question is a matter of law, and a mistake of law is not available to the accused as a defense.[25] The empowering resolution defines the limits of the investigation and hence the relevancy of the interrogation. "Wilfulness" in the contempt-of-Congress statute has been defined as any voluntary action not the result of an accident or a mistake of fact[26] but not necessarily done with a criminal intent.[27] A quorum was at one time a requirement to make an investigating committee a competent tribunal for prose-

---

[19]U.S. CONST. Amend. V.

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

[21]McGrain v. Daugherty, 273 U.S. 135 (1927); Barsky v. United States, *supra* note 18; United States v. Josephson, 165 F.2d 82 (2d Cir. 1947), *cert. denied*, 333 U.S. 838 (1948). *But cf.* Rumely v. United States, 197 F.2d 166 (D.C. Cir. 1952), *cert. granted*, 73 Sup. Ct. 16 (1952).

[22]Oklahoma Press Publishing Co. v. Walling, 327 U.S. 186 (1946); Barry v. United States, 279 U.S. 597 (1929).

[23]Lawson v. United States, 176 F.2d 49 (D.C. Cir. 1949), *cert. denied*, 339 U.S. 934 (1950).

[24]McGrain v. Daugherty, 273 U.S. 135 (1927); Marshall v. United States, 176 F.2d 473 (D.C. Cir. 1949).

[25]Sinclair v. United States, 279 U.S. 263 (1929); Townsend v. United States, 95 F.2d 352 (D.C. Cir. 1938).

[26]Fields v. United States, 164 F.2d 97 (D.C. Cir. 1947). *But cf.* United States v. Kamp, 102 F. Supp. 757 (D.D.C. 1952).

[27]Barsky v. United States, 167 F.2d 241 (D.C. Cir. 1947), *cert. denied*, 334 U.S. 843 (1948).

cution for perjury;[28] but the Senate, under its powers to prescribe its own rules of procedure,[29] has resolved that one member constitutes a quorum under specified conditions.[30] Thus it can be seen that procedural safeguards are practically unavailable.[31]

The court in the instant case has deliberately side-stepped any constitutional questions. The opinion reasons that the objective of any investigation is to ascertain the true facts and that the atmosphere of the forum did not lend itself to this purpose;[32] the witnesses were therefore justified in refusing to testify. Perhaps the court desired to stay out of any controversy as to the power of the judiciary to limit the power of the legislature; yet this case may create a new and desirable limitation on what is regarded by many as the excessive zeal of the Congress.

The problem is one of balancing the rights of the individual, when such rights become clothed with the public interest, against the powers of the Government under the surveillance of the perhaps ethereal power[33] of the courts to control Congress in its legislative investi-

---

[28]Christoffell v. United States, 338 U.S. 84 (1949).

[29]U.S. CONST., Art. I, §5, cl. 2.

[30]SEN. RES. 180, 96 Cong. Rec. 1284 (1950); see also United States v. Bryan, 72 F. Supp. 58 (D.D.C. 1947), *aff'd. sub nom.* Barsky v. United States, 167 F.2d 141 (D.C. Cir. 1947), *cert. denied,* 334 U.S. 843 (1948).

[31]See Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123 (1951). Three of the six concurring opinions indicated that injury to one's reputation or business by unreasonable and arbitrary executive defamation would be a deprivation of property without due process of law.

[32]Here the court could have analogized the instant case to a criminal trial and said that it is a duty of the court (Senate Crime Committee) to see that the trial results in the finding and pronouncement of the truth, Pfaff v. United States, 85 F.2d 309 (7th Cir. 1936). Technically, no analogy exists and, if the court had so attempted to analogize, innumerable constitutional and policy questions would have arisen. *Compare* United States v. Moran, 194 F.2d 623, 627 (2d Cir. 1952) where, in speaking of a televised Congressional hearing, the court said, ". . . nor was the hearing so lacking in decorum . . . that it can not be regarded as a 'competent tribunal,'" *with* Final Report of the Special Committee to Investigate Organized Crime in Interstate Commerce (Senate Crime Committee), *Sen. Rep.* 725, 82d Cong., 1st Sess., 99-100 (1951), stating that television is not well suited to eliciting the truth.

[33]In United States v. Ballin, 144 U.S. 1 (1892), the Court held that Congress' methods of procedure should bear a reasonable relation to the result which is sought. That this rule has not been expanded as a means of control over Congress is perhaps indicative of the Court's desire not to clash headlong with an equal but separate branch of the Government. *See* United States v. Di Carlo, 102 F. Supp.

gations.[34] Congress should not be unnecessarily hampered in its search for facts, but neither should it forget its responsibility as a guardian of individual liberties.[35]

This decision points a way to limit abuses of Congress' investigatory power without unduly hindering it by technical procedural devices. If a hearing is solely for fact gathering purposes no harm may result if it is televised. If criminal prosecutions appear to be a by-product of the hearing, however, it would behoove Congress to recognize its responsibility,[36] forbid the televising of such hearings, protect our criminal procedural safeguards, and foster our burgeoning right to privacy.[37]

PARIS G. SINGER

CONSTITUTIONAL LAW: FREEDOM OF ATTENTION ON COMMON CARRIERS

Public Utilities Commission of the District of Columbia v. Pollak, 343 U.S. 451 (1952)

In response to protests concerning the use of radios in vehicles operated by Capital Transit Company, the Public Utilities Commission of the District of Columbia found after investigation that the transit radio programs were "not inconsistent with public convenience, comfort and safety."[1] Pollak and others, as persons "affected,"[2] appealed to the district court from the commission's final order on

---

597, 602 (N.D. Ohio 1952) (power of inquiry must be exercised with due regard for the rights of witnesses).

[34]U.S. CONST. Art. I, §1; Art. II, §1; Art. III, §1.

[35]Missouri, K. & T. Ry. v. May, 194 U.S. 267, 270 (1904).

[36]Congress' power of investigation and the manner of its use ". . . will largely determine the position and prestige of the Congress in the future." President (then Senator) Truman, when retiring from the "Truman" Committee, 90 CONG. REC. 6747 (1944).

[37]Warren and Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890).

[1]*Re* Capital Transit Co., 81 P.U.R. (N.S.) 122, 126 (1949).

[2]Seeking review pursuant to 49 STAT. 882-885 (1935), D.C. CODE §§43-705 to 43-710 (1940).