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Constitutional Limitations on the Legislative Power of Investigations

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NOTES AND COMMENTS

CONSTITUTIONAL LIMITATIONS ON THE LEGISLATIVE POWER OF INVESTIGATIONS

Two recent decisions of great importance, *Watkins v. United States*,[1] and *Sweezy v. New Hampshire*,[2] are judicial attempts at answering the question: What are the rights and privileges of a witness before a legislative investigating committee? Involved in this question are difficult problems of determining the proper limits of the power of inquiry, of establishing the minimum requirements that must be met by investigative bodies in order to satisfy demands of fair play and adequate notice. Solutions to these problems must be met within an area of conflicting interests: on the one hand the desire to expand and preserve individual action and expression, while at the same time a need for the free flow of all important information to our legislatures, to allow them to function properly and to keep informed. The decisions recognize the problems, and attempt to reconcile the conflict by finding a middle ground where questions of interpretation and definition can be viewed and discussed, and extreme approaches avoided. An adequate recognition of the problems involved does not always produce the most desirable result. Whether the Supreme Court in the *Watkins* decision has been able to speak clearly at a time when clear speech is a necessity will be the subject matter of this discussion.

THE HISTORY OF LEGISLATIVE INQUIRY

For almost one hundred years following the adoption of the Constitution, the institution of legislative inquiry "flourished virtually free from judicial supervision or control."[3] Legislative inquiry as an institution has roots as old and deep as most legislative institutions, and its growth and development within the United States traced to its source, the English Parliament.[4] In *Anderson v. Dunn*,[5] an early decision in this country, legislative inquiry was recognized as an institution not readily susceptible to judicial review or control. The decision also left its impression in the growth of the contempt power, by a recognition of an inherent power of Congress to punish for contempt.

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1. 77 Sup. Ct. 1173 (1957).
2. 77 Sup. Ct. 1203 (1957).
3. Fields v. United States, 164 F.2d 97, 99 (App. D.C. 1947). For the most complete scholarly discussion of the early historical background of legislative inquiries, see Landis, *Constitutional Limitations on the Congressional Power of Investigation*, 40 HARV. L. REV. 153 (1926). Also, Potts, *Power of Legislative Bodies to Punish for Contempt*, 74 U. OF PA. L. REV. 691 (1926).
4. Morgan, *Kilbourn v. Thompson Revisited*, 37 CAL. L. REV. 556 (1948).
5. 6 Wheat. 204 (U. S. 1821). The power of state legislatures to investigate and to punish contempts was upheld at an early date in *Briggs v. MacKellar*, 2 Abb. Pr. 30 (N.Y. 1855).

The Constitution,[6] confers upon each House of Congress power to punish contempt committed by its own members. It does not mention any power to punish non-members for contempt. Nevertheless, action was taken against non-members, thus indicating that Congress found a power to punish by implication. The *Anderson* decision, involving a trespass, and *Ex Parte Nugent*,[7] an assault, were early statements by the Supreme Court that Congress did possess, not only the power to punish for contempt, but also the ability to serve as a fact-finding body. The early traditional power of contempt was exercised by bringing the witness or offender to the bar of the House and there trying him. If he was found guilty, the offended House ordered the Sergeant-at-Arms to imprison the offender for the duration of the session. It can be seen that the severity of the sanctions exercised was limited in time, and in space, since the witness could not be held in contempt longer than the session which was in progress at the time his contempt occurred. Thus, this traditional method had its limitations, and a better method had to be devised by which Congress would initiate the contempt proceedings, and leave the imposition of a fine or imprisonment to an executive official, acting under judicial supervision.

In 1857, the procedure for handling certain of these charges was altered, when Congress provided by statute[8] that on the refusal of a witness to testify, his refusal was to be interpreted as an offense against the House or Senate, which would certify the fact of contempt to the District Attorney for the District of Columbia, who would then prosecute the witness for a misdemeanor. The enactment of 1857 was upheld,[9] in an inquiry which investigated charges of corruption among certain senators, and more recent proceedings under the present statutory provisions have been the rule,[10] and punishment before the bar the exception. With the early development of the power to punish contempt, came the growth of the power to investigate. Early decisions had dealt with a study of the historical sources of the investigative power, but none attempted to place any limits upon this power, nor to determine whether this power might not in some way conflict with any constitutional doctrine.

It was not until 1881, in *Kilbourn v. Thompson*,[11] that the Supreme Court undertook to pass upon the validity of a judgment of the House of Representatives, adjudicating a witness to be in contempt of the authority of the House. The decision involved a legislative inquiry into the operations of a so-called real estate pool, and the amount of indebtedness arising from the failure of Jay Cook & Co., a well-known banking house. One Kilbourn refused to answer

6. U.S. CONST., art. I, §5.
7. 18 Fed. Cas. 483, No. 10377 (1838).
8. REV. STAT. §102 (1875), as amended, 2 U.S.C. §192 (1952).
9. In re Chapman, 166 U.S. 661 (1895).
10. See note 8, *supra*.
11. 103 U.S. 168 (1881).

questions propounded by the committee and was ordered arrested by the House to answer for contempt. Kilbourn raised the issue of the House's power to investigate under broad resolutions, and to punish for contempt. The decision of the Supreme Court imposed a constitutional limitation which involved the separation of powers, suggesting that such powers of investigation were to be regulated by the judiciary, while at the same time admitting a special power to punish for contempt. The Court assumed the authority to examine the legal basis of the committee's powers and its proceeding, and looked to a connection between the information sought, and one of the powers expressly conferred upon Congress, or for purposes of legislation. If the information sought was within one of the powers expressly conferred upon Congress, the authorizing resolution would not be challenged, and a proper legislative purpose found to exist.

The decision was thought to have set back legislative investigations, and its actual and limited effect was not known until the oil scandal investigations in the nineteen twenties. It was in the famous cases of *McGrain v. Daugherty*,[12] and *Sinclair v. United States*,[13] that the Supreme Court qualified earlier intimations that the powers to investigate and initiate contempt proceedings were to be carefully scrutinized. The corruption in the handling of the oil leases had aroused public agitation, and as a result congressional investigations were begun. The skill and success of these committees in scourging official corruption, coupled with strong scholarly comment in support of full legislative investigative powers, brought a change in view by the Supreme Court. This change was limited to investigations which revealed misconduct in high public offices, and was not meant to be expanded to such investigations which were concerned with testimony of individuals given in times of national and international tension. But, the public revealed a climate of opinion more receptive to a more wide-open use of committee investigations, and the view which supported the most liberal use of the powers of search and subpoena dominated the thinking of both the Congress and the courts.[14] None of the decisions rendered by any court came to grips with the problems of the reach of the committee power of investigations, what due process requirements had to be met by these committees, and just what conduct an individual had to avoid in order to escape punishment for contempt.

Although the power to investigate is essentially a very broad one, it is difficult to determine how broad the powers should be. It is clear that a valid legislative purpose is required,[15] that inquiry into the private affairs of an individual, unrelated to a legislative purpose, is limited,[16] as is the ability to extend

12. 273 U.S. 135 (1926).
13. 279 U.S. 263 (1927).
14. See statements of Mr. Justice Van Devanter in *McGrain v. Daugherty*, 273 U.S. 135 (1926).
15. Quinn v. United States, 349 U.S. 155 (1955).
16. *Ibid.*

investigations into areas involving free speech, and other substantive freedoms. All would agree that the rights and privileges of witnesses must be accorded some protection, and the language of the contempt statute, squarely met if a conviction is to be obtained under its use. Here the questions of pertinency, scope of inquiry, question under inquiry, all present difficult problems, not only of definition, but of enforcement as well. Since each resolution which authorizes a committee to investigate a certain area of interest is different, the questions arising under the statute will not be completely solved, but the resolution will be accepted or rejected on its own merits, although subjected to the same tests, forced to meet the same high standards. The same will be true of each question that is asked a witness, and each question that is refused by a witness which may be the basis of a contempt proceeding. All the conflicting positions, the perplexing questions of statutory interpretation, and application were present in the decision rendered by the Supreme Court in *Watkins v. United States.*[17]

THE WATKINS DECISION

One John T. Watkins, a labor union officer, complied with a subpoena, and appeared before the House Committee on Un-American Activities,[18] apparently investigating Communist infiltration into labor unions. Watkins admitted his participation in Communist activities, but denied ever being a party member. He agreed to answer questions about himself, and about persons who were still party members, but refused to answer questions about persons who were former members, but who to his best knowledge were no longer connected with any Communist group or supported any of their recommendations. The latter questions, he contended, were not relevant to the work of the Committee, and therefore an answer could not be compelled from him. The chairman thereupon informed him of the purpose of the hearings, the resolution authorizing the Committee to function, as well as the ability of the Committee to inquire about persons who had been members of the Communist Party. Upon further refusal to answer, the House instituted contempt proceedings, and on the basis of his refusal to answer, he was convicted under 2 U.S.C. §192.

The opinion of the Supreme Court, reversing and remanding, was delivered by the Chief Justice. He traced the legislative history of the investigative powers, noting that there had developed, since World War II, a new kind of legislative investigation, involving what was termed a broad intrusion into the affairs of private individuals. Pre-war cases had defined the scope of the powers in terms of the limitations of the sources of that power, whereas in later cases the emphasis shifted to problems of accommodating the interests of the government with the

17. See note 1, *supra.*
18. See brief for the United States, p. 17, *Watkins v. United States,* 77 Sup. Ct. 1173 (1957).

rights of the individual. In applying the Bill of Rights as a restraint upon congressional investigations, the Court based its decision squarely upon the Due Process clause of the Fifth Amendment. The Chief Justice declared that a question under inquiry had not been made clear to the witness with the same degree of clarity and precision that is required of any element of a criminal offense, that before a conviction under section 192 would be sustained, not only must the question under inquiry be made clear, but also the pertinency, or relation of the question asked to the matter under inquiry, be revealed with "undisputable clarity." Watkins had not been informed of the question under inquiry, either in the statements of the chairman at the time the questions were asked, nor when the Committee convened, nor when he was ordered to answer the questions. Since the witness could not reasonably know what conduct he was to avoid, his conviction was not in accord with the due process requirements of the Fifth Amendment.

Mr. Justice Clark wrote a vigorous dissent, incorporating many of the "stock" arguments of the proponents of untrammeled use of the investigative powers, arguing that the majority opinion was a "mischievous curbing" of congressional investigations. He took the position that the Committee was acting entirely within its resolution, that the question under inquiry, communist infiltration of labor, was made very clear to the witness, and the questions asked were all pertinent to this question, declaring finally that the present case did not involve the holding in either the *Kilbourne* decision, nor the holding in *United States v. Rumely*,[19] where a statute was strictly construed and the activity of the witness found not to be subject to investigation nor to a contempt conviction on his refusal to testify.

The Effect of the Decision Upon the Contempt Statute

Generally, the scope of any particular congressional committee's authority to investigate is determined by the legislative body which created the committee.[20] It may be as broad as the legislative purpose requires,[21] but cannot extend or exceed the authority granted the committee by Congress.[22] Congress has been held to possess the power to legislate and inquire in regard to Communism and the Communist Party.[23] In establishing the House Committee on Un-American Activities,[24] the House of Representatives authorized it to make investigations of un-American propaganda activities, the diffusion within this country of subversive propaganda. Prior to the *Watkins* decision, it was found adequate if the Senate

19. 345 U.S. 41 (1953).
20. United States v. Lamont, 18 F.R.D. 27 (S.D.N.Y. 1955).
21. Marcello v. United States, 196 F.2d 437 (5th Cir. 1952).
22. See note 20, *supra*.
23. Barsky v. United States, 167 F.2d 241 (D.C. Cir.), *cert. denied* 334 U.S. 843 (1948).
24. 60 STAT. 828 (1946).

or House resolution spoke with some meaning,[25] and was found sufficient in itself to show pertinency under 2 U.S.C. §192. The existence of the resolution in the *Watkins* case is not challenged, that is, the ability of the House to establish separate investigations under the authorizing resolution. But it now appears that, were the Committee to base a conviction upon a mere reference to the enabling resolution alone, a due process violation would result, since an enabling resolution, being a very broadly worded document, is vague, indefinite, and loose.[26] There is nothing new in this position, if the distinction between the authorizing resolution and the question under inquiry be kept clear, when a Subcommittee, acting under a narrow grant of power, operates in a selected area, which is *within* the broader area of the authorizing resolution.

It is agreed that the jurisdiction of a committee as defined by resolution reveals the area into which the committee is empowered to inquire.[27] Under section 192, a person will be in contempt if he refuses to answer any question pertinent to a question under inquiry.[28] That is clear. What is not so clear is the meaning of the phrase, "question under inquiry." Since the authorizing resolution is too broad and subject to attack if it is used as the basis for a conviction, the term must mean something less, something narrower than the scope of inquiry. If we give the term a natural meaning, and construe it narrowly, which must be done when a criminal statute is attacked,[29] then the phrase takes on some meaning and importance. Also, it is doubly important to find a clear meaning for the phrase, since under the statute, pertinency cannot be discovered unless it can be shown that the answer is connected to a valid question under inquiry. Without first determining the question under inquiry, there would be presented the strange task of finding the connection for a question to a subject we do not know exists, and then to declare that the question is pertinent because we now find that a subject of inquiry *does* exist! The term, question under inquiry, must therefore refer to a narrow, particular matter, which lies within the area of permissible inquiry. An example would be the following: Within the resolution of the House Committee on Un-American Activities, a sub-committee could validly be authorized to investigate the depth, scope, and effect of communist infiltration, either by subversion or through party infiltration, in the Ford Motor plants in the

25. See note 23, *supra*.
26. 77 Sup. Ct. at 1190.
27. Barry v. United States ex rel. Cunningham, 279 U.S. 597 (1929); Sinclair v. United States, 279 U.S. 263 (1927); In re Chapman, 166 U.S. 661 (1895).
28. 2 U.S.C. §192 provides:
> Every person who having been summoned . . . to give testimony . . . upon any matter under inquiry before . . . any committee of either House of Congress . . . refuses to answer any question pertinent to the question under inquiry, shall be guilty of a misdemeanor.

29. It is generally agreed that criminal statutes should be narrowly construed. See, *United States v. Resnick*, 299 U.S. 207, 210 (1936). Also they should be given their plain and natural meaning. For a comprehensive discussion of the Plain Meaning Rule, see LENHOFF, COMMENTS, CASES, AND MATERIALS ON LEGISLATION 557 (1949).

Detroit area. This very narrow range must be made undisputably clear to the witness by every source available, and is mainly done in the statements of the chairman at the beginning of the committee hearing, and at any time that a witness balks at answering a question. The witness should not be made to "guess" at the question under inquiry. Again, if we use the conduct of the chairman as an important means of informing the witness of an *already-existing* question, it is evident that he cannot fulfill his function by merely parroting and paraphrasing the authorizing resolution.[30] He, the chairman, must be advised by the Committee itself, acting within its authorized reach, and must be careful that at all times, he is sure the witness knows what the committee hearing is all about. How does the *Watkins* decision shed light upon this problem of determining the "question under inquiry?"

The majority opinion goes to some length in determining what is *not* sufficient, either standing alone, or taken as a whole, unless more clearly stated, and then used only as guides in determining the narrow ground of present inquiry. Yet, why were not the statements of the chairman sufficient to inform Watkins what was under investigation by the Sub-Committee? Briefly stated, the chairman told Watkins that the Sub-Committee was interested in acquiring information for legislation, so as to provide that the Subversive Activities Control Board would be ". . . empowered to find if certain labor organizations are in fact Communist-controlled . . . such labor groups would not have available the use of the National Labor Relations Board."[31] The chairman elaborated on the number of cities in which investigations were held in regard to the communist threat to our labor organizations, and stated that the Sub-Committee questioning Watkins was continuing the work of the other committee. Perhaps these statements should have been amplified, refined, and repeated for the benefit of the witness, but it seems unrealistic to say that Watkins was completely in the dark at the time the questions he refused to answer were asked. He seemed fully aware of the question under inquiry when he gladly answered questions concerning *his* affairs in the labor movement. The Court left much to be desired in its treatment of the question under inquiry.

THE PROBLEM OF PERTINENCY

Since pertinency is an essential element of the crime charged, the government must prove that the question which the witness refused to answer was in some real way connected to the investigation,[32] and this connective reasoning must be pointed out to the witness by the Committee. The petitioner, Watkins, in effect

30. 77 Sup. Ct. at 1190.
31. 77 sup. Ct. at 1191. (The Court's footnote 49 is a full statement of the introductory remarks made by the chairman of the House Sub-Committee on Un-American Activities).
32. Bowers v. United States, 202 F.2d 447 (D.C. Cir. 1953).

said that the Sub-Committee could not show him how the question whether certain people he knew were still communists or not, could be helpful in framing new legislation, or in some essential way connected to the question of infiltration into labor groups. Assuming there is present a "question under inquiry," it is clear that the task of the committee is not over. Each question asked of the witness must relate to that question under inquiry, and that this showing of pertinency must be revealed by the chairman whenever a question is challenged. The findings of the committee are of course subject to judicial review.[33]

Pertinency means pertinent to a subject properly under inquiry, and not merely pertinent to the person under interrogation;[34] a subject related to a legislative purpose which Congress could constitutionally entertain.[35] Prior to the *Watkins* decision, reported cases in which courts have held questions asked to be not pertinent, are meagre,[36] involving a committee or sub-committee with relatively narrow jurisdiction. No case has actually arisen embodying the problem whether a question asked could be found to be within the jurisdiction of the committee, and yet not pertinent to the question under inquiry, when both were in issue.[37]

Since pertinency is an element of the crime to be proved under section 192, each question must therefore have an importance of its own in relation to the question under inquiry. Pertinency is not shown because the question is connected to another question asked, or because, defining the question under inquiry as broadly as possible, *some* connection will exist, between the question and the problem before the committee. Also, pertinency should not be shown by pointing out to the witness that the question under inquiry has been made clear. The *Watkins* decision imposes a strong burden upon the committee, although not an overwhelming burden. It must make it very clear why the committee wants the information that the particular question asked seeks to uncover. The committee did not make it clear to Watkins why the names of past members could in some positive way enable the House to create new legislation. But the Court does not tell us why the names of the past members still active were pertinent information, and past members not so. Present activity does of course have more weight and bearing on immediate legislation, and the success of Watkins in not answering may have been based upon the idea that such old information had little value to the committee interested in future legislation.

33. United States v. Sacher, 139 F. Supp. 855 (D.C. D.C. 1956).
34. United States v. Kamin, 135 F. Supp 382 (D.C. Mass. 1955).
35. United States v. Orman, 207 F.2d 148 (3d Cir. 1953).
36. See notes 32, 34, *supra.*
37. Early decisions confused the question under inquiry with a question within the authorizing resolution. See, *Morford v. United States,* 176 F.2d 49 (D.C. Cir. 1949). For a good discussion of this problem area, see 12 N.Y.U. INTRAMURAL LAW REVIEW 157 (March 1957).

CONTEMPT PROCEEDING AT THE BAR OF THE HOUSE

The early historical use of the contempt proceedings brought before the bar of the House revealed its limitations, but the method was never totally discarded, even after Section 192 was created. This traditional method of punishing for contempt was practiced until well into the nineteen twenties,[38] with section 192 the customary means of punishing recalcitrant witnesses. Had the House punished Watkins by use of the old contempt procedure, it could be argued that the strict statutory provisions of section 192 need not be met, and that the act of Watkins could be treated as a violation of the dignity of the House.[39] Argument would be made that Watkins had interfered with the orderly conduct of congressional business, by an act comparable to an assault upon a House member,[40] or attempted bribery of a member,[41] or refusal to reveal the cause of a successful rebellion. For more recent precedent involving the use of the traditional contempt power in a factual situation analogous to the *Watkins* case, the decision of *McGrain v. Daugherty*,[42] would be brought forth to support such use of the contempt power, insofar as conduct was compelled of a written or oral nature.

An investigation of the *McGrain* decision supports a contrary finding, in that the requirements of section 192, or those as strict and definite, would have to be met in order to sustain a conviction. One Harry Daugherty, who had been Attorney General during the Harding Administration, was charged with certain acts of misfeasance, and these charges were brought to the attention of the Senate. A resolution was adopted authorizing and directing a select committee of five senators to investigate facts concerning the alleged failure of the Attorney General to prosecute violators of the Sherman Anti-Trust Act, as well as his failure to arrest Albert Fall and Harry Sinclair, persons charged with defrauding the government in certain oil leases granted them, and the committee was further directed to investigate Daugherty's activities and discover if they in any way impaired his efficiency as a representative of the government. A subpoena was served upon the brother of Harry Daugherty commanding him to appear before the committee. He failed to appear, and upon a further issuances of a new subpoena, he aagain refused to appear. The committee made a report to the Senate reciting the facts above, and upon the remarks of the committee, the Senate adopted the following resolution:

> Whereas the appearance and testimony of the said M. S. Daugherty is material and essential in order that the committee may properly execute the functions imposed upon it . . . Resolved That the President

38. *McGrain v. Daugherty*, 273 U.S. 135 (1926) is a good example.
39. Anderson v. Dunn, 6 Wheat. 204 (U.S. 1821).
40. See notes, 21, *supra*.
41. *Ibid.*
42. See note 38, *supra*.

> of the Senate pro tempore issue his warrant commanding the Sergeant-at-Arms to take into custody the body of said M. S. Daugherty . . . wherever found and bring (him) . . . *before the bar of the Senate then and there to answer such questions pertinent to the matter under inquiry.*[43] (Emphasis added).

The phrase "questions pertinent to the matter under inquiry" was repeated in the body of the warrant. Upon a habeas corpus proceeding, Daugherty challenged the power of the Senate. That he was unsuccessful is not important for the purposes of this discussion, but rather the wording of the resolution and warrant, and the subsequent statement of the Supreme Court that, in cases involving the answers to questions or the production of documents, the questions of pertinency and matter (question) under inquiry must be met. Not only must a committee be authorized to act pursuant to a valid legislative resolution, and for a legitimate legislative purpose, but it also must narrow its area of inquiry whenever it seeks particular information, and ask only relevant questions having a real connection to the matter under inquiry. If such a test must be met, it does not appear that the standards for proceeding under traditional contempt methods are any less strict than those imposed by section 192, and that even if a distinction could be drawn between "question under inquiry" and "matter under inquiry," the problem of meeting the test of pertinency would remain; perhaps the hardest test of the two to meet. It is conceivable that the present Supreme Court would interpret "matter under inquiry" to give it the strictness of the term "question under inquiry." Punishment by the traditional method of a proceeding before the bar is no less a deprivation of procedural due process, than a conviction under section 192 without meeting the letter of the statute. Anything less than adequate notice of what the committee is investigating, and why the questions asked are important to that investigation, would not be in accordance with fundamental concepts of fair play and notice.

CONCLUSION—DOES THE WATKINS DECISION SEVERELY LIMIT THE POWER OF CONGRESS TO INVESTIGATE?

Decisions of great magnitude are always subject to the vices of misstatement and misapplication. The Watkins decision is an important statement concerning the rights of individuals before legislative investigative bodies, and the broad language used by the Chief Justice is susceptible to the vices stated above whenever one attempts to find the scope of its possible application. Its application to the power of Congress to investigate is of fundamental importance, and any restraints the decision imposes upon that power should be gingerly applied.

Watkins v. United States[44] does not cripple the investigative power of

43. 273 U.S. at 153.
44. See note 1, *supra*.

Congress. In his concluding statements, the Chief Justice tempers any earlier declarations made during the decision which might lead to the conclusion that Congress has been stripped clean to the bone. He declares:

> We are mindful of the complexities of modern government and the ample scope that must be left to the Congress as the sole constitutional dispository of legislative power. Equally mindful are we of the *indispensable* power of congressional investigations. The conclusions we have reached in this case will not prevent the Congress from obtaining any information it needs for the proper fulfillment of its role.[45]

The important service done by the Supreme Court has been to make the committee hearings provide the same standards of fair procedure that the Court has compelled the government to meet whenever it enforces federal statutes. The questions under inquiry and the pertinency of any questions asked, must be made "undisputably clear" to the witness. This standard is a greater burden than has ever been placed upon any congressional body, but it is greater only in comparison with the bare degree of information that earlier had to be given a witness when he refused to answer any questions.[46] The Court has merely asked that a committee do a much better job of presenting all relevant matter to the witness which would aid him in understanding the work being done by the committee and the importance of his answers to this work. Vague statements of the committee's role or purpose will be condemned, and any contempt conviction reversed if based upon the barest statements made to a witness. It is not too much to ask of Congress that it conduct its investigations, and exercise its powers of contempt and compulsory process with a respect for the procedural safeguards found within the Due Process Clause of the Fifth Amendment.

The term, procedural due process, has no fixed, constant definition, even when the phrase is used to describe federally-created rights under the Fifth Amendment. The term may at one time expand the rights and privileges of individuals, but at another time be defined so as to prevent coverage in a particular situation. The term gains meaning not only by the friction created between the authority of the state and the rights of the individual, but also from the differing views and attitudes of the individuals who comprise our society. At periods of national tension, that group or class which desires a limitation to be placed uppon the definition of due process will prevail, and the individual forced to act within a narrower area of protection. It is the time, place, and circumstances, which will define due process, and thus give the term its constantly changing area of application.

In the *Watkins* decision, the Supreme Court adds a new facet which it hopes

45. 77 Sup. Ct. at 1193.

46. The resolution standing alone was found sufficient in *Barsky v. United States*, 167 F.2d (D.C. Cir.), *cert. denied* 334 U.S. 843 (1948).

will aid Congress in carrying out its legitimate legislative function. The Bill of Rights covers legislative investigations, just as it applies to prosecutions where questions of coerced confessions, unreasonable searches and seizures, and self-incrimination are involved.[47] Standards of fair practices and procedure as they apply to legislative investigative bodies call for adequate notice to be given a witness of the matter under inquiry, and a careful explanation of the connection between all questions asked and the question under investigation. Thus, required conduct will be clearly separated from conduct which is outside the permissible reach of the committee, and a witness will not be heard to say that he did not receive warning. Congress must mend its ways[48] in order to bring its standard of conduct within that scheme of well-ordered liberty[49] which is the Due Process Clause. The approach of the Supreme Court is not new, nor radical. It is in keeping with its traditional role whenever the rights of the State conflict with the rights and privileges of its citizens, and a delicate task of accommodation must be performed. The Supreme Court has made this accommodation in the *Watkins* decision at the expense of the State, and in favor of the citizens, but has at the same time preserved for the State, acting through its legislature, its proper legitimate function when performed with the procedures required by due process considerations.

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47. McNabb v. United States, 318 U.S. 332 (1943) (delay in arraignment); Boyd v. United States, 116 U.S. 616 (1886) (unreasonable search and seizure); Emspak v. United States, 349 U.S. 190 (1955) (self-incrimination).

48. Peters, *The Supreme Court and the Spirit of 1957*, 7 BUFFALO L. REV. 44 (1957).

49. Palko v. Conn., 302 U.S. 319 (1937).