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Constitutional Law - Due Process -Watkins v. United States as a Limitation on Power of Congressional Investigating Committees

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CONSTITUTIONAL LAW—DUE PROCESS—WATKINS V. UNITED STATES AS A LIMITATION ON POWER OF CONGRESSIONAL INVESTIGATING COMMITTEES—In order that Congress may effectively exercise its legislative function it must have information upon which to act. Thus, although the Constitution does not expressly grant an investigative power, by necessary implication Congress has the authority to gather information through its various committees.[1] There was little occasion in the past to question the limits of this implied power. Congressional committees, until recently, rarely attempted to exceed a purely information-seeking

1 McGrain v. Daugherty, 273 U.S. 135 (1927).

function.[2] This self-restraint, combined with a reluctance on the part of the courts to find that an investigation had been conducted for an improper purpose, left the scope of the investigative power practically unfettered by judicial decree.[3] The past decade, however, has witnessed a decided change in the activities of some congressional committees. No longer limiting themselves to the traditional information-gathering role, some committees have assumed the function of an information-*giving* agency, with their primary objective often being to expose "subversive" or "undesirable" persons before the court of public opinion.[4] With the advent of this enlarged sphere of activity, congressional witnesses have sought to invoke various constitutional limitations and guarantees in an effort to avoid damaging committee inquiries. In at least one respect these efforts have secured a measure of success. The privilege against self-incrimination has been consistently recognized by the Supreme Court as being applicable to congressional investigations and has been utilized to the legal maximum by numerous witnesses.[5] Although a number of attempts have been made to invoke other constitutional guarantees or to assert a general lack of authority in a particular committee, until *Watkins v. United States*[6] such efforts were uniformly unsuccessful.[7]

In the *Watkins* case a labor official was convicted of contempt of Congress for refusing before the Un-American Activities Committee to identify certain persons alleged to have been formerly members of the Communist Party.[8] The witness did not rely on

2 Landis, "Constitutional Limitations on the Congressional Power of Investigation," 40 HARV. L. REV. 153 (1926); Smelser, "Legislative Investigations: Safeguards for Witnesses; The Problem in Historical Perspective," 29 NOTRE DAME LAWYER 163 (1954).

3 In Kilbourn v. Thompson, 103 U.S. 168 at 190 (1881), the Supreme Court took the position that there is a general "right of privacy" which shelters a witness from the inquiries of congressional committees. In McGrain v. Daugherty, 273 U.S. 135 at 171 (1927), however, the Court narrowed the right to cases in which Congress did not have a legitimate legislative purpose for conducting the investigation into private affairs. See also Sinclair v. United States, 279 U.S. 263 at 294 (1926). This limitation has not provided a meaningful check on the investigating power since the courts have been willing to presume the existence of a proper legislative purpose. McGrain v. Daugherty, supra this note, at 177-178. See also United States v. Orman, (3d Cir. 1947) 207 F. (2d) 148.

4 See Rogers, "Congressional Investigations: The Problem and Its Solution," 18 UNIV. CHI. L. REV. 464 at 468 (1951).

5 See Quinn v. United States, 349 U.S. 155 (1955); Emspak v. United States, 349 U.S. 190 (1955).

6 354 U.S. 178 (1957).

7 See United States v. Josephson, (2d Cir. 1947) 165 F. (2d) 82, cert. den. 333 U.S. 838 (1948); Lawson v. United States, (D.C. Cir. 1949) 176 F. (2d) 49, cert. den. 339 U.S. 934 (1950).

8 Watkins v. United States, (D.C. Cir. 1956) 233 F. (2d) 681, noted in 42 VA. L. REV. 675 (1956), 9 VAND. L. REV. 872 (1956).

the right against self-incrimination, but challenged generally the authority of the committee to make such interrogations.[9] On certiorari, the Supreme Court reversed the conviction. In so doing, for the first time in modern history, the Court looked beyond self-incrimination principles to subject the congressional investigatory power to other significant constitutional limitations. It is the purpose of this comment to examine the nature and extent of the restraints imposed by the *Watkins* case as well as the potential problems raised by the decision.

I. *Due Process of Law: A Fundamental Limitation*

Federal penal statutes which contain vague or ambiguous language are void under the due process clause of the Fifth Amendment.[10] The Contempt of Congress Statute[11] provides that a witness shall be guilty of a misdemeanor if he refuses to answer before a congressional committee any question "pertinent to the question under inquiry." A clear definition of the "question under inquiry" is obviously essential if a witness is to determine whether or not a given interrogatory is "pertinent." It therefore follows that the nature and extent of the "question under inquiry" must be made explicit if a conviction under the congressional contempt legislation is to satisfy the definiteness requirements of due process. This defense of vagueness had been urged on several prior occasions but was generally unsuccessful.[12] The *Watkins* case accepts

9 Petitioner made the following statement: "I am not going to plead the fifth amendment, but I refuse to answer certain questions that I believe are outside the proper scope of your committee's activities. I will answer any questions which this committee puts to me about myself. I will also answer questions about those persons whom I knew to be members of the Communist Party and whom I believe still are. I will not, however, answer any questions with respect to others with whom I associated in the past. . . ." Principal case at 185.

10 E.g., United States v. Cohen Grocery Co., 255 U.S. 81 (1921); Connally v. General Construction Co., 269 U.S. 385 (1926).

11 52 Stat. 942 (1938), 2 U.S.C. (1952) §192.

12 In Barsky v. United States, (D.C. Cir. 1948) 167 F. (2d) 241 at 247, cert. den. 334 U.S. 843 (1948), the court declared the Resolution of the Un-American Activities Committee to be sufficiently definite. The Court said: "It is said that the Resolution is too vague to be valid. Perhaps the one phrase 'un-American propaganda activities,' taken alone as it appears in subclause (i) of the Resolution, would be subject to that condemnation. But the clause . . . 'subversive and un-American propaganda that *** attacks the principle of the form of government as guaranteed by our Constitution,' which is subclause (ii), is definite enough. It conveys a clear meaning, and that is all that is required." See also Lawson v. United States, (D.C. Cir. 1949) 176 F. (2d) 49, cert. den. 339 U.S. 934 (1950). In United States v. Josephson, (2d Cir. 1947) 165 F. (2d) 82 at 87, cert. den. 333 U.S. 838 (1948), the court held that a witness who refused to answer any questions, and was therefore not put to the decision as to the probability

this due process rationale and holds that, on the facts before the Court, the requirements of definiteness were not satisfied.

Although the majority opinion seems clearly correct in its statement and application of the law, the conclusion reached by the Court and, in some instances, the language it employs, pose several interesting questions. On policy grounds alone it may be urged that the due process requirement of definiteness should not be imposed on the authorizing resolutions of congressional investigating committees. There is certainly some merit in the view that Congress must be allowed to delegate broad authority to its committees if the committee system is to retain any effectiveness. The primary objective of the investigative process being to determine the need for new legislation, committees must have broad discretion with which to function.[13] If Congress is required narrowly to confine the scope of its committees' authority, the net result might well be the necessity of establishing ad hoc committees for each investigation to be conducted.[14] This could impose an undue burden on the Congress and seriously impair the effectiveness of any particular investigation.[15]

The majority opinion indicates that clarification of the "question under inquiry" may be achieved from at least three sources: the committee's authorizing resolution, the remarks of the chairman or members of the committee, and the nature of the immediate proceedings.[16] The majority seems to assume that the "question under inquiry" may be some topic of investigation more narrow in scope than the committee's overall authority,[17] and that clear

of criminal liability for a refusal to answer, could not challenge the vague language of the authorizing statute on due process grounds. One court has held that the vagueness principle applies only to penal legislation and is, therefore, not applicable to the congressional contempt legislation. United States v. Bryan, (D.C. D.C. 1947) 72 F. Supp. 58, revd. on other grounds (D.C. Cir. 1949) 174 F. (2d) 525, revd. 339 U.S. 323 (1950). This view seems clearly erroneous in light of the fact that a witness may be fined and jailed for a refusal to answer. No other court has taken this position.

13 See note, "The Power of Congress To Investigate and To Compel Testimony," 70 HARV. L. REV. 671 at 680 (1957).

14 Id. at 681.

15 See the dissenting opinion of Justice Clark in the principal case.

16 Principal case at 209.

17 Some courts have assumed, without expressly holding, that the "question under inquiry" is co-extensive with the committees' jurisdiction as defined by statute or resolution. Sinclair v. United States, 279 U.S. 263 at 297 (1929). In Barry v. United States ex rel. Cunningham, 279 U.S. 597 at 613 (1929), the Court, in dicta, said, "When evidence is taken by a committee, the pertinency of questions propounded must be determined by reference to the scope of the authority vested in the committee by the Senate."

definition of this immediate subject of investigation would satisfy due process requirements. Yet it seems clear that the congressional contempt statute is not intended to convict witnesses for refusing to answer questions which Congress has not given the committee authority to ask.[18] Even though the nature and extent of the immediate investigation is made clear, in order to weigh the risk of potential criminal prosecution for a refusal to answer, the witness must be able to ascertain whether the subject of inquiry is within the committee's overall jurisdiction. Under an indefinite and vague authorizing resolution a witness is unable to make this determination. It would seem, therefore, that it is the definition of the committee's total jurisdiction as set forth in its authorizing resolution that is critical from the standpoint of due process. If it is assumed that the question under inquiry is co-extensive with the committee's overall authority, it is nevertheless difficult to see how the remarks of the committee members in any one hearing could define the overall authority sufficiently to satisfy due process requirements. On the other hand it is possible that a course of consistent conduct on the part of a committee which has channeled its inquiries into reasonably defined areas, and avoided others, might be adequate to induce the courts to find that an originally vague resolution had been rendered sufficiently definite.[19]

It is established that Congress has the implied authority to try recalcitrant witnesses for contempt of its committees without resort to the judiciary.[20] The present system of prosecuting congressional contempt cases before the federal courts was inaugurated only because of limitations on the length of time the House of Representatives could restrain witnesses found to be in contempt.[21] Even under a system of congressional trials, the witness would probably be able to secure judicial review by means of a habeas corpus proceeding.[22] In view of the majority's holding on the vagueness issue,

18 United States v. Orman, (3d Cir. 1953) 207 F. (2d) 148 at 153.

19 The majority opinion at least hints at this possibility in reference to the resolution before it: "At one time, perhaps, the resolution might have been read narrowly to confine the Committee to the subject of propaganda. The events that have transpired in the fifteen years before the interrogation of petitioner makes such a construction impossible at this date." Principal case at 202.

20 Anderson v. Dunn, 6 Wheat. (19 U.S.) 204 (1821).

21 The Supreme Court has held that no person may be imprisoned by the House of Representatives longer than the legislative session during which he was convicted. Id. at 231.

22 It has been argued that the courts cannot review congressional trials for contempt. Morgan, "Congressional Investigations and Judicial Review: Kilbourn v. Thompson

the question arises as to whether the standards of definiteness required by the court would be held equally applicable in habeas corpus proceedings were Congress to prosecute contempt cases before its own bar to avoid the restrictions of the certainty requirement.[23]

When Congress commits a witness for contempt, it may be argued that the purpose is to hold him until he is willing to testify and not to punish him for a refusal to testify. If this difference causes the contempt to be classified as civil rather than criminal, the definiteness requirements applicable to penal legislation would not seem to apply. It may be further argued that a congressional finding that a witness was in contempt for refusing to answer a committee interrogation would necessarily constitute a ratification of the committee's authority to ask the disputed question. Yet the same contention could be made under the present system since contempt proceedings are never initiated by the Attorney General unless directed by the house concerned.[24] Since penal legislation must satisfy definiteness requirements as of the time an offense is committed, the ratification argument seems untenable in either case.

II. *Unconfined Investigative Authority: First Amendment Implications*

Whether the First Amendment applies to the investigatory powers of Congress and the extent to which it limits that power if applicable have been in considerable doubt.[25] The Supreme Court, prior to the *Watkins* case, had an opportunity to settle the question but avoided the constitutional issue.[26] The question has been squarely presented to the lower federal courts on several occasions, and although generally the result has been favorable to the applicability of the amendment, in all instances the infringe-

Revisited," 37 CALIF. L. REV. 556 (1949). Congress has permitted review, however. See note, "The Power of Congress To Investigate and To Compel Testimony." 70 HARV. L. REV. 671 at 672 (1957), note 110, and cases cited therein.

[23] Justice Clark raises this question in his dissent.

[24] 49 Stat. 2041 (1936), 2 U.S.C. (1952) §194 provides that the President of the Senate or Speaker of the House shall submit, under seal of the Senate or House, a statement of the facts concerning the contempt to the United States Attorney for appropriate action.

[25] See generally 65 YALE L. J. 1159 (1956); 29 IND. L. J. 162 (1954).

[26] United States v. Rumely, 345 U.S. 41 (1953).

ment of the First Amendment freedoms has been found justified.[27] It seems clear that congressional investigations may lead to a curtailment of freedoms protected by the First Amendment. This is not to say that the First Amendment includes a general freedom to remain silent. The policy which supports a right to open discussion would not seem also to support a right to remain silent. But the First Amendment does apply whenever political thought or affiliation is restricted in any manner by any governmental agency.[28] If the effect of an investigation is to deter either a witness or an onlooker from future political affiliation or expression, it would seem that First Amendment rights have been abridged. The *Watkins* case explicitly adopts this reasoning.[29]

But individual liberties are not absolute. It has long been established that danger to the general welfare will justify some curtailment of personal rights,[30] though the degree of danger necessary to provide a justification is a matter of some uncertainty.[31] The Supreme Court decisions which have dealt with this problem have been concerned with legislation, not with legislative investigations. Lower courts which have considered the First Amendment in relation to the investigative power have been uncertain whether the tests applicable to legislation are equally applicable to the investigative process.[32] *Watkins* does little to answer this complex question. Although the majority opinion declares that the First Amendment may be invoked before congressional investi-

27 Barsky v. United States, (D.C. Cir. 1948) 167 F. (2d) 241 at 247, cert. den. 334 U.S. 843 (1948). Cf. United States v. Josephson, (2d Cir. 1947) 165 F. (2d) 82, cert. den. 333 U.S. 838 (1948).

28 See generally 65 YALE L. J. 1159 (1956).

29 The majority opinion refers to the impact on beliefs, expressions, or associations. It must probably be assumed that the primary concern of the Court is the impact on political thought and conduct. This would seem to be true in light of the particular facts before the Court. The Un-American Activities Committee has been mainly concerned with political affiliations. Furthermore, since the Court does not appear to adopt a general freedom to remain silent, it must be assumed that the right that is recognized is limited to areas of conduct or belief most sensitive to oppressive influence. Compare the protection of academic freedom in Sweezy v. New Hampshire, 354 U.S. 234 (1957), noted p. 291 infra.

30 Schenck v. United States, 249 U.S. 47 (1919).

31 Compare Dennis v. United States, 341 U.S. 494 (1951) with Yates v. United States, 354 U.S. 298 (1957).

32 In Barsky v. United States, (D.C. Cir. 1948) 167 F. (2d) 241, cert. den. 334 U.S. 843 (1948), the court said at 247: "There is a vast difference between the necessities for inquiry and the necessities for action. The latter may be only when danger is clear and present, but the former is when danger is reasonably represented as potential." Cf. United States v. Josephson, (2d Cir. 1947) 165 F. (2d) 82, cert. den. 333 U.S. 838 (1948).

gating committees,[33] it does not hold that the particular investigation in question violated First Amendment limitations. The Court never determines, on the facts, whether there was a sufficient justification for the investigation into First Amendment matters; nor does the Court indicate the test to be applied if such a determination is to be made. Rather the majority opinion stresses the point that when a congressional committee compels testimony in sensitive areas of political conduct or belief, it is essential that its authority to conduct the investigation be explicitly spelled out by Congress.[34] The Court seems to relate this requirement to the problem of determining whether or not an invasion of First Amendment freedoms is justified in terms of public necessity. Although it is the task of the judiciary to make the final decision as to whether public necessity outweighs private rights, the Court indicates it is unable to make this crucial determination unless it can ascertain that Congress actually desires the particular investigation to be conducted.[35] It is doubtful that the majority opinion means to imply by this that a clear congressional mandate to conduct a particular investigation would necessarily provide a justification for First Amendment infringements. The Court does seem to be implying, however, that, absent a clear determination by Congress that a particular investigation will serve a valid legislative purpose, any investigation into areas of political affiliation or belief will be invalid. The perplexing aspect of this im-

[33] "Clearly, an investigation is subject to the command that the Congress shall make no law abridging freedom of speech or press or assembly." Principal case at 197.

[34] "Protected freedoms should not be placed in danger in the absence of a clear determination by the House or the Senate that a particular inquiry is justified by a specific legislative need." Principal case at 205. Compare the rationale of the Court in the companion case of Sweezy v. New Hampshire, 354 U.S. 234 (1957), noted p. 291 infra. There the petitioner was convicted of contempt in the New Hampshire courts for refusing to answer questions before a one-man investigating committee in connection with the petitioner's progressive party leanings and in connection with certain of his college lectures. The investigation was carried out under a New Hampshire statute which gave the attorney general authority to investigate and determine whether "subversive" persons were present within the state. The Court seemed to take the position that state investigations into areas of political conduct or belief are invalid under the due process clause of the Fourteenth Amendment if the state legislature fails narrowly to define the authority of the investigating agency.

[35] "An excessively broad charter, like that of the House Un-American Activities Committee, places the courts in an untenable position if they are to strike a balance between the public need for a particular interrogation and the right of citizens to carry on their affairs free from unnecessary governmental interference. It is impossible in such a situation to ascertain whether any legislative purpose justifies the disclosures sought and, if so, the importance of that information to the Congress in furtherance of its legislative function." Principal case at 205-206.

plication lies in the fact that the Court presumably would invalidate on due process grounds *any* investigation conducted under a broad, indefinite resolution, whether it invaded First Amendment areas or not.[36] It would, therefore, seem completely unnecessary to discuss First Amendment implications when dealing with an overbroad resolution.[37] The explanation for the majority's extended discussion of First Amendment rights is probably found in its analysis of the due process issue. The majority opinion seems to take the position that the due process requirement could be satisfied even though the committee is granted authority in vague and sweeping terms. This is revealed by the fact that although the Court decides that the authorizing resolution of the Un-American Activities Committee is too indefinite to satisfy due process, it then goes on to determine whether the committee's remarks or interrogations clarified the question under inquiry for the petitioner. This approach seems to overlook the fact that even if the committee did pinpoint the nature of its immediate investigation, the witness would still have to determine whether the immediate inquiry was within the overall authority of the committee. In the final analysis, therefore, it would seem that due process would require an explicit authorizing resolution. If this is true it would have to be concluded that the First Amendment aspects of the majority opinion are completely unnecessary. Even if the court's approach to the due process question is accepted, it is doubtful that its discussion of First Amendment problems is more than dictum. The majority's only express holding is that the authorizing resolution of the committee violates due process.

III. *Unconfined Investigative Authority: Exposure Implications*

The federal government may exert only those powers which are expressly granted to it by the Constitution or which are found

[36] See part I of this comment, supra.

[37] There may be a valid distinction between *over-broad* legislation impinging upon First Amendment freedoms and legislation which violates due process because it is too *vague and indefinite*. The fact that the majority opinion makes no such distinction as regards a congressional committee's authorizing resolution seems understandable. In its discussion of First Amendment rights and in its discussion of the exposure question, the majority's concern is centered on the lack of a definite standard in the committee's authority; that broad discretion placed in committee hands makes it impossible for a court to determine the true desires of Congress. This requirement that there be a definite standard in order to confine committee discretion seems indistinguishable from the requirement of definiteness necessary to satisfy due process.

by the Supreme Court to exist by necessary implication.[38] The Supreme Court has held that there is an implied power in Congress to conduct investigations to aid it in carrying out its legislative duties.[39] Thus, Congress clearly has the authority to investigate in order to ascertain the need for new legislation and to determine the effectiveness of existing legislation. Congress has no legislative authority to indict or convict persons for legal or social wrongdoing.[40] It would seem, therefore, that a congressional investigation which seeks to punish individuals or organizations is not in aid of a legislative function and is unauthorized. The recent tendency of some congressional committees to expose "subversive" groups and individuals[41] and the assumption by some committees of a publicity function have raised the question of whether these activities are properly within the legitimate scope of the investigative authority. It seems clear that if the motive behind a particular inquiry is to expose a witness in order to cause his social ostracism, the investigation is primarily a punitive device, and is outside the proper scope of legislative inquiry.[42] It also seems clear that exposure is justified when it is merely incidental to acquiring information vital to the drafting of new legislation, determining the need for legislation, or policing existing legislation.[43] If the committee desires to expose the witness in order to inform the public of particular subversive activities or general social evils so as to gain public enthusiasm for preventive legislation, the question is not as easy.[44]

The *Watkins* decision explicitly states that "exposure for exposure's sake" is not a proper objective for a congressional investi-

38 McCulloch v. Maryland, 4 Wheat. (17 U.S.) 316 (1819).

39 McGrain v. Daugherty, 273 U.S. 135 at 174, 175 (1927).

40 Kilbourn v. Thompson, 103 U.S. 168 (1881). See also United States v. Icardi, (D.C. D.C. 1956) 140 F. Supp. 383 at 388.

41 The Un-American Activities Committee has said: "Exposure in a systematic way began with the formation of the House on Un-American Activities, May 26, 1938. . . . The House Committee on Un-American Activities was started on its way May 20, 1938, with the instructions from the United States House of Representatives to expose people and organizations attempting to destroy this country. That is still its job and to that job it sticks." House Committee on Un-American Activities, "100 Things You Should Know About Communism," H. Doc. 136, 82d Cong., 1st sess. 19, 67 (1951).

42 See Alstyne, "Congressional Investigations," 15 F.R.D. 471 (1954); 10 ARK. L. REV. 210 (1956).

43 McGrain v. Daugherty, 273 U.S. 135 (1927). See Landis, "Constitutional Limitations on the Congressional Powers of Investigation," 40 HARV. L. REV. 153 (1926).

44 See Liacos, "Rights of Witnesses Before Congressional Committees," 33 BOST. UNIV. L. REV. 337 at 344 to 346 (1953); 44 KY. L.J. 318 (1956).

gation.[45] The Court does not hold, however, that the Un-American Activities Committee had such an objective when it questioned the petitioner. The Court is, therefore, not required to define with precision the meaning of the phrase, "exposure for exposure's sake."[46] The majority takes much the same approach on the exposure issue as it takes on the First Amendment problem.[47] It stresses the fact that under an unconfined delegation of investigative authority it is impossible to determine whether Congress actually desires, or has use for the data which it gathered. Under such circumstances a court is unable to determine whether the exposure that results from an investigation into private affairs is justified by a furtherance of the legislative function of Congress.[48] The implication of the Court's reasoning seems to be that *any* investigation which exposes the private activities of witnesses is invalid unless Congress has explicitly authorized the particular investigation to be conducted. Here, as on the question of First Amendment freedoms, it must probably be concluded that the Court's discussion is unnecessary in view of its ultimate holding. Since the majority concludes that a congressional investigation is subject to the definiteness requirement of due process, it would presumably strike down an indefinite authorizing resolution in any event, and the fact that the committee was exposing private affairs would seem irrelevant in such a case. Yet if the Court's position is that due process can be satisfied notwithstanding an over-broad and ambiguous resolution, the question arises as to the constitutional basis upon which the Court would invalidate an investigation which exposed the private affairs of congressional witnesses.

[45] "We have no doubt that there is no congressional power to expose for the sake of exposure." Principal case at 200.

[46] The Court does indicate that it is a proper function of Congress to inquire into and publicize corruption, maladministration and inefficiency in agencies of the government. Principal case at 200, note 33. Apparently the Court would not permit exposure as a device to solicit public support for remedial legislation.

[47] In fact, it is difficult to determine whether the Court's analysis requires separation of the two problems. Since at least part of the abridgement of First Amendment freedoms is presumably brought about by the coercive effect on persons who are exposed by investigating committees, the two problems may overlap. However, if the abridgement of First Amendment rights may occur absent any publicity aspects, the two problems are clearly distinct. There may be exposure of private affairs which would have no coercive effect on the beliefs or affiliations of on-lookers.

[48] "In deciding what to do with the power that has been conferred upon them, members of the committee may act, pursuant to motives that seem to them to be the highest. Their decisions, nevertheless, can lead to ruthless exposure of private lives in order to gather data that is neither desired by the Congress nor useful to it." Principal case at 205.

Since the Court's objection is not exposure itself, but seems to be the fact that an unconfined resolution makes it impossible to determine if the exposure is justified, it seems probable that the Court would predicate its decision on delegation of power principles.[49] If it is assumed that a congressional committee's authority to investigate constitutes a delegation of legislative power, such principles could be used to invalidate any grant of authority placing uncontrolled discretion in the hands of committee members.[50] The implication to be drawn from the language of the majority opinion, however, is that the Court would use such a weapon only when a committee had engaged in exposure. Thus it would appear that a committee could continue to investigate under a broad resolution if it avoided inquiry into personal affairs or provided procedural safeguards by which it could elicit personal information without exposing witnesses before the public.[51]

Conclusion

The *Watkins* decision holds that congressional investigative authority is subject to the definiteness requirement of due process. The majority opinion implies, but does not expressly hold, that investigations which probe into political beliefs or affiliations, or which expose the private affairs of witnesses are invalid if authority to conduct the particular investigation is not explicitly indicated in the committee's authorizing resolution. The implication is that such investigations would be invalidated on delegation of power principles. If the definiteness requirements of due process will always lead to the invalidation of broad, ambiguous authorizing resolutions, delegation of power limitations are unnecessary. If due process can be satisfied notwithstanding a broad grant of authority, delegation principles would operate to strike down in-

49 That this would be the Court's approach is indicated by the majority's frequent reference to "delegated power" and "committee discretion."

50 It may be questioned, of course, whether the principles governing the delegation of authority to administrative agencies or to the executive branch should be equally applicable to the delegation of investigative authority to a congressional committee composed entirely of members of Congress.

51 Procedural safeguards for witnesses have been suggested by many writers. See Galloway, "Congressional Investigations: Proposed Reforms," 18 UNIV. CHI. L. REV. 478 (1951). See also Kauper, "Government of Laws—Not of Men. A Comparison of Congressional Investigative Procedures and Judicial Procedures with Reference to the Examination of Witnesses," 33 MICH. ST. B.J. 9 (August, 1954).

vestigations which probe into political conduct, or which expose the private affairs of witnesses. It must be concluded, therefore, that the *Watkins* case requires that Congress narrowly define the scope of authority of its various investigating committees. It clearly requires this in the case of committees which investigate sensitive areas of conduct;[52] it probably requires it in all cases.

Allan L. Bioff, S. Ed.

52 In the recent case of United States v. Peck, (D.C. D.C. 1957) 154 F. Supp. 603, the Watkins case was relied upon to acquit a newspaperman of contempt for refusing to identify certain persons as communists before the Internal Security Subcommittee. The court found the major defect in the investigations of the subcommittee to be the vagueness of the resolution pursuant to which they were conducted. Because of this vague resolution, the investigation of political conduct was held invalid. The court also indicated that the vagueness of the resolution prevented the witness from ascertaining what the "question under inquiry" was. This violated due process principles of "fundamental fairness" and necessitated an acquittal.