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CONSTITUTIONAL LAW - CRIMINAL PROCEDURE - FEDERAL IMMUNITY STATUTE APPLICABLE TO STATE COURT

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CONSTITUTIONAL LAW — CRIMINAL PROCEDURE — FEDERAL IMMUNITY STATUTE APPLICABLE TO STATE COURTS—In response to a summons, petitioner appeared to testify before a congressional committee investigating crime, and confessed to having run a gambling business in Maryland. This confession was used in the criminal court of Baltimore to convict petitioner of conspiring to violate the state's anti-lottery laws. The conviction was affirmed by the Court of Appeals of Maryland,[1] which rejected petitioner's contention that use of the committee testimony was forbidden by a federal statute which provides that no testimony given by a witness in congressional inquiries "shall be used as evidence in any criminal proceeding against him in any court."[2] On certiorari the United States Supreme Court *held,* reversed. The federal statute proscribing the incriminating use of testimony given by witnesses in congressional inquiries applies to state courts as well as to federal courts, without necessity of a claim by the witness of a constitutional privilege as to each question asked of him. *Adams v. Maryland,* 347 U.S. 179, 74 S.Ct. 442 (1954).

[1] Adams v. State, (Md. 1953) 97 A. (2d) 281.

[2] 18 U.S.C. (Supp. V, 1952) §3486: "No testimony given by a witness before either House, . . . or before any joint committee established by a joint or concurrent resolution of the two Houses of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committed in giving such testimony. But an official paper or record produced by him is not within the said privilege."

Federal immunity statutes[3] originally stemmed from the need for effective power to compel testimony. The Fifth Amendment guarantee against self-incrimination[5] made necessary a formula whereby the legislature could require an exchange of the constitutional privilege of silence for a statutory immunity from prosecution.[6] Initially, the immunity statute applicable to congressional investigations[7] provided that a witness should not be prosecuted ". . . for any fact or act touching which he shall be required to testify,"[8] but because this general pardoning power was quickly abused,[9] the statute was amended and narrowed to its present form,[10] proscribing subsequent incriminating use of actual testimony, but permitting use of this testimony to ferret out other admissible evidence. Although this more limited immunity was effective to preclude the potential of "gratuities to crime,"[11] the original purpose of the legislation was frustrated, for it was held in *Counselman v. Hitchcock*[12] that an act not providing complete immunity from prosecution is not broad enough to permit compelling a witness to give incriminating testimony. Despite this frustration of purpose the statute has remained in force in its modified version[13] and has been held effective to immunize testimony given before congressional investigating committees.[14] The claim that it was not intended to extend immunity to witnesses who could not be compelled to testify is rejected by the language of the principal case.[15] Likewise rejected is the argument that a claim of the constitutional privilege of silence is a prerequisite to statutory immunity.[16] Although subsequent immunity statutes require such an express claim by the

[3] For a listing of these statutes see 8 WIGMORE, EVIDENCE, 3d ed., §2281, n.11 (1940).

[4] CONG. GLOBE, 34th Cong., 3d sess., p. 403 et seq. (1857).

[5] U.S. CONST., amend. V: ". . . nor shall any person . . . be compelled in any criminal case to be a witness against himself. . . ."

[6] Statutes compelling witnesses to testify where the immunity afforded is co-extensive with the privilege surrendered have been upheld. See Brown v. Walker, 161 U.S. 591, 16 S.Ct. 644 (1896).

[7] A literal reading of the Fifth Amendment would confine the guarantee against compulsory self-incrimination to "criminal proceedings" but construction has been broad and inclusive of quasi-judicial proceedings. See Corwin, "The Supreme Court's Construction of the Self-Incrimination Clause," 29 MICH. L. REV. 1 (1930).

[8] 11 Stat. L. 156 (1857).

[9] See CONG. GLOBE, 37th Cong., 2d sess., p. 364 (1862).

[10] Note 2 supra.

[11] Heike v. United States, 227 U.S. 131, 33 S.Ct. 226 (1913).

[12] 142 U.S. 547, 12 S.Ct. 195 (1892).

[13] Proposed amendment of 18 U.S.C. §3486 has been introduced in the Senate in the form of S. 16, 83d Cong., 1st sess. (1953), and in the House in H. R. 6899, 83d Cong., 2d sess. (1954). Both proposals would grant a witness immunity with respect to transactions, matters, or things concerning which, after he has claimed his privilege against self-incrimination, he is nevertheless compelled to testify. The House proposal would provide a larger role for the attorney general in granting such immunity.

[14] See United States v. Bryan, 339 U.S. 323, 70 S.Ct. 724 (1950).

[15] Principal case at 182.

[16] Principal case at 181. With respect to waiver of the Fifth Amendment privilege, see Vajtauer v. Immigration Commissioner, 273 U.S. 103, 47 S.Ct. 302 (1927).

witness,[17] earlier decisions were in conflict[18] and it was not until 1942 in *Monia v. United States*[19] that the Supreme Court held that an express claim was not required. In reaffirming the decision in the *Monia* case, the principal case espouses the "gratuity theory"[20] of construction of immunity statutes, requiring only a sufficient showing of compulsion[21] to rebut a claim of waiver.[22] Inasmuch as no language of the act requires an express claim, it would be difficult to justify a more stringent construction.

More significant is the holding of the principal case that the proscription of the immunity act applies to state courts as well as to federal courts.[23] This would not seem to affect the rule that prospective state incrimination is no basis for silence in a valid federal investigation[24] and that federal investigators are not required to confer immunity from state prosecution as a prerequisite to compulsory interrogation which touches on state law violations.[25] Rather, the grant of immunity where state law violations are involved would seem to be a matter of legislative discretion, and not a benefit to which the witness is entitled as a matter of right. Further, the decision does not preclude prosecution by the state authorities, since the immunity extends only to the actual testimony given; the state prosecutor is free to use this testimony as a lead to other admissible evidence.[26] In effect, the Court holds that the power to legislate rules of evi-

[17] See the dissenting opinion of Justice Frankfurter in United States v. Monia, 317 U.S. 424 at 431, 63 S.Ct. 409 (1942), which notes seventeen regulatory measures enacted between 1933 and 1942 that require an express claim of privilege. Note that the proposed amendment of 18 U.S.C. §3486, discussed in note 13 supra, would likewise require an express claim of privilege.

[18] Taking the view that immunity statutes should be strictly construed were Johnson v. United States, (4th Cir. 1925) 5 F. (2d) 471; United States v. Lay Fish Co., (D.C. N.Y. 1929) 13 F. (2d) 136; United States v. Skinner, (D.C. N.Y. 1914) 218 F. 870. Holding the wording of the statutes to be controlling were United States v. Goldman, (D.C. Conn. 1928) 28 F. (2d) 424; United States v. Ward, (D.C. Wash. 1924) 295 F. 576; United States v. Pardue, (D.C. Tex. 1923) 294 F. 543.

[19] 317 U.S. 424, 63 S.Ct. 409 (1943).

[20] For an analysis and comparison of the "gratuity" and "exchange" theories of construction of immunity statutes see Dixon, "The Fifth Amendment and Federal Immunity Statutes," 22 GEO. WASH. L. REV. 447, 554 at 557-564 (1954).

[21] Petitioner "was not a volunteer. He was summoned. Had he not appeared he could have been fined and sent to jail. 2 U.S.C. §192." Principal case at 181.

[22] Justice Jackson, concurring, would go further than the majority in the principal case and not even require a minimal showing of compulsion under 18 U.S.C. §3486. For him, the statute in unambiguous language promises protection "to all witnesses, to all testimony, and in all courts." Principal case at 184.

[23] See Brown v. Walker, 161 U.S. 591, 16 S.Ct. 644 (1896). See also Grant, "Immunity From Compulsory Self-Incrimination in a Federal System of Government," 9 TEMPLE L. Q. 57, 194 (1934, 1935).

[24] United States v. Murdock, 284 U.S. 141, 52 S.Ct. 63 (1931); Feldman v. United States, 322 U.S. 487, 64 S.Ct. 1082 (1944).

[25] But see United States v. Di Carlo, (D.C. Ohio 1952) 102 F. Supp. 597.

[26] The principal case provides basis for speculation with respect to immunity statutes applicable to federal administrative proceedings under which immunity extends to any matter related to the testimony. These statutes do not use the phrase "in any court" which is construed by the Court in the principal case, but merely provide, as a rule, that "no person shall be prosecuted. . . ."

dence for state courts is "necessary and proper"[27] to the conduct of congressional investigations and the acquisition of testimony.[28] To the extent that the resulting protection afforded witnesses promotes cooperation and facilitates disclosures, the decision of the Court is justified. Potential interference with state law enforcement would properly be a matter of legislative concern and would not be a valid objection to the holding of the principal case.

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[27] U.S. CONST., art. I.

[28] Congress has the power to summon witnesses before either house or before their committees. McGrain v. Daugherty, 273 U.S. 135, 47 S.Ct. 319 (1927).