Constitutional Law–Legislative Investigations–Pertinence and Scope of Inquiry

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Available at: https://researchrepository.wvu.edu/wvlr/vol60/iss1/8
ment of the United States, and, therefore, they would not be able to take an oath to defend the Constitution. In a similar vein, conscientious objectors, In re Summers, 325 U.S. 561 (1945); and members of organizations such as the I.W.W., In re Smith, 133 Wash. 145, 233 Pac. 288 (1925); and the Christian Front, Application of Cassidy, 268 App. Div. 282, 51 N.Y.S.2d 202 (2d Dep't 1944), have been disbarred or denied admission to the bar because they could not conscientiously take the necessary oath. Our courts are a bulwark of free people. Hence, it is obvious why the officers of those courts, i.e., lawyers, could not advocate the overthrow of that judicial system by illegal and unconstitutional methods. Even present communist members and members of the Communist Party's allied organizations who admit their membership are refused the license to practice law though they emphatically deny they advocate the overthrow of the Government of the United States by force and violence. Martin v. Law Society, [1950] 3 D.L.R. 173 (B.C.C.A.); Application of Patterson, 302 P.2d 227 (Ore. 1955).

There are some who would argue that there is no longer any need for protecting the bar from communists and communist lawyers, but so long as our judicial system is to administer justice, it is necessary that its officers believe in its continued existence. See Note, 20 U. Chi. L. Rev. 480, 506 (1953).

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Constitutional Law—Legislative Investigations—Pertinence and Scope of Inquiry—Petitioner, before a House of Representatives, sub-committee, refused to state whether or not he knew certain named persons to have been members of the Communist Party, claiming that the questions asked were outside the proper authority of the committee. He was then cited for contempt of Congress and the matter was referred to the courts; at the trial he was found guilty, and conviction was affirmed. On certiorari, held, that the authorized scope of the committee and its stated objects were too uncertain to enable a witness to determine whether or not he could rightfully refuse to answer questions on the ground of pertinence. Watkins v. United States, 77 Sup. Ct. 1178 (1957).

In a companion case, the Court held that lacking indication of legislative desire for answers to the questions asked, a state attorney-general—investigating by legislative direction—had no authority
to question a witness concerning his associations, lectures, or beliefs; and that conviction of contempt for refusal to answer such questions was improper. *Sweezy v. New Hampshire*, 77 Sup. Ct. 1203 (1957).

Both cases required consideration of pertinence of questions to the investigating agency's authorized scope of inquiry with respect to the limits inherent in the legislative process and those imposed by the Bill of Rights. U.S. Const. amends. I-VIII. These limits find expression in judicial review of the contempt power of the legislature. *E.g.*, *In re Chapman*, 166 U.S. 661 (1897). This power is inherent in the legislative process. *Anderson v. Dunn*, 19 U.S. (6 Wheat.) 204 (1821). In both cases the Court was able to avoid constitutional questions by statutory interpretation, indicating that an indefinite authorization "insulated" the legislative body from the witnesses. *Watkins v. United States*, 77 Sup. Ct. 1173, 1188 (1957); *Sweezy v. New Hampshire*, supra.

Considering only the federal government, the fundamental inherent limitation on legislative investigation is that Congress has no general power to inquire into the private affairs of citizens, although it may inquire into matters which are the proper subject of legislation. *McGrain v. Daugherty*, 273 U.S. 135, 173-74, 50 A.L.R. 1 (1927) (dictum). In addition, while Congress may not assume executive or judicial powers, inquiry into matters also criminal is not forbidden. *Sinclair v. United States*, 279 U.S. 263 (1929).

Limits imposed on investigations by the constitutional guarantee of freedom of speech are not well defined. U. S. Const. amend. I; Note, 29 Ind. L.J. 162 (1954). Courts will not decide a constitutional question when there is another basis for decision. *E.g.*, *Rescue Army v. Municipal Court*, 331 U.S. 549 (1947). Such a basis has been found in contempt proceedings. *United States v. Rumely*, 345 U.S. 41 (1953). Refusal to answer a question posed by a legislative committee is a misdemeanor, but only so when the question is pertinent to the question under inquiry. 52 Stat. 942 (1938), 2 U.S.C. § 192 (1952). By interpretation of this requirement, and others not considered here, the Court may protect first amendment rights without invoking them, as when "lobbying activities" in an authorized resolution was narrowly construed to place an alleged contempt outside the scope of inquiry. *United States v. Rumely*, supra.

Pertinent, as used in the contempt sense, means pertinent to the subject matter properly under inquiry and not merely pertinent to the witness. *United States v. Orman*, 207 F.2d 148 (3d Cir. 1954). Pertinence is a broader term than relevance at common law. *Townsend v. United States*, 95 F.2d 352 (D.C. Cir.), cert. denied, 303 U.S. 664 (1938). A question is pertinent if it leads from one pertinent phase of questioning to another. *Wollam v. United States*, 244 F.2d 212 (9th Cir. 1957). Normally, pertinence is a matter of law. *Sinclair v. United States*, supra. However, if it must be established by evidence, it becomes a question for the jury. *United States v. Orman*, supra. Pertinence may not be presumed. *Bowers v. United States*, 202 F.2d 447 (D.C. Cir. 1953). It is generally agreed that it is the question that must be pertinent rather than the answer sought. See Note, 70 Harv. L. Rev. 671 (1957). In all events, however, to support a contempt conviction, the question must be pertinent to a matter properly under inquiry. *Marshall v. United States*, 176 F.2d 473 (D.C. Cir. 1949), cert. denied, 339 U.S. 933 (1950).

The present decisions are based on a sound foundation of precedent; they establish no new principle of law, but only tighten the previous requirements. On this basis legitimate legislative investigation need not suffer, provided only that the legislature define and authorize the scope of inquiry on the basis of needed information, and that the investigators confine their questions to those pertinent to the authorized scope.

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