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Constitutional Law--Complete Immunity Granted to Witnesses before Congressional Committees

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Recent Decisions

CONSTITUTIONAL LAW — COMPLETE IMMUNITY GRANTED TO WITNESSES BEFORE CONGRESSIONAL COMMITTEES

The Supreme Court of the United States granted certiorari after the Court of Appeals of Maryland had affirmed petitioner's conviction in the Criminal Court of Baltimore of conspiring to violate the state lottery laws.[1] This conviction was based upon a confession given by petitioner in answer to questions by a Senate Committee investigating crime, before which he had been summoned. Petitioner contended that such usage of his confession was forbidden by a federal statute granting immunity to witnesses in Congressional hearings.[2]

In reversing the judgment and remanding the cause, the Supreme Court held that a witness so summoned by a Congressional Committee is not required to claim the protection of the Fifth Amendment as to each question directed to him before he is entitled to the protection of the statute, that the phrase "any court" in the statute is not limited in its application to federal courts but includes state courts and precludes the use of the immunized testimony as evidence in prosecutions therein as well; and, that the statute does not accord "complete immunity" to the subpoenaed witness beyond the scope of the testimony actually received.[3]

What is "complete immunity," and how far does an "immunity bath" extend, are basic questions with which immunity statutes such as the one herein have been continually connected.[4]

Although there is authority to the contrary, the seemingly better view is that a constitutional provision against compulsory self-incrimination is not satisfied by a statute requiring a person to testify or give evidence where the only immunity offered in lieu of the constitutional privilege is that the testimony or evidence so produced shall not thereafter be used in evidence against him.[5] The principal fault which courts have found with such statutes is that the witness is still open to prosecution and may be convicted on evidence independent of, but obtained from sources suggested by, the very

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[1] Adams v. State of Maryland, 74 Sup. Ct. 442 (1954).

[2] "No testimony given by a witness before either House or before any committee of 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 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 said privilege." 62 STAT. 833, 18 U.S.C. § 3486 (1948).

[3] Adams v. State of Maryland, *supra* at 445.

[4] 8 Wigmore, Evidence § 2281 (3rd Ed. 1940).

[5] See Note, 118 A.L.R. 602, 605 (1939).

information which he has been forced to reveal.[6] The Court in the principal case takes the former view when it states that the statute does not give complete immunity.[7] Under this view it is held that the protection accorded witnesses by the Fifth Amendment is not adequately established by the statute for no provision is included which prohibits the use of elicited testimony to discover other evidence with which to prosecute,[8] and, therefore it would seem that the witness would have to claim his privilege in order to avoid prosecution. However, the Court rejected this conclusion by holding that the witness need not raise his privilege to each question asked since it would limit the statute to the protection already given by the Fifth Amendment.[9]

The co-existence of individual state sovereignties and a national sovereignty gives rise to the argument that the immunity accorded subpoenaed witnesses by a state or federal statute exists only within the boundaries of the particular jurisdiction in which the witness testifies.[10] Therefore, other jurisdictions could not be prevented from using the testimony and evidence elicited to indict or prosecute the witness in a subsequent proceeding.

In spite of the logic of the argument the majority of decided cases have held that statewide immunity is "complete immunity" since it is the only protection the state can give to witnesses.[11] Further justification for the majority holding is that the "danger [of prosecution in other jurisdictions based on the elicited testimony] is so inconsequential and remote [that] ... the only danger to be considered is one arising within the same jurisdiction."[12]

On the other hand the minority view has held that such "complete immunity" does not set-off the Fifth Amendment privilege against self-incrimination,[13] making it necessary, therefore, for the witness to raise the privilege himself.

The Court, while recognizing the minority view, does not adopt it. Rather it partially corrects the lack of "complete immunity" given by the statute by interpreting the phrase "any court" as including state courts as

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[6] *Id.* at 606.

[7] Adams v. Maryland, *supra* at 445.

[8] See note 2, *supra.*

[9] See note 7, *supra.*

[10] See note 4, *supra;* 8 Wigmore, Evidence § 2258 (3rd ed. 1940); *Cf.* Counselman v. Hitchcock, 142 U.S. 547, 12 Sup. Ct. 195 (1892) (This decision had held the principle statute to give incomplete immunity to the supoenaed witness, therefore not off-setting his Fifth Amendment privilege because it did not prevent the testimony elicited from being used to discover other evidence with which to indict or prosecute.)

[11] Hale v. Henkel, 201 U.S. 43, 26 Sup. Ct. 370 (1905).

[12] *Ibid.*

[13] *In re* Watson, 293 Mich. 263, 291 N.W. 652 (1940).