

§ 11. —Fourth Amendment

The fourth amendment prohibition against unreasonable searches and seizures applies to congressional investigations.⁽¹⁹⁾ A court of appeals made an unequivocal statement to this effect:

The Fourth Amendment exempts no branch of the federal government from the commandment that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . ." This constitutional guaranty applies with equal force to executive, legislative and judicial action. Courts and committees rightly require answers to questions. But neither may exert this power to extort assent in invasions of homes and to seizures of private papers. Assent so extorted is no substitute for lawful process.⁽²⁰⁾

The Supreme Court in one case held that the counsel to a Senate subcommittee who allegedly conspired with state officials to seize property and records by unlawful means in violation of the fourth

did not arise as contempt proceedings from congressional investigations.

19. *Watkins v United States*, 354 U.S. 178, 188 (1957). See also Moreland, Allen B., *Congressional Investigations and Private Persons*, 40 So. Cal. L. Rev. 189, 225-230 (1967).
20. *Nelson v United States*, 208 F2d 505 (D.C. Cir. 1953), cert. denied 346 U.S. 827 (1953).

amendment was not entitled to immunity under the Speech or Debate Clause and would have to appear as a defendant in a civil action and, if found liable, pay damages. However, the chairman of the subcommittee who had also been named as a party defendant was entitled to the immunity.⁽¹⁾

Lower courts have adjudicated the validity of subpoenas issued by committees. For example, the Supreme Court of the District of Columbia held that a Senate subpoena duces tecum requiring Western Union to supply all copies of all telegrams sent or received by a law firm for a 10-month period in 1935 exceeded any legitimate exercise of the subpoena power.⁽²⁾

Similarly, a federal district court expressed its view of a subpoena duces tecum which specified "the minute books, contracts, reports, documents, books of account, etc., either belonging to the relator or to the Railway Audit and Inspection Company, Inc., with which he was connected" in the following manner:

[T]he subpoena on its face, shows a mere fishing expedition into the private affairs of the relator and his company, not within the scope of the com-

1. *Dombrowski v Eastland*, 387 U.S. 82 (1967).
2. *Strawn v Western Union*, 3 USL Week 646 (SCDC, Mar. 11, 1936).

mittee's investigation, and an encroachment upon defendant's rights under the Fourth Amendment. . . . The duces tecum part of the subpoena is so lacking in specification and description, and so wide in its demands, that it is felt it could not have been ordered had the application for it been made to this court.⁽³⁾

Although courts refuse to enforce subpoenas which they find to be overbroad, they refuse to limit a committee's use of information in its possession. After telegraph companies refused to comply with a Senate committee's subpoena duces tecum directing them to produce all telegrams transmitted from their offices from Feb. 1 to Sept. 1 of 1935, representatives of the committee and the Federal Trade Commission examined these messages and made notes and copies. Conceding that a court could enjoin this "trespass" while it was being conducted, a court of appeals stated that it lacked authority to enjoin use of the material after the committee had gained possession.⁽⁴⁾

A subpoena for documents held in a representative capacity need

3. *United States v Groves*, 18 F Supp 3 (W.D. Pa. 1937); because the case was decided on the point of failure to appear before the committee, the statement relating to the subpoena was dictum.
4. *Hearst v Black*, 87 F2d 68, 71 (D.C. Cir. 1936).

not be as specific as one for documents belonging to an individual. Thus, a subpoena directing production of "All records, correspondence and memoranda of the Civil Rights Congress relating to: . . . (1) the organization of the group; (2) its affiliation with other organizations; and (3) all monies received or expended by it," did not constitute "unreasonable search and seizure."⁽⁵⁾

§ 12. —Sixth Amendment

Because the language of the sixth amendment stipulates its application "In all criminal prosecutions," the amendment does not apply directly to congressional investigations. Consequently, a witness is not entitled to confront or cross-examine witnesses.⁽⁶⁾ But

5. *McPhaul v United States*, 364 U.S. 372, 381 (1960); compare *McPhaul* with *United States v Groves*, 18 F Supp 3 (W.D. Pa. 1937), note supra, which discusses a subpoena for papers which belong to an individual.
6. *United States v Fort*, 443 F2d 670 (D.C. Cir. 1970), cert. denied, 403 U.S. 932 (1971). *Fort*, however, cites examples of granting a limited right of self-examination (p. 680 and n. 24). See also *Hannah v Larche*, 363 U.S. 420 (1960), in which the Supreme Court by analogy approved state legislative committee rules which denied the rights of confronta-