Congressional Arrogance

Description

From â€œThe Hillâ€•

> [Hastert tells President Bush FBI raid was unconstitutional](#)
> [By Patrick OÃ¢â‚¬â„¢Connor](#)
>
> House Speaker Dennis Hastert (R-Ill.) told President Bush yesterday that he is concerned the Federal Bureau of InvestigationÃ¢â‚¬â„¢s (FBI) raid on Rep. William JeffersonÃ¢â‚¬â„¢s (D-La.) congressional office over the weekend was a direct violation of the Constitution.

The rest of the article, as do many others, goes on to say something went of the tracks constitiutionally.

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What I havenâ€™t seen, but then this is America and the era of the mass media who seems to rarely check facts anymore, is a reference to any part of the Constitution that states, directly, or even indirectly implies, that the Congress is exempt from any action, decsision or regulation of the other two branches of the Federal Government.

There is a reference to the Speech and Debate Clause here:

> In the SpeakerÃ¢â‚¬â„¢s lengthy statement, Hastert complained that the seizure of legislative papers, no matter how innocuous, was a violation of the Ã¢â‚¬Å“the principles of Separation of Powers, the independence of the Legislative Branch, and the protections afforded by the Speech and Debate clause of the Constitution.Ã¢â‚¬Â•

In Article 1, Section 6 of the Consititution of the United States, it does say members of the Congress canâ€™t be arrested, but to leave it at this would fall unde the â€œpartial truthâ€• rule, which I once heard a wise man say: â€œA partial truth is a whole lie.â€• Read on for why this applies.

My presumed applicable extract from the Constitution that is being referenced (since Denny Hasert wonâ€™t say exactly what part heâ€™s discussing:

> â€œ..be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House,â€¦â€•

The history behind why this Spech and Debate clause exists, with freedom from arrest precedes even American history, with some good logic. From FindLaw.com:

> [Privilege of Speech or Debate](#)

Members .â€“This clause represents â€•the culmination of a long struggle for parliamentary supremacy. Behind these simple phrases lies a history of conflict between the Commons and the Tudor and Stuart monarchs during which successive monarchs utilized the criminal and civil law to suppress and intimidate critical legislators. Since the Glorious Revolution in Britain, and throughout United States history, the privilege has been recognized as an important protection of the independence and integrity of the legislature.â€• 380 So Justice Harlan explained the significance of the speech-and-debate clause, the ancestry of which traces back to a clause in the English Bill of Rights of 1689 381 and the history of which traces back almost to the beginning of the development of Parliament as an independent force. 382 â€•In the American governmental structure the clause serves the additional function of reinforcing the separation of powers so deliberately established by the Founders.â€• 383 â€•The immunities of the Speech or Debate Clause were not written into the Constitution simply for the personal or private benefit of Members of Congress, but to protect the integrity of the legislative process by insuring the independence of individual legislators.â€• 384

The protection of this clause is not limited to words spoken in debate. â€•Committee reports, resolutions, and the act of voting are equally covered, as are â€˜things generally done in a session of the House by one of its members in relation to the business before it.â€•â€™ 385 Thus, so long as legislators are â€•acting in the sphere of legitimate legislative activity,â€• they are â€•protected not only from the consequence of litigationâ€™s results but also from the burden of defending themselves.â€• 386 But the scope of the meaning of â€•legislative activityâ€• has its limits. â€•The heart of the clause is speech or debate in either House, and insofar as the clause is construed to reach other matters, they must be an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House.â€• 387 Immunity from civil suit, both in law and equity, and from criminal action based on the performance of legislative duties flows from a determination that a challenged act is within the definition of legislative activity, but the Court in the more recent cases appears to have narrowed the concept somewhat.

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There is more, but I think that quotation covers much of the issue.

Now, Iâ€™m not a lawyer, but I thankfully am a graduate of a school system before the NEA got their hooks into it, so I can still read and know a few big words. Taking the entire Article 1, Section 6 of the Constitution and reading it gives an entirely new spin to this discussion, one in which I would say was the definitive one:

Section 6.

The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, ***except Treason, Felony and Breach of the Peace***, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

This section clearly says Congress people will still be allowed to attend Congressional sessions if they have committed minor crimes, read: ***misdemeanors***. Felony charges are not exempted, which, taking bribes would constitute. And even at that, it only applies during the time of the sessions, and the travel too and from. When Congress is in recess, they are, under this section, subject to having to be just plain old citizens from a law enforcement standpoint.

From FindLaw on this Article:

> Privilege From Arrest
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> This clause is practically obsolete. It applies only to arrests in civil suits, which were still common in this country at the time the Constitution was adopted. 376 It does not apply to service of process in either civil 377 or criminal cases. 378 Nor does it apply to arrest in any criminal case. The phrase â€•treason, felony or breach of the peaceâ€• is interpreted to withdraw all criminal offenses from the operation of the privilege. 379

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The Congress is protected, when it comes right down to it, just as we are. They are free to debate, but they still cannot commit felonious acts, nor acts of treason (do you hear that, Congressman Murtha?). Not above any law, but it just clearly laid out a protection of allowing them to speak during sessions of Congress. Once the final gavel drops, they are subject to be accountable for their actions, as any of us would be.

From a pratical standpoint, Congress is specifically given the duty and responsibility of passing laws. The Executive branch is then obligated to enfoce them. If the Executive Branch had the ability to pass laws, then also enforce them, it would be a completely different debate, but our Founding fathers wisely did not give the Executive Branch the abillity to put laws in place. All the Justice Department and the FBI did was to hold a citizen accountable for the breaking of a law, which was passed by Congress. How can this come close to the issues for the reasons the Speech and Debate was written in the first place?

Hey, Representative Jefferson: Who passed the law against bribing of Federal officials? It sure is tough playing by your own rules, isnâ€™t it? That comes back to my single most important lesson from War College: Itâ€™s allways dangerous to set a precedent, for you never know when you will have to live by it yourself.

Note: In the writing of this post, or in the story that has drawn so much ire from Congressional representatives, **NO ACTUAL CONGRESSMEN WERE ARRESTED,** nor were any harmed, except for their feelings getting hurt.

Oh, yeah, I was in my wallet last night and realized I have â€œLegislative Papersâ€• of my ownâ€¦..

Legislative Papers

I may be worng, for like a good chilled wine, there may be temperature specifications, besides physical ones, that define what really qualifies as â€œlegislative papers.â€•

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Category

1. Political

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