

Sec. 6—Rights and Disabilities of Members

Cl. 1—Compensation and Immunities

ceedings 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.”⁴⁵¹ Press releases and newsletters are “[v]aluable and desirable” in “inform[ing] the public and other Members,” but neither are essential to the deliberations of the legislative body nor part of the deliberative process.⁴⁵²

Applying this distinction between protected “legislative activity” and unprotected activity in the criminal context, the Court in *Gravel v. United States*⁴⁵³ held that a grand jury could validly inquire into the processes by which the Member obtained classified government documents and into the arrangements for subsequent private republication of these documents, since neither action involved protected conduct. “While the Speech or Debate Clause recognizes speech, voting and other legislative acts as exempt from liability that might otherwise attach, it does not privilege either Senator or aide to violate an otherwise valid criminal law in preparing for or implementing legislative acts.”⁴⁵⁴

A similar distinction may be discerned when the application of a criminal statute calls into question the legislative conduct and motivation of a Member. Thus, in *United States v. Johnson*,⁴⁵⁵ the Court voided the conviction of a Member for conspiracy to impair lawful governmental functions. The Member had, in the course of seeking to divert a governmental inquiry into alleged wrongdoing by a savings and loans association, accepted a bribe to make a speech on the floor of the House of Representatives. The speech was charged as being part of the conspiracy and extensive evidence concerning it was introduced at a trial. It was this examination into the context of the

⁴⁵¹ 443 U.S. at 126, quoting *Gravel v. United States*, 408 U.S. 606, 625 (1972).

⁴⁵² *Hutchinson v. Proxmire*, 443 U.S. 111, 130, 132–33 (1979). The Court distinguished between the more important “informing” function of Congress, that is, its efforts to inform itself in order to exercise its legislative powers, and the less important “informing” function of acquainting the public about its activities. The latter function the Court did not find an integral part of the legislative process. *See also* *Doe v. McMillan*, 412 U.S. 306, 314–17 (1973). *But compare* *id.* at 325 (concurring). For consideration of the “informing” function in its different guises in the context of legislative investigations, *see* *Watkins v. United States*, 354 U.S. 178, 200 (1957); *United States v. Rumely*, 345 U.S. 41, 43 (1953); *Russell v. United States*, 369 U.S. 749, 777–78 (1962) (Justice Douglas dissenting).

⁴⁵³ 408 U.S. 606 (1972).

⁴⁵⁴ 408 U.S. at 626.

⁴⁵⁵ 383 U.S. 169 (1966).