

Legislative Immunity

Peter S. Wattson
Senate Counsel
Minnesota

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Our Goal

- Prepare for a Rare Event
 - Summons
 - Subpoena
- Silver Bullet
- Our Common Responsibility

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Origins

- Common Law
- Constitutions
- Statutes

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Scope

Legislative Acts

- Introducing and Voting for Bills
- Failing or Refusing to Vote
- Voting to Seat or Unseat a Member
- Voting on a Confirmation
- Voting on an Impeachment

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Legislative Acts, cont'd

- Making Speeches
- Enforcing Rules
- Serving on a Committee
- Conducting Hearings
- Investigating Executive Agencies
- Gathering Information

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Legislative Acts, cont'd

- Publishing Reports
- Sending Letters
- Drafting Documents
- Lobbying for Legislation
- Making Budgetary Decisions

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Legislative Acts, cont'd

- Personnel Decisions
 - Speech or Debate Clause Immunity
 - The nature of the duties of the employee
 - Common Law Immunity
 - The nature of the decision about the employee

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Nature

- Absolute
- Personal
- Continuing
- Functional

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Some Activities are Not Immune

Actions without Lawful Authority

- Unconstitutional Procedures
- Illegal Investigative Procedures
- False Disclosures and Claims

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Not Immune, cont'd

Political Acts

- Solicitation of Bribes
- Communications to the Press
- Communications to Constituents
- Pressure on the Executive Branch
- Travel on Legislative Business

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Not Immune, cont'd

Administrative Acts

- Personnel Decisions
 - Congressional Employees
 - The nature of the duties of the employee
 - State and Local Employees
 - The nature of the decision about the employee
- Other Local Acts
 - Substantively Legislative
 - Facts Considered
 - Impact of Decision
 - Procedurally Legislative

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Not Immune, cont'd

Executive Branch Activities

- Sitting on an Audit Commission
- Sitting on an Executive Branch Committee

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Some Evidence May be Admitted

- Proof of Status as a Member
- Acts Offered by Member in His Defense

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Uses of Immunity

From Ultimate Relief

- Criminal Prosecution
- Liability for Damages
- Declaratory Judgments
- Injunctions
- Writs of Quo Warranto and Mandamus
- Claims for Repayment

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Uses of Immunity, cont'd

From Giving Testimony or Documents

- In Criminal Actions
- In Civil Actions
 - Members of Congress
 - State Legislators
 - Local Legislators

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Appropriate Relief

- From Criminal Indictment
- From Civil Complaint
- From Subpoena
 - Quashed
 - Protective Order

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Procedural Questions

- Right to Interlocutory Appeal
- Waiver of Immunity

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Conclusion

Our Common Responsibility

- Avoid an Unknowing Waiver
 - Mention During New Member Orientation
 - Always Resist
 - No Testimony Under Oath
 - No Disclosure of Non-Public Documents
- Remember!
 - Summons
 - Subpoena
 - Silver Bullet

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