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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 261

JOHN T. WATKINS, *Petitioner*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinions in the Court of Appeals, sitting en banc, have not yet been reported. (Pet. 39-66).[1]

[1] The appeal was first heard by a three judge division composed of Chief Judge Edgerton and Judges Bazelon and Bastian. The division reversed the conviction, with Judge Bastian dissenting. The opinion of the division was substantially the same as the dissenting opinion on the decision of the court en banc.

JURISDICTION

The judgment of the Court of Appeals was entered on April 23, 1956 and a petition for rehearing was denied on May 22, 1956. By order of Mr. Chief Justice Warren, the time for filing a petition for a writ of certiorari was extended to July 20, 1956, and the petition was filed on July 19, 1956. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1). See also Rules 37(b)(2) and 45(a), F.R. Crim. P.

QUESTIONS PRESENTED

1. Whether the House Committee on Un-American Activities, with power to investigate the extent of un-American propaganda activities, and having before it for consideration a proposed amendment to the Internal Security Act of 1950 relating to Communist infiltration into labor union activities, could require petitioner, a labor union official, to testify as to whether certain persons were former members of the Communist Party engaged while they were Communists in union activities.

2. Whether, in a proceeding in which petitioner sought the dismissal of the indictment, he was entitled to a hearing to prove that Government employees, of whom there were some on the indicting grand jury, are biased as a class in cases involving Communism.

STATUTES AND RESOLUTION INVOLVED

Rev. Stat. § 102, as amended, 2 U.S.C. 192:

> Every person who having been summoned as a witness by the authority of either House of Con-

gress, to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months.

Sec. 121(a) and (b) of the Legislative Reorganization Act of 1946, 60 Stat. 812, 822, 823, 828, provides in part:

Section 121(a), Rule X, of the Rules of the House of Representatives is amended to read as follows:

"Rule X

"Standing Committees

"(a) There shall be elected by the House, at the commencement of each Congress, the following standing committees:

"* * *

"17. Committee on Un-American Activities, to consist of nine Members

"* * *"

(b) Rule XI of the Rules of the House of Representatives is amended to read as follows:

"Rule XI

"Powers and Duties of Committees

(1) All proposed legislation, petitions, memo rials, and other matters relating to the subjects listed under the standing committees, named below shall be referred to such committees respectively:

"* * *

"(q)(1) Committee on Un-American Activities

"A. Un-American Activities

"(2) The Committee on Un-American Activities as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

"The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

"For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses, and of the production of such books, papers and documents, and to take such testimony, as it deems necessary.

> Subpoenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman and may be served by any person designated by any such chairman or member.
>
> "* * *"

H. Res. No. 5, 83rd Cong., 1st Sess. (1953) (99 Cong. Rec. 15, 18) adopted the provisions of the Legislative Reorganization Act as the rules of the 83rd Congress.

STATEMENT

Petitioner was indicted on seven counts for refusing to answer pertinent questions before a Congressional subcommittee in violation of Section 192, Title 2, United States Code (R. 2-3).[2] Petitioner waived his right to a trial by jury (R. 16) and was found guilty on all counts, (R. 17-18). He was fined five hundred dollars and sentenced to imprisonment for one year (R. 18). Execution of the one year imprisonment term was suspended and petitioner was placed on probation (R. 18). On appeal to the Court of Appeals for the District of Columbia Circuit, the judgment of conviction was affirmed by a decision (per Bastian J.) of the court sitting en banc, Chief Judge Edgerton and Judge Bazelon dissenting (Pet. 39).

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[2] See H. Res. No. 534, 83rd Cong., 2nd Sess. (1954) (Gov. Ex. 4, R. 68) directing the Speaker of the House of Representatives to certify the report of petitioner's contempt to the United States Attorney.

The facts may be summarized as follows:

The Legislative Reorganization Act of 1946 made provision for the House Committee on Un-American Activities as a standing committee to be elected by the House at the commencement of each Congress (60 Stat. 812, 822, 823). According to the Act, all matters relating to un-American activities were to be referred to this committee which was authorized to investigate un-American propaganda activities in the United States and "all other questions in relation thereto that would aid Congress in any remedial legislation" (60 Stat. 812, 823, 828). This Act was adopted as part of the rules of the House by H. Res. No. 5, 83rd Congress, 1st Session (1953) (99 Cong. Rec. 1518).

In large part as a result of investigations and recommendations by the Committee, the Internal Security Act of 1950 (64 Stat. 987) was enacted (R. 43). At the time of petitioner's contempt, the Committee was considering an amendment to this Act (R. 44). Briefly, the proposed bill denied the use of the National Labor Relations Board to labor organizations which the Subversive Activities Control Board found, after suitable hearings and procedures, to be Communist-controlled action groups (R. 44). The Committee was also making a study of bills dealing with the admissibility of evidence secured from confidential devices in cases involving national security (R. 44). In connection with this and other proposed legislation, the Committee conducted hearings in various areas to investigate the extent of Communist infiltration into labor unions (R. 26, 43, 44).

In March 1954, the Committee was conducting hearings in Chicago (R. 42). At the commencement of the hearing, Chairman Velde explained that a purpose of the Committee, as directed by Congress, was to ascertain the extent and success of subversive activities within the United States and on the basis of its investigations to make recommendations for new legislation (R. 43). He pointed out that during the fifteen years in which the Committee had been in existence it had made forty-seven recommendations to Congress and only eight of these recommendations had not been acted upon (R. 43).[3]

He also described summarily the proposed amendment to the Internal Security Act of 1950, referred to above, and other legislation currently pending before the Committee (R. 44). Concluding, he stated, "Every witness who has been subpoened to appear before the committee here in Chicago, as in all hearings conducted by this committee, are known to possess information which will assist the committee in performing its directed function to the Congress of the United States" (R. 44).

Petitioner and another witness whom the Committee sought to question in Chicago could not be found (R. 70). As a result, when the hearings were continued in Washington (R. 70), petitioner was summoned and appeared before the Committee on April

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[3] Among the eight not acted upon was that providing that witnesses appearing before Congressional committees be granted immunity from prosecution on the information they furnish (R. 43). Subsequently, Congress passed the Immunity Act of 1954, 68 Stat. 745, amending 18 U.S.C. 3486. See *Ullman* v. *United States,* 350 U.S. 422.

29 (R. 70). Petitioner was sworn and testified that from 1935 to 1953 he had been employed by the International Harvester Company at East Moline, Illinois (R. 72). However, from 1942 to 1953 he had been on leave from the job under a labor union contract (R. 72). From 1942 to 1949 he was employed by the Farm Equipment-CIO International Union (FE) (R. 72). During this time he rose to the position of president of the FE-CIO District No. 2 which was made up of a geographical area around the Quad Cities, including Canton, Dubuque and Rock Falls (R. 77). When the Farm Equipment Workers merged with the United Electrical, Radio and Machine Workers in 1949, he continued with the latter union until 1953 (R. 72). In 1953 petitioner left to go with the United Auto Workers-CIO International Union as an organizer (R. 72).

Petitioner was then questioned concerning the testimony of two witnesses, Donald O. Spencer and Walter Rumsey, who had appeared before the Committee in September 1952 (R. 73) and in March 1954 (R. 77), respectively, and who had identified petitioner as a Communist. Spencer, who had admitted being a Communist from 1943 to 1946, had testified that he had been recruited into the Party by Walter Rumsey with the endorsement and prior approval of petitioner, district vice-president of the FE at that time (R. 73). In Chicago, Rumsey had testified that he had been recruited into the Communist Party by petitioner (R. 77) and at the beginning had paid dues to him (R. 83). Later, Rumsey stated that he had

collected dues from petitioner who had assumed the name of Sam Brown (R. 84).

Petitioner admitted knowing Spencer and Rumsey (R. 73, 77, 78, 79) and was familiar with their testimony concerning him (R. 75). He admitted co-operating with the Communist Party from 1942 to 1947 to such a degree that some persons might honestly have thought him to be a Communist (R. 75). He made contributions to Communist causes (R. 75-77), signed petitions for Communists (R. 75-77), and attended caucuses at an FE convention at which Communist Party officials were present (R. 75). He also participated in union meetings along with such Communists as Fred Fine, Gil Green and Bill Sentner (R. 80-81) and attended a public meeting of the Communist Party where Foster spoke.[4] Petitioner was completely cognizant of the fact that the general program and policy of the Communist Party was to attempt to control the various unions (R. 81) and he testified that it was probably correct to say that the discussion he had with these men whom he knew to be Communists was in connection with their desire to control the union policy and activities (R. 81). However, he denied that he had ever been a "card-carrying member" of the

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[4] These men are known Communist leaders. All have been convicted for violation of the Smith Act, 54 Stat. 670, 671, 18 U.S.C. 2385. Gil Green was convicted along with Eugene Dennis and others in *Dennis* v. *United States*, 183 F. 2d 201 (C.A. 2), affirmed, 341 U.S. 494. Fred Fine was indicted along with the defendants in *United States* v. *Flynn*, 216 F. 2d 354 (C.A. 2), certiorari denied, 348 U.S. 909. At the time of the arrest he could not be located, but was subsequently tried and convicted on July 31, 1956 in the Southern District of New York. Sentner's appeal from his conviction is now pending (No. 15097, 8th Circuit).

Communist Party (R. 75). Contradicting Spencer's testimony, petitioner testified that he did not have anything to do with recruiting Spencer into the Party (R. 73-74) and that "Spencer was wrong when he termed any meetings which I attended as closed Communist Party meetings" (R. 75). Petitioner further denied recruiting Rumsey into the Party or receiving dues from him or paying dues to him under the alias of Sam Brown (R. 75, 77, 83-84).

The Committee then proceeded to ask petitioner whether he knew certain persons whom Rumsey during his testimony in Chicago had identified as fellow members in the Communist Party when he (Rumsey) also was a member (R. 84, 85, 87). The first of the persons whom petitioner knew was Harold Fisher (R. 85). The Committee then asked him whether he knew Fisher to be a member of the Communist Party (R. 85). Petitioner, after conferring with counsel, made the following statement (R. 85-86):

> I would like to get one thing perfectly clear, Mr. Chairman. I am not going to plead the fifth amendment, but I refuse to answer certain questions that I believe are outside the proper scope of your committee's activities. I will answer any questions which this committee puts to me about myself. I will also answer questions about those persons whom I knew to be members of the Communist Party and who I believe still are. I will not however, answer any questions with respect to others with whom I associated in the past. I do not believe that any law in this country requires me to testify about persons who may in the past have been Communist Party members or

> otherwise engaged in Communist Party activity but who to my best knowledge and belief have long since removed themselves from the Communist movement.
>
> I do not believe that such questions are relevant to the work of this committee nor do I believe that this committee has the right to undertake the public exposure of persons because of their past activities. I may be wrong, and the committee may have this power, but until and unless a court of law so holds and directs me to answer, I most firmly refuse to discuss the political activities of my past associates.

On further questioning, petitioner reiterated his intention not to rely on the Fifth Amendment and assured the Committee that he was acting on the advice of counsel (R. 86).[5] He was then directed by the Chair-

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[5] After making his statement, the following colloquy occurred (R. 86):

> Mr. Kunzig: And I want to get this clear for the record. You are not in any way raising the fifth amendment?
>
> Mr. Watkins: I am not.
>
> Mr. Kunzig: But you are refusing to answer the question I have just asked you?
>
> Mr. Watkins: Based upon the statement just read, yes.
>
> Mr. Kunzig: And you, of course, have advice of counsel. He is sitting right next to you at this moment and you just conferred with him, is that correct?
>
> Mr. Watkins: That is correct.
>
> Mr. Scherer: Mr. Chairman, I ask that you direct the witness to answer.
>
> Mr. Velde: Yes. This committee is set up by the House of Representatives to investigate subversion and subversive propaganda and to report to the House of Representatives for the purpose of remedial legislation.
>
> The House of Representatives has by a very clear majority, a very large majority, directed us to engage in that type of work, and so we do, as a committee of the House of Repre-

man to answer the question and refused to do so.

The next person identified by Mr. Rumsey, who petitioner admitted knowing, was Charles Hobbe (R. 87). When asked if he knew "Charles Hobbe to be a member of the Communist Party," petitioner's reply was "I stand on my statement" and he refused to answer further (R. 87). Thereupon, the Chairman directed him to answer, but, again referring to his statement, he refused to comply (R. 87).

Similar refusals and directions to answer followed, and like those previously described became the subject of the various counts of the indictment. In all, petitioner refused to answer as to thirty persons whom he admitted knowing (R. 87-90).[6]

In August, four months following the hearings, the Communist Control Act of 1954, 68 Stat. 775, 50 U.S.C. (Supp. II) 841 *et seq.*, was passed. The Act contained several amendments to the Internal Security Act of 1950 (64 Stat. 987, 50 U.S.C. 781 *et seq.*), in-

sentatives, have the authority, the jurisdiction, to ask you concerning your activities in the Communist Party, concerning your knowledge of any other persons who are members of the Communist Party or who have been members of the Communist Party, and so, Mr. Watkins, you are directed to answer the question propounded to you by counsel.

Now do you remember the question that was propounded to you?

Mr. Watkins: I remember the question, Mr. Chairman, and I have read my answer, which among other things, states that your committee may have this power, and I stand on my statement.

[6] As to one additional person, Joseph Stern, petitioner told the Committee, "I have knowledge that he carried on Communist Party activities in the Quad City area. I have not known him for several years, or his whereabouts, but at the time he was in the Quad Cities he was carrying on Communist Party activities" (R. 90).

cluding a provision (68 Stat. 775, 779-780, 50 U.S.C. (Supp. II) 792a(h)) denying to a labor union, found by the Subversive Activities Control Board to be a Communist-infiltrated organization, any benefits provided by the Labor Management Relations Act of 1947 (61 Stat. 136, 29 U.S.C. 141 *et seq.*)[7]

ARGUMENT

This petition is wholly bottomed on the erroneous postulate that the Committee had no valid *legislative* purpose when it questioned petitioner. But the Court of Appeals has definitely found that there was a specific and valid legislative objective to the inquiry (Pet. 44-47, 50)—in particular, a study of Communist labor union activities in connection with bills on that subject—and the record supports that finding. There is no occasion, therefore, to reach the broad questions presented as to "exposure for exposure's sake" (Pet. 2-3, 19, *et seq.*) Nor, since the court "must judge each inquiry in its own setting and upon its own facts," as the Court of Appeals said (Pet. 50), is there any call for this Court to review the particular determination in this case by the lower courts that petitioner was interrogated pursuant to, and in connection with, a specific legislative inquiry. The general principles governing Congressional inquiries, as they actually affect this case, are not in dispute; the only real con-

[7] Among other changes, the Communist Control Act of 1954 added the term "Communist-infiltrated" organization and its definition to the Internal Security Act of 1950 (68 Stat. 775, 777, 50 U.S.C. (Supp. II) 782). Section 6 of the Communist Control Act also made it unlawful for members of Communist organizations to hold office or employment with any labor organization or to represent an employer (68 Stat. 775, 777, 50 U.S.C. (Supp. II) 784).

troversy is as to the existence of a valid "legislative purpose" in this particular instance and that relatively narrow issue has been decided adversely to petitioner.

I.

As the courts below have found, the Committee did have a valid, specific, legislative purpose in questioning petitioner.

1. It was pointed out by the Chairman of the Committee, at the commencement of the hearing of which petitioner's interrogation was a part, that forty-seven recommendations made by the committee had been acted upon by Congress at that time (*supra,* p. 7; R. 43). Among those was the Internal Security Act of 1950, which was enacted on the basis of a congressional finding that "[t]here exists a world Communist movement . . . whose purpose it is by . . . infiltration into other groups . . . and any other means deemed necessary, to establish a Communist totalitarian dictatorship in the countries throughout the world" and that this movement presented "a clear and present danger to the security of the United States" (64 Stat. 987-989 (50 U.S.C. 781). The Chairman also expressly stated that there had been referred to the Committee a bill which would deny to Communist-controlled unions the benefits of the Labor Management Relations Act of 1947 (*supra,* p. 7; R. 44). Some four months later the bill became law (*supra,* p. 12).

In *McGrain* v. *Daugherty,* 273 U.S. 135, 177-178, the Court held that, if the subject of the inquiry is one in which legislation by Congress "could be had", it is immaterial that the authorizing resolution fails to

include an express avowal that an investigation is being directed for a legislative purpose. And *Sinclair* v. *United States,* 279 U.S. 263, 294-295, declared that Congress could investigate to determine what, if any, legislation was necessary. *Quinn* v. *United States,* 349 U.S. 155, also recognizes the power of Congress to investigate matters relating to contemplated legislation—"including of course the authority to compel testimony, either through its own processes or through judicial trial" (349 U.S. at 160-161). Where, as here, the Committee has specific legislative proposals under consideration, there can be no doubt of its power to investigate to ascertain whether any legislation is necessary, and, if so, what form it should take. The inquiry undertaken in this case was as directly related to contemplated legislation as those in the *McGrain* and *Sinclair* cases, and the many other instances in our history in which the contempt statute has validly been applied to Congressional investigations.[7a]

2. The particular questions asked petitioner were pertinent to the particular matter under inquiry and were not for the purpose of exposure. He admitted cooperating with the Communist Party from 1942 to 1947, in union activities, to such an extent that some persons might honestly have believed him to be a Communist (*supra,* 9), and he was admittedly familiar with Communist infiltration, over a period of years, into at least one segment of union functioning (*supra,* pp. 8-11).

[7a] Petitioner did not make the claim below that the Committee's inquiry exceeded its mandate from the House, and he does not do so here (see Pet. 34).

(a). In these circumstances, it is clear that his knowledge was relevant to the inquiry into the scope and nature of Communist infiltration into union activities. The answers to the questions put by the Committee could well reveal, in themselves, the extent of Communist influence in the union, and, if petitioner had answered affirmatively, his replies would have provided the basis for further inquiry as to the detailed character of the infiltration. Such questioning was plainly material to consideration of a bill which became the Communist Control Act of 1954, with its special provisions relating to Communist-infiltrated unions (*supra,* pp. 12-13).

Moreover, petitioner had made a direct attack on the credibility of Donald O. Spencer and Walter Rumsey, two witnesses who had testified before the Committee (*supra,* 8-10). It was after petitioner had denied certain testimony given by Rumsey that the Committee began to question him concerning the Communist Party membership of about thirty persons whom Rumsey had identified as being Communists in the labor movement (*supra,* 10). Since he had already attacked Rumsey's credibility, petitioner could not refuse to answer these questions which likewise bore on Rumsey's veracity. As was pointed out by the Court of Appeals (Pet. 50-51), "Having volunteered an attack on the credibility of a prior witness, appellant could not later refuse to answer questions concerning Communist Party membership of other union associates of appellant and of the prior witness on the ground that this particular phase of testimony was beyond the scope of the Committee's in-

vestigating power." Cf *Rogers* v. *United States,* 340 U.S. 367.

(b). If the Committee had the additional (and more general) aim of ascertaining the number of Communists at a particular period in our recent history, that, too, would be a valid subject of inquiry in connection with such measures as the Communist Control Act of 1954 or amendments to the Internal Security Act of 1950. Congress, having the power to inquire into Communism and the Communist Party for the purpose of considering legislation, must also have the power to identify individuals who belong to the Party. *Barsky* v. *United States,* 167 F. 2d 241, 246, certiorari denied, 334 U.S. 843; *Morford* v. *United States,* 176 F. 2d 54, 57 (C.A.D.C.), reversed on other grounds, 339 U.S. 258; *United States* v. *Kamin,* 136 F. Supp. 791, 799-800, 801 (D. Mass).[8] The relative numerical strength of the Party at certain periods is material to the subject and can properly involve an inquiry into past as well as present membership. Thus, the Court of Appeals stated (Pet. 43):

> * * * A majority of the court is of opinion that congress has power to investigate the history of the Communist Party and to ask the questions Watkins refused to answer. It would be quite in order for Congress to authorize a committee

[8] See also *Marshall* v. *United States,* 176 F. 2d 473, 474-475 (C.A.D.C.), certiorari denied, 339 U.S. 933, where the court held that an inquiry into the finances and *personnel* of the National Federation for Constitutional Liberties was proper; and in *United States* v. *Norris,* 300 U.S. 564, this Court held that a resolution authorizing an inquiry into the names of persons and corporations subscribing to the campaign expenditures of various candidates was within the constitutional powers of Congress.

> to investigate the rate of growth or decline of the Communist Party, and so its numerical strength at various times, as part of an inquiry into the extent of the menace it poses and the legislative means that may be appropriate for dealing with that menace.[9]

2. Despite the specific finding by the Court of Appeals that the questions *"were"* actually pertinent, and not merely *"could"* have been relevant (Pet. 43), petitioner still insists that the questioning by the Committee was "a clear case of exposure for exposure's sake" (Pet. 19, *et seq.*). He urges in support that the Committee "from its earliest days down to the present, has asserted a separate and independent power of exposure unrelated to legislative purpose" (Pet. 19); as proof, offer was made of newspaper reports and statements made by Committee members at various times.

But the Court of Appeals properly ruled that "even if the unbridled power of exposure were claimed by some members of Congress, the claim would not establish its use in any particular inquiry" (Pet. 50). Each inquiry should be judged "in its own setting and upon its own facts" (Pet. 50); in this case the

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[9] In determining whether a question is pertinent to a subject under investigation, the courts have always allowed Congress a wide latitude. Thus, in *Townsend* v. *United States,* 95 F. 2d 352, 361 (C.A.D.C.), certiorari denied, 303 U.S. 664, citing *McGrain* v. *Daugherty,* 273 U.S. 135, it was stated that "[a] legislative inquiry may be as broad, as searching, and as exhaustive as is necessary to make effective the constitutional powers of Congress." See also *United States* v. *Josephson,* 165 F. 2d 82, 89-90 (C.A.D.C.), certiorari denied, 333 U.S. 838; *Barsky* v. *United States,* 167 F. 2d 241, 243-247 (C.A.D.C.), certiorari denied, 334 U.S. 843; *United States* v. *Orman,* 207 F. 2d 148, 153-154 (C.A. 3).

opening statements made by the Chairman—as well as the posture of the particular legislation then pending in Congress, and the nature of the questions asked petitioner—plainly indicate that there was a specific legislative objective of this particular inquiry viewed "in its own setting and upon its own facts". In circumstances such as these, a court cannot go behind the stated purpose of the investigation to delve into some other, or ulterior, motive claimed to exist within the minds of the legislators. *Sinclair* v. *United States,* 279 U.S. 263, 295; *McGrain* v. *Daugherty,* 273 U.S. 135, 170, 172, 175-178; *Dennis* v. *United States,* 171 F. 2d 986, 988 (C.A.D.C.), affirmed on other grounds, 339 U.S. 162; *Barsky* v. *United States,* 167 F. 2d 241, 250 (C.A.D.C.), certiorari denied, 334 U.S. 843; *Eisler* v. *United States,* 170 F. 2d 273, 278-279 (C.A.D.C.), certiorari dismissed, 338 U.S. 883; *United States* v. *Orman,* 207 F. 2d 148, 157 (C.A. 3); *United States* v. *Kamin,* 136 F. Supp. 791, 800-801 (D. Mass.).[10]

There is likewise no merit to petitioner's related argument that the Committee already had in its files all the information it attempted to obtain from him (Pet. 26-29). First, this contention overlooks the fact that petitioner had attacked the credibility of the witness Rumsey and was being questioned further on that witness' testimony which certainly formed part of the information then in the Committee's files on the 30 persons petitioner was asked to identify (*supra,* 10). Second, it is settled, as petitioner admits (Pet.

[10] We do not mean here either to affirm or deny the existence of a general Congressional power of "exposure" unrelated to a particular legislative inquiry. Our position is simply that that question is not actually presented by this case, and is therefore not reached.

28), that Congress may conduct hearings to substantiate earlier testimony. *Young* v. *United States,* 212 F. 2d 236, 239 (C.A.D.C.), certiorari denied, 347 U.S. 1015.[15] In any case, Congress cannot be required "to exhaust the possibilities" (Pet. 28) in its files before questioning a witness, any more than a witness in a judicial proceeding, whose testimony is relevant and unprivileged, can refuse to testify on the ground that the court already has enough evidence or that other sources of information should be used. Such a requirement would amount to an undue infringement on the powers of the legislature to conduct its own inquiries. For the same reason, petitioner cannot complain of questions concerning labor unions which the Committee did not ask him (Pet. 25-26, 29 fn., 22, 31, 58). He had shown himself to be a recalcitrant witness, and the Committee could appropriately decline to question him further.

3. Since the questions were pertinent to an authorized inquiry, petitioner had no right to refuse to answer on the ground that "exposure" might result. In such a case, failure to reply can not be excused—in the absence, as here, of a claim of privilege under the Fifth Amendment—because the witness might be "exposed" for a wrong doing, disreputable activity, or a crime. 2 U.S.C. 193;[12] *Sinclair* v. *United States,* 279

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[11] In *Young* v. *United States, supra,* the court held that hearings were proper to substantiate an earlier report on a bill which appeared doubtful of passage in view of a presidential reorganization plan.

[12] "No witness is privileged to refuse to testify to any fact, or to produce any paper, respecting which he shall be examined by either House of Congress, or by any joint committee established

U.S. 263, 295; *McGrain* v. *Daugherty,* 273 U.S. 135, 179-180; *United States* v. *Josephson,* 165 F. 2d. 82, 89 (C.A. 2), certiorari denied, 333 U.S. 838. Indeed, petitioner himself admits that the powers of Congress to investigate encompass exposure "where ancillary to a valid legislative purpose" (Pet. 13).

II.

In one of his "questions presented" (Pet. 3), petitioner challenges, on the ground of vagueness, the validity of the resolution authorizing the Committee to function,[13] but this point is barely mentioned in the rest of the petition (see Pet. 17, fn. 13). The resolution has already been upheld in the lower courts against comparable assaults. *Dennis* v. *United States,* 171 F. 2d 986, 987-988 (C.A.D.C.), affirmed on other grounds, 339 U.S. 162; *Barsky* v. *United States,* 167 F. 2d 241, 242-247 (C.A.D.C.), certiorari denied, 334 U.S. 843; *United States* v. *Josephson,* 165 F. 2d 82, 90-1 (C.A. 2), certiorari denied, 333 U.S. 838; *Emspak* v. *United States,* 203 F. 2d 54, 56 (C.A.D.C.), reversed on other

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by a joint or concurrent resolution of the two Houses of Congress, or by any committee of either House, upon the ground that his testimony to such fact or his production of such paper may tend to disgrace him or otherwise render him infamous." (R. S. § 103.)

[13] H. Res. No. 5, 79th Cong., 1st Sess., 91 Cong. Rec. 10, 15 (1945). This resolution, which established the committee as one of the standing committees of the House, was carried into House Rules X and XI and into the Legislative Reorganization Act of 1946, 60 Stat. 812, 828. The Reorganization Act was adopted as the Rules of the 83rd Congress by H. Res. No. 5, 83rd Cong., 1st Sess. (1953), *supra.* Prior to January 3, 1945, the Committee was a special committee, popularly known as the Dies Committee.

grounds, 349 U.S. 190.[14] In *Emspak* and its companion cases, the issue was argued here but was not reached by the Court (see 349 U.S. at 170, 202, 223). As applied to petitioner, we submit that the resolution is clearly valid for the reasons set forth in the Briefs for the United States in *Emspak,* Oct. Term, 1953, No. 67, pp. 48-50, 66, *se seq.,* and in *Quinn* v. *United States,* Oct. Term, 1954, No. 8, pp. 70-79.

Petitioner has also summarily presented (Pet. 3), with hardly any discussion, the question of whether the First Amendment protects against the "forced disclosure" of his "past political associations". But this point does not exist in petitioner's case since he freely testified as to his own past history and general associations (cf. *Rogers* v. *United States,* 340 U.S. 367), and in any event the specific inquiries to which he refused to respond concerned Communist infiltration into union activities, not purely "political" activities. Moreover, the First Amendment does not bar inquiry into Communist activities in the circumstances about which petitioner was asked. See the Briefs for the United States in *Emspak, supra,* pp. 95 *et seq.,* and in *Quinn, supra,* pp. 70 *et seq.*

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[14] Other cases are:—*Eisler* v. *United States,* 170 F. 2d 273 (C.A.D.C.), certiorari dismissed, 338 U.S. 883; *Marshall* v. *United States,* 176 F. 2d 473 (C.A.D.C.), certiorari denied, 339 U.S. 933; *Lawson* v. *United States,* 176 F. 2d 49, 50-53 (C.A.D.C.), certiorari denied, 339 U.S. 934; *Kamp* v. *United States,* 176 F. 2d 618 (C.A.D.C.), certiorari denied, 339 U.S. 957; *Morford* v. *United States,* 176 F. 2d 54 (C.A.D.C.), reversed on other grounds, 339 U.S. 258.

III.

Petitioner also contends (Pet. 34-38) that the trial court erred in denying (R. 10-11), without opinion, his motion (R. 4-10) to dismiss the indictment on the ground that "there were less than 12 members of the Grand Jury who concurred in finding the indictment who were free from prejudice or bias against [him]" (R. 4), or, in the alternative, to grant a hearing at which he might "determine which grand jurors concurred in finding the indictment and offer proof * * * that bias or prejudice existed on the part of the requisite number of the grand jurors" (*ibid.*). The basis of the asserted bias and prejudice was the alleged fact, stated on information and belief, that eleven of the grand jurors were government employees and that, of the remainder, some were "close associates" or "relatives" of govenment employees (R. 5). It was alleged that all such persons, by reason of the Government's loyalty-security program, are so affected by a "climate of * * * intimidation" concerning all aspects of Communism as to render them unable, freely and without intimidation, to vote against the indictment of persons accused of crimes which are in any way connected with that subject (R. 6-10).

This contention, which, though urged in the Court of Appeals, is not discussed in either of the opinions, is substantially identical with one of the contentions made in the petition for certiorari in No. 137, this Term, *Ben Gold* v. *United States*. Our reply in that case (Br. in Opp., pp. 38-40) is accordingly adopted

for this case.[15] See, also, the Brief for the United States in *Quinn* v. *United States,* Oct. Term, 1954, No. 8, pp. 43 *et seq.*

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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AUGUST, 1956

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[15] To the extent that the instant case differs from *Gold* on its facts, the difference does not favor petitioner. For here, as in *Emspak* v. *United States,* 203 F. 2d 54, 58-60 (C.A.D.C. [concurring opinion]), reversed on other grounds, 349 U.S. 190, the trial court was aware that the fact of petitioner's refusal to answer the Committee's questions was not in dispute. The defense was rather "a legal justification for the refusal" (*id.* at 59). Since "[t]he function of the grand jury is merely to determine whether the evidence before it, if unexplained, would justify a verdict of guilty" (*id.* at 60),—since, that is to say, "[o]ur legal procedure does not include provision for the presentation to a grand jury of matters of defense or justification" (*id.* at 59)—it is as true here as it was in *Emspak* that "[n]o circumstance was brought to the court's attention which demonstrated that this grand jury was unsuitable to take that action" (*id.* at 60).

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