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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 WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The majority (R. 175-185) and dissenting (R. 185-198) opinions in the Court of Appeals, sitting *en banc*, are reported at 233 F. 2d 681.[1]

JURISDICTION

The judgment of the Court of Appeals was entered on April 23, 1956 (R. 199) and a petition for rehearing was denied on May 22, 1956 (R. 200). By order

[1] The appeal was first heard by a three-judge division of the court, composed of Chief Judge Edgerton and Judges Bazelon and Bastian. This division reversed petitioner's conviction, with Judge Bastian dissenting. The dissenting opinion of the two judges who constituted the majority of the division, which they filed in connection with the *en banc* court's decision, is "nearly identical with" their former majority opinion (R. 185).

of Mr. Chief Justice Warren, the time for filing a petition for a writ of certiorari was extended to July 20, 1956 (R. 200) and the petition was filed on July 19, 1956. Certiorari was granted on October 8, 1956 (R. 201). 352 U. S. 822. The jurisdiction of this Court rests upon 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether it sufficiently appears from the record of the proceedings at which petitioner refused to answer questions that the House Committee on Un-American Activities was acting pursuant to a valid legislative purpose when it questioned petitioner.

2. Whether extraneous "evidence"—*i. e.,* materials other than the rule from which a congressional committee derives its authority and the record of the proceedings at which a refusal to answer questions occurred—is admissible at the trial of the recalcitrant witness to prove that the committee had other than a valid legislative purpose.

3. Whether the Committee's inquiry would not have been valid even if its purpose had been simply to inform Congress and the public of Communist activities in labor unions.

4. Whether a witness before a congressional committee has the right under the First Amendment to refuse to disclose whether various individuals among his past associates, who to his "best knowledge and belief" have "removed themselves from the Communist movement", were to his knowledge once members of the Communist Party, where the witness fully

discloses his own past Communist affiliations and is willing to, and does, name those of his past associates who were formerly, and to his "best knowledge and belief" still are, active in the Party.

5. Whether 2 U. S. C. 192 (providing for the punishment of any witness before a congressional committee who refuses to answer any question "pertinent to the question under inquiry"), read together with the House rule establishing the Committee on Un-American Activities, is unconstitutionally vague.

6. Whether, in the pretrial proceeding in which he sought the dismissal of the indictment, petitioner 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, or, in the alternative, to an opportunity to examine such employees for the purpose of determining whether they or any of them were individually biased against him.

STATUTE AND RULES INVOLVED

2 U. S. C. 192 (R. S. 102, as amended) provides:

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

> demeanor, 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.

Rules X and XI of the Rules of the House of Representatives, as amended by the Legislative Reorganization Act of 1946, c. 753, § 121, 60 Stat. 812, 822, 823, 828 (which Rules were adopted by the House at the commencement of the Eighty-Third Congress [2] as rules of the House for that Congress (H. Res. 5, 83d Cong., 1st sess., 99 Cong. Rec. 15, 16, 18, 24)), provide in pertinent part 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.
>
> * * * * *

RULE XI.—POWERS AND DUTIES OF COMMITTEES

> (1) All proposed legislation, messages, petitions, memorials, 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.*

---

[2] It was during that Congress that the refusals to answer questions here involved occurred (April 29, 1954).

(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 the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpenas 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.
>
> * * * * *

STATEMENT

On April 29, 1954, petitioner, appearing as a witness before a subcommittee of the Committee on Un-American Activities of the House of Representatives, refused to answer certain questions put to him as such witness (R. 69 *et seq.*). On May 11, 1954, Representative Velde, Chairman of the Committee, submitted a report of petitioner's refusal to the House of Representatives (H. Rep. No. 1579, 83d Cong., 2d sess.; Gov. Ex. 3, R. 65–67). The House directed the Speaker to certify to the United States Attorney for the District of Columbia, for presentment to the grand jury, the committee's report (H. Res. No. 534, 83d Cong., 2d sess.; Gov. Ex. 4, R. 68). A seven-count indictment, charging petitioner with violating 2 U. S. C. 192 (*supra,* pp. 3–4), was thereafter returned in the United States District Court for the District of Columbia (R. 2–3).

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 prison sentence 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 *en banc* (per Bastian, J.), Chief Judge Edgerton and Judge Bazelon dissenting (R. 175–198).

The pertinent facts may be summarized as follows:

Rule X of the Rules of the House of Representatives, as amended by the Legislative Reorganization Act of 1946, provides for a Committee on Un-American Activities as a standing committee to be elected by the House at the commencement of each Congress (*supra,* p. 4). Under Rule XI, all proposed legislation relating to un-American activities is to be referred to this committee, which is authorized to investigate "the extent, character, and objects of un-American propaganda activities in the United States", "the diffusion within the United States of subversive and un-American propaganda", and "all other questions in relation thereto that would aid Congress in any necessary remedial legislation" (*supra,* pp. 4–5). These Rules were adopted as part of the rules of the House at the beginning of the Eighty-third Congress (during which the offenses here involved occurred) by H. Res. 5, 83d Cong., 1st sess. (99 Cong. Rec. 15, 16, 18, 24).[3]

In large part as a result of investigations and recommendations by the House Committee on Un-American Activities, the Internal Security Act of 1950 (64 Stat. 987) was enacted (R. 28, 43). At the time of petitioner's appearance before the Committee, the Committee was considering a proposed amendment to this Act (R. 28, 44), which would deny the "use

[3] The Committee was made one of the standing committees of the House of Representatives in January 1945 by H. Res. 5, 79th Cong., 1st sess. (91 Cong. Rec. 10, 15). Prior to that time, it was a special committee popularly known as the Dies Committee, first established in 1938.

of the National Labor Relations Board" to any labor organization which the Subversive Activities Control Board should find, after hearing, to be a "Communist-controlled action group" (R. 44).[4] The Committee was also making a study of a proposed "immunity statute" and of a bill dealing with the admissibility of evidence secured from "confidential devices" in "cases involving the national security" (R. 30, 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. 26–27, 43, 44).

In March 1954, the Committee conducted public hearings in Chicago (R. 30). At the commencement of the hearings, Chairman Velde explained that a purpose of the Committee was to ascertain, as directed by Congress, 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. 27–28, 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, only eight of which had not been acted upon (R. 43).[5] He also referred to the pro-

[4] The substance of the proposed amendment was in fact enacted into law, as part of the Communist Control Act of 1954, four months following petitioner's appearance before the Committee. See *infra*, p. 15.

[5] Among the eight not acted upon was that providing that "witnesses appearing before congressional committee[s] 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 *Ullmann* v. *United States*, 350 U. S. 422.

posed amendment to the Internal Security Act of 1950, referred to above, and other proposed legislation pending before the Committee (R. 44). Concluding his public statement, Mr. Velde stated that "Every witness who has been subpoenaed 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).

During the Chicago hearings, one witness, Walter Rumsey, testified that he had been recruited into the Communist Party by petitioner (R. 33, 77) and at the beginning had paid dues to him (R. 33–34, 83–84). Rumsey further stated that he had later collected dues from petitioner, who had assumed the name of "Sam Brown" (R. 34, 84). The Committee also had testimony identifying petitioner as a Communist from one Donald O. Spencer, who had appeared before the Committee some eighteen months previously, on September 3, 1952 (R. 31, 73). Spencer had admitted being a Communist from 1943 to 1946 (R. 32, 73), and had testified that he had been recruited into the Party by Rumsey with the endorsement and prior approval of petitioner, whom he identified as the then "district vice-president" of the Farm Equipment-CIO International Union (FE) (R. 32, 73). Spencer had further testified that he had once attended a Communist Party meeting at which petitioner and two others, Kate Hall and Jerry Fielde, were present (R. 74).

In Chicago, the Committee attempted to subpoena petitioner, but he could not be found (R. 26, 70), The hearings were later continued in Washington, D. C. (R. 26, 70). Petitioner was summoned and appeared with counsel before the Committee on April 29, 1954 (R. 70). Petitioner testified that from 1935 to 1953 he had been employed by the International Harvester Company at East Moline, Illinois (R. 72). From 1942 to 1953, he said, he had been on leave from the latter job pursuant to the terms of a labor union contract (R. 72). He had been employed by the Farm Equipment-CIO International Union (FE) from 1942 to 1949 (R. 72), during which time he had risen to the position of president of the FE-CIO District No. 2, made up of a certain geographical area around the "Quad Cities", including Canton and Rock Falls, Illinois, and Dubuque, Iowa (R. 77). When the Farm Equipment Workers merged with the United Electrical, Radio and Machine Workers (UE) in 1949, he further testified, he continued with the latter union until 1953, when he left to go with the United Auto Workers-CIO International Union as an organizer (R. 72).

When questioned about the testimony of Spencer and Rumsey, petitioner admitted knowing them (R. 73, 77, 78, 79) and indicated that he was familiar with their testimony concerning him (R. 75). He admitted having "cooperated with the Communist Party" and having "participated in Communist activities" during the years 1942 to 1947 "to such a degree that some persons may honestly believe" him to have been a

Party member (R. 75). He admitted that he had 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 had participated in union meetings, he said, along with such Communists as Fred Fine, Gil Green and Bill Sentner [6] (R. 80–81), and had attended a public meeting of the Communist Party at which Party-head William Z. Foster had spoken (R. 82).

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 discussions he had had with individuals known by him to be Communists had been "in connection with their desire to control * * * the union's policy and activities" (R. 81). However, he denied that he had ever been a "card-carrying member" of the Communist Party (R. 75). Contradicting Spencer's testimony, he testified that he had had nothing to do with recruiting Spencer into the Party (R.

[6] These individuals are all well-known Communist Party leaders. All have been convicted for violation of the Smith Act. Green was one of the defendants in the prosecution which culminated in *Dennis* v. *United States*, 341 U. S. 494. Fine was one of those indicted in the New York "second-string" prosecution, which culminated in *United States* v. *Flynn*, 216 F. 2d 354 (C. A. 2), certiorari denied, 348 U. S. 909. He could not be located at first, but he 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).

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73–74) and that "Spencer was wrong when he termed any meetings which I attended as closed Communist Party meetings" (R. 75). In contradiction of Rumsey, petitioner denied having recruited Rumsey into the Party, or having received dues from him, or having paid dues to him under the alias "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 active in the Communist Party when he (Rumsey) also was a member (R. 40, 84, 85, 87). The first of the persons whom petitioner said he knew was one Harold Fisher (R. 85). The Committee asked him whether he knew Fisher to be a member of the Communist Party (R. 85). Petitioner, after conferring with counsel, read the following prepared 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 whom 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 (R. 86). The First Amendment was mentioned by no one at any time during the colloquy. Upon Representative Scherer's requesting Chairman Velde to "direct the witness to answer" (R. 86), Mr. Velde said (*ibid.*):

> 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 Representatives, 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?

Petitioner replied that he "remembered the question" but would "stand on [his] statement" (R. 86).

The next person who had been identified as a Communist by Mr. Rumsey and whom petitioner admitted knowing was a Charles Hobbe (R. 87). When asked if he knew Hobbe to be "a member of the Communist Party," petitioner again refused to answer, again declaring that he would "stand on [his] statement" (R. 87). Similar refusals to answer with respect to other individuals followed, each accompanied by a direction to answer, and, like those previously described, became the subjects of the various counts of the indictment. In all, petitioner refused to answer as to thirty persons whom he admitted knowing (R. 87–90). However, consistently with his position that he would answer questions about persons whom he knew to be Communists and who he believed were still such as of the time of his testifying (R. 85, 88), he made the following statement concerning an individual identified as Joseph Stern, who was one of the persons about whom the Committee inquired (R. 90):

> 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.

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 (R. 28–29). The Act contained several amendments to the Internal Security Act of 1950 (64 Stat. 987, 50 U. S. C. 781 *et seq.*), including a provision (§ 10, 68 Stat. 775, 779–780) amending the Internal Security Act (see 50 U. S. C. (Supp. II) 792a (h)) so as to deny to labor unions found by the Subversive Activities Control Board to be "Communist-infiltrated" organizations any of the benefits provided by the National Labor Relations Act.[7]

SUMMARY OF ARGUMENT

I

The Committee was acting pursuant to a valid legislative purpose when it questioned petitioner.

A. The purpose of a congressional inquiry must be gathered from the record of the committee hearing and the committee's authorization, hospitably

[7] Among other changes in the Internal Security Act which the Communist Control Act effected are the following:

Section 7 of the Communist Control Act (68 Stat. 777) added the term "Communist-infiltrated organization" and its definition to the Internal Security Act and broadened the latter Act's definition of "Communist organization" so as to include "Communist-infiltrated organizations" (see 50 U. S. C. (Supp. II) 782). Section 6 of the Communist Control Act (68 Stat. 777) further amended the Internal Security Act so as to make it unlawful for any member of a "Communist organization" (the definition of which had thus been expanded) to "hold office or employment with any labor organization * * * or to represent any employer in any matter or proceeding arising or pending under [the National Labor Relations] Act" (see 50 U. S. C. (Supp. II) 784 (a) (1) (E)).

read. In interpreting a committee's authority, the courts have been mindful that an inquiry need not be restricted to those facts which prove the need for new legislation. Nor need it be limited to the precise area which Congress has power to regulate. The power to investigate is broader than the substantive authority which may eventually be exerted by the investigating body, for not until the whole region of facts has been canvassed can it be determined where the boundaries of regulation should be drawn. Judicial inquiry into a committee's "legislative purpose" must therefore not be restrictive or hostile, but must take account both of the powers of Congress and of its pressing need to inform itself broadly.

B. The record of this hearing, together with the rule under which the Committee operates, show that the hearing had a proper legislative purpose.

1. At the very commencement of the series of hearings of which petitioner's interrogation was a part, the aim of the hearings was stated by the Chairman to be "to ascertain," pursuant to the mandate of Congress, "the extent and success of subversive activities directed against these United States," and, on the basis of its findings, to make to the Congress "recommendations * * * for new legislation." The Chairman further pointed out that some forty-seven recommendations, previously made by the Committee, had been acted upon by Congress up to that time, the resulting legislation including the Internal Security Act of 1950, which had been enacted as the result of a congressional finding of the existence of a "world

Communist movement," whose purpose it is, by "infiltration into other groups" (among other ways), to establish a world-wide "Communist totalitarian dictatorship." The Chairman also stated that there had been referred to the Committee an important proposed amendment to this Act (which in fact became law four months following petitioner's appearance before the Committee), which would deny to Communist-controlled labor unions the benefits of the National Labor Relations Act. Previously, Congress had enacted the non-Communist affidavit provisions of the Taft-Hartley Act in an effort to diminish Communist influence in trade unions. It is thus clear that the Committee was investigating a subject with respect to which Congress had already passed legislation, and with which it would shortly concern itself once again.

2. The particular information which the Committee sought to elicit from petitioner was clearly pertinent to its inquiry into the need for further legislation respecting Communist infiltration into labor unions. The language of Rule XI (containing the Committee's grant of authority from the House of Representatives) was certainly broad enough to warrant inquiry into the success of past Communist infiltrations into unions, with a view to evaluating the impact of existing statutes and the need for new ones. If the extent of the success of subversive propaganda is to be determined, inquiry into the numbers and identities of persons who are or have been influenced by it (as well as the importance of their positions in strategic areas of the economy) is not improper. "Per-

sonnel is part of the subject." ***Barsky*** v. ***United States,*** 167 F. 2d 241, 246 (C. A. D. C.), certiorari denied, 334 U. S. 843. Petitioner, as he himself acknowledged, had information on that aspect of the subject.

3. The fact that the Committee did not ask petitioner about all his personal experiences connected with the infiltration of Communists into the unions with which he had been associated did not, contrary to his contention, evidence an "unmistakable purpose of exposure" for "exposure's sake." Petitioner, an active leader in the labor movement for many years, had been identified by two previous witnesses as a member of the Communist Party. These witnesses had likewise named as Communists other persons active in the labor field who the Committee had reason to believe were known to petitioner. It was natural, therefore, for the Committee to call petitioner for the purpose of corroborating or denying these other witnesses' testimony both as to himself and the others named. The very fact that petitioner corroborated in part and contradicted in part the earlier witnesses' testimony with respect to himself shows the reasonableness of the Committee's desire to question him for such additional light on the whole subject as he could throw. It can be presumed that the Committee already had information with respect to the general nature of Communist infiltrative techniques *vis-à-vis* labor unions. Its primary interest at the time was the *extent* of the Party's penetration into these unions. Inquiry as to whether named individuals connected with the unions were or were not Party members

was a logical and legitimate way of learning the answer. Decision as to the best way of obtaining the information sought must be left to the discretion of the Committee.

4. The possibility that some individuals may suffer hardship as a result of the exercise by Congress of its power of investigation—for example, by having various aspects of their past lives "exposed"—does not warrant a refusal to respond to a proper inquiry. No more than a witness at a trial was petitioner free to refuse to respond to otherwise legitimate questions on the ground that they invaded his or others' "privacy", or might "expose" them, or bring unfavorable publicity or public disapproval.

C. The extraneous "evidence" which petitioner offered to prove that the Committee's objective was "exposure" was properly excluded as inadmissible.

1. The evidence allegedly showing that the Committee had asserted in the past a separate and independent power of exposure—consisting of past reports of, and transcripts of earlier hearings before, the Committee, and excerpts from various statements of past and present members of the Committee, made on and off the floor of Congress—was inadmissible.

(*a*) A long line of decisions of this Court indicate that (a) the objective of a congressional inquiry should be gathered by the court solely from the record of the hearing and the text of the instrument authorizing the investigation, (b) extraneous materials alleged to traverse or challenge the purpose so determined should not be considered, and (c) the purpose of the inquiry should be hospitably sought

and held to be legitimate "if it is capable of being so construed" (*People, ex rel. McDonald* v. *Keeler,* 99 N. Y. 463, 487, quoted with approval in *McGrain* v. *Daugherty,* 273 U. S. 135, 178); "[t]o find that a committee's investigation has exceeded the bounds of legislative power it must be *obvious*" that such has been the case (*Tenney* v. *Brandhove,* 341 U. S. 367, 378) (emphasis added.) These rules spring from the respect owed by one coordinate branch of the Government to another, acting within its special sphere.

(*b*) These conclusions are borne out by an analysis of the nature and implications of the rule for which petitioner argues. That rule would apply, of course, not just to the Committee here involved, but to any committee of either House—indeed to the Houses themselves and to the Congress as a whole. It would give to every recalcitrant witness before every congressional committee the right to attempt to show—by evidence *dehors* the text of the instrument containing the committee's authorization, and outside of the record of the particular proceedings of the committee in which the recalcitrance occurred—that the committee, despite the fact that those two sources showed that it was acting pursuant to a valid legislative purpose, did not *in fact* have such a purpose. Under the rule proposed, an issue at every trial of such a recalcitrant witness would be the purpose of the committee—which would entail an inquiry into the thoughts and mental processes of the committee members. Grave problems would certainly arise as to which members' purposes, if it appeared that the members had different purposes, would be

authoritative. Every trial under 2 U. S. C. 192 would run the risk of being converted from a trial of the accused recalcitrant into a trial of the purposes and motives of the committee's members. The rule which we urge, on the other hand, comports with the realities of the efficient administration of justice and gives due recognition to the deference owed by the courts to a co-ordinate branch of the Government, yet fully respects the principle that the power of Congress to investigate, broad as it is, "cannot be used to inquire into private affairs unrelated to a valid legislative purpose" (*Quinn* v. *United States,* 349 U. S. 155, 161).

2. The evidence allegedly showing that the Committee already had the information it was seeking from petitioner in its files was also properly held inadmissible. It is an untenable premise that a congressional committee, once it has received testimony on some subject or subjects within its jurisdiction, may never question another witness on the same subject or subjects for corroborative or amplificatory purposes.

II

The Committee's inquiry would not have been invalid even if its purpose had been simply to inform Congress and the public of Communist activities in labor unions. There is considerable support among students of congressional power for the view that the "informing function" is one of the inherent powers of the legislatures of representative governments. Cf. *United States* v. *Harriss,* 347 U. S. 612, sustaining the Federal Regulation of Lobbying Act.

III

The Committee did not violate petitioner's rights under the First Amendment by requiring him to state whether to his knowledge various of his past associates were members of the Communist Party.

A. Petitioner fully and candidly disclosed his own past associations with the Communist Party. He was also willing to identify those of his past Communist associates who to his "best knowledge and belief" were still Party members, and he did in fact identify one of his former associates about whom he was questioned. It was only with respect to those of his past associates who to his "best knowledge and belief" had since "removed themselves from the Communist movement" that he refused to testify. Thus, what petitioner was actually seeking to do was to protect his former associates (in this latter category) from possible embarrassment. He was seeking to vindicate, if anyone's, not his, but their rights to political privacy under the First Amendment (assuming *arguendo* that the Amendment confers such rights, and treating the Communist Party for present purposes as merely another political party). But it is settled that one cannot invoke the constitutional rights of another.

B. In any event, a witness before a congressional committee inquiring into the nature and extent of Communist infiltration has no right under the First Amendment to decline to disclose whether he is or has been a member of the Communist Party.

1. Since Congress certainly has the power to inquire into, and legislate with respect to, the subjects

of Communism and the Communist Party (as many decisions have held), it has the power to identify the individuals who belong or have belonged to the Party. It has been uniformly so held. *E. g., Barsky* v. *United States,* 167 F. 2d 241, 246 (C. A. D. C.), certiorari denied, 334 U. S. 843. For, the nature and scope of the program and activities of the Party depend in large measure upon the character and number of its adherents. In particular, Congress has the right to inquire into possible membership in the Communist Party of leaders of labor unions and those active in union undertakings. It has been clear at least since *American Communications Assn.* v. *Douds,* 339 U. S. 382, that in this field the Communist Party cannot be treated as an ordinary political party, nor associations with it as ordinary associations.

2. Petitioner's attempts to distinguish these decisions and their rationale are unavailing. That the Committee's questions related to past Party membership is not material. Congress is not precluded from inquiring into past Communist infiltrations by the fact that the persons responsible therefor may since have quit the Party. Nor is it material that the persons about whom petitioner was questioned might already have been identified at Committee hearings as Party members. The Committee had a right to seek for corroboration of information already in its possession.

3. Inherent in petitioner's argument is the contention that the "right to silence" is protected by the First Amendment. But even if it is accepted that

disclosures before the Committee may result in unfavorable publicity and discourage persons from subjecting themselves to the risk of similar unfavorable reaction to their associations, it does not follow that the First Amendment is in any way violated. The sanction growing out of such disclosures is not a legal one, but, at most, the sanction of public opinion, against which the First Amendment does not guarantee.

IV

2 U. S. C. 192, providing for the punishment of refusal by a witness before a congressional committee to answer any question "pertinent to the question under inquiry," is not unconstitutionally vague because the grant of authority to the Committee is broadly worded in terms of "un-American propaganda activities" and "other questions in relation thereto that would aid Congress in any necessary remedial legislation." This argument has been repeatedly and correctly rejected by the courts.

In the first place, the only constitutional questions before the Court are those which relate to the particular questions asked of petitioner. Secondly, the strict standards of definiteness applicable to criminal statutes have never been thought applicable to rules or resolutions establishing congressional committees and defining their powers; if this contention of petitioner's were sound, no congressional committee would have a sufficiently specific grant of authority to sustain the conviction of any witness who refused to give testimony before it. Thirdly, no problem of definite-

ness is presented so long as the subject of the specific inquiry at which the witness is questioned is clear, as it was here. Finally, the challenged terms of Rule XI, as they apply to this case, are, in any event, sufficiently precise in their context to satisfy any reasonable standard of definiteness.

V

Petitioner was not entitled to dismissal of the indictment because of the presence of government employees on the grand jury, nor did his allegations and offer of proof entitle him to a hearing on that issue. Substantially the same issue is involved in No. 137, this Term, *Ben Gold* v. *United States,* pending on writ of certiorari. For a summary of our arguments on the point, the Court is referred to pp. 49–51 of the Summary of Argument in the Government's brief in that case. Those arguments, moreover, have *a fortiori* applicability in this case. For, concededly, petitioner did in fact refuse to answer questions of the Committee as charged in the indictment. His defense was a legal justification for his refusals, and our legal procedure does not include provision for the presentation to a grand jury of matters of defense or justification.

ARGUMENT

Petitioner has presented as two of the issues in his case the questions of whether the House Un-American Activities Committee has the power, either (a) under the Constitution (Br. 2, 24–39), or (b) under the rule of the House whence it derives its powers

(Rule XI, *supra,* pp. 4–6) (Br. 76–95), to "expose" persons as past or present members of the Communist Party, separate from and independent of its conceded power to investigate "in aid of legislation."[8] As we show below, however (*infra,* pp. 27–53), the Committee had a valid and legitimate legislative objective when it questioned petitioner, and any "exposure" which might have resulted from the questioning was merely incidental to this purpose. Since petitioner concedes that a congressional committee may compel testimony which, in fact, "exposes" individuals as Communists, so long as such testimony is relevant to an investigation "in aid of legislation" (Br. 24–25), it follows that this record does not present the broad question, which petitioner argues at length, of whether the Committee in question or, indeed, the Congress itself, has the power to "expose" individuals as past or present members of the Communist Party.

For that reason, we shall first discuss those issues which we believe are presented by this case, and only then do we propose to touch upon the broader questions which petitioner argues so comprehensively and at the same time so abstractly.

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[8] The latter of the two questions was concededly not squarely presented or argued in the petition for a writ of certiorari (Br. 78–79, fn. 61). See Rule 40 (1) (d) (2) of the Rules of this Court. In any event, for the reasons set forth in the text, it is our contention that neither of the two questions is presented by the facts of this case.

I

THE COMMITTEE WAS ACTING PURSUANT TO A VALID LEGISLATIVE PURPOSE WHEN IT QUESTIONED PETITIONER

As we have just noted, petitioner strongly contends that the Committee's sole purpose was to "expose" him and his former associates to scorn and ridicule by publicizing their previous Communist affiliations (Br. 39). To support this position he argues, first, that, apart from its legislative function, the Committee, as evidenced by various committee reports, transcripts of committee hearings, and statements made by committee members on the floor of Congress and to the press, had asserted in the past a separate and "independent power of exposure" (Br. 39, 41–58). Secondly, he says, at the time the Committee questioned him it already had in its files the information which it sought to elicit from him, so that its purpose must have been solely that of exposure (Br. 39, 64–69). Thirdly, petitioner contends that the questions which the Committee did and did not ask him, as well as its colloquies with him, evidenced an "unmistakable" purpose of "exposure for exposure's sake" (Br. 24, 39, 58–64). The entire contention is without merit. The trial court and the Court of Appeals both correctly concluded, on the basis of the properly admissible evidence, that the Committee was

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acting pursuant to a valid legislative purpose when it questioned petitioner.[9]

A. THE PURPOSE OF A CONGRESSIONAL INQUIRY MUST BE GATHERED FROM THE RECORD OF THE COMMITTEE HEARING AND THE COMMITTEE'S AUTHORIZATION, HOSPITABLY READ

The decisions of this Court make clear that the purpose of a congressional investigation is ordinarily to be determined first of all, from the statute, rule, or resolution which authorized it. See, for example, *McGrain* v. *Daugherty,* 273 U. S. 135, 176–180; *Sinclair* v. *United States,* 279 U. S. 263, 294–295; *In re Chapman,* 166 U. S. 661, 669–671; *Kilbourn* v. *Thompson,* 103 U. S. 168, 192–196; *Barry* v. *United States ex rel. Cunningham,* 279 U. S. 597, 612, 619; *United States* v. *Rumely,* 345 U. S. 41.[10] In interpreting the authorizing document, the Court has adhered to its language (*Barry* v. *United States ex rel. Cunningham, supra,* at 611–613), but has not considered itself bound by strict rules of construction. Thus, the authorizing resolution need not include an express avowal that an

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[9] Petitioner contends that all that the Court of Appeals found was that the questions which he was asked *could* have been asked for a valid legislative purpose, not that they *did* have such a purpose (Br. 70–72). The court, however, explicitly stated that "A majority of the court is of opinion that the questions [asked petitioner] *were* pertinent to a valid legislative purpose * * *" (R. 178–179, emphasis added).

[10] In the *Kilbourn* case (see 103 U. S. at 196), the Court found that the resolution was in excess of the powers conferred on Congress by the Constitution. In *Rumely,* the Court concluded that the committee had exceeded the scope of the authority granted it under the resolution. In each of the other cases cited, the Court sustained the authority of Congress and the investigating committee.

investigation was being conducted for legislative purposes. *McGrain* v. *Dougherty, supra,* at 178; *In re Chapman, supra,* at 669–670. The prime test has been whether the subject to be investigated is one with respect to which Congress *might,* if necessary, legislate, and with which the particular committee is empowered to deal. *McGrain* v. *Daugherty, supra,* at 177–178; *Sinclair* v. *United States, supra,* at 295; *Kilbourn* v. *Thompson, supra,* at 195; see also *Barsky* v. *United States,* 167 F. 2d 241, 245 (C. A. D. C.), certiorari denied, 334 U. S. 843.

And in interpreting a committee's authority and objective, the courts have been mindful that an inquiry need not be restricted to those facts which prove the need for new legislation or for modification of existing laws; nor is it limited to the precise area which Congress has power to regulate or prohibit. The power to investigate is almost always broader than the substantive authority which may eventually be exerted by the investigating agency, for not until the whole region of facts has been canvassed can it be determined where the definite boundaries of regulation should be drawn. It is just as important for Congress to be informed of facts which show proposed or possible legislation to be undesirable or unnecessary as it is for it to know the circumstances calling for affirmative action. In many areas, such as those impinging on freedom of speech or interstate commerce, Congress's power to legislate may even depend upon the existence or non-existence of facts which can be shown only through a legislative inquest. Judicial inquiry into a committee's "legislative purpose" must

therefore not be restrictive or hostile, but must take account both of the powers of Congress and of its pressing need to inform itself broadly. The latitude is necessarily wide.[11] As was stated in *Townsend* v. *United States,* 95 F. 2d 352, 361 (C. A. D. C.), certiorari denied, 303 U. S. 664:

> A legislative inquiry may be as broad, as searching, and as exhaustive as is necessary to make effective the constitutional powers of Congress. *McGrain* v. *Daugherty,* 273 U. S. 135 * * *. A judicial inquiry relates to a *case,* and the evidence to be admissible must be measured by the narrow limits of the pleadings. A legislative inquiry anticipates *all possible cases* which may arise thereunder and the evidence admissible must be responsive to the scope of the inquiry, which generally is very broad.[12]

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[11] For these reasons, it is immaterial that a committee has proposed little legislation; the power to conduct a hearing is not measured by recommendations for legislation or their absence. *United States* v. *Josephson*, 165 F. 2d 82, 89 (C. A. 2), certiorari denied, 333 U. S. 838; *Townsend* v. *United States*, 95 F. 2d 352, 355 (C. A. D. C.), certiorari denied, 303 U. S. 664. Also, the possibility that invalid as well as valid legislation may result does not limit the power of inquiry. *Barsky* v. *United States*, 167 F. 2d 241, 245 (C. A. D. C.), certiorari denied, 334 U. S. 843.

[12] "* * * An investigation is precisely what it purports to be—an investigation. Sometimes attempts are made to discredit it by calling it a fishing expedition. It is not a trial based upon an indictment where the facts are already known and merely need presentation to a jury. It is a study by the government of circumstances which seem to call for study in the public interest. And the public hearing is usually, certainly in important investigations, preceded by a long period of extensive research" (Black, *Inside a Senate Investigation*, 172 Harper's Magazine 275, 278 (1936)).

B. THE RECORD OF THE HEARING, TOGETHER WITH THE RULE UNDER WHICH THE COMMITTEE OPERATES, SHOW THAT THE HEARING HAD A PROPER LEGISLATIVE PURPOSE

1. The record of the hearing at which petitioner testified, and the rule under which the Committee derives its powers and conducts its affairs (House Rule XI, *supra,* pp. 4–6), affirmatively establish that the Committee was acting pursuant to its delegated authority [13] and had a valid legislative purpose when it asked the questions which petitioner refused to answer, *viz.,* the purpose of investigating "in aid of legislation." As pointed out by the Chairman of the Committee at the very commencement of the series of hearings of which petitioner's interrogation was a part (see *supra,* pp. 8–10), the aim of the hearings was "to ascertain," pursuant to the mandate of "[t]he Congress of the United States," "the extent and success of subversive activities directed against these United States," and, on the basis of its findings, to make to the Congress "recommendations * * *

[13] We do not deal separately with Point III of petitioner's brief (Br. 76–95), urging that the Committee's inquiry exceeded its mandate from the House—see footnote 8, *supra*, p. 26—because petitioner's entire argument on that Point is based on his view that the Committee was engaging in "exposure for exposure's sake" and had no valid legislative purpose. We show in the text that that contention is invalid. Petitioner does *not* urge that, if the Committee did have a proper legislative purpose (as we believe), its actions were unauthorized by its charter from the House.

for new legislation" (R. 43; *supra*, p. 8).[14] The Chairman repeated the substance of this observation at the very hearing at which petitioner testified—in fact, as an incident to his instructing petitioner to answer the first of the series of questions which he refused to answer (*supra*, pp. 13–14).

The Chairman further pointed out that some forty-seven recommendations, previously made by the Committee, had been acted upon by Congress up to that time (*supra*, p. 8). Among these was the Internal Security Act of 1950, which had been enacted as the result 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 presents "a clear and present danger to the security of the United States" (§ 2, 64 Stat. 987, 989; 50 U. S. C. 781). The Chairman also stated that there had been referred to the Committee an important proposed amendment to this Act (*supra*, pp. 8–9), which would deny to Communist-controlled labor unions the benefits of the National Labor Relations Act

[14] The power of Congress and its committees to investigate Communist infiltration into groups and organizations has been consistently upheld. *E. g.*, *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, 244–247 (C. A. D. C.), certiorari denied, 334 U. S. 843; *United States* v. *Josephson*, 165 F. 2d 82, 90–91 (C. A. 2), certiorari denied, 333 U. S. 838; *Morford* v. *United States*, 176 F. 2d 54, 57 (C. A. D. C.), reversed on other grounds, 339 U. S. 258. See also *infra*, pp. 61–68.

(*supra,* pp. 7–8). Some four months following petitioner's appearance before the Committee, this bill became law (*supra,* p. 15).[15] Previously, Congress had enacted the non-Communist affidavit provisions of the Taft-Hartley Act in an effort to diminish Communist influence in trade unions (*Leedom* v. *International Union of Mine, Mill and Smelter Workers,* No. 57, this Term, decided December 10, 1956). It is thus clear that the Committee was investigating a subject with respect to which Congress not merely *might* legislate, but with respect to which it *had* already passed legislation, and with which it would shortly concern itself once again.

2. The particular information which the Committee sought to elicit from petitioner was clearly pertinent to this inquiry into the need for further legislation on Communist infiltration into labor unions. As we have already suggested (*supra,* pp. 29–30), "pertinency" in the field of legislative investigations is necessarily broader than "relevancy" in the law of evidence. See, *e. g., Townsend* v. *United States,* 95 F. 2d 352, 361 (C. A. D. C.), certiorari denied, 303 U. S. 664; *United States* v. *Orman,* 207 F. 2d 148, 153–154 (C. A.

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[15] Petitioner argues that "the Committee report on the bill * * * did not claim there had been any hearings on the bill" (Br. 73). However, the very report to which petitioner refers (H. Rep. No. 2651, 83d Cong., 2d sess., p. 2) expressly states that the Committee had taken "voluminous testimony" to show the extent of Communist infiltration into labor unions, and quotes extensively from testimony taken both immediately prior to and subsequent to petitioner's testimony. The report includes excerpts (H. Rep. 2651, *supra*, pp. 13–15) from the testimony of Walter Rumsey, whose credibility had been put in doubt by petitioner (see *supra*, pp. 9, 12, and *infra*, pp. 36–38).

3). And the pertinency of information sought by the Committee must, of course, be determined with reference to the scope of the authority granted to it by Congress (*Barry* v. *United States ex rel. Cunningham,* 279 U. S. 597, 613).

In this case, the language of the enabling Rule (*supra,* pp. 4–6) was certainly broad enough to warrant an inquiry into the success of past Communist infiltrative tactics, particularly into unions, with a view to evaluating the impact of existing statutes and the need for new ones. If the extent of the success of subversive propaganda is to be determined, a showing of the numbers and identities of persons who are or have been influenced by it (as well as the importance of their positions in strategic areas of the economy) is not improper.[16]

Congress, if it has the power to inquire into Communism and the Communist Party for the purpose of considering pertinent legislation, must also, as observed by the Court of Appeals (R. 178, 182), have the power to ascertain the numbers and identities of individuals who belong to the Party. *Barsky* v.

[16] Similarly, if the investigation were concerned with the effect of interlocking directorates on the operation of the antitrust laws, it would be pertinent to inquire into the numbers and identities of persons serving on multiple boards of directors, the identities of the companies involved, and related questions. Nor would the investigating committee be limited in its inquiry to the present. The situation as it existed in the past, being relevant to a correct understanding of the situation as it exists at present, would clearly be pertinent to the question under inquiry. Moreover, examples of past infiltration would reveal future possibilities against which Congress might well wish to guard.

United States, 167 F. 2d 241, 246 (C. A. D. C.), 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. *Lattimore,* 215 F. 2d 847, 851–853 (C. A. D. C.); *Barenblatt* v. *United States,* C. A. D. C., No. 13,327, decided January 3, 1957; *Sacher* v. *United States,* C. A. D. C., No. 13,302, decided January 3, 1957; *United States* v. *Kamin,* 136 F. Supp. 791, 799–800, 801 (D. Mass.). "Personnel," in short, "is part of the subject" (*Barsky* v. *United States, supra,* at 246).[17] Petitioner, as he himself acknowledged, had information on that aspect of the subject. In fact, we think a fair reading of his brief in this Court reveals that he does not seriously challenge the Committee's power to ask the questions it did, if its purpose was a legislative one and not primarily to "expose."

3. Petitioner argues, however, that the character of the Committee's questioning of him, and the fact that the Committee did not ask him all about his personal experiences connected with the infiltration of Communists into the unions with which he had been associated, evidenced an "unmistakable purpose of ex-

[17] 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.

posure" for "exposure's sake" (Br. 24, 58–64). The record of the hearing disposes of this contention.[18]

The Committee clearly had sufficient reason to believe that petitioner might have information pertinent to the subject under inquiry—the extent of Communist infiltration into labor unions (R. 26). Petitioner had been an active leader in the labor movement for many years (*supra,* pp. 10–12), and he had been identified by two previous witnesses as a member of the Communist Party (*supra,* p. 9). These witnesses had likewise named as Communists other persons active in the labor field who the Committee had reason to believe were known to petitioner (*supra,* p. 9, 12). Nothing could be more natural, therefore, than for the Committee to call petitioner for the purpose either of corroborating or denying these other witnesses' testimony both as to himself and the others named. Petitioner concedes that a purpose of corroboration—at least on "matters of substantial importance" (Br. 69)—is a normal and legitimate reason for a committee to summon a witness.

Indeed, the need for corroboration here was particularly emphasized by the very fact that petitioner

[18] As the majority below pointed out, "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" (R. 184). Petitioner himself refrains from making any "broadside charge" that the Committee here involved has as its "sole purpose" the "expos[ing of] individuals to scorn and retribution" (Br. 58). Each inquiry, as the majority below observed, must be judged "in its own setting and upon its own facts," and cannot be judged on the basis of speeches, newspaper articles and other generalities (R. 184).

himself, while he substantiated and corroborated much of what the earlier witnesses had testified to with respect to himself, contradicted them in several essential particulars. While he admitted having cooperated with the Communist Party from 1942 to 1947 in connection with union activities to such an extent that some persons might honestly have believed him to have been a Party member (*supra,* pp. 10–11), and while he had admittedly been familiar with Communist infiltration, over a period of years, into at least one segment of union functioning (*supra,* pp. 10–13), he flatly denied ever having been a Party member himself (*ibid.*). He further denied, again in contradiction of at least one of these witnesses, ever having paid or received Party dues (*supra,* pp. 11–12). Such a challenge to the testimony of other witnesses is manifestly pertinent and material to the course of an investigation. *United States* v. *Creech,* 21 F. Supp. 439 (D. D. C.). It is to be recalled, furthermore, that all of the persons about whom petitioner refused to answer questions were persons whom one of these earlier witnesses, Rumsey, had already, "during his recent testimony in Chicago," "identified as Communist Party members" (R. 84; see also R. 87, 89). Answers by petitioner to the questions would either have corroborated or further impeached Rumsey's testimony with respect to the question of whether these other persons about whom the Committee had inquired were or were not Party members. Since petitioner had already cast doubt on Rumsey's testimony with respect to his own alleged former Party membership, it is evident that the need for corrobora-

tion of Rumsey with respect to the other persons was not insubstantial. The Committee had the right to find out whether it should rely on Rumsey's testimony. See the opinion below at R. 184–185.

Quite apart from the corroborative aspects of the Committee's questioning of petitioner, his answers to the Committee's questions, if he had chosen to be co-operative, could well have tended to reveal, in and of themselves, the full extent of Communist penetration into the unions with whose affairs he had been familiar and could well have provided the basis for further inquiry as to the detailed character of such infiltration. Such questioning was plainly material to consideration of the bill which became the Communist Control Act of 1954, particularly its provisions which amended the Internal Security Act of 1950, relating to Communist-infiltrated unions (*supra*, p. 15).

Equally misplaced is petitioner's reliance on the character of the questions which the Committee "did not ask" him (Br. 60–64). It is argued, for example, that the Committee, when it was apprised by petitioner that he had engaged in an intraunion dispute "about compliance with the non-Communist oath provision of the Taft-Hartley Act," "did not ask one further question about the details of [this] internal fight," "which surely would have been of great significance to the Committee if it had been considering any legislation in the field of Communist infiltration of trade unions" (Br. 60). Again, it is said that "[t]he Committee did not want the benefit of petitioner's experiences as they related to Communist

techniques in labor unions; it did not want the benefit of petitioner's informed opinion about Communist operations in the labor field or the effect of existing or pending legislation upon those operations" (Br. 64). It so happened, however, that the Committee's concern at the time was not the nature of "Communist techniques in labor unions"—concerning which it can be presumed the Committee already had information—but primarily the *extent* of Communist penetration into these unions. That issue was to the forefront, and inquiry as to whether named individuals connected with the unions were or were not Party members was a logical and legitimate way of learning the answer.[19]

[19] The dissenting opinion below points out that "[t]he Committee made no attempt to learn from Watkins either the total number of Communists in his union, or what positions Communists held in the union, or whether or how, or how far, or in what direction, they influenced the union" (R. 191). It then reasons that "[w]hether Communist infiltration of unions creates a need for legislation would seem to depend on the number, and the nature, extent, and effectiveness of the activities, of Communists in unions" (*ibid.*). One way, however, of ascertaining the "total number" of Communists in a union is to inquire of persons in a position to know who the Communists in the union are. This is probably the only reliable means of ascertaining the information sought, since a witness' naked statement that there are, say, x Communists in a given union is not subject to verification without ascertaining the identities of the individuals in question. (If the Congress did not have accurate information, the challenge would no doubt be made that there was no proof of need for further legislation on Communist infiltration.)

As for the remainder of the dissent's criticism of how the Committee operated, the answer is the one we have given in the text, namely, that the Committee was primarily interested in determining the extent of the Communist infiltration of the unions.

So long as the questions asked are pertinent, the determination of what is to be asked and what is not to be asked must be left to the discretion of the investigating committee, which knows what information it feels it needs at the time. To rule otherwise would amount to an undue infringement on the power of the legislature to conduct its own inquiries and substitute the courts as the overseers and supervisors of such investigations (see also *infra,* pp. 41–42, 47–48, 51–53).[20]

The need for further legislation in the field could well have depended, in the Committee members' minds, on the answer to this question. A congressional committee may legitimately inquire into one aspect of a subject which lies within its power to investigate without encompassing every conceivable aspect of the subject at a given hearing or series of hearings. Moreover, as we have suggested in the text, the Committee may have felt satisfied, as a result of its fifteen years of inquiry into the subject, as to *how* Communists operate and have been interested at the time only in *who* they were in the unions in question and *how many* there were. Furthermore, by refusing to answer the questions, petitioner had shown himself to be a recalcitrant witness, and the Committee could appropriately decline to question him further.

[20] Though petitioner did not plead the Fifth Amendment, and specifically disclaimed reliance on it (R. 86), it is obvious from his statement to the Committee that his refusal to answer was predicated solely on a desire to protect others, who to *his* "best knowledge and belief" were no longer Communists (*supra*, pp. 12–13). Even if petitioner had invoked the Fifth Amendment, it would not have served his purposes under these circumstances, since it is settled that the privilege against compulsory self-incrimination is purely personal (*Rogers* v. *United States*, 340 U. S. 367, 371; *Hale* v. *Henkel*, 201 U. S. 43, 69–70; *McAlister* v. *Henkel*, 201 U. S. 90, 91), and protects only against the possibility of criminal prosecution, not simply against exposure to public scorn and obloquy. *Brown* v. *Walker*, 161 U. S. 591, 609–610. See also *infra*, pp. 58–61.

4. During the course of a congressional investigation, it is inevitable that there will be a certain amount of "exposing" of various aspects and facets of the past lives of individuals. Effectively to perform its function of conducting investigations in order to determine what new legislation, if any, is necessary, a congressional committee must delve into the past as well as the present, and its findings must be made available to Congress. At times, individuals will suffer some hardship as a result of the exercise by Congress of its power of investigation, but the possibility of such hardship does not warrant a refusal to respond to a proper inquiry.

No more than a witness at a trial was petitioner free to refuse to respond to otherwise legitimate questions on the ground that they invaded his or others' "privacy", or might "expose" them, or bring unfavorable publicity or public disapproval. The public interest in the information outbalances the possible injury to the individual. This Congress has recognized, since 1862, in R. S. 103, 2 U. S. C. 193, which declares that no witness before a congressional committee is privileged to refuse to testify "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." See also, to the same effect, *Sinclair* v. *United States,* 279 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; *Townsend* v. *United States,* 95 F. 2d 352, 361 (C. A. D. C.), certiorari denied, 303 U. S. 664;

Report on Congressional Investigations (Nov. 22, 1948) of the Committee on the Bill of Rights of the Association of the Bar of the City of New York, pp. 3–4 (fn. 33, *infra,* p. 67); see also *infra,* pp. 47–48, 57–68. Petitioner himself concedes that the power of Congress to investigate encompasses "exposure" where that is ancillary to a valid legislative purpose (Br. 24–25).

C. THE EXTRANEOUS "EVIDENCE" WHICH PETITIONER OFFERED TO PROVE THAT THE COMMITTEE'S OBJECTIVE WAS "EXPOSURE" WAS PROPERLY EXCLUDED AS INADMISSIBLE

1. The evidence allegedly showing that the Committee had asserted in the past a separate and independent power of exposure

Petitioner contends that the trial court erred in excluding proffered evidence allegedly tending to show that the Committee had asserted in the past a "power of exposure" separate from and independent of its power to investigate "in aid of legislation" (Br. 41). This evidence consisted of past reports of, and transcripts of earlier hearings before, the Committee, and excerpts from various statements which had been made by the Chairman and certain members of, and past chairmen and members of, the Committee on the floor of Congress and to the press. All such evidence, we submit, was properly held inadmissible.[21]

[21] At the trial, petitioner offered in evidence these excerpts from various committee reports, transcripts of hearings, and statements appearing in the Congressional Record and in newspapers (R. 60). Objection to this evidence was sustained on the ground that it was not material to the issues presented (R. 61–64). The proffered evidence was included in the record as an offer of proof (R. 62–64; Def. Exs. 6–9, R. 111–174).

(*a*) As we have shown (*supra,* pp. 31–42), the record of the Committee's hearing, taken together with its authorization from the House of Representatives, conclusively demonstrate the existence of a valid legislative purpose. Once the courts have made such a determination on the basis of the hearing record and the authorizing resolution, they have uniformly not allowed the recalcitrant witness to challenge the Committee's stated purpose by attempting to show, by extraneous evidence, that it was really pursuing some other objective.

In *In re Chapman,* 166 U. S. 661, 670, this Court, after pointing out that the questions propounded to the witness were clearly pertinent to a subject over which Congress had jurisdiction, stated, "We cannot assume on this record that the action of the Senate was without a legitimate object, and so encroach upon the province of that body." In *Sinclair* v. *United States,* 279 U. S. 263, 295, the Court found that a refusal by the committee to pass a motion directing that the inquiry should not relate to controversies pending in court, with which was coupled a statement by one of the members that there was nothing else about which to examine the petitioner, was not enough to show that the committee intended to depart from its legislative purpose. In *Barry* v. *United States ex rel. Cunningham, supra,* 279 U. S. 597, 611, 612, an attempt was made to show that, on the basis of a committee report, Cunningham had been illegally arrested for contempt of the Senate. This Court, however, reversing the Court of Appeals, held, *on the*

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basis of the language of the resolution directing the witness to be brought before the bar of the Senate, that the purpose for which he had been taken into custody was solely to elicit testimony in response to questioning and not to arrest him for contempt.[22] In *McGrain* v. *Daugherty,* 273 U. S. 135, 177–178, in determining whether the object of a Senate inquiry had been to aid in legislating, the Court quoted with approval the following statement from *People, ex. rel. McDonald* v. *Keeler,* 99 N. Y. 463, 487:

> We are bound to presume that the action of the legislative body was with a legitimate object *if it is capable of being so construed,* and we have no right to assume that the contrary was intended. [Emphasis added.]

In *Morford* v. *United States,* 176 F. 2d 54, 58 (C. A. D. C.), reversed on other grounds, 339 U. S. 258, it was held that it was not error to refuse to permit the accused to attempt to prove that the Committee on Un-American Activities was seeking to obtain names of persons for the sole purpose of blacklisting.

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[22] With respect to the question of whether the Senate had abused its discretion in issuing the warrant of arrest, the Court stated (279 U. S. at 619–620):

"The presumption in favor of regularity, which applies to the proceedings of courts, cannot be denied to the proceedings of the Houses of Congress, when acting upon matters within their constitutional authority. * * *

"Here the question under consideration concerns the exercise by the Senate of an indubitable power; and *if judicial interference can be successfully invoked it can only be upon a clear showing of such arbitrary and improvident use of the power as will constitute a deniel of due process of law.* That condition we are unable to find in the present case." (Emphasis added.)

See also *Barenblatt* v. *United States,* C. A. D. C., No. 13, 327, decided January 3, 1957.

Similarly, extraneous evidence impugning the conduct of congressional committees or the motives of individual members has always been held inadmissible. *United States* v. *Orman,* 207 F. 2d 148, 157 (C. A. 3); *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, 278–9 (C. A. D. C.), certiorari dismissed, 338 U. S. 883; *Dennis* v. *United States,* 171 F. 2d 986, 988 (C. A. D. C.), affirmed on other grounds, 339 U. S. 162; *United States* v. *Josephson,* 165 F. 2d 82, 89 (C. A. 2), certiorari denied, 333 U. S. 838; *United States* v. *Kamin,* 136 F. Supp. 791, 800–801 (D. Mass.).[23]

The principles which indisputably emerge from this long and consistent course of decision are that (a) the objective of the congressional inquiry should be gathered by the court solely from the record of the hearing and the text of the instrument authorizing the investigation, (b) extraneous materials alleged to traverse or challenge the purpose so determined should not be

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[23] Cf. *United States* v. *Icardi*, 140 F. Supp. 383 (D. D. C.), holding that the Armed Services Committee of the House was not pursuing a valid legislative purpose when it questioned Icardi. The court concluded—from the transcript of the testimony at the hearing, the testimony of the Chairman of the Committee at the trial, and the report of the Committee to Congress on Icardi's testimony—that its purpose in questioning the witness (140 F. Supp. at 386–387) was the impermissible one of putting him under oath with a view to a possible perjury indictment as a result of his testimony.

considered,[24] and (c) the purpose of the inquiry should be hospitably sought, and held to be legitimate *"if it is capable of being so construed"* (*supra,* p. 44); "[t]o find that a committee's investigation has exceeded the bounds of legislative power it must be *obvious* that there was a usurpation of functions exclusively vested in the Judiciary or the Executive" (*Tenney* v. *Brandhove,* 341 U. S. 367, 378) (emphasis added). These rules spring from the respect owed by one coordinate branch of the Government to another, acting within its special sphere. Cf. *Missouri, Kansas & Texas Ry. Co.* v. *May,* 194 U. S. 267, 270. Just as the courts do not scrutinize the hidden motives of legislators in enacting laws (see, *e. g., Sonzinsky* v. *United States;* 300 U. S. 506, 513–514), so they should not go behind the reasons officially given for conducting an inquiry thought necessary as a preliminary to the passage of legislation. And if, as petitioner urges is the case here, there be some doubt as to the true purpose of the inquiry, the courts should seek to uphold rather than to destroy.[25] Otherwise, the

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[24] Throughout our history, one of the common criticisms of congressional committees has been that they were being used by sponsors or members for political or personal reasons distinct from the declared aim of aiding the legislative functions of Congress. Cf. Dimock, *Congressional Investigating Committees* (Johns Hopkins Univ. Studies, Series XLVII, No. 1, 1929), p. 164.

[25] Despite petitioner's great emphasis, throughout his brief, on the need to avoid serious constitutional issues, he never applies this canon to the threshhold question of the purpose of the Committee's inquiry in his case. If he were to apply that principle, he would have to conclude that, to avoid the constitutional issue posed in Point I of his brief—"exposure for exposure's sake"—the inquiry should be construed as having a valid legislative purpose.

power to legislate effectively will be needlessly hampered or withdrawn by unwarranted judicial restraints.

Harshness, inequity, or even injustice in the conduct of legislative investigations cannot be cured by the courts where the inquiry does not exceed the bounds of its authority or trespass on constitutional rights. "In times of political passion, dishonest or vindictive motives are readily attributed to legislative conduct and as readily believed. Courts are not the place for such controversies. Self-discipline and the voters must be the ultimate reliance for discouraging or correcting such abuses. The courts should not go beyond the narrow confines of determining that a committee's inquiry may fairly be deemed within its province." *Tenney* v. *Brandhove,* 341 U. S. 367, 378. While it may be true that "the presently recognized legal limitations upon the powers of Congressional investigating committees are not adequate to prevent individual abuse and injustice" (Van Alstyne, *Congressional Investigations,* 15 F. R. D. 471, 482), it is also true that "the ineffectiveness of the legal rules to provide a basis for judicial control should be recognized as reflective of the judicially felt necessity for leaving the investigative power of Congress largely free and unfettered, to the end that it may continue to serve its indispensable function as

one of the balance-wheels in the intricate operation of Constitutional government." *Id.,* at 483.[26]

(*b*) These "theoretical" conclusions are borne out by an analysis of the nature and implications of the rule for which petitioner argues. That rule would not, of course, be limited to the particular Committee involved in this case. It would apply to all committees of either House—indeed, to the Houses themselves and to the Congress as a whole. It would confer upon every recalcitrant witness before every committee of either House the right to attempt to show—by evidence *dehors* the resolution or rule under which the committee operated, and outside of the transcript of, and other evidence directly relating to, the particular proceedings of the committee in which the recalcitrance occurred—that the committee, despite the fact that the record of the particular proceedings showed that it was acting pursuant to a valid legislative purpose, nevertheless did not *in fact* have such a purpose.

The question which the trial court (or perhaps the jury) would be required to decide would not be a simple one of objective fact like, for example, whether a quorum of committee members was or was not present when a certain question was asked. Cf. *Christoffel* v. *United States,* 338 U. S. 84. The question

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[26] See also, *e. g.*, Frankfurter, *Hands Off the Investigations*, 38 New Republic 329, 331 (1924), reprinted at 65 Cong. Rec. 9080–9082; Landis, *Constitutional Limitations on the Congressional Power of Investigation*, 40 Harv. L. Rev. 153 (1926); Potts, *Power of Legislative Bodies to Punish for Contempt*, 74 U. of Pa. L. Rev. 691, 780 (1926); Morgan, *Congressional Investigations and Judicial Review: Kilbourn* v. *Thompson Revisited*, 37 Cal. L. Rev. 556 (1949).

would relate to a subjective, mental fact—*the purpose of the committee.* And since committees consist of members, the question would entail in last analysis an inquiry into the thoughts and mental processes of the individual committee members at the time the question or questions which the witness refused to answer were asked. Perhaps each committee member would be required, at the instance of the Government or the accused, to testify and be cross-examined at the trial as to what purpose he had in mind at the time the questions were asked. Clearly, the court (or jury) might very well find such testimony just as relevant and probative (if not more so), with respect to the issue of the committee members' purposes, as the sort of extraneous materials which petitioner sought to introduce in this case. But at this point the practical problems connected with the implementation, at an actual trial, of the rule petitioner advocates would surely become acute—not to speak of the propriety of calling legislators to the stand for this purpose. In addition to questions of the burden of proof and the burden of going forward, there would be grave problems of whose testimony to take, and what views should be accepted as authoritative.[27]

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[27]For instance, would all the committee members, however large the committee , be required to testify? If the hearing had been before the House or Senate itself, would each member of the House (or Senate) have to testify? Could each be called? If the hearing had been before a joint committee, and the court (or jury) found from the extrinsic evidence that the Senators on the committee actually had a valid legislative purpose but that the Representatives had not, which group's purposes would govern? What would be the case where a question was asked by a committee member shown not to have had a valid legislative purpose, even though the majority of the committee did have a proper purpose?

The problems we have suggested indicate the practical difficulties which would be connected with any attempt to implement in practice a rule of the type for which petitioner argues. Equally important, every trial under 2 U. S. C. 192 would, under petitioner's rule, run the risk of being converted from a trial of the accused for having refused to answer questions into a trial of the purposes, intentions, and motives of the committee's members. The bare possibility of so unseemly a spectacle argues strongly for the rule which we have suggested is the correct one, *viz.,* that, where it appears from the face of the record of a committee hearing and the rule or resolution under which the committee conducts its affairs that the hearing was pursuant to a valid legislative purpose, a recalcitrant witness should not be permitted at his trial to introduce allegedly impeaching evidence *dehors* these sources in an attempt to prove that the committee in fact was operating for some other purpose. *Supra,* pp. 28–30, 43–48. This, we submit, is the only rule which comports with the realities of the efficient and expeditious administration of criminal justice and gives due recognition to the deference owed by the courts to the Congress and its committees as a coordinate branch of the Government, yet fully respects the equally basic tenet that the power of Congress to investigate, broad as it is, "cannot be used to inquire into private affairs unrelated to a valid legislative purpose" (*Quinn* v. *United States,* 349 U. S. 155, 161).

2. *The evidence allegedly showing that the Committee already had the information it was seeking from petitioner in its files*

Also without merit is petitioner's contention (Br. 64–69) that it was error for the trial court to preclude him from attempting to adduce evidence which, allegedly, would have shown that the Committee already had "in its * * * files" the "information about himself and the 30 individuals which it attempted to extract from [him] in a public hearing" (Br. 64). The excluded evidence, he argues, would have been further proof that "the Committee's purpose in forcing him to testify was to publicly expose him and these 30 individuals rather than a bona fide effort to obtain [his] testimony * * * in aid of legislation" (*ibid.*).[28]

The point is founded on the manifestly untenable premise that a congressional committee, once it has

[28] In an effort to substantiate this claim, petitioner, before the trial, served on the Clerk of the Committee and the Clerk of the House of Representatives subpoenas calling for all the information in the possession of the Committee relating to himself and to the persons about whom he was questioned (R. 11–14). The Government moved to quash the subpoenas (R. 15) and petitioner filed counter motions requesting the court to rule that the documents specified in the subpoenas were relevant and material and to request the House of Representatives to permit the inspection and copying of all pertinent documents (R. 16). The court granted the motion to quash on the ground that the documents sought by the subpoenas were not relevant (R. 19). At the commencement of the trial, petitioner asked for a reconsideration of the ruling on the motions (R. 58). This motion was denied (R. 58). Petitioner's counsel then made an offer of proof of what would have been shown through the subpoenaed materials (R. 58–59; Def. Ex. 4, R. 94–109).

received testimony on some subject or subjects within its jurisdiction, may never question another witness on the same subject or subjects for corroborative or amplificatory purposes. See *Young* v. *United States,* 212 F. 2d 236, 239 (C. A. D. C.), certiorari denied, 347 U. S. 1015. As we point out above, moreover (see *supra,* pp. 36–38), petitioner's own testimony before the Committee in this case pointed up sharply the need for, and desirability of, substantiation of the earlier testimony of witnesses Spencer and Rumsey with respect to himself and the other individuals about whom the Committee had inquired. In any event, it is clear that Congress cannot be required "to exhaust the possibilities" (Br. 66) 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 (see Br. 71, fn. 56).

The "least possible power" doctrine, relied on by petitioner (Br. 68–69), has no application to this case. The doctrine originated with reference to the extent of the implied power of Congress to deal with contempt, *i. e.,* the question of whether Congress possesses the power to punish for contempt to the same extent that the power is possessed by a court of law. *Anderson* v. *Dunn,* 6 Wheat. 204, 231; *Marshall* v. *Gordon,* 243 U. S. 521, 540–541. This Court, concluding that Congress does not have such power, held that Congress may deal with contempt only to the extent necessary to enable it to exert its recognized powers—

that Congress possesses, with respect to contempt, "the least possible power adequate to the end proposed." Therefore, said the Court, Congress is limited to committing the offender to imprisonment which may not extend beyond the session of the body before which the contempt occurred. *Anderson* v. *Dunn, supra,* at 230–231; *Marshall* v. *Gordon, supra,* at 540–542. Nothing in any of the decisions of the Court, however, suggests that Congress, or any committee of Congress, is subject to such a restrictive limitation in its search for information, on a subject within its jurisdiction, as a basis for possible new legislation. The whole course of the history of congressional inquiries shows that they have never been confined to the "least possible power"; rather, as we have pointed out (*supra*, pp. 28–30, 41–42, 43–48), their powers have been held to be broad and of wide latitude so that Congress may legislate "wisely" and "effectively" (*McGrain* v. *Daugherty,* 273 U. S. 135, 175; *Quinn* v. *United States,* 349 U. S. 155, 161).

II

THE INQUIRY WOULD NOT HAVE BEEN INVALID EVEN IF THE COMMITTEE'S PURPOSE HAD BEEN SIMPLY TO INFORM CONGRESS AND THE PUBLIC OF COMMUNIST ACTIVITIES IN LABOR UNIONS

It is our firm position, as Point I shows, that this case does not present the issues, which petitioner argues so strongly, of "exposure for exposure's sake." But it is appropriate to touch somewhat upon that subject, so that our silence not be thought to be an acceptance of petitioner's arguments or position.

At the outset, we note the ambiguity in petitioner's use of the term "exposure". Frequently, the connotation of the word, in petitioner's brief, seems to include a specific purpose to call down upon petitioner and his former associates "public scorn", "ridicule", or "retribution" (see, *e. g.,* Br. 24, 29, 39). Sometimes, however, the argument seems, more broadly, to be that a congressional committee has no power of "exposure" even in the sense of making information public for the sake of informing Congress and the public of certain facts which they ought to know, though no specific proposed legislation is being considered by the committee (see, *e. g.,* Br. 25–28). It is with this latter aspect of petitioner's argument that we shall deal in this Point. The claim that the Committee was merely attempting to bring "public scorn" on petitioner or his past associates is so clearly contradicted even by the materials petitioner cites that it need not be answered.

In the first place, the existence of a purpose on the part of the Committee to combat subversive activities by publicity would not mean that the inquiry was not also in aid of legislation. A disclosure, for example, that a certain organization, such as a labor union, was led by persons who were subservient to a foreign government—or the extent to which the Communist Party and its ideology have penetrated the fabric of our national life—would both tend to open the eyes of the public and of Congress to the nature of the organization, and would also be relevant in determining whether further legislation in that field was desirable. It cannot be said, therefore, that a purpose

to inform Congress and the public about Communist infiltration in labor unions is necessarily antagonistic to a valid legislative objective. As we have shown in Point I, *supra*, pp. 31–33, the Committee did have possible legislation in mind when it questioned petitioner. That it may also have been desirous of acquainting Congress and the public with Communist activities in the labor movement would not detract from this objective.

But even if the Committee had no possible legislation in mind in questioning petitioner, and was moved solely by the desire to bring information to the attention of Congress and the public, there is considerable support amongst students of congressional power for the view that the "informing function" of Congress is one of the inherent powers of the legislatures of representative governments.[29] Landis, *Constitutional Limitations on the Congressional Power of Investigation,* 40 Harv. L. Rev. 153, 205, 206, n. 227 (1926); Potts, *Power of Legislative Bodies to Punish for Contempt,* 74 Univ. of Pa. L. Rev. 691, 811–814 (1926); Galloway, *Investigative Function of Congress,* 21 Am. Pol. Sc. Rev. 47, 62–64 (1927); Cousens, *Investigations Under Legislative Authority,* 26 Georgetown L. J. 905, 918 (1938); McGeary, *The Developments of Congressional Investigative Power,* p. 104; Woodrow Wilson, *Congressional Government* (1885 ed.), p. 303, as quoted in *Tenney* v. *Brandhove,* 341 U. S. 367, 377, and *United States* v. *Rumely,* 345 U. S. 41, 43; Frank-

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[29] A representative democracy relies upon the creation of a favorable public opinion for the acceptance and thus the enforcement of new legislation.

furter, *Hands Off the Investigations,* 38 New Republic 329 (1924), reprinted at 65 Cong. Rec. 9080–9082.

It very well may be that Congress can, under the Constitution, undertake investigations for the sole purpose of publicizing information, at least so long as the matters to be disclosed are related to a substantive congressional power. It is settled that Congress, in the exercise of its regulatory power, may in certain circumstances authorize the receipt and publicizing of such information. *United States* v. *Harriss,* 347 U. S. 612; *Electric Bond & Share Co.* v. *Securities and Exchange Commission,* 303 U. S. 419. *Harriss* upheld the Federal Regulation of Lobbying Act, which "provided for a modicum of information from those who for hire attempt to influence legislation or who collect or spend funds for that purpose" (347 U. S. at 625). In the *Electric Bond & Share* case, this Court observed, in relation to the registration provisions of the Public Utility Holding Company Act, that "the requirement of information is in itself a permissible and useful type of regulation" (p. 439). This method of protecting the public interest by requiring the disclosure of information in fields subject to the power of Congress has been employed in a number of other statutes. *E. g.,* newspapers using the mails, 37 Stat. 533, 39 U. S. C. 233 (*Lewis Publishing Co.* v. *Morgan,* 229 U. S. 288); Securities Act of 1933, 48 Stat. 74, 15 U. S. C. 77a; Food, Drug and Cosmetic Act, 52 Stat. 1040, 1041, 21 U. S. C. 321; Alien Registration Act, 54 Stat. 673, 8 U. S. C. 452; registration of lobbyists, 60 Stat. 839, 2 U. S. C. 261; registration of for-

eign agents, 52 Stat. 631, 22 U. S. C. 611; registration of certain subversive organizations, 54 Stat. 1201, 18 U. S. C. 2386.

Indeed, the principle of disclosure has been advanced by persons zealous to protect civil liberties as the best method of dealing with the Communist problem in this country. The Report of the President's Committee on Civil Rights (*To Secure These Rights,* U. S. Govt. Printing Office, 1947) concluded that (pp. 52, 53):

> The principle of disclosure is, we believe, the appropriate way to deal with those who would subvert our democracy by revolution or by encouraging disunity and destroying the civil rights of some groups.
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> * * * * *
>
> The federal government * * * ought to provide a source of reference where private citizens and groups may find accurate information about the activities, sponsorship, and background of those who are active in the market place of public opinion.

See also *United States* v. *Josephson,* 165 F. 2d 82, 89 (C. A. 2), certiorari denied, 333 U. S. 838.

III

THE COMMITTEE DID NOT VIOLATE PETITIONER'S RIGHTS UNDER THE FIRST AMENDMENT BY REQUIRING HIM TO STATE WHETHER TO HIS KNOWLEDGE VARIOUS OF HIS PAST ASSOCIATES WERE MEMBERS OF THE COMMUNIST PARTY

Petitioner also contends (Br. 96–119) that "the compelled disclosures sought by the Committee" vio-

lated his rights under the First Amendment (Br. 96). "Requiring petitioner to disclose the past political affiliations of his associates," he argues, "abridges his right of political privacy as well as theirs. Compelled public disclosure of past political associations invades the privacy under which such associations were undertaken. It is, in effect, a penalty on political association which serves as a restraint on political activity. The right of political association, if it is to be meaningful, must include the right not to be subjected to public humiliation for such association" (Br. 101). The argument must be rejected for several reasons.

A. SINCE PETITIONER ADMITTED HIS OWN PAST COMMUNIST ASSOCIATIONS, AND WAS WILLING TO IDENTIFY PAST ASSOCIATES WHO HE BELIEVED WERE STILL PARTY MEMBERS, HIS REFUSAL TO NAME ASSOCIATES WHO HE BELIEVED HAD SINCE QUIT THE PARTY WAS AN ATTEMPT TO VINDICATE, NOT HIS, BUT THEIR, RIGHTS

Assuming, *arguendo* (but see *infra,* pp. 61–68), that petitioner would have been justified under the First Amendment in refusing to state whether he was or ever had been a member of the Communist Party, or otherwise affiliated or associated with it, it is clear that that was not the nature of his refusal here.

Petitioner told the Committee that he was entirely willing to "answer any questions which this committee puts to me about myself" (*supra,* p. 12). Accordingly, he admitted that, during the years 1942 to 1947, he had made contributions to Communist causes, signed petitions for Communists, attended union caucuses at which Communist Party officials were

present, participated in union meetings together with well-known Communists, and attended a public meeting of the Communist Party at which the Party head, Foster, had spoken (*supra,* pp. 10–11). He testified that he had been fully aware that the general program and policy of the Party had been to attempt to gain control of the unions with which he had been affiliated, and that it was "probably correct" to say that the discussions he had had with individuals known by him to be Communists had been "in connection with their desire to control * * * the union's policy and activities" (*supra,* p. 11). While he denied ever having been a "card-carrying member" of the Party (*supra,* p. 11), he freely admitted having "cooperated with the Communist Party" and "participated in Communist activities" during the years in question "to such a degree that some persons may honestly believe" that he was a Party member (*supra,* pp. 10–11).

A more complete and candid statement of his past political associations and activities (treating the Communist Party for present purposes as a mere political party) can hardly be imagined. Petitioner certainly was not attempting to conceal or withhold from the Committee his own past political associations, predilections, and preferences.[30] Furthermore, petitioner told the Committee that he was entirely willing to identify for the Committee, and answer any

[30] Significantly, the First Amendment, as we have pointed out (*supra,* p. 13), was at no time mentioned by anyone during the colloquy between petitioner and the Committee members. Cf. *Ullmann* v. *United States,* 350 U. S. 422, 439, fn. 15.

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questions it might have concerning, "those persons whom I knew to be members of the Communist Party", provided that, "to [his] best knowledge and belief", they still were members of the Party (*supra,* pp. 12–13). And he did identify one of the persons about whom the Committee questioned him, Joseph Stern, as having to his knowledge "carried on Communist Party activities in the Quad City area" during the years in question (*supra,* p. 14). It was only those of his past associates, known to him as having been Communist Party members "or otherwise engaged in Communist Party activity", who "to [his] best knowledge and belief" had since "removed themselves from the Communist movement," whom petitioner refused to identify for the Committee (*supra,* pp. 12–13).

In these circumstances, there can be no question, we submit, that what petitioner was actually seeking to do before the Committee was to protect his former associates (in this latter category) from possible embarrassment or humiliation which they might incur as the result of his public identification of them in their past capacities. He was attempting to vindicate, if anyone's, not his, but their rights to political privacy under the First Amendment (assuming, again *arguendo,* that that Amendment confers such rights). But it is settled that one cannot invoke the constitutional rights of another; the asserted deprivation must be personal to the claimant. See, *e. g., Ashwander* v. *Tennessee Valley Authority,* 297 U. S. 288, 347–348; *Alabama Power Co.* v. *Ickes,* 302 U. S. 464, 479; *Tileston* v. *Ullman,* 318 U. S. 44, 46.

Moreover, we show below (*infra,* pp. 61–68) that the authorities in this field (*e. g., Barsky* v. *United States,* 167 F. 2d 241, 246 (C. A. D. C.), certiorari denied, 334 U. S. 843; *United States* v. *Josephson,* 165 F. 2d 82, 90–92 (C. A. 2), certiorari denied, 333 U. S. 838; *Lawson* v. *United States,* 176 F. 2d 49, 51–52 (C. A. D. C.), certiorari denied, 339 U. S. 934) unanimously hold that not even the witness himself may decline on First Amendment grounds to disclose whether he is or ever has been a member of the Communist Party. Petitioner's argument goes far beyond even that contention. The reasons which make that contention untenable thus apply *a fortiori* to the present argument.

B. A WITNESS BEFORE A CONGRESSIONAL COMMITTEE INQUIRING INTO THE NATURE AND EXTENT OF COMMUNIST INFILTRATION HAS NO RIGHT UNDER THE FIRST AMENDMENT TO DECLINE TO DISCLOSE WHETHER HE IS OR HAS BEEN A MEMBER OF THE COMMUNIST PARTY

1. It certainly cannot be denied, and petitioner apparently does not question (see Br. 110–111), that Congress has power to inquire into, and to legislate with respect to, the subjects of Communism and the Communist Party. See *American Communications Assn.* v. *Douds,* 339 U. S. 382; *Osman* v. *Douds,* 339 U. S. 846; *Galvan* v. *Press,* 347 U. S. 522; *Harisiades* v. *Shaughnessy,* 342 U. S. 580; *Carlson* v. *Landon,* 342 U. S. 524; *Communist Party* v. *Subversive Activities Control Board,* 223 F. 2d 531 (C. A. D. C.), reversed on other grounds, 351 U. S. 115; *Dennis* v. *United States,* 341 U. S. 494; *Adler* v. *Board of Education,* 342 U. S. 485. But "[i]f Congress has power to in-

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quire into the subjects of Communism and the Communist Party," as was observed in *Barsky* v. *United States,* 167 F. 2d 241, 246 (C. A. D. C.), certiorari denied, 334 U. S. 843,—

> * * * it has power to identify the individuals who believe in Communism and those who belong to the party. The nature and scope of the program and activities depend in large measure upon the character and number of their adherents. Personnel is part of the subject.

The *Barsky* decision on this point has since been affirmed and reaffirmed many times. Thus, in *Lawson* v. *United States,* 176 F. 2d 49, 52–53 (C. A. D. C.), certiorari denied, 339 U. S. 934, the court said that, under "[t]he combined rationale of these recent decisions as to this very Committee [the House Committee on Un-American Activities]", there was no longer the "slightest doubt" that the Committee's—

> * * * power of inquiry includes power to require a witness before the Committee to disclose whether or not he is a Communist, and that failure or refusal of a witness so to disclose is properly punishable under 2 U. S .C. § 192.

As recently as January 3, 1957, the court below, again reaffirming its *Barsky* decision, pointed out that (*Barenblatt* v. *United States,* No. 13,327, slip opinion, p. 15)—

> * * * If Congress can legislate against a threat of communism which is reasonably apprehended, it can, consistently with the meaning of the Constitution and the language in the *Quinn* case [*Quinn* v. *United States,* 349 U. S.

> 155] quoted above, inquire of a witness whether or not he is a communist, subject to the constitutional limitations imposed by the privilege against self-incrimination.

To the same effect, see *United States* v. *Josephson,* 165 F. 2d 82, 90–92 (C. A. 2), certiorari denied, 333 U. S. 838.[31]

This is not to say that Congress has any "general power to inquire into political beliefs and associations" (*Barenblatt* v. *United States, supra,* slip opinion, p. 16). But it clearly does have the power to inquire into the nature, character, and activities of, the seriousness of the danger emanating from, and all other aspects (including the number and identity of its members) of the particular organization known as the Communist Party of the United States. This is because there is—at the very least—the strongest reason to believe that that organization, dominated and controlled by a foreign power, seeks, under the cloak and style of a domestic political party, to subvert and destroy the American form of government by force and violence and other unconstitutional means. See, *e. g., American Communications Assn.* v. *Douds,* 339 U. S. 382, 424–433 (opinion of Mr. Justice Jackson); *Dennis* v. *United States,* 341 U. S. 494, 562–566 (Mr. Justice Jackson, concurring);

[31] See also *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; and *Dennis* v. *United States*, 171 F. 2d 986 (C. A. D. C.), affirmed on other grounds, 339 U. S. 162; *Sacher* v. *United States*, C. A. D. C., No. 13,302, decided January 3, 1957.

United States v. *Dennis,* 183 F. 2d 201, 206, 212–213 (C. A. 2), affirmed, 341 U. S. 494; *Communist Party* v. *Subversive Activities Control Board,* 223 F. 2d 531, 562–573 (C. A. D. C.), reversed on other grounds, 351 U. S. 115. See also Internal Security Act of 1950, c. 1024, § 2, 64 Stat. 987, 50 U. S. C. 781; Communist Control Act of 1954, c. 886, § 2, 68 Stat. 775, 50 U. S. C. (Supp. II) 841.[32] Congress, in short (*Barenblatt* v. *United States, supra,* slip opinion, p. 16),—

> * * * does have that power [to inquire into political beliefs and associations] where the answer to the question posed can be and is regarded by Congress as having value in the exercise of legislative duty. Congress can legislate on the internal security dangers it has declared to have arisen from the activities of the Communist Party in this country. It can and it has.

In particular, Congress has the right to inquire into possible membership in the Communist Party of leaders of labor unions and those active in union undertakings. The *Douds* cases, *supra,* p. 61, show that, in this field of union activity, the Communist Party cannot be treated as an ordinary political party nor associations with it as ordinary associations. It is far too late in the day to assert that Communist activity in the labor movement is not a fit subject for congressional concern.

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[32] Petitioner himself admits that there can be no "doubt that legislative requirements for information may support congressional inquiry into membership in the Communist Party under certain circumstances; the world-wide and domestic Communist menace is certainly an appropriate subject of congressional concern" (Br. 110–111).

2. Petitioner's attempts to distingush these decisions and their rationale are unavailing. "[W]hatever justification", he says, "the theory that 'personnel is part of the subject' might have provided for the identification of Communists in strategic positions when Congress first initiated investigations into Communist activities, it cannot now support continued identification of those who were Party members long ago. Moreover, it certainly provides no justification for *re-identifications* which can shed no light upon either the former or the present 'nature and scope of the program and activities' of the Communist Party" (Br. 117–118; petitioner's emphasis). But, clearly, Congress is not precluded from inquiring into the manner and extent of past Communist infiltrations into strategic areas of our economy by the fact that the Party members responsible for such successful penetrations in the past may since have quit the Party or otherwise removed themselves from the Communist movement. Past membership is certainly some evidence of present membership; surely the Committee was not bound to rely, as petitioner appears to assume it should have, on petitioner's "best knowledge and belief" (*supra,* pp. 12–13) as to whether persons known to him to have been members of the Party in the past had since left the movement. Furthermore, past membership and infiltration may well indicate future dangers to be guarded against. And the fact that a witness before the Committee or a person about whom the witness is questioned may previously have been identified as a Party member is surely no bar to the Committee's seeking confirmation or corroboration

of the earlier identification by interrogating either the individual identified or another person having knowledge of the facts. As we have previously pointed out (*supra*, pp. 36–38), this very case presents a clear example of the ever-present necessity for substantiation of prior witnesses' testimony.

3. Inherent in petitioner's argument is the contention that a "right to silence" is protected by the First Amendment. But even if it is accepted that disclosures before the Committee may result in unfavorable publicity and discourage persons from subjecting themselves to the risk of similar unfavorable reaction to their associations and expression of views, it does not follow that the First Amendment is in any way violated. For the sanction growing out of such disclosures is not a legal one, but, at most, the sanction of public opinion, against which the First Amendment does not guarantee. Thus, a hostile public opinion does not excuse a witness from being required to give relevant testimony at a judicial trial. Similarly, a prospective juror may be asked questions relating to his views and political beliefs at the *voir dire* examination, and these are permitted if relevant and germane. This is because the public interest in full disclosure is considered to outweigh any hardship resulting to the individual. The same is true of compelled testimony of witnesses before a congressional committee. See, *e. g.*, Nutting, *Freedom of Silence: Constitutional Protection Against*

Governmental Intrusions in Political Affairs (1948), 47 Mich. L. Rev. 181, 213–222.[33]

It is not this sort of indirect consequence of public testimony with which the First Amendment is concerned. The Amendment does not provide that Congress may not inform itself; it provides that "Congress shall make no law * * * abridging the freedom

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[33] See also the Report on Congressional Investigations (November 22, 1948) of the Committee on the Bill of Rights of the Association of the Bar of the City of New York, which states (pp. 3–4):

"There seems to be prevalent a belief, although somewhat vague, that the individual American is endowed with some sort of a 'right of privacy' which exempts him from inquiry into his private affairs. One hears it suggested that such an inquiry violates some protection afforded by the Bill of Rights. We know of no 'right of privacy' or constitutional guarantee which makes a citizen immune to the giving of evidence where an inquiry is being made by a legally constituted Congressional committee engaged in a legitimate investigation—any more than a citizen is immune from having to give relevant testimony in a trial before a court of law. The questions, of course, must be relevant to the subject under investigation, and the decisions of the Supreme Court already protect the individual from being required to answer questions which are not pertinent to the inquiry. But, assuming that the question is material and relevant to an inquiry in aid of a lawful purpose of Congress, we do not believe that the individual is immune from being required to answer merely because the question delves into his private affairs, *his previous utterances or his affiliations, political or otherwise.* It is not necessary for the purpose of this report to attempt to predict what the courts may hold with respect to the inquiry into an individual's privately entertained belief, except to say that at all events a court would probably insist that the relevancy of such an inquiry be clearly established and that this would be true only in rather exceptional circumstances." [Emphasis added.]

of speech, or of the press." It was designed to prevent attempts by law to curtail freedom of speech.[34] It was not intended to protect persons against unfavorable public opinion, even though such opinion may be stimulated by disclosures made to or by an investigating body. Nor does the possibility that persons may voluntarily refrain from expressing their views in order to avoid a hostile public reaction mean that any law has abridged their freedom of speech. Cf. *United States* v. *Harriss,* 347 U. S. 612, 626.[35]

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[34] The purpose of the Amendment has been described as the promotion of that free and open discussion which is "indispensable to the discovery and spread of political truth" (Mr. Justice Brandeis, concurring in *Whitney* v. *California*, 274 U. S. 357, 375).

Compare:

"* * * [T]heir purpose [First Amendment freedoms] has evidently been to protect parties in the free publication of matters of public concern, to secure their right to a free discussion of public events and public measures, and to enable every citizen at any time to bring the government and any person in authority to the bar of public opinion by any just criticism upon their conduct in the exercise of the authority which the people have conferred upon them." (2 Cooley, *Constitutional Limitations* (8th ed), p. 885.)

[35] *United States* v. *Rumely*, 345 U. S. 41, cited by petitioner (Br. 97–98), is not to the contrary. There, this Court expressly refrained from deciding the relationship between the First Amendment and the congressional power to investigate. Furthermore, that case did not relate to questioning a witness as to his past or present membership in the Communist Party, in pursuit of a valid legislative purpose. The legitimacy of such a question, as we have shown (*supra*, pp. 61–66), has uniformly been sustained. The other decisions of this Court relied on by petitioner (Br. 97–100, notes 82–89) are likewise inapplicable. They were all concerned with the constitutionality of statutes which actually imposed restrictions on speech or publication.

IV

2 U. S. C. 192, READ TOGETHER WITH THE RULE OF THE HOUSE UNDER WHICH THE COMMITTEE ON UN-AMERICAN ACTIVITIES DERIVES ITS POWERS, IS NOT UNCONSTITUTIONALLY VAGUE

Petitioner next argues (Br. 119–124) that "2 U. S. C. 192, read together with the authorization of the Committee on Un-American Activities, is so vague and indefinite as to deprive petitioner of due process of law" (Br. 119). Pointing out that 2 U. S. C. 192, R. S. 102, as amended (*supra,* pp. 3–4) punishes the refusal by a witness before a congressional committee to answer any question "pertinent to the question under inquiry", he argues that "[t]he witness * * * must resolve for himself whether a question by the committee is part of an *authorized inquiry* and this he can only do by reference to the statute or resolution purporting to authorize the investigation" (Br. 119; petitioner's italics). "Therefore," he continues, "the contempt statute must be read together with the enactment setting forth the authorization of the particular committee, in order to decide whether the witness was able to make the determination that the inquiry was authorized with the accuracy required by the due process clause" (Br. 119–120). But, the argument concludes, the rule under which the House Committee on Un-American Activities operates (House Rule XI, *supra,* pp. 4–6), in defining the Committee's investigatory powers, uses such vague terms and expressions—*e. g.,* "the extent, character, and objects of un-American propaganda activities" and "all other questions in

relation thereto that would aid Congress in any necessary remedial legislation"—as to provide "no reasonably ascertainable standard of guilt" (Br. 120).

Substantially the same contention has been repeatedly advanced and as often rejected. *Barsky* v. *United States,* 167 F. 2d 241, 247–248 (C. A. D. C.), certiorari denied, 334 U. S. 843; *Dennis* v. *United States,* 171 F. 2d 986, 987–988 (C. A. D. C.), affirmed on other grounds, 339 U. S. 162; *Lawson* v. *United States,* 176 F. 2d 49, 52–53 (C. A. D. C.), certiorari denied, 339 U. S. 934; *Morford* v. *United States,* 176 F. 2d 54, 56 (C. A. D. C.), reversed on other grounds, 339 U. S. 258; *Marshall* v. *United States,* 176 F. 2d 473, 474 (C. A. D. C.), certiorari denied, 339 U. S. 933; *Emspak* v. *United States,* 203 F. 2d 54, 56 (C. A. D. C.), reversed on other grounds, 349 U. S. 190; see also *United States* v. *Josephson,* 165 F. 2d 82, 87–88 (C. A. 2), certiorari denied, 333 U. S. 838; cf. *Sacher* v. *United States,* C. A. D. C., No. 13,302, decided January 3, 1957. In *Emspak* and its companion cases, the issue was argued here but was not reached by the Court (see *Emspak,* 349 U. S. 190, 202; *Quinn* v. *United States,* 349 U. S. 155, 170; *Bart* v. *United States,* 349 U. S. 219, 223). As applied to petitioner, we submit that the statute and rule, read together, are clearly valid for the reasons set forth in the Brief for the United States in *Emspak,* No. 9, Oct. Term, 1954 (No. 67, Oct. Term, 1953), pp. 66–71, 78–95. We request the Court to consider the arguments in that brief, nine copies of which are being filed herewith.

Briefly summarized, those arguments, as applied to this petitioner, are as follows:

First, the only constitutional questions which are properly before the Court are those which relate to the particular questions which petitioner was asked and refused to answer. Petitioner's effort to raise questions, not presented by this record, relating to other witnesses, to other questions, and to other proceedings is misconceived.

Secondly, the strict standards of definiteness applicable to criminal statutes are inapplicable to rules or resolutions establishing congressional committees and defining their powers. If petitioner's contention were sound, it is unlikely that the grant of authority to any congressional committee has sufficient specificity to sustain the conviction of any witness who refused to give testimony before it. For example, the Committees on Interstate and Foreign Commerce have jurisdiction over "interstate and foreign commerce generally" (60 Stat. at 817, 826); the Committees on the Armed Services have jurisdiction over "common defense generally" (*id.* at 815, 824); and the Committees on Appropriations have jurisdiction over "appropriation of the revenue for the support of the Government" (*ibid.*). These definitions of the powers of congressional committees are obviously far broader than the standards of definiteness required in criminal statutes. Indeed, they are broader than the broadest acceptable standards which Congress may lay down in delegating authority to executive departments and agencies. Yet no one has ever suggested that these committees are unconstitutional, or

that they cannot compel testimony by the power of subpoena, because of the broad sweep of their general authority. The reason is clear: To judge congressional resolutions defining powers of committees by the normal standards of definiteness applicable to criminal statutes would invalidate every general assignment of committee jurisdiction and hopelessly hobble the vital work which Congress accomplishes through its committees.

Thirdly, no problem of definiteness is presented so long as the subject of the specific, actual inquiry at which the witness is questioned has been disclosed. The clause of 2 U. S. C. 192 punishing refusal to answer any question "pertinent to the question under inquiry" is not made unconstitutionally indefinite by the generality of the statute, resolution, or rule creating the committee. If we assume that the witness must have a basis for judging the pertinence of the "question under inquiry" in order to determine whether he must answer, it does not follow that such information is obtainable only from the instrument creating the committee. The precise question under inquiry in an investigation would normally be obvious, as it was here, at the time of the question.[36] A witness who honestly had doubts could ask the committee before deciding whether to answer a particular question. The decisions sustaining convictions for violations of administrative regulations promulgated under some relatively broad statutory standard of au-

[36] Petitioner cannot deny that he knew that the subject-matter of the inquiry was Communist infiltration into labor unions.

thority are analogous. In such cases, the general standard under which the regulation is promulgated need not meet the standard of specificity required of a criminal statute. It is sufficient if the regulation itself meets that standard.

Finally, the challenged terms of Rule XI, as they apply to this case, are, in any event, sufficiently precise in their context to satisfy any reasonable standard of definiteness. The term "un-American", in the phrase "un-American propaganda activities" as it appears in clause (i) of the pertinent passage of the rule (Rule XI (1) (q) (2); see *supra,* p. 5), is clothed with specific content and meaning by its use in the phrase "un-American propaganda", as used in clause (ii). In the latter clause, the propaganda is further described as propaganda "instigated from foreign countries or of a domestic origin" which "attacks the principle of the form of government as guaranteed by our Constitution." It would be unreasonable to demand greater specificity of language in the instrument which constitutes, in effect, the Committee's "charter." By this time, there can be no doubt that these words apply to activities of Communist Party members within various institutions of American life.[37]

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[37] Petitioner's contention has no more merit, we submit, than would have a similar contention—by one who had contumaciously refused as a witness at a criminal trial in a federal district court to answer a question pertinent to the matter under inquiry, after having been ordered to do so by the court—that he could not constitutionally be held guilty of contempt of court because the statute whence the court derives its criminal juris-

V

PETITIONER WAS NOT ENTITLED TO DISMISSAL OF THE INDICTMENT BECAUSE OF THE PRESENCE OF GOVERNMENT EMPLOYEES ON THE GRAND JURY, NOR DID HIS ALLEGATIONS AND OFFER OF PROOF ENTITLE HIM TO A HEARING ON THAT ISSUE

Petitioner finally contends (Br. 125–132) 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 by examination of the grand jurors and otherwise 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

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diction (which provides simply that "[t]he district courts of the United States shall have original jurisdiction * * * of all offenses against the laws of the United States" (18 U. S. C. 3231)) contains so vague and general a grant of power that conviction under the contempt statute (18 U. S. C. 401), read together with the statute defining the court's jurisdiction, would offend against due process. It could be argued by the contumacious court witness, in the same vein that petitioner argues here, that whether a given act or omission constitutes an "offense against the laws of the United States" is often so highly problematical that the rule requiring definiteness in a criminal statute would be breached by making a witness at a criminal trial decide at his peril whether the alleged act or omission for which the accused was on trial did or did not constitute such an offense, so as to give the court power to compel the witness' testimony.

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 government employees (R. 5). It was alleged, and offered to be proved at the requested hearing, that all such persons, by reason of the Government's loyalty-security program, are so affected by a "climate of * * * fear and intimidation" (R. 9) 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 by the petitioner in No. 137, this Term, *Ben Gold* v. *United States,* pending on writ of certiorari.[38] Our reply in that case (Brief for the United States, pp. 123–138) is accordingly adopted in this case, and the Court is asked to consider those arguments in connection with this case.

It should be pointed out, furthermore, that, 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

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[38] Substantially the same issue was involved in *Quinn* v. *United States*, 349 U. S. 155, and *Emspak* v. *United States*, 349 U. S. 190. However, the Court found it unnecessary to reach this issue in either case (*Quinn*, 349 U. S. at 170; *Emspak*, 349 U. S. at 202).

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).

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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