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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,

Respondent.

BRIEF OF AMERICAN BAR ASSOCIATION
Amicus Curiae

INTEREST OF AMICUS

The American Bar Association, appearing in this case, with the consent of both parties, is vitally interested in the issue herein involved and considers it to be its duty to lend any assistance in its power to the fullest discussion of the questions and to their proper determination.

The American Bar Association heretofore appointed a Special Committee on Communist Tactics, Strategy and Objectives and has given continuous attention to developments bearing upon the question of national security. Through this Special Committee the Board of Governors of the said Association was advised of the pendency of this case and the issues involved, following which notification the Board authorized the Special Committee to take steps in order to present a brief setting forth its views relating to the questions involved.

HISTORY OF THE CASE ON APPEAL

On January 26, 1956, a divided panel of three judges of the United States Court of Appeals for the District of Columbia Circuit reversed Watkins' conviction. The majority of this panel consisted of Chief Judge Edgerton and Judge Bazelon. A vigorous dissenting opinion was filed by Judge Bastian. The majority and dissenting opinions of the panel were printed in slip form and issued by the court but have not been reported in the official reports.

Upon application of the government, a rehearing *en banc* was ordered by the court on February 17, 1956, and the order of the three-judge panel was vacated.

On April 23, 1956, Watkins' conviction was affirmed by the full Court of Appeals *en banc* by a vote of 6-2, speaking through Judge Bastian. Chief Judge Edgerton and Judge Bazelon filed a dissent nearly identical with their earlier opinion for the panel. 233 F. 2d 681.

QUESTIONS PRESENTED

(1) Was the Committee on Un-American Activities of the House of Representatives acting in furtherance of a legitimate legislative purpose within the scope of its authorization in seeking the information in question from petitioner?

(2) Does the information sought by the Committee abridge petitioner's First Amendment rights?

ARGUMENT

I

CONGRESS HAS BROAD AND EXTENSIVE POWERS TO INVESTIGATE AND INQUIRE IN AID OF LEGISLATION

The power of Congress to make investigations and exact testimony in aid of legislation is implied as an

attribute to the power to legislate. *McGrain* v. *Daugherty,* 273 U.S. 135, 161 (1927)

In *Quinn* v. *United States,* 349 U.S. 155, 160 (1955), this court, commenting on the scope of the congressional investigating power, characterized it as being "co-extensive with the power to legislate," but subject to the limitation, *inter alia,* that such power could not be used "to inquire into private affairs unrelated to a valid legislative purpose," citing *Kilbourn* v. *Thompson,* 103 U.S. 168, 190.

The Committee Was Acting In Furtherance Of A Legislative Purpose Within The Scope Of Its Authorization In Seeking The Information In Question

Congress has the authority—indeed the compelling duty —to inquire fully into matters and conditions relating to Communism generally, its objectives, and its particular activities.[1]

By no fair and reasonable interpretation of the authority vested in the Committee on Un-American Activities can a sound basis exist for denying to it the power to conduct hearings in aid of legislation relating to communist-infiltrated labor unions. That such was its avowed purpose in subpoenaeing the petitioners to testify is evident from the Chairman's opening statement quoted in the majority opinion below at page 684-686.

The petitioner contends that despite the announcement of any other purpose the true purpose was solely one of "exposure for exposure's sake" and "retributive justice," a non-legislative purpose in violation of the doctrine of

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[1] The legitimate exercise of the investigating power is not restricted to legislation in actual contemplation, nor is its power to conduct hearings for legislative purposes to be measured by recommendations for legislation or their absence. See *In re Chapman,* 166 U.S. 661,670, (1897); *Townsend* v. *United States,* 95 F.2d 352,355 (C.A.D.C., 1938), *Barsky* v. *United States,* 167 F.2d 241, 245 (C.A.D.C., 1948), *cert. den.,* 334 U.S. 843 (1948), *rehearing den.,* 339 U.S. 899 (1950).

separation of powers. He urges upon this court, as he did without success in the District Court and Court of Appeals, the adoption of a novel proposition of law by which the courts in prosecutions for contempt of Congress scrutinize the motives of a Congressional Committee in order to determine whether the Committee was in fact acting with a legislative purpose in making an inquiry in a field in which it was authorized to conduct hearings in aid of legislation. He urges the establishment of some criteria whereby the courts should determine the presence or absence of a legislative purpose by considering the statements of individual members of the Committee wherever made; by examining the questions asked by the Committee and to speculate as to those which it did not ask; and to weigh and evaluate the sufficiency of the information already in the files of the Committee obtained from other sources—all to seek to arrive at a judicial determination of the motive with which a legislative committee conducts hearings within its authorized sphere of activity.

It is settled that in a field proper for legislative action, a legislative purpose on the part of Congress will be presumed, and the courts should not scrutinize the motives of Congress or its Committees. See *McGrain* v. *Daugherty, supra* wherein this court held that the courts are bound to presume that the action of Congress or its committees is with a legitimate object if it is capable of being so construed, and they have no right to assume that a contrary object was intended (citing with approval *People* v. *Keeler,* 99 N.Y. 463, 487 (1885).

Thus, in *Morford* v. *United States,* 176 F.2d 54 (C.A. D.C., 1949), *rev'd on other grounds,* 339 U.S. 258 (1950), the court, in upholding the trial court's exclusion of evidence that the Committee on Un-American Activities was not acting in furtherance of a legislative purpose in seeking the information which Morford refused to give, said

"a legitimate legislative purpose is presumed when the general subject of investigation is one concerning which Congress can legislate, and when the information sought would materially aid its consideration," citing *McGrain* v. *Daugherty, supra.* In that case, as here, it was urged that the Committee was merely seeking the names of persons for the non-legislative purpose of adding such names to its "blacklist."

In *Eisler* v. *United States,* 170 F.2d 273, 279 (C.A. D.C., 1948), the court had before it contentions similar to those of this petitioner. It stated "the court has no authority to scrutinize the motives of Congress or one of its committees," and properly refused to admit evidence that the Committee's real purpose was "to harass and punish him for his political beliefs * * * and that the Committee acted for ulterior motives not within the scope of its or Congress' powers."

In *Lawson* v. *United States,* 176 F.2d 49 (C.A.D.C., 1949) *cert. den.,* 339 U.S. 934 (1950), *rehearing den.,* 339 U.S. 972 (1950), it was urged by appellant that the trial court erred in excluding evidence that the Committee was pursuing a non-legislative purpose because its primary purpose was to "blacklist," "expose," and "spotlight" him to cause his discharge, and that where the Committee already had the information sought from the witness it was "merely cumulative" and the hearing has a non-legislative purpose and hence the information was not "pertinent" (Records and Briefs, Court of Appeals, D.C., Vol. 772, appellant's brief, p 72, 90). These contentions were dismissed by the Court of Appeals without discussion because they did not "merit discussion" (at p. 54). These same matters were assigned as errors in Lawson's petition for certiorari (Lawson's Petition, p. 67-77, 96).

That relevant testimony in aid of legislation may be compelled by the Committee which may incidentally or as a natural consequence of its constitutional activities

involve the "exposure" of individuals can afford no basis in itself for limiting the legitimate inquisitorial powers of the Committee.[2]

In *Barsky* v. *United States, supra,* the court held that it had "no authority to speak or act upon the conduct by the legislative branch of its own business, so long as the bounds of power and pertinency are not exceeded, and the mere possibility that the power of inquiry may be abused 'affords no ground for denying the power'" (citing *McGrain* v. *Daugherty, supra,* at page 175). And in *Dennis* v. *United States,* 171 F.2d 986, 988 (C.A.D.C., 1949), aff'd., 339 U. S. 162 (1950), the court said "it is neither the business nor the prerogative of this court or any other court to pass upon either the wisdom of Congress in setting up the Committee, the private or public character of members of the Committee or the propriety of the procedure of the Committee unless it transgresses the authority committed to it by the Congress under the Constitution."

To the same effect is the recent case of *United States* v. *Orman,* 207 F. 2d 148, 157 (C.A. 3, 1953).

A most recent case, decided January 3, 1957, dealing with similar issues to those involved in the Watkins case, is *Barenblatt* v. *United States* No. 13,327, United States Court of Appeals for the District of Columbia Circuit. The opinion, written by Judge Bastian for a unanimous Court, convincingly states the reasons for not unduly restricting the operations of Congressional Committees. Also the Court after reviewing the history of the Committee on Un-American Activities of the House of Representatives concluded that there is abundant reason to sustain its inquiries into Communist infiltration.

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[2] Watkins v. United States, *supra,* at p. 687; United States v. Josephson, Post p. 9, at p. 89.

The Court stated

> "Appellant next contends that the primary purpose of the subcommittee's inquiry was to "expose" his beliefs and associations and that, therefore, the subcommittee exceeded the bounds of its investigative power. There can be no doubt that Congress has the power of inquiry and investigation when the inquiry or investigation is upon a subject concerning which Congress may legislate. The very resolution establishing the committee indicates that the subject under inquiry was one concerning which Congress could legislate. The fact that such an inquiry or investigation may reveal or "expose" some facts embarrassing to some one is incidental and without effect upon the validity of the inquiry.
>
> "Evidence was presented at the trial to show that the House Committee on Un-American Activities had been engaged in a continuing investigation into communist methods of infiltration * * *"

Of great importance is the Court's ruling, with supporting authority that

> "Courts must presume congressional investigations to have valid legislative purposes. Townsend v. United States, 95 F.2nd, 352, cert. denied, 303 U.S. 664 (1938).

Further on the related question the Court stated

> "Though we, of course, agree that Congress does not have a general power to inquire into political beliefs and associations, it does have that power 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 another recently decided Case—that of *Sacher* v. *United States* No. 13,302, U. S. Court of Appeals for District of Columbia, decided January 3, 1957, the Court speaking through Judge Burger stated

> "It is appellant's contention that the questions forming the basis of the indictment could not be pertinent to the subject of inquiry for appellant's testimony demonstrated he had no knowledge of the circumstances leading to the recantation. If this were true an interested party could effectively determine the pertinency of questions and the inquiring body would abdicate in favor of the witnesses. Pertinency is not measured by the amount of information a witness may wish to disclose. The test is whether under the circumstances the information reasonably sought is germane to the subject of inquiry."

For well-considered rulings by a State Court in this field particularly bearing upon the legislative purpose and validity of Committee action thereunder, see

Wyman v. Sweezy, 100 N. H. 103
and
Nelson v. Wyman, 99 N. H. 33

ARGUMENT

II

THE DISCLOSURES SOUGHT BY THE COMMITTEE DO NOT ABRIDGE PETITIONER'S FIRST AMENDMENT RIGHTS

In connection with its investigation, the Committee sought to identify the former associates of the petitioner as members of the Communist Party between 1942 and 1947. The question was directed to a possible answer calculated to aid materially the legitimate legislative objectives of the investigation, and an answer should be compelled over a claim of First Amendment rights.

In *Barsky* v. *United States, supra,* the court, holding that the Committee on Un-American Activities could properly ask a witness if he is a member of the Communist Party over a claim of First Amendment rights, stated:

> "If Congress has power to inquire into the subject of Communism and the Communist Party, 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. Moreover, the accuracy of the information obtained depends in large part upon the knowledge and the attitude of the witness whether present before the Committee or represented by the testimony of another. We note at this point that the arguments directed to the invalidity of this inquiry under the First Amendment would apply to an inquiry directed to another person as well as to one directed to the individual himself. The right to refuse self-incrimination is not involved. The problem relates to the power of inquiry into a matter which is not a violation of law." (P. 246).
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> " * * * To remain uninformed upon a subject thus represented would be failure in Congressional responsibility." (P. 247).

See *United States* v. *Josephson,* 165 F.2d 82 (C.A. 2, 1947) *cert. den.,* 333 U.S. 838 (1948) *rehearing den.,* 333 U. S. 858 (1948), *motion for leave to file a 2nd petition for rehearing den.,* 335 U. S. 899 (1948), wherein the court held that the Committee on Un-American Activities had a right to inquire into Communism, over a claim of First Amendment rights; In *Lawson* v. *United States, supra,* where the court held that the Committee on Un-American Activities could compel appellants to answer whether they were members of the Communist Party and the Screen Writers Guild over a First Amendment claim that they could not be compelled to disclose "their private beliefs and associations"; similarly, in *Morford* v. *United States, supra,* where the court held that the Committee could compel the witness to give the names of persons who produced the publication "Reporter," because "Personnel is part of the subject;" and in *Rogers* v. *United States,* 340 U.S. 367 (1951), where a witness before a grand jury originally refused to identify the person to whom she had given the Party's books because "I don't feel that I

should subject a person or persons to the same thing that I'm going through" (page 368), the court said:

> "Petitioner expressly placed her original declination to answer on an untenable ground, since a refusal to answer cannot be justified by a desire to protect others from punishment, much less to protect another from interrogation by a grand jury" (p. 371).

While petitioner concedes that the substantiality of the congressional need for information may "on occasion" justify the compulsion of disclosures over a claim of First Amendment rights, he cites *United States* v. *Rumley,* 345 U.S. 41, for the proposition that the Amendment occupies a preferred position in any weighing of the contending principles, i.e., the Congressional exercise of its power of inquiry as against the guarantees of First Amendment rights.

So necessary is the proper functioning of the investigative powers of the legislative process that any unwarranted limitation placed by the Courts upon them would result in irreparable harm to this coordinate branch of the Government. While no deprivation of rights and privileges by the Congress in the course of investigations should be permitted, the Courts must exercise judicial restraint so as not to thwart the purpose and objectives of the legislative Committees when operating properly within the sphere of their jurisdiction.

CONCLUSION

Official records and common knowledge furnish proof of the fact that the Congress of the United States over recent years has been occupied constantly with problems growing out of the challenge of Communism. In every session during the last two decades measures have been presented for consideration relating to subversion. The organization of the Un-American Activities Committee by the House of Representatives and the creation of the Internal Security Subcommittee by the Senate show con-

clusively that the legislative branch of the Government realized the gravity of the situation and was determined to act in preservation of this government.

It was in fulfillment of its duty in this respect that the Un-American Activities Committee undertook the inquiries which included the interrogation of the petitioner, John T. Watkins. Naturally the questioning was pressed when Watkins admitted that he had cooperated with the Communists and possessed information as to the operations of these enemies of the United States. When it is borne in mind that this treacherous apparatus is under the domination of a foreign government and is calculatingly directed toward the overthrow of American institutions by force and violence,[3] the exercise of judicial realism becomes imperative in enunciating a legal principle preserving the broadest possible fact-finding powers in Congress to fulfill its legislative duty.

That the legal defenses against the Communist Conspiracy have not been perfected is attested by the fact that the Internal Security Act of 1950 has not yet been finally acted upon by the Supreme Court of the United States. It is a fact that the legislative branch must give continuing attention to the study and consideration of every aspect of this problem. To the credit of the House Un-American Activities Committee and of the Senate Internal Security Subcommittee it can be said that unremitting attention has been given in order to legislate, if the Courts should eventually decide that the present statutes are in need of revision or amendment.

No clearer or more authoritative declaration could have been given than the message to the Joint Session of the Congress by President Eisenhower on January 5th, 1957, setting out in detail the ever-present danger to American institutions posed by the Soviet-inspired Communist

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[3] See legislative findings in Internal Security Act of 1950, Section 2, 50 U.S.C. 781, 64 Stat. 987 *et seq.*

Party. It is false to the point of absurdity to dignify this conspiratorial organization as a "political party", which its sympathizers and even some Courts are prone to do. President Eisenhower himself left no doubt as to the conviction of the United States Government that clear and present danger faces us from the Communist conspiracy.

The President in portraying the crises through which America has passed stated that the world has experienced "instability which has been heightened and at times manipulated by International Communism". He answered in this January 5, 1957 message the misguided zealots who would further temporize with the Soviet propagandists when he said

> "International Communism, of course, seeks to mask its purpose of domination by expressions of good will and by superficially attractive offers of political, economic and military aid."

And lest complacency mark the American attitude our President, as Commander-in-Chief, warned that there exists "increased danger from International Communism."

We commend to the Supreme Court the reasoning and clarity of the opinion rendered by Judge Bastian of the Circuit Court of Appeals sitting *en banc*. While vigilant of the rights of the traverser in a criminal proceeding, this learned jurist was not unmindful of the necessary safeguards for the protection of the individual. Constitutional privileges must ever be preserved, so that no individual defendant will ever be denied the basic rights of American citizenship. Nevertheless those safeguards must not be over-extended to the point that enemies of our form of government be encouraged and aided in their subversive purposes.

In respectfully suggesting to this Court that the issues herein presented are of far-reaching importance, we do not countenance any departure from those foundational

principles which have ever supported the free institutions of the United States. But we would do a disservice to our government and especially to the Judicial Branch, which has always proved a bulwark of our liberties, if we urged the Court to do anything which would have the effect of lessening national efforts for self preservation.

We believe that in every individual case, no matter how inconsequential it may appear to be, there is the opportunity of strengthening or weakening this free constitutional Republic, which is the last hope of struggling human beings the world over. It is our belief that we must preserve individual rights and freedoms but that the best guarantee we can have to accomplish this purpose is the protection and preservation of our national security.

The danger of loss of our freedoms must not be risked. The elected representatives of our Legislative and Executive Departments must be upheld in their actions unless there is violation of either Constitutional or statutory provisions when they are acting in protection of the national welfare. We repeat the expressed belief in our Brief, as Amicus Curiae, in the case of *Communist Party of the United States of America* v. *Subversive Activities Control Board,* No. 48—October Term, 1955, that

> "this country is entitled to protection—not alibis or epitaphs".

It is respectfully submitted that the order of the Circuit Court of Appeals in this case affirming the conviction

of the District Court should be upheld by the Supreme Court of the United States.

Respectfully submitted,

HERBERT R. O'CONOR,
Baltimore, Md.
Chairman

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