

HARLAN, J., Opinion of the Court

SUPREME COURT OF THE UNITED STATES

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360 U.S. 109

**Barenblatt v. United States**

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

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No. 35 Argued: November 18, 1958 --- Decided: June 8, 1959  
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MR. JUSTICE HARLAN delivered the opinion of the Court.

Once more the Court is required to resolve the conflicting constitutional claims of congressional power, and of an individual's right to resist its exercise. The congressional power in question concerns the internal process of Congress in moving within its legislative domain; it involves the utilization of its committees to secure "testimony needed to enable it efficiently to exercise a legislative function belonging to it under the Constitution." *McGrain v. Daugherty*, 273 U.S. 135, 160. The power of inquiry has been employed by Congress throughout our history, over the whole range of the national interests concerning which Congress might legislate or decide upon due investigation not to legislate; it has similarly been utilized in determining what to appropriate from the national purse, or whether to appropriate. The scope of the power of inquiry, in short, is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.

Broad as it is, the power is not, however, without limitations. Since Congress may only investigate into those areas in which it may potentially legislate or appropriate, [p112] it cannot inquire into matters which are within the exclusive province of one of the other branches of the Government. Lacking the judicial power given to the Judiciary, it cannot inquire into matters that are exclusively the concern of the Judiciary. Neither can it supplant the Executive in what exclusively belongs to the Executive. And the Congress, in common with all branches of the Government, must exercise its powers subject to the limitations placed by the Constitution on governmental action, more particularly, in the context of this case, the relevant limitations of the Bill of Rights.

The congressional power of inquiry, its range and scope, and an individual's duty in relation to it, must be viewed in proper perspective. *McGrain v. Daugherty*, *supra*; Landis, Constitutional Limitations on the Congressional Power of Investigation, 40 Harv.L.Rev. 153, 214; Black, Inside a Senate Investigation, 172 Harpers Monthly 275 (February 1936). The power and the right of resistance to it are to be judged in the concrete, not on the basis of abstractions. In the present

case, congressional efforts to learn the extent of a nationwide, indeed worldwide, problem have brought one of its investigating committees into the field of education. Of course, broadly viewed, inquiries cannot be made into the teaching that is pursued in any of our educational institutions. When academic teaching -- freedom and its corollary, learning -- freedom, so essential to the wellbeing of the Nation, are claimed, this Court will always be on the alert against intrusion by Congress into this constitutionally protected domain. But this does not mean that the Congress is precluded from interrogating a witness merely because he is a teacher. An educational institution is not a constitutional sanctuary from inquiry into matters that may otherwise be within the constitutional legislative domain merely for the reason that inquiry is made of someone within its walls. [p113]

In the setting of this framework of constitutional history, practice, and legal precedents, we turn to the particularities of this case.

We here review petitioner's conviction under 2 U.S.C. § 192<sup>[n1]</sup> for contempt of Congress, arising from his refusal to answer certain questions put to him by a Subcommittee of the House Committee on Un-American Activities during the course of an inquiry concerning alleged Communist infiltration into the field of education.

The case is before us for the second time. Petitioner's conviction was originally affirmed in 1957 by a unanimous panel of the Court of Appeals, 100 U.S.App.D.C. 13, 240 F.2d 875. This Court granted certiorari, 354 U.S. 930, vacated the Judgment of the Court of Appeals, and remanded the case to that court for further consideration in light of *Watkins v. United States*, 354 U.S. 178, which had reversed a contempt of Congress conviction and which was decided after the Court of Appeals' decision here had issued. Thereafter, the Court of Appeals, sitting en banc, reaffirmed the conviction by a divided court. 102 U.S.App.D.C. 217, 252 F.2d 129. We again granted certiorari, 356 U.S. 929, to consider petitioner's statutory and constitutional challenges to his conviction, and particularly his claim that the Judgment below cannot stand under our decision in the *Watkins* case.

Pursuant to a subpoena, and accompanied by counsel, petitioner, on June 28, 1954, appeared as a witness before [p114] this congressional Subcommittee. After answering a few preliminary questions and testifying that he had been a graduate student and teaching fellow at the University of Michigan from 1947 to 1950 and an instructor in psychology at Vassar College from 1950 to shortly before his appearance before the Subcommittee, petitioner objected generally to the right of the Subcommittee to inquire into his "political" and "religious" beliefs or any "other personal and private affairs" or "associational activities," upon grounds set forth in a previously prepared memorandum which he was allowed to file with the Subcommittee.<sup>[n2]</sup> Thereafter, petitioner specifically declined to answer each of the following five questions:

Are you now a member of the Communist Party? [Count One.]

Have you ever been a member of the Communist Party? [Count Two.]

Now, you have stated that you knew Francis Crowley. Did you know Francis Crowley as a member of the Communist Party? [Count Three.]

Were you ever a member of the Haldane Club of the Communist Party while at the University of Michigan? [ Count Four.]

Were you a member while a student of the University of Michigan Council of Arts, Sciences, and Professions? [Count Five.]

In each instance the grounds of refusal were those set forth in the prepared statement. Petitioner expressly disclaimed reliance upon "the **Fifth Amendment**."<sup>[n3]</sup> [p115]

Following receipt of the Subcommittee's report of these occurrences, the House duly certified the matter to the District of Columbia United States Attorney for contempt proceedings. An indictment in five Counts, each embracing one of petitioner's several refusals to answer, ensued. With the consent of both sides, the case was tried to the court without a jury, and, upon conviction under all Counts, a general sentence of six months' imprisonment and a fine of \$250 was imposed.

Since this sentence was less than the maximum punishment authorized by the statute for conviction under any one Count,<sup>[n4]</sup> the judgment below must be upheld if the conviction upon any of the Counts is sustainable. See *Claassen v. United States*, **142 U.S. 140**, 147; *Roviaro v. United States*, **353 U.S. 53**; *Whitfield v. Ohio*, **297 U.S. 431**. As we conceive the ultimate issue in this case to be whether petitioner could properly be convicted of contempt for refusing to answer questions relating to his participation in or knowledge of alleged Communist Party activities at educational institutions in this country, we find it unnecessary to consider the validity of his conviction under the Third and Fifth Counts, the only ones involving questions which on their face do not directly relate to such participation or knowledge.

Petitioner's various contentions resolve themselves into three propositions: first, the compelling of testimony by the Subcommittee was neither legislatively authorized nor constitutionally permissible because of the vagueness of Rule XI of the House of Representatives, Eighty-third Congress, the charter of authority of the parent Committee.<sup>[n5]</sup> Second, petitioner was not adequately apprised of the pertinency of the Subcommittee's questions to the [p116] subject matter of the inquiry. Third, the questions petitioner refused to answer infringed rights protected by the **First Amendment**.

#### SUBCOMMITTEE'S AUTHORITY TO COMPEL TESTIMONY

At the outset, it should be noted that Rule XI authorized this Subcommittee to compel testimony within the framework of the investigative authority conferred on the Un-American Activities Committee.<sup>[n6]</sup> Petitioner contends that *Watkins v. United States*, *supra*, nevertheless held the grant of this power in all circumstances ineffective because of the vagueness of Rule XI in delineating the Committee jurisdiction to which its exercise was to be appurtenant. This view of *Watkins* was accepted by two of the dissenting judges below. 102 U.S.App.D.C. at 124, 252 F.2d at 136.

The *Watkins* case cannot properly be read as standing for such a proposition. A principal contention in *Watkins* was that the refusals to answer were justified because the requirement of 2

**U.S.C. § 192** that the questions asked be "pertinent to the question under inquiry" had not been satisfied. 354 U.S. at 208-209. This Court reversed the conviction solely on that ground, holding that Watkins had not been adequately apprised of the subject matter of the Subcommittee's investigation or the pertinency [p117] thereto of the questions he refused to answer. *Id.* at 206-209, 214-215, and *see* the concurring opinion in that case, *id.* at 216. In so deciding, the Court drew upon Rule XI only as one of the facets in the total *mise en scene* in its search for the "question under inquiry" in that particular investigation. *Id.* at 209-215. The Court, in other words, was not dealing with Rule XI at large, and indeed in effect stated that no such issue was before it, *id.* at 209. That the vagueness of Rule XI was not alone determinative is also shown by the Court's further statement that, aside from the Rule,

the remarks of the chairman or members of the committee, or even the nature of the proceedings themselves, might sometimes make the topic [under inquiry] clear.

*Ibid.* In short, while *Watkins* was critical of Rule XI, it did not involve the broad and inflexible holding petitioner now attributes to it.<sup>[n7]</sup>

Petitioner also contends, independently of *Watkins*, that the vagueness of Rule XI deprived the Subcommittee of the right to compel testimony in this investigation into Communist activity. We cannot agree with this contention, which, in its furthest reach, would mean that the House Un-American Activities Committee under its existing authority has no right to compel testimony in any circumstances. Granting the vagueness of the Rule, we may not read it in isolation from its long history in the House of Representatives. Just as legislation is often given meaning by the gloss of legislative reports, administrative interpretation, and long usage, so the proper meaning of an authorization to a congressional committee is not to be derived alone from its abstract terms unrelated to the definite content furnished them by the course of congressional actions. The Rule comes to us with a [p118] "persuasive gloss of legislative history," *United States v. Witkovich*, **353 U.S. 194**, 199, which shows beyond doubt that, in pursuance of its legislative concerns in the domain of "national security," the House has clothed the Un-American Activities Committee with pervasive authority to investigate Communist activities in this country.

The essence of that history can be briefly stated. The Un-American Activities Committee, originally known as the Dies Committee, was first established by the House in 1938.<sup>[n8]</sup> The Committee was principally a consequence of concern over the activities of the German-American Bund, whose members were suspected of allegiance to Hitler Germany, and of the Communist Party, supposed by many to be under the domination of the Soviet Union.<sup>[n9]</sup> From the beginning, without interruption to the present time and with the undoubted knowledge and approval of the House, the Committee has devoted a major part of its energies to the investigation of Communist activities.<sup>[n10]</sup> More particularly, in 1947, the Committee announced [p119] a wide-range program in this field,<sup>[n11]</sup> pursuant to which, during the years 1948 to 1952, it conducted diverse inquiries into such alleged Communist activities as espionage; efforts to learn atom bomb secrets; infiltration into labor, farmer, veteran, professional, youth, and motion picture groups, and, in addition, held a number of hearings upon various legislative proposals to curb Communist activities.<sup>[n12]</sup>

In the context of these unremitting pursuits, the House has steadily continued the life of the Committee at the [p120] commencement of each new Congress;<sup>[n13]</sup> it has never narrowed the powers of the Committee, whose authority has remained throughout identical with that contained in Rule XI, and it has continually supported the Committee's activities with substantial appropriations.<sup>[n14]</sup> Beyond this, the Committee was raised to the level of a standing committee of the House in 1945, it having been but a special committee prior to that time.<sup>[n15]</sup>

In light of this long and illuminating history, it can hardly be seriously argued that the investigation of Communist activities generally, and the attendant use of [p121] compulsory process, was beyond the purview of the Committee's intended authority under Rule XI.

We are urged, however, to construe Rule XI so as at least to exclude the field of education from the Committee's compulsory authority. Two of the four dissenting judges below relied entirely, the other two alternatively, on this ground. 102 U.S.App.D.C. at 224, 226, 252 F.2d at 136, 138. The contention is premised on the course we took in *United States v. Rumely*, 345 U.S. 41, where in order to avoid constitutional issues, we construed narrowly the authority of the congressional committee there involved. We cannot follow that route here, for this is not a case where Rule XI has to "speak for itself, since Congress put no gloss upon it at the time of its passage," nor one where the subsequent history of the Rule has the "infirmity of *post litem motam*, self-serving declarations." See *United States v. Rumely, supra*, at 44-45, 48.

To the contrary, the legislative gloss on Rule XI is again compelling. Not only is there no indication that the House ever viewed the field of education as being outside the Committee's authority under Rule XI, but the legislative history affirmatively evinces House approval of this phase of the Committee's work. During the first year of its activities, 1938, the Committee heard testimony on alleged Communist activities at Brooklyn College, N.Y.<sup>[n16]</sup> The following year, it conducted similar hearings relating to the American Student Union and the Teachers Union.<sup>[n17]</sup> The field of "Communist influences in education" was one of the items contained in the Committee's [p122] 1947 program.<sup>[n18]</sup> Other investigations including education took place in 1952 and 1953.<sup>[n19]</sup> And, in 1953, after the Committee had instituted the investigation involved in this case, the desirability of investigating Communism in education was specifically discussed during consideration of its appropriation for that year, which, after controversial debate, was approved.<sup>[n20]</sup>

In this framework of the Committee's history, we must conclude that its legislative authority to conduct the inquiry presently under consideration is unassailable, and that, independently of whatever bearing the broad scope of Rule XI may have on the issue of "pertinency" in a given investigation into Communist activities, as in *Watkins*, the Rule cannot be said to be constitutionally [p123] infirm on the score of vagueness. The constitutional permissibility of that authority otherwise is a matter to be discussed later.

#### PERTINENCY CLAIM

Undeniably, a conviction for contempt under 2 U.S.C. § 192 cannot stand unless the questions asked are pertinent to the subject matter of the investigation. *Watkins v. United States, supra*, at

214-215. But the factors which led us to rest decision on this ground in *Watkins* were very different from those involved here.

In *Watkins*, the petitioner had made specific objection to the Subcommittee's questions on the ground of pertinency; the question under inquiry had not been disclosed in any illuminating manner, and the questions asked the petitioner were not only amorphous on their face, but, in some instances, clearly foreign to the alleged subject matter of the investigation -- "Communism in labor." *Id.* at 185, 209-215.

In contrast, petitioner in the case before us raised no objections on the ground of pertinency at the time any of the questions were put to him. It is true that the memorandum which petitioner brought with him to the Subcommittee hearing contained the statement,

to ask me whether I am or have been a member of the Communist Party may have dire consequences. I might wish to . . . challenge the pertinency of the question to the investigation,

and, at another point, quoted from this Court's opinion in *Jones v. Securities & Exchange Comm'n*, **298 U.S. 1**, language relating to a witness' right to be informed of the pertinency of questions asked him by an administrative agency.<sup>[n21]</sup> These statements cannot, [p124] however, be accepted as the equivalent of a pertinency objection. At best, they constituted but a contemplated objection to questions still unasked, and, buried as they were in the context of petitioner's general challenge to the power of the Subcommittee, they can hardly be considered adequate, within the meaning of what was said in *Watkins*, *supra*, at 214-215, to trigger what would have been the Subcommittee's reciprocal obligation had it been faced with a pertinency objection.

We need not, however, rest decision on petitioner's failure to object on this score, for here "pertinency" was made to appear "with undisputable clarity." *Id.* at 214. First of all, it goes without saying that the scope of the Committee's authority was for the House, not a witness, to determine, subject to the ultimate reviewing responsibility of this Court. What we deal with here is whether petitioner was sufficiently apprised of "the topic under inquiry" thus authorized "and the connective reasoning whereby the precise questions asked relate [d] to it." *Id.* at 215. In light of his prepared memorandum of constitutional objections, there can be no doubt that this petitioner was well aware of the Subcommittee's authority and purpose to question him as it did. *See* p. 123, *supra*. In addition, the other sources of this information which we recognized in *Watkins*, *supra*, at 209-215, leave no room for a "pertinency" objection on this record. The subject matter of the inquiry had been identified at the commencement of the investigation as Communist infiltration into the field of education.<sup>[n22]</sup> Just prior to petitioner's appearance before the Subcommittee, the scope of the day's hearings had been announced as,

in the main, communism in education and the experiences and background in the party by Francis X. T. Crowley. [p125] It will deal with activities in Michigan, Boston, and, in some small degree, New York.

Petitioner had heard the Subcommittee interrogate the witness Crowley along the same lines as he, petitioner, was evidently to be questioned, and had listened to Crowley's testimony

identifying him as a former member of an alleged Communist student organization at the University of Michigan while they both were in attendance there.<sup>[n23]</sup> Further, petitioner had stood mute in the face of the Chairman's statement as to why he had been called as a witness by the Subcommittee.<sup>[n24]</sup> And, lastly, unlike *Watkins, id.* at 182-185, petitioner refused to answer questions as to his own Communist Party affiliations, whose pertinency, of course, was clear beyond doubt.

Petitioner's contentions on this aspect of the case cannot be sustained.

## CONSTITUTIONAL CONTENTIONS

Our function at this point is purely one of constitutional adjudication in the particular case and upon the particular record before us, not to pass judgment upon the general wisdom or efficacy of the activities of this Committee in a vexing and complicated field. [p126]

The precise constitutional issue confronting us is whether the Subcommittee's inquiry into petitioner's past or present membership in the Communist Party<sup>[n25]</sup> transgressed the provisions of the **First Amendment**,<sup>[n26]</sup> which, of course, reach and limit congressional investigations. *Watkins, supra*, at 197.

The Court's past cases establish sure guides to decision. Undeniably, the **First Amendment** in some circumstances protects an individual from being compelled to disclose his associational relationships. However, the protections of the **First Amendment**, unlike a proper claim of the privilege against self-incrimination under the **Fifth Amendment**, do not afford a witness the right to resist inquiry in all circumstances. Where **First Amendment** rights are asserted to bar governmental interrogation, resolution of the issue always involves a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown. These principles were recognized in the *Watkins* case, where, in speaking of the **First Amendment** in relation to congressional inquiries, we said (at p. 198):

It is manifest that, despite the adverse effects which follow upon compelled disclosure of private matters, not all such inquiries are barred. . . . The critical element is the existence of, [p127] and the weight to be ascribed to, the interest of the Congress in demanding disclosures from an unwilling witness.

*See also American Communications Assn. v. Douds, 339 U.S. 382*, 399-400; *United States v. Rumely, supra*, at 43-44. More recently, in *National Association for the Advancement of Colored People v. Alabama, 357 U.S. 449*, 463-466, we applied the same principles in judging state action claimed to infringe rights of association assured by the Due Process Clause of the **Fourteenth Amendment**, and stated that the "subordinating interest of the State must be compelling" in order to overcome the individual constitutional rights at stake. *See Sweezy v. New Hampshire, 354 U.S. 234*, 255, 265 (concurring opinion). In light of these principles, we now consider petitioner's **First Amendment** claims.

The first question is whether this investigation was related to a valid legislative purpose, for Congress may not constitutionally require an individual to disclose his political relationships or

other private affairs except in relation to such a purpose. *See Watkins v. United States, supra*, at 198.

That Congress has wide power to legislate in the field of Communist activity in this Country, and to conduct appropriate investigations in aid thereof, is hardly debatable. The existence of such power has never been questioned by this Court, and it is sufficient to say, without particularization, that Congress has enacted or considered in this field a wide range of legislative measures, not a few of which have stemmed from recommendations of the very Committee whose actions have been drawn in question here.<sup>[n27]</sup> In the last analysis, this power rests on [p128] the right of self-preservation, "the ultimate value of any society," *Dennis v. United States*, 341 U.S. 494, 509. Justification for its exercise, in turn, rests on the long and widely accepted view that the tenets of the Communist Party include the ultimate overthrow of the Government of the United States by force and violence, a view which has been given formal expression by the Congress.<sup>[n28]</sup> On these premises, this Court, in its constitutional adjudications, has consistently refused to view the Communist Party as an ordinary political party, and has upheld federal legislation aimed at the Communist problem which, in a different context, would certainly have raised constitutional issues of the gravest character. *See, e.g., Carlson v. Landon*, 342 U.S. 524; *Galvan v. Press*, 347 U.S. 522. On the same premises, this Court has upheld under the **Fourteenth Amendment** state legislation requiring those occupying or seeking public office to disclaim knowing membership in any organization advocating overthrow of the Government by force and violence, which legislation none can avoid seeing was aimed at membership in the Communist Party. *See Gerende v. Board of Supervisors*, 341 U.S. 56; *Garner v. Board of Public Works*, 341 U.S. 716. *See also Beilan v. Board of Public Education*, 357 U.S. 399; *Lerner v. Casey*, 357 U.S. 468; 341 U.S. 494, 509. Justification for its exercise, in turn, rests on the long and widely accepted view that the tenets of the Communist Party include the ultimate overthrow of the Government of the United States by force and violence, a view which has been given formal expression by the Congress.<sup>[n28]</sup> On these premises, this Court, in its constitutional adjudications, has consistently refused to view the Communist Party as an ordinary political party, and has upheld federal legislation aimed at the Communist problem which, in a different context, would certainly have raised constitutional issues of the gravest character. *See, e.g., Carlson v. Landon*, 342 U.S. 524; *Galvan v. Press*, 347 U.S. 522. On the same premises, this Court has upheld under the **Fourteenth Amendment** state legislation requiring those occupying or seeking public office to disclaim knowing membership in any organization advocating overthrow of the Government by force and violence, which legislation none can avoid seeing was aimed at membership in the Communist Party. *See Gerende v. Board of Supervisors*, 341 U.S. 56; *Garner v. Board of Public Works*, 341 U.S. 716. *See also Beilan v. Board of Public Education*, 357 U.S. 399; *Lerner v. Casey*, 357 U.S. 468; *Adler v. Board of Education*, 342 U.S. 485. Similarly, in other areas, this Court has recognized the close nexus between the Communist Party and violent overthrow of government. *See Dennis v. United States, supra*; *American Communications Assn. v. Douds, supra*. To suggest that, because the Communist Party may also sponsor peaceable political reforms, the constitutional issues before us should now be judged as if that Party were just an ordinary political [p129] party from the standpoint of national security, is to ask this Court to blind itself to world affairs which have determined the whole course of our national policy since the close of World War II, affairs to which Judge Learned Hand gave vivid expression in his opinion in *United States v. Dennis*, 183 F.2d 201, 213, and to the vast burdens which these conditions have entailed for the entire Nation.

We think that investigatory power in this domain is not to be denied Congress solely because the field of education is involved. Nothing in the prevailing opinions in *Sweezy v. New Hampshire*, *supra*, stands for a contrary view. The vice existing there was that the questioning of Sweezy, who had not been shown ever to have been connected with the Communist Party, as to the contents of a lecture he had given at the University of New Hampshire, and as to his connections with the Progressive Party, then on the ballot as a normal political party in some 26 States, was too far removed from the premises on which the constitutionality of the State's investigation had to depend to withstand attack under the **Fourteenth Amendment**. See the concurring opinion in *Sweezy*, *supra*, at 261, 265, 266, n. 3. This is a very different thing from inquiring into the extent to which the Communist Party has succeeded in infiltrating into our universities, or elsewhere, persons and groups committed to furthering the objective of overthrow. See Note 20, *supra*. Indeed, we do not understand petitioner here to suggest that Congress in no circumstances may inquire into Communist activity in the field of education.<sup>[in29]</sup> [p130] Rather, his position is, in effect, that this particular investigation was aimed not at the revolutionary aspects, but at the theoretical classroom discussion of communism. In our opinion, this position rests on a too constricted view of the nature of the investigatory process, and is not supported by a fair assessment of the record before us. An investigation of advocacy of or preparation for overthrow certainly embraces the right to identify a witness as a member of the Communist Party, see *Barsky v. United States*, 83 U.S.App.D.C. 127, 167 F.2d 241, and to inquire into the various manifestations of the Party's tenets. The strict requirements of a prosecution under the Smith Act,<sup>[in30]</sup> see *Dennis v. United States*, *supra*, and *Yates v. United States*, **354 U.S. 298**, are not the measure of the permissible scope of a congressional investigation into "overthrow," for, of necessity, the investigatory process must proceed step by step. Nor can it fairly be concluded that this investigation was directed at controlling what is being taught at our universities, rather than at overthrow. The statement of the Subcommittee Chairman at the opening of the investigation evinces no such intention,<sup>[in31]</sup> and, so far as this record reveals [p131] nothing thereafter transpired which would justify our holding that the thrust of the investigation later changed. The record discloses considerable testimony concerning the foreign domination and revolutionary [p132] purposes and efforts of the Communist Party.<sup>[in32]</sup> That there was also testimony on the abstract philosophical level does not detract from the dominant theme of this investigation -- Communist infiltration furthering the alleged ultimate purpose of overthrow. And certainly the conclusion would not be justified that the questioning of petitioner would have exceeded permissible bounds had he not shut off the Subcommittee at the threshold.

Nor can we accept the further contention that this investigation should not be deemed to have been in furtherance of a legislative purpose because the true objective of the Committee and of the Congress was purely "exposure." So long as Congress acts in pursuance of its constitutional power, the Judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power. *Arizona v. California*, **283 U.S. 423**, 455, and cases there cited. "It is, of course, true," as was said in *McCray v. United States*, **195 U.S. 27**, 55,

that, if there be no authority in the judiciary to restrain a lawful exercise of power by another department of the government, where a wrong motive or purpose has impelled to the exertion of the power, that abuses of a power conferred may be temporarily effectual. The [p133] remedy for this, however, lies, not in the abuse by the judicial authority of its functions, but in the

people, upon whom, after all, under our institutions, reliance must be placed for the correction of abuses committed in the exercise of a lawful power.

These principles, of course, apply as well to committee investigations into the need for legislation as to the enactments which such investigations may produce. *Cf. Tenney v. Brandhove*, 341 U.S. 367, 377-378. Thus, in stating in the *Watkins* case, p. 200, that "there is no congressional power to expose for the sake of exposure," we at the same time declined to inquire into the "motives of committee members," and recognized that their

motives alone would not vitiate an investigation which had been instituted by a House of Congress if that assembly's legislative purpose is being served.

Having scrutinized this record, we cannot say that the unanimous panel of the Court of Appeals which first considered this case was wrong in concluding that "the primary purposes of the inquiry were in aid of legislative processes." 240 F.2d at 881.<sup>[n33]</sup> Certainly this is not a case like *Kilbourn v. Thompson*, 103 U.S. 168, 192, where

the House of Representatives not only exceeded the limit of its own authority, but assumed a power which could only be properly exercised by another branch of the government, because it was in its nature clearly judicial.

*See McGrain v. Daugherty*, 273 U.S. 135, 171. The constitutional legislative power of Congress in this instance is beyond question. [p134]

Finally, the record is barren of other factors which, in themselves, might sometimes lead to the conclusion that the individual interests at stake were not subordinate to those of the state. There is no indication in this record that the Subcommittee was attempting to pillory witnesses. Nor did petitioner's appearance as a witness follow from indiscriminate dragnet procedures, lacking in probable cause for belief that he possessed information which might be helpful to the Subcommittee.<sup>[n34]</sup> And the relevancy of the questions put to him by the Subcommittee is not open to doubt.

We conclude that the balance between the individual and the governmental interests here at stake must be struck in favor of the latter, and that, therefore, the provisions of the **First Amendment** have not been offended.

We hold that petitioner's conviction for contempt of Congress discloses no infirmity, and that the judgment of the Court of Appeals must be

*Affirmed.*

1.

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 misdemeanor, punishable by a fine of not more than \$1,000 nor less than \$100 and imprisonment in a common jail for not less than one month nor more than twelve months.

2. In the words of the panel of the Court of Appeals which first heard the case, this memorandum can best be described as a lengthy legal brief attacking the jurisdiction of the committee to ask appellant any questions or to conduct any inquiry at all, based on the First, Ninth and **Tenth Amendments**, the prohibition against bills of attainder, and the doctrine of separation of powers.

100 U.S.App.D.C. at 17, n. 4, 240 F.2d at 879, n. 4.

3. We take this to mean the privilege against self-incrimination.

4. See Note 1, supra.

5. H.Res. 5, 83d Cong., 1st Sess., 99 Cong.Rec. 15, 18, 24. The Committee's charter appears as paragraph 17(b) of Rule XI. References to the Rule throughout this opinion are intended to signify that paragraph.

6.

The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (1) the extent, character, and objects of un-American propagandist activities in the United States, (2) the diffusion within the United States of subversive and un-American propagandist 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 (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

H.Res. 5, 83d Cong., 1st Sess., 99 Cong.Rec. 15, 18, 24. The Rule remains current in the same form. H.Res. 7, 86th Cong., 1st Sess., Cong.Rec. Jan. 7, 1959, p. 13.

7. Had Watkins reached to the extent now claimed by petitioner, a reversal of the judgment of the Court of Appeals, not a remand for further consideration, would have been required when this case first came to us.

8. H.Res. 282, 75th Cong., 3d Sess., 83 Cong.Rec. 7568, 7586.

9. See debate on the original authorizing resolution, 75th Cong., 3d Sess., 83 Cong.Rec. 7567, 7572-7573, 7577, 7583-7586.

10. H.R.Rep. No. 2, 76th Cong., 1st Sess.; H.R.Rep. No. 1476, 76th Cong., 3d Sess.; H.R.Rep. No. 1, 77th Cong., 1st Sess.; H.R.Rep. No. 2277, 77th Cong., 2d Sess.; H.R.Rep. No. 2748, 77th

Cong., 2d Sess.; H.R.Rep. No. 2233, 79th Cong., 2d Sess.; H.R.Rep. No. 2742, 79th Cong., 2d Sess.; Report of the Committee on Un-American Activities to the United States House of Representatives, 80th Cong., 2d Sess., December 31, 1948 (Committee Print); H.R.Rep. No.1950, 81st Cong., 2d Sess.; H.R. Rep No. 3249, 81st Cong., 2d Sess.; H.R.Rep. No. 2431, 82d Cong., 2d Sess.; H.R.Rep. No. 2516, 82d Cong., 2d Sess.; H.R.Rep. No. 1192, 83d Cong., 2d Sess.; H.R.Rep. No. 57, 84th Cong., 1st Sess.; H.R.Rep. No. 1648, 84th Cong., 2d Sess.; H.R.Rep. No. 53, 85th Cong., 1st Sess.; H.R.Rep. No. 1360, 85th Cong., 2d Sess.

11. The scope of the program was as follows:

1. To expose and ferret out the Communists and Communist sympathizers in the Federal Government.
2. To spotlight the spectacle of having outright Communists controlling and dominating some of the most vital unions in American labor.
3. To institute a counter-educational program against the subversive propaganda which has been hurled at the American people.
4. Investigation of those groups and movements which are trying to dissipate our atomic bomb knowledge for the benefit of a foreign power.
5. Investigation of Communist influences in Hollywood.
6. Investigation of Communist influences in education.
7. Organization of the research staff so as to furnish reference service to Members of Congress and to keep them currently informed on all subjects relating to subversive and un-American activities in the United States.
8. Continued accumulation of files and records to be placed at the disposal of the investigative units of the Government and armed services.

Report of the Committee on Un-American Activities to the United States House of Representatives, 80th Cong., 2d Sess., Dec. 31, 1948, 2-3 (Committee Print).

12. Report of the Committee on Un-American Activities to the United States House of Representatives, 80th Cong., 2d Sess., December 31, 1948, 15-21 (Committee Print); H.R.Rep. No.1950, 81st Cong., 2d Sess. 1-10; H.R.Rep. No. 3249, 81st Cong., 2d Sess. 5-6, 27-29; H.R.Rep. No. 2431, 82d Cong., 2d Sess. 6-9; H.R.Rep. No. 2516, 82d Cong., 2d Sess. 7-67, 69-73.

13. H.Res. 26, 76th Cong., 1st Sess., 84 Cong.Rec. 1098, 1128; H.Res. 321, 76th Cong., 3d Sess., 86 Cong.Rec. 532, 605; H.Res. 90, 77th Cong., 1st Sess., 87 Cong.Rec. 886, 899; H.Res. 420, 77th Cong., 2d Sess., 88 Cong.Rec. 2282, 2297; H.Res. 65, 78th Cong., 1st Sess., 89 Cong.Rec. 795, 810. See Note 15, *infra*.

14. See, e.g., H.Res. 510, 75th Cong., 3d Sess., 83 Cong.Rec. 8637, 8638 (1938); H.Res. 91, 77th Cong., 1st Sess., 87 Cong.Rec. 899 (1941); H.Res. 415, 78th Cong., 2d Sess., 90 Cong.Rec. 763 (1944); H.Res. 77, 80th Cong., 1st Sess., 93 Cong.Rec. 699, 700 (1947); H.Res. 152, 80th Cong., 1st Sess., 93 Cong.Rec. 3074 (1947); H.Res. 482, 81st Cong., 2d Sess., 96 Cong.Rec. 3941, 3944 (1950); H.Res. 119, 83d Cong., 1st Sess., 99 Cong.Rec. 1358-1359, 1361-1362 (1953); H.Res. 352, 84th Cong., 2d Sess., 102 Cong.Rec. 1585, 1718-1719 (1956); H.Res. 137, 86th Cong., 1st Sess., Cong.Rec. Jan. 29, 1959, p. 1286.

15. H.Res. 5, 79th Cong., 1st Sess., 91 Cong.Rec. 10, 15. In 1946, the Committee's charter was embodied in the Legislative Reorganization Act of 1946, 60 Stat. 812, 828. Since then, the House has continued the life of the Committee by making the charter provisions of the Act part of the House Rules for each new Congress. H.Res. 5, 80th Cong., 1st Sess., 93 Cong.Rec. 38; H.Res. 5, 81st Cong., 1st Sess., 95 Cong.Rec. 10, 11; H.Res. 7, 82d Cong., 1st Sess., 97 Cong.Rec. 9, 17, 19; H.Res. 5, 83d Cong., 1st Sess., 99 Cong.Rec. 15, 18, 24; H.Res. 5, 84th Cong., 1st Sess., 101 Cong.Rec. 11; H.Res. 5, 85th Cong., 1st Sess., 103 Cong.Rec. 47; H.Res. 7, 86th Cong., 1st Sess., Cong.Rec. Jan. 7, 1959, p. 13.

16. Hearings before House Special Committee on Un-American Activities on H.Res. 282, 75th Cong., 3d Sess. 943-973.

17. Hearings before House Special Committee on Un-American Activities on H.Res. 282, 76th Cong., 1st Sess. 6827-6911.

18. See Note 11, *supra*.

19. Defense area hearings at Detroit in 1952 involved inquiries into Communist activities among the students and teachers in Michigan schools and universities. H.R.Rep. No. 2516, 82d Cong., 2d Sess. 10. Similar investigations were conducted by the Committee the same year in the Chicago defense area. *Id.* at 28. In 1953, the Committee investigated alleged Communist infiltration into the public school systems in Philadelphia and New York, H.R.Rep. No. 1192, 83d Cong., 2d Sess. 2, 4.

20. In the course of that debate, a member of the Un-American Activities Committee, Representative Jackson, commented:

So far as education is concerned, if the American educators, and, if the gentlemen who are objecting to the investigation of communism and Communists in education will recognize a valid distinction, I want to point out this is not a blunderbuss approach to the problem of communism in education. We are not interested in textbooks. We are not interested in the classroom operations of the universities. We are interested instead in finding out who the Communists are and what they are doing to further the Communist conspiracy. I may say in that connection that we have sworn testimony identifying individuals presently on the campuses of this country, men who have been identified under oath as one-time members of the Communist Party. Is there any Member of this body who would say we should not investigate this situation?

83d Cong., 1st Sess., 99 Cong.Rec. 1360.

21.

The citizen, when interrogated about his private affairs, has a right before answering to know why the inquiry is made, and, if the purpose disclosed is not a legitimate one, he may not be compelled to answer.

298 U.S. at 26.

22. Excerpts from the Chairman's statement at the opening of the investigation on February 25, 1953, as to the nature of this inquiry are set forth in Note 31, *infra*.

23. Crowley immediately preceded petitioner on the witness stand. It appears to be undisputed that petitioner was in the hearing room at the time this statement was made and during Crowley's testimony. In his own examination, petitioner acknowledged knowing Crowley.

24. The Chairman stated at the hearing, just before petitioner was excused,

that the evidence or information contained in the files of this committee, some of them in the nature of evidence, shows clearly that the witness has information about Communist activities in the United States of America, particularly while he attended the University of Michigan.

That information which the witness has would be very valuable to this committee and its work.

25. Because the sustaining of petitioner's conviction on any one of the five Counts of the indictment suffices for affirmance of the judgment under review, we state the constitutional issue only in terms of petitioner's refusals to answer the questions involved in Counts One and Two in order to sharpen discussion. However, we consider his refusal to answer the question embraced in Count Four would require the same constitutional result. As to Counts Three and Five, see p. 115, *supra*.

26.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances .

27. See Legislative Recommendations by House Committee on Un-American Activities, Subsequent Action Taken by Congress or Executive Agencies (A Research Study by Legislative Reference Service of the Library of Congress), Committee on Un-American Activities, House of Representatives, 85th Cong., 2d Sess., June 1958.

28. See Subversive Activities Control Act of 1950, Title I of the Internal Security Act of 1950, § 2, 64 Stat. 987-989. See also *Carlson v. Landon*, 342 U.S. 524, 535, n. 21.

29. The amicus brief of the American Association of University Professors states at page 24:

The claims of academic freedom cannot be asserted unqualifiedly. The social interest it embodies is but one of a larger set within which the interest in national self-preservation and in enlightened and well informed law-making also prominently appear. When two major interests collide, as they do in the present case, neither the one nor the other can claim *a priori* supremacy. But it is in the nature of our system of laws that there must be demonstrable justification for an action by the Government which endangers or denies a freedom guaranteed by the Constitution.

30. 54 Stat. 670, 18 U.S.C. § 2385.

31. The following are excerpts from that statement:

. . . In opening this hearing, it is well to make clear to you and others just what the nature of this investigation is.

From time to time, the committee has investigated Communists and Communist activities within the entertainment, newspaper, and labor fields, and also within the professions and the Government. In no instance has the work of the committee taken on the character of an investigation of entertainment organizations, newspapers, labor unions, the professions, or the Government, as such, and it is not now the purpose of this committee to investigate education or educational institutions, as such. . . .

\* \* \* \*

The purpose of the committee in investigating Communists and Communist activities within the field of education is no greater and no less than its purpose in investigating Communists and Communist activities within the field of labor or any other field.

The committee is charged by the Congress with the responsibility of investigating 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 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 all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

It has been fully established in testimony before congressional committees and before the courts of our land that the Communist Party of the United States is part of an international conspiracy which is being used as a tool or weapon by a foreign power to promote its own foreign policy and which has for its object the overthrow of the governments of all non-Communist countries, resorting to the use of force and violence, if necessary. . . . Communism and Communist activities cannot be investigated in a vacuum. The investigation must, of necessity, relate to individuals, and, therefore, this morning, the committee is calling you [one Davis] as a person known by this committee to have been at one time a member of the Communist Party.

\* \* \* \*

The committee is equally concerned with the opportunities that the Communist Party has to wield its influence upon members of the teaching profession and students through Communists who are members of the teaching profession. Therefore, the objective of this investigation is to ascertain the character, extent and objects of Communist Party activities when such activities are carried on by members of the teaching profession who are subject to the directives and discipline of the Communist Party.

The full statement is printed as the Appendix to the original Court of Appeals opinion, 100 U.S.App.D.C. 22-24, 240 F.2d 884-886.

32. Thus, early in the investigation, one of the witnesses, Hicks, testified in response to a question as to "the general purpose of the Communist Party in endeavoring to organize a cell or unit among the teaching profession" at the various universities that, contrary to his original view:

. . . it is very obvious to me that the popular front [Communist protection of democracy against Fascism] was simply a dodge that happened in those particular years to serve the foreign policy of the Soviet Union; so it seems to me that the party, in organizing branches in the colleges, had two purposes. One was to carry out the existing line which they wanted to make a show of advancing, and then, of course, the other was to try to have a corps of disciplined revolutionaries whom they could use for other purposes when the time came.

33. We agree with the Court of Appeals that the one sentence appearing in the Committee's report for 1954, upon which petitioner largely predicates his exposure argument, bears little significance when read in the context of the full report and in light of the entire record. This sentence reads:

The 1954 hearings were set up by the committee in order to demonstrate to the people of Michigan the fields of concentration of the Communist Party in the Michigan area, and the identity of those individuals responsible for its success.

34. See p. 124 and Note 24, supra.