

***Barenblatt v. United States (1959)***

360 U.S. 109

*Lloyd Barenblatt, who had previously served as a psychology instructor at the University of Michigan and at Vassar College, was subpoenaed to testify by a subcommittee of the House UnAmerican Activities Committee, which was conducting hearings dealing with alleged Communist infiltration into the field of education. He refused to answer subcommittee questions pertaining to his past or present membership in the Communist Party and other groups, asserting that the First Amendment barred a legislative inquiry into his political beliefs and associations. After being convicted of contempt of Congress, he appealed the conviction primarily on First Amendment grounds.*

Opinion of the Court: Harlan, Frankfurter, Clark, Whittaker, Stewart.

Dissenting opinions: Black, Warren, Douglas; Brennan.

**JUSTICE HARLAN delivered the opinion of the Court.**

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, it cannot inquire into matters which are within the exclusive province of one of the other branches of the Government. 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.

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. Second, petitioner was not adequately apprised of the pertinency of the Subcommittee's questions to the subject matter of the inquiry. Third, the questions petitioner refused to answer infringed rights protected by the First Amendment.

Rule XI authorized this Subcommittee to compel testimony within the framework of the investigative authority conferred on the Un-American Activities Committee. Petitioner contends that *Watkins v. United States* [1957] 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. 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.

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 “persuasive gloss of legislative history,” 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. 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. In the context of these unremitting pursuits, the House has steadily continued the life of the Committee at the commencement of each new Congress; it has never narrowed the powers of the Committee, whose authority has remained throughout identical with that contained in Rule XI; and it has continuingly supported the Committee’s activities with substantial appropriations. 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. 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 compulsory process, was beyond the purview of the Committee’s intended authority under Rule XI.

Undeniably a conviction for contempt cannot stand unless the questions asked are pertinent to the subject matter of the investigation. 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 related to it.” *Watkins*. 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. The subject matter of the inquiry had been identified at the commencement of the investigation as Communist infiltration into the field of education. 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. And, lastly, petitioner refused to answer questions as to his own Communist Party affiliations, whose pertinency of course was clear beyond doubt.

The precise constitutional issue confronting us is whether the Subcommittee’s inquiry into petitioner’s past or present membership in the Communist Party transgressed the provisions of the First Amendment, which of course reach and limit congressional investigations. 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.

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. 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. In the last analysis this power rests on the right of self-preservation, “the ultimate value of any society.” *Dennis v. United States* [1951]. 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.

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 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. 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. 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.”

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.*

**JUSTICE BLACK, with whom THE CHIEF JUSTICE and JUSTICE DOUGLAS concur, dissenting.**

It goes without saying that a law to be valid must be clear enough to make its commands understandable. For obvious reasons, the standard of certainty required in criminal statutes is more exacting than in noncriminal statutes. This is simply because it would be unthinkable to convict a man for violating a law he could not understand. This Court has recognized that the stricter standard is as much required in criminal contempt cases as in all other criminal cases, and has emphasized that the “vice of vagueness” is especially pernicious where legislative power over an area involving speech, press, petition and assembly is involved.

Measured by the foregoing standards, Rule XI cannot support any conviction for refusal to testify. On the Court’s own test, the issue is whether Barenblatt can know with sufficient certainty, at the time of his interrogation, that there is so compelling a need for his replies that infringement of his rights of free association is justified. The record does not disclose where Barenblatt can find what that need is. There is certainly no clear congressional statement of it in Rule XI. Perhaps if Barenblatt had had time to read all the reports of the Committee to the House, and in addition had examined the appropriations made to the Committee he, like the Court, could have discerned an intent by Congress to allow an investigation of communism in education. Even so he would be hard put to decide what the need for this investigation is since Congress expressed it neither when it enacted Rule XI nor when it acquiesced in the

Committee's assertions of power. Yet it is knowledge of this need—what is wanted from him and why it is wanted—that a witness must have if he is to be in a position to comply with the Court's rule that he balance individual rights against the requirements of the State. I cannot see how that knowledge can exist under Rule XI. I would hold that Rule XI is too broad to be meaningful and cannot support petitioner's conviction.

The First Amendment says in no equivocal language that Congress shall pass no law abridging freedom of speech, press, assembly or petition. The activities of this Committee, authorized by Congress, do precisely that, through exposure, obloquy and public scorn.

To apply the Court's balancing test under [present] circumstances is to read the First Amendment to say "Congress shall pass no law abridging freedom of speech, press, assembly and petition, unless Congress and the Supreme Court reach the joint conclusion that on balance the interest of the Government in stifling these freedoms is greater than the interest of the people in having them exercised." This is closely akin to the notion that neither the First Amendment nor any other provision of the Bill of Rights should be enforced unless the Court believes it is reasonable to do so. This violates the genius of our written Constitution.

But even assuming what I cannot assume, that some balancing is proper in this case, I feel that the Court after stating the test ignores it completely. At most it balances the right of the Government to preserve itself, against Barenblatt's right to refrain from revealing Communist affiliations. Such a balance, however, mistakes the factors to be weighed. In the first place, it completely leaves out the real interest in Barenblatt's silence, the interest of the people as a whole in being able to join organizations, advocate causes and make political "mistakes" without later being subjected to governmental penalties for having dared to think for themselves. It is this right, the right to err politically, which keeps us strong as a Nation. For no number of laws against communism can have as much effect as the personal conviction which comes from having heard its arguments and rejected them, or from having once accepted its tenets and later recognized their worthlessness. Instead, the obloquy which results from investigations such as this not only stifles "mistakes" but prevents all but the most courageous from hazarding any views which might at some later time become disfavored. This result, whose importance cannot be overestimated, is doubly crucial when it affects the universities, on which we must largely rely for the experimentation and development of new ideas essential to our country's welfare. It is these interests of society, rather than Barenblatt's own right to silence, which I think the Court should put on the balance against the demands of the Government, if any balancing process is to be tolerated. Instead they are not mentioned, while on the other side the demands of the Government are vastly overstated and called "self-preservation." It is admitted that this Committee can only seek information for the purpose of suggesting laws, and that Congress' power to make laws in the realm of speech and association is quite limited, even on the Court's test. Its interest in making such laws in the field of education, primarily a state function, is clearly narrower still. Yet the Court styles this attenuated interest self-preservation, and allows it to overcome the need our country has to let us all think, speak, and associate politically as we like and without fear of reprisal. Such a result reduces "balancing" to a mere play on words.

Finally, I think Barenblatt's conviction violates the Constitution because the chief aim, purpose and practice of the House Un-American Activities Committee, as disclosed by its many reports, is to try witnesses and punish them because they are or have been Communists or because they refuse to admit or deny Communist affiliations. The punishment imposed is generally punishment by humiliation and public shame.

The same intent to expose and punish is manifest in the Committee's investigation which led to Barenblatt's conviction. The declared purpose of the investigation was to identify to the people of Michigan the individuals responsible for the, alleged, Communist success there. As a result of its Michigan investigation, the Committee called upon American labor unions to amend their constitutions, if necessary, in order to deny membership to any Communist Party member. This would, of course, prevent many workers from getting or holding the only kind of jobs their particular skills qualified them for. The Court, today, barely mentions these statements, which, especially when read in the context of past reports by the Committee, show unmistakably what the Committee was doing. I do not question the Committee's patriotism and sincerity in doing all this. I merely feel that it cannot be done by Congress under our Constitution.