

## Sec. 1—The Congress

## Legislative Powers

in the field of education, an authority with which the witness had shown familiarity. Additionally, the opening statement of the chairman had pinpointed that subject as the nature of the inquiry that day, and the opening witness had testified on the subject and named Barenblatt as a member of the Communist Party at the University of Michigan. Thus, pertinency and the witness's knowledge of the pertinency of the questions asked him were shown.

Similarly, in *Wilkinson v. United States*,<sup>245</sup> the Court held that, when the witness was apprised at the hearing that the committee was empowered to investigate Communist infiltration of the textile industry in the South; that it was gathering information with a view to ascertaining the manner of administration and need to amend various laws directed at subversive activities; that Congress hitherto had enacted many of its recommendations in this field; and that it possessed information about his Party membership, he was notified effectively that a question about that affiliation was relevant to a valid inquiry. A companion case was held to be controlled by *Wilkinson*,<sup>246</sup> and in both cases the majority rejected the contention that the committee inquiry was invalid because both Wilkinson and Braden, when they were called, were engaged in organizing activities against the committee.<sup>247</sup>

Related to the cases discussed in this section are cases requiring that congressional committees observe strictly their own rules. Thus, in *Yellin v. United States*,<sup>248</sup> a contempt conviction was reversed because the committee had failed to observe its rule providing for a closed session if a majority of the committee believed that a witness's appearance in public session might unjustly injure his reputation. The Court ruled that the committee had ignored the rule when it subpoenaed the witness for a public hearing and then failed

<sup>245</sup> 365 U.S. 399 (1961).

<sup>246</sup> Braden v. United States, 365 U.S. 431 (1961).

<sup>247</sup> The majority denied that the witness's participation in a lawful and protected course of action, such as petitioning Congress to abolish the committee, limited the committee's right of inquiry. "[W]e cannot say that, simply because the petitioner at the moment may have been engaged in lawful conduct, his Communist activities in connection therewith could not be investigated. The subcommittee had reasonable ground to suppose that the petitioner was an active Communist Party member, and that as such he possessed information that would substantially aid it in its legislative investigation. As *Barenblatt* makes clear, it is the nature of the Communist activity involved, whether the momentary conduct is legitimate or illegitimate politically, that establishes the government's overbalancing interest." *Wilkinson v. United States*, 365 U.S. 399, 414 (1961). In both cases, the dissenters, Chief Justice Warren and Justices Black, Douglas, and Brennan argued that the committee action was invalid because it was intended to harass persons who had publicly criticized committee activities. *Id.* at 415, 423, 429.

<sup>248</sup> 374 U.S. 109 (1963).