the answers to which he might have been able to explain away as unrelated to criminal conduct; if an answer might tend to be incriminatory, the witness is not deprived of the privilege merely because he might have been able to refute inferences of guilt.[254] In still another case, the Court held that the committee had not clearly overruled the claim of privilege and directed an answer.[255]

In *Hutcheson v. United States*,[256] the Court rejected a challenge to a Senate committee inquiry into union corruption on the part of a witness who was under indictment in state court on charges relating to the same matters about which the committee sought to interrogate him. The witness did not plead his privilege against self-incrimination but contended that, by questioning him about matters that would aid the state prosecutor, the committee had denied him due process. The plurality opinion of the Court rejected his ground for refusing to answer, noting that, if the committee's public hearings rendered the witness's state trial unfair, then he could properly raise that issue on review of his state conviction.[257]

Claims relating to the First Amendment have been frequently asserted and as frequently denied. It is not that the First Amendment is inapplicable to congressional investigations, it is that, under the prevailing Court interpretation, the First Amendment does not bar all legislative restrictions of the rights guaranteed by it.[258] "[T]he 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 gov-

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[254] Emspak v. United States, 349 U.S. 190 (1955).

[255] Bart v. United States, 349 U.S. 219 (1955).

[256] 369 U.S. 599 (1962).

[257] Justice Harlan wrote the opinion of the Court, which Justices Clark and Stewart joined. Justice Brennan concurred solely because the witness had not claimed the privilege against self-incrimination, but he would have voted to reverse the conviction had there been a claim. Chief Justice Warren and Justice Douglas dissented on due process grounds. Justices Black, Frankfurter, and White did not participate. At the time of the decision, the Self-incrimination Clause did not restrain the states through the Fourteenth Amendment, so that it was no violation of the clause for either the Federal Government or the states to compel testimony which would incriminate the witness in the other jurisdiction. *Cf.* United States v. Murdock, 284 U.S. 141 (1931); Knapp v. Schweitzer, 357 U.S. 371 (1958). The Court has since reversed itself, Malloy v. Hogan, 378 U.S. 1 (1964); Murphy v. Waterfront Comm'n, 378 U.S. 52 (1964), thus leaving the vitality of *Hutcheson* doubtful.

[258] The matter is discussed fully in the section on the First Amendment but a good statement of the balancing rule may be found in Younger v. Harris, 401 U.S. 37, 51 (1971), by Justice Black, supposedly an absolutist on the subject: "Where a statute does not directly abridge free speech, but—while regulating a subject within the State's power—tends to have the incidental effect of inhibiting First Amendment rights, it is well settled that the statute can be upheld if the effect on speech is minor in relation to the need for control of the conduct and the lack of alternative means for doing so."