The Evidence: A Content Analysis of the HUAC Record, The Case against HUA

Hans Zeisel
Rose Stamler

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THE EVIDENCE: A CONTENT ANALYSIS OF THE HUAC RECORD

Hans Zeisel* and Rose Stamler**

I. THE STUDY

Ours was not the first effort to document and analyze the Committee's activities. Others have compiled the record of the lost jobs both in industry and universities, of the Committee's mistreatment of attorneys and witnesses, of the more than 100 criminal contempt indictments for noncooperation of which less than ten were upheld as valid, and of the small legislative output of one of Congress' most expensive committees.¹

The purpose of the present study, however, was to present precise evidence concerning the basic claims of the plaintiffs in 
Stamler v. Willis
that: (1) the Committee was not conducting its investigations and hearings to gain new information useful in framing new legislation; (2) it asked questions in areas in which it was constitutionally prohibited from making laws; (3) it asked questions about events decades old at the time of the hearing; (4) it continued to question witnesses who had already made clear they would not answer; and (5) it asked questions in public that were already answered in private by its friendly witnesses. In sum, in its years of questioning the Committee's primary interest was not in receiving answers to its questions but in publicly asking those questions designed to make headlines which would defame and degrade. The compound effect was to chill and deter others from taking stands or actions that might lead to their being called as witnesses before the Committee. Exposure for exposure's sake and for the sake of creating a political

* Professor Emeritus of Law and Sociology, University of Chicago. Dr. Jur., 1927; Dr. Rer. Pol., 1928; Vienna.

** Assistant Professor, Northwestern University Medical School. M.A., 1962; University of Chicago.

climate in which dissent would be stifled was the Committee's main purpose.\textsuperscript{2}

The traditional method of proving such contentions had been through the use of expert witnesses, drawn from the fields of political science, sociology, or psychology, who, after studying the Committee's record and viewing its effects, would testify both as to their findings and their expert conclusions. In the \textit{Stamler} case, it was thought that such expert testimony could be aided by presenting data on the Committee's activities in systematic, objective form, thereby removing such testimony from the suspicion of bias. There was, after all, a government printed record of the hearings the Committee had conducted, and if a way could be found adequately to describe the content of these hearings it would produce the objective picture the courts would want for their decision. As discussed in the companion piece above, the method known as content analysis fit the need here.\textsuperscript{3}

\section*{A. Method of Analyzing the Committee Record}

It was decided to draw a probability sample of 100 witnesses from the total body of 3,079 witnesses who appeared on the official list of witnesses in all hearings of the Committee.\textsuperscript{4} In light of \textit{Watkins v. United States}\textsuperscript{5} it was decided to oversample the ten years following that decision; two-thirds of the sample witnesses were selected from the decade following the decision, one-third from the prior decade. For the total time span of both periods, the two samples were appropriately weighted (Table I).

The printed Committee record of the examination of each sample witness was reproduced and coded according to specifically drafted instructions by experienced coders of the National Opinion Research Center, University of Chicago. Each witness' testimony was recorded in three dimensions: the questions the witness was asked; the individual responses of the witness; and the witness' overall response pattern. Table I presents a description of the sample.

\begin{footnotesize}\begin{itemize}
\item[\textsuperscript{3}] See Sullivan, Kamin & Sussman, \textit{supra note 2}, at 256-62.
\item[\textsuperscript{4}] Design and selection of the sample were guided by Professor Paul Meier, member— and then chairman— of the Department of Statistics at the University of Chicago.
\end{itemize}\end{footnotesize}
TABLE I

SAMPLING PLAN

<table>
<thead>
<tr>
<th></th>
<th>Before 1957</th>
<th>1957 and after</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of hearings *</td>
<td>108</td>
<td>64</td>
<td>172</td>
</tr>
<tr>
<td>Number of witnesses *</td>
<td>1,979</td>
<td>1,100</td>
<td>3,079</td>
</tr>
<tr>
<td>in sample</td>
<td>33</td>
<td>67</td>
<td>100</td>
</tr>
<tr>
<td>Sampling ratio</td>
<td>1 in 60.0</td>
<td>1 in 16.4</td>
<td></td>
</tr>
</tbody>
</table>

*by actual count

1. Questions

Three main types of questions were distinguished. The first type consisted of identification and procedural questions as to name, address, educational and employment background, and hearing procedure. Included in this category were questions like, “Are you Joseph Smith?”, “Is your lawyer here?”, and “Are you refusing to answer?”. The second group included political-social questions where no Committee disapproval was indicated. An example of this type of question is, “At that time, were you a member of the union?” (with no aspersions by the Committee on this union). The third type was comprised of questions concerning “misdeeds” where the questioning Committee member or counsel left no doubt that, in his view, wrongdoing was involved. Included here were such questions as, “Weren’t you a member of the American Peace Crusade, which was on the Attorney General’s subversive list?”, “Was John Jones a member of that Communist cell?”, and “Is it not true that you were acting on behalf of the interests of a foreign power, the Soviet Union?”

The misdeeds were subdivided into two categories, criminal and political. Criminal activities included activities where espionage, sabotage, or other clearly illegal acts were involved. Political activities were activities where the alleged misdeed could involve membership in a legal but proscribed organization, signing a petition, attending meetings, holding certain views, or knowing people with views or affiliations deemed un-American by the Committee.

2. Individual Responses

Responses to Committee questions were found to fall into three classes. One category consisted of definite refusals to answer, where the
witness sometimes but not always stated constitutional grounds for the refusal. A second category contained nonresponsive answers occurring where there was neither a definite refusal nor a responsive answer. Here, the answer often took the form of asking for clarification. The final category included responsive answers which the Committee accepted as having answered the question. Some of these responsive answers could be further described as affirmative responsives in which the witness gave positive information. In this latter subclass were answers like, “Yes, I did attend that meeting.”, and “Jane Doe was known by me to be a member of the Communist Party.”

3. Response Patterns

Overall responses classified witnesses into two categories: uncooperative witnesses who refused to answer some or all questions the Committee put to them; and cooperative witnesses who answered all the Committee’s questions. The main types of cooperating witnesses were found to be experts, agents, or “recanters.” Experts were usually government officials. Agents were either undercover agents for the Committee, employees of the Committee, or employees of other government agencies (FBI, police). Recanters were former members of organizations deemed un-American by the Committee.

B. Results

The tables that follow tell the story with precision, but the numbers, and the necessarily brief captions and labels refer to complex phenomena. The essential flavor cannot be captured by statistics alone. For those who are old enough to have lived through the events, the tables might evoke the proper context. To complete the picture for all readers, the statistical summaries are accompanied and illustrated by excerpts from the record itself.⁶

1. The Magnitude of the Committee’s Activity

One measure of the size of the Committee’s operation was the number of people it called and questioned as witnesses, more than 3,000 in all, three-fourths of whom documented their unwillingness by refusing to answer some or all of the Committee’s questions (Table II). Another

⁶ The names of witnesses have been replaced with initials to preserve privacy.
indication of the scale of the Committee’s operation was the huge number of questions they asked over the years. Nearly a quarter of a million queries were put, more than half of them misdeed questions, about acts, beliefs, or associations viewed (and publicized) by the Committee as improper or worse (Table III). Each witness was asked an average of 73 questions, 42 of which were about alleged misdeeds (Table IV).

### TABLE II

**TYPE OF WITNESSES APPEARING BEFORE THE COMMITTEE**

<table>
<thead>
<tr>
<th></th>
<th>Number</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cooperative —</td>
<td>758</td>
<td>25</td>
</tr>
<tr>
<td>answering all questions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Uncooperative —</td>
<td>2,321</td>
<td>75</td>
</tr>
<tr>
<td>refusing to answer some or all questions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>3,079</td>
<td>100 %</td>
</tr>
</tbody>
</table>

### TABLE III

**NUMBER OF QUESTIONS ASKED**

<table>
<thead>
<tr>
<th>Asked of</th>
<th>Misdeed Questions</th>
<th>Other Questions*</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Uncooperative Witnesses</td>
<td>67,200</td>
<td>77,100</td>
<td>144,300</td>
</tr>
<tr>
<td>Cooperative Witnesses</td>
<td>61,600</td>
<td>19,900</td>
<td>81,500</td>
</tr>
<tr>
<td>Total</td>
<td>128,800</td>
<td>97,000</td>
<td>225,800</td>
</tr>
</tbody>
</table>

* Identification, procedural, and factual questions not implying any wrongdoing.

### TABLE IV

**AVERAGE NUMBER OF QUESTIONS ASKED PER WITNESS**

<table>
<thead>
<tr>
<th></th>
<th>Uncooperative Witnesses</th>
<th>Cooperative Witnesses</th>
<th>All Witnesses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Misdeed Questions</td>
<td>29</td>
<td>81</td>
<td>42</td>
</tr>
<tr>
<td>Other Questions</td>
<td>33</td>
<td>26</td>
<td>31</td>
</tr>
<tr>
<td>Total</td>
<td>62</td>
<td>107</td>
<td>73</td>
</tr>
</tbody>
</table>
What information was the Committee actually seeking? What was the nature of the alleged misdeeds that justified the subpoenas, the interrogation, the contempt citations, the headlines? Could the questions asked logically lead to facts needed for new legislation? Were the questions in an area where control and regulation through legislation could constitutionally be established? The data in Table V yield a clear answer. Only 5 percent of all misdeed questions asked dealt with acts that even with the broadest interpretation could be deemed a proper subject for legislation, namely criminal acts involving possible espionage, sabotage, passport violation, criminal violence, etc. 93 percent of the misdeed questions dealt with political affiliations, activities in or associations with organizations which, while often unpopular, were nonetheless legal.

### Table V

**TYPE OF ACTS INVOLVED IN MISDEED QUESTIONS**

<table>
<thead>
<tr>
<th>Percent of Questions*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal (espionage, sabotage, etc.)</td>
</tr>
<tr>
<td>Political (membership, meetings, signing petitions, etc.)</td>
</tr>
<tr>
<td>Suspect political views, associates</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>

* Adds to slightly more than 100%, since some of questions involved more than one type of misdeed.

### 2. Questions on Criminal Activities

Most witnesses (80 percent) were never asked any questions at all about criminal acts and were queried solely about such subjects as whom they knew, what they thought, what meetings or marches they had attended.

### Table VI

**PERCENT OF WITNESSES ASKED ANY QUESTIONS ABOUT CRIMINAL ACTS**

<table>
<thead>
<tr>
<th>Cooperative Witnesses</th>
<th>Uncooperative Witnesses</th>
<th>All Witnesses</th>
</tr>
</thead>
<tbody>
<tr>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>Some such questions</td>
<td>20</td>
<td>54</td>
</tr>
<tr>
<td>No such questions</td>
<td>80</td>
<td>46</td>
</tr>
<tr>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>
The chief exception to this pattern was in a unique hearing involving the Ku Klux Klan. Shortly after the arrest of four members of the Ku Klux Klan in connection with the slaying of Mrs. Viola Liuzzo, a civil rights worker, President Johnson requested that Congress conduct an investigation into the Klan. At this hearing, fresh on the heels of the slaying, 54 percent of witnesses were asked questions dealing with probable criminal acts. Less than one in five uncooperative witnesses at all other hearings were asked such questions. Some excerpts from the KKK hearing, related to criminal activities follow:

Mr. Appell: Under the constitution and laws of the Original Knights of the Ku Klux Klan, Realm of Louisiana, there is provision for the creation within Klaverns of a body known as the wrecking crew. Can you tell the committee the purpose and function of the wrecking crew?

Mr. B.: Sir, I respectfully decline to answer that question for the constitutional reasons previously given.

Mr. Appell: Did you ever serve as a member of a wrecking crew?

Mr. B.: I respectfully decline to answer that question for the reasons previously given.

Mr. Appell: Have you, as a Klansman, ever engaged in active violence?

Mr. B.: I respectfully decline to answer that question for the constitutional reasons previously given....

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8 N.Y. Times, Mar. 27, 1965, at 1, col. 8; Mar. 31, 1965, at 1, col. 2.

9 This hearing was one of the two hearings in HUAC's 25 year history as a permanent committee of the House of Representatives in which it investigated right-wing groups. The other such hearing was on January 30, 1946, when the Committee called Gerald L.K. Smith, leader of the Silver Shirts, to testify. See House Comm. on Un-American Activities, Investigation of Un-American Propaganda Activities in the United States, 79th Cong., 2d Sess., 4-60 (1946) (Washington, D.C., January 30th); W. Goodman, supra note 1, at 181-82. The remaining 170 hearings centered on "Communism" as defined by the Committee. Prior to the establishment of HUAC as a permanent committee in 1945, the Committee also investigated fascist activity, but even then the focus was on left-wing groups. Id., at 59. See also Comment, Congressional Investigation of Political Activity — Watkins v. United States Re-examined, 58 Mich. L. Rev. 406, 424 (1960).

10 KKK Hearings, supra note 7, at 2404 (Washington, D.C., Jan 4th).
Mr. Manuel: Mr. M., concerning the organization which you testified about this morning, namely, the Federated Knights of the Ku Klux Klan of Alabama, was that organization the subject of a grand jury inquiry in the year 1949 by a grand jury in the State of Alabama?

Mr. M.: Yes, sir.

Mr. Manuel: Did that grand jury inquire into the activities of the Federated Knights of the Ku Klux Klan with respect to alleged acts of terrorism, flogging and burning on the part of members of that organization?

Mr. M.: Some flogging incidents were investigated. That is all I remember.

Mr. Manuel: To your certain knowledge, were members of the Federated Klans involved in acts of terrorism or flogging in the State of Alabama in the year 1949 or any time prior thereto?

Mr. M.: No, sir.

Mr. Manuel: They were not?

Mr. M.: No, sir...

In the remaining 171 hearings, what the Committee considered to be criminal activities were often hard to distinguish from political activities. As an example, a witness was questioned in 1963 about a trip to Cuba, and the exchange went as follows:

Mr. Nittle: It appears from Exhibit 3 that you have been making an effort to influence college youth concerning Cuba. Is that not a fact?

(Witness conferred with counsel.)

Witness: Could I have that question clarified?

Mr. Nittle: I think the question is certainly clear enough, and should be to you.

Witness: I think, from a lawyer's point of view, the word "influence" would not indicate what you refer to at all, but simply would be a conclusion.

Mr. Nittle: Were you, or were you not, making an effort to influence college youth concerning Cuba?

Witness: It is the same question.

Mr. Nittle: What is your answer to the question?

Witness: I can't answer your question. I don't even know what you mean by "influence".

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11 KKK Hearings, supra note 7, at 3523 (Washington, D.C., Feb. 14th).
Mr. Nittle: Mr. Chairman, I request that the witness be directed to answer the question.

The Chairman: Well, phrase your question in the light of the Foreign Agents Registration Act, because that is the subject of the hearings this morning.\textsuperscript{12}

Mr. Nittle: Was it your purpose to influence college youth or "to prevail upon, indoctrinate, convert or "induce" them in any way, with respect to the public interests, policies, or relations of the Government of Cuba?

(Witness conferred with counsel.)

Witness: May I see that section, please, that you read from? Unless you prefer to read it.

Mr. Nittle: I was making an excerpt from the Foreign Agents Registration Act of 1938, the section thereof defining the term "political propaganda".

(Witness conferred with counsel.)

Witness: I am not very well acquainted with the Foreign Agents Registration Act. I will answer your question in just a moment, and I do not understand your question, but if you are within the meaning of that act asking me whether I am a foreign agent, I am not a foreign agent.

Mr. Nittle: The question was whether you were by your appearance at the First Unitarian Church, addressing an audience which was restricted to those of college age, attempting to "prevail upon, indoctrinate, convert or induce them with respect to the political or public interests, policies, or relations of the Government of Cuba.

Now, were you attempting to do just that? You are not being asked for a legal opinion. You are not being asked whether you are an agent of a foreign power.

Witness: Well, I am so confused at this point I do not know what you are asking me.

Mr. Nittle: Mr. Chairman, I think the question is perfectly clear, even to the witness, and I respectfully request that you direct her to answer the question.

The Chairman: The question comes within the purview of this hearing.\textsuperscript{13}


Questions regarding crime were sometimes directly focused on a witness' alleged activity, but often referred only to a hypothetical potentiality for criminal activities.

Mr. Scherer: Again you have not answered the question. I last asked you as to whether or not you have been engaged in any espionage activities. You said if you had, you would have been prosecuted.

(At this point the witness conferred with Mr. Hatten.)
Witness: If I were charged with a crime or with any sort of espionage in a legal court of law, I would hesitate not at all to answer that question yes or no.

Mr. Clardy: What would that answer be?
Witness: Well, you are asking two questions in a different way. Isn't that true? You know it, yourself.
Mr. Clardy: It is inconceivable to me, Witness, that any honest, patriotic American citizen would hesitate for one second to answer that question if he were innocent and had never engaged in espionage against his country. You have convinced me, sir, that possibly you have.  

The following excerpt from a lengthy interrogation of a union official which took place in a Baltimore hearing in 1951 contains both the alleged crime and the potential crime types of question:

Mr. Potter: It has been alleged that certain members of the Marine Cooks and Stewards Union are engaged in Soviet espionage activities, and that the Communists are using these members as couriers.

Now is that statement true?
Witness: (after consulting with his counsel) Mr. Potter, in my opinion I think the statement is wholly false, and that [it] is only being asked as a direct attack against my union.

Mr. Potter: I am saying that that is an alleged charge that was made.

Now, you have denied the charges, I assume, and I am asking you, as an official of the union, whether you would do everything possible to safeguard your country and that as to

---

members, or anybody who, to your knowledge, was engaged in espionage work, or courier services, for the Communist Party, if you would take it upon yourself to report those people to the proper governmental officials who would take charge and prefer the proper charges?

Witness: (after consulting with his counsel) I object to the question. I think that question is asked in an attempt to attack and discredit my union.

Mr. Potter: If I were an official of an organization, I would certainly report anybody that I knew —

Witness: I don’t think you could become an official of my union.

Mr. Jackson: Will the gentleman yield?

Mr. Potter: Yes.

Mr. Jackson: Do I understand the witness to say that if he had personal knowledge of espionage, he would not report it to the United States Government?

Witness: I never said that.

Mr. Jackson: Well, that certainly would be the understanding I would draw from the answer. I think the record should be corrected to show the answer the witness intended to give.\(^{15}\)

3. Political Misdeeds

Questions about criminal activities, real or potential, appeared so seldom in the record, that they constituted a virtual exception in the interrogation pattern. Over 90 percent of Committee questions dealt only with political misdeeds. We produce here a typical exchange, this one between the Committee and song-writer Mr. R.

Mr. Doyle: The only reference in the introduction, apparently made by a man with your name, is to revolutionary songs from foreign countries, emphasizing the Soviet Union and Germany. There isn’t a single American song called to attention in that introduction. I do not know why. Well, I can see why. I can see why someone with a clever thought used the title “America Sings” and then put nothing in there except Russian and German revolutionary songs. There is not an American song called

to attention. And yet they call it America sings. And that is the kind of Soviet propaganda that is infiltrating our country.

I have one thing more, Mr. R. Can you show me in your writings, and I ask you in good faith, one single song upholding and promoting loyalty to the Stars and Stripes, to the American flag?

Mr. R.: Everything I have written does this.

Mr. Doyle: Show me in wording, where you emphasize in your lovely music and prose and poetry, where you urge the American people to uphold the Stars and Stripes. I didn’t see one in that ballad.

Mr. R.: It seems to me that these lines that I quoted to you before say this.

Mr. Doyle: Do you find where you urge the American people to uphold the Constitution and the Stars and Stripes, where you are telling the American schoolchildren?

Mr. R.: Do you mean my quoting, “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator”, I am just fooling around with that?

Mr. Doyle: That is quoting. I mean where you write a poem yourself. My point is this: Show me one poem or one song where you have deliberately set to music or otherwise, that the American schoolchildren, for instance, or the Americans, shall support the Constitution, and so forth. Do you see what I am getting at?

Mr. R.: I have a song called The House I Live In. That is America to me. It has sold millions and millions of copies. It has been sung by most of the big singers in the country at one time or another. This says:

What is America to me? A name, a map, the flag I see, a certain word, democracy. What is America to me? The house I live in. The plot of earth, the street, the grocer and the butcher, the people that I meet.

The middle section goes on, the words of old Abe Lincoln, of Jefferson and Payne, of Washington and Roosevelt.

Mr. Doyle: Mail me a copy and I will pay you for it, gladly.

Mr. R.: The biggest line in it is ‘A dream that has been growing for 150 years.’ This has been sung. School kids know it. You should know it.

Mr. Doyle: Why, then, do you tear down this theory by this sort of thing? Why do you tear down that magnificent conception of our country?

Mr. R.: I am not tearing down. I never have torn down.
Mr. Doyle: I beg to differ with you. I say mail me a copy of that, and I will pay you for it, gladly.

Mr. Arens: I want to clear the record on one thing. Are you now a Communist?

Mr. R.: Do you expect me to answer that?\textsuperscript{16}

In 1956, the Committee summoned authors of a report that examined the Committee's role in blacklisting Hollywood performers. After asking the witness if he had hired a certain Dr. J. to work with him on his research, the Committee went on to define her misdeed, and by association, the witness' misdeed:

Mr. Arens: Did you know that she was admitted into the United States only in 1945?
Witness: She has a pronounced accent. I presumed it was not too long ago.

Mr. Arens: Did you know that prior to her association with the study of which you were director that she had issued reports or studies herself critical of the loyalty programs of this Government, published reports?\textsuperscript{17}

Opposition to the Committee or to bills and laws it favored continually appeared among misdeed questions. After a local paper in Pittsburgh ran an ad opposing the scheduled 1959 hearings, the Committee put the following questions to a witness: "Who gave you the information contained in the ad about the voting records of the members of this committee? Who gave you that information?"\textsuperscript{18} In a separate hearing involving the Committee for the Protection of the Foreign Born, after a witness had refused to answer questions on his political affiliations or activities with that organization, the Committee continued:

Mr. Arens: What is that button I see on your lapel? Would you help us on that?
Witness: Yes. It says "To Repeal the Racist Walter-McCarran Act".


Mr. Arens: What organization gave you that button? Would tell us?

(The witness confers with his counsel.)
Witness: I refuse to answer that question.

Mr. Scherer: I ask that you direct the witness to answer that question.

(The witness confers with his counsel.)
Mr. Doyle: I direct the witness to answer.
Witness: I refuse to answer this question on the grounds of the first and fifth amendments.

Mr. Velde: Did you have to buy that button?

(The witness confers with his counsel.)
Witness: Same answer.

Mr. Scherer: I ask that you direct the witness to answer Mr. Velde's question. In my opinion, he has waived any privilege he has.

Witness: I refuse to answer this on the ground of the first and fifth amendments.

Mr. Scherer: May I say, for the record, it is the opinion of this member of the committee that, by answering the question with reference to the button, he has waived any privilege that he might have of invoking the fifth amendment with respect to other questions concerning the button.

Mr. Doyle: The witness has been directed to answer counsel’s question. I will make it clear to the witness again that you have been directed to answer that question.

Mr. Brock (Witness’ attorney): He knows that, Mr. Doyle.

Mr. Arens: That little button doesn’t contain on its face or on the back of it the name of the organization that is actually sponsoring this drive?

Mr. Brock: Would you like it in evidence? You may have it.

Mr. Scherer: I think it should be put in evidence.

(Exhibit retained in committee files.)

Mr. Arens: We thank you very much, counsel.

Mr. Brock: Yes, sir.

Mr. Arens: What else have you done besides displaying that button to try to cause the repeal of the Walter-McCarran Immigration and Nationality Act?
Witness: I think that this committee does not have the power to inquire into my beliefs, my opinions, or my associations.

Mr. Arens: We are not asking you about your beliefs or your opinions. We are asking about your actions.
Mr. Brock: I don't want to be contumacious —
Mr. Arens: Counsel shall be advised here and now that his sole and exclusive prerogative before this committee is to advise his witness of his constitutional rights.\(^\text{19}\)

In Atlanta in 1958, Mr. Arens again made clear that the Committee equated opposition to it with subversion. Before questioning the witness, he introduced this theme:

It is the information of the committee or the suggestion of the committee that in anticipation of the hearings here in Atlanta, Georgia, you were sent to this area by the Communist Party for the purpose of developing a hostile sentiment to this committee and to its work for the purpose of undertaking to bring pressure upon the United States Congress to preclude these particular hearings. Indeed it is the fact that you were not even subpoenaed for these particular hearings until we learned that you were in town for that very purpose and that you were not subpoenaed to appear before this committee until you had actually registered in the hotel here in Atlanta.

.......

[He then went on to question the witness on his misdeed:] Now sir, if you will tell this committee whether or not, while you are under oath, you are now a Communist, we intend to pursue that area of inquiry and undertake to solicit from you information respecting your activities as a Communist on behalf of the Communist Party, which is tied up directly with the Kremlin; your activities from the standpoint of propaganda; your activities from the standpoint of undertaking to destroy the Federal Bureau of Investigation and the Committee on Un-American Activities, because indeed this committee issued a report entitled "Operation Abolition", in which we told something, the information we then possessed, respecting the efforts of the Emergency Civil Liberties Committee, of which you are the guiding light, to destroy the F.B.I. and discredit the director of the F.B.I. and to undertake to hamstring the work of this Committee on Un-American Activities.\(^\text{20}\)

\(^{19}\) *House Comm. on Un-American Activities, Communist Political Subversion*, 84th Cong., 2d Sess., pt. 1, at 6743-44 (1956) (Los Angeles, Dec. 7th).

The Committee repeatedly combined its political questions with insults and derogatory comments to the witness, thus making its questions the testimonial record:

Mr. Arens: Do you honestly feel, and are you trying to make this committee and the people of this country believe, that you, a member of the Communist conspiracy, responsive to the will of the Kremlin, are in truth and in fact, concerned about the welfare of the Negro people of this country?
Witness: I wouldn't try to make you believe anything.
Mr. Arens: Then stand up and tell this committee while you are under oath whether or not your activities and this facade that you are throwing around yourself in this aura of so-called respectability are not a front for the conspiratorial activities of yourself as a member of the Communist Party.\textsuperscript{21}

\begin{center}
\textasteriskcentered
\end{center}

Mr. Arens: Where was your courage and patriotism when you joined with others urging the withdrawal of the United States troops from Korea while they were engaged in mortal combat with the North Korean Communists?
Witness: The same answer, sir.\textsuperscript{22}

Questions such as these constituted the vast bulk of all the pages of transcripts. And sharing the pages with the questions themselves were the inserted political comments of the Committee members and Committee counsel. A few examples give their tone:

Mr. Scherer: . . . [T]here is an organization on the mainland called the Emergency Civil Liberties Committee. That committee is Communist dominated, Communist controlled. Its president is Harvey O'Connor, a dedicated, hardcore, identified Communist. He is now under indictment.

The Emergency Civil Liberties Committee has followed the Un-American Activities Committee into almost every city in which it has had hearings in the continental United States. In fact, it has come there in advance. Its agent came into Puerto

\textsuperscript{21} \textit{Id.}, at 2716.
Rico and he is here today. He has been here. He is Clark Foreman.

His purpose is to come into this community, as he has into almost every community in which this committee has had hearings, and misrepresent the purposes of this committee, to stir up hatred and ill will against the Congress of the United States.

I consider that man more dangerous and disloyal to the United States than any witness we might question here, and he is not a Puerto Rican.

I just wanted to make it clear, the purpose of this investigation.

Witness: May I object to this defamation without —

Mr. Tuck: The gentleman is out of order. If you care to testify, you will probably be summoned.

Mr. Scherer: I would like, in view of what I have said, to ask our counsel, Mr. Arens, to just tell briefly what this Emergency Civil Liberties Committee is, its history, and what we know about — this committee which has its representative here and who just violated the rules of this committee by making the outburst in the committee room.23

* * * *

Mr. Doyle: Why then, do they talk of peace? Because it serves Communist interest in two ways: 1. The initiated Communist, understanding his Marxist-Leninist doctrine, knows that a Moscow call to intensify the "fight for peace" means that he should intensify his fight to destroy capitalism and its major bastion, the United States of America. This is the way to peace — according to his Communist doctrine. Thus, Communist peace propaganda is a call to action for all Communists, spurring them to increased activity and effort aimed at achieving the Communist goal of world conquest — by war or any other means. 2. As events have proved, peace propaganda and agitation have a disarming, mollifying, confusing and weakening effect on those nations which are the intended victims of communism. Moreover, throughout history, aggressors, dictators and governments bent on conquering others, or the whole

world, have known that pacifism or an unrealistic and exaggerated desire for peace on the part of their intended victims is a tremendous asset to ultimate victory for the aggressor. Excessive concern with peace on the part of any nation impedes or prevents adequate defense preparation, hinders effective diplomacy in the national interest, undermines the will to resist and saps national strength. For this reason, in today's world, intense peace propaganda and agitation in non-Communist nations obviously serve the aggressive plans of world communism.24

* * * *

Mr. Arens: . . . [t]he leadership of the National Council of Churches of Christ in the United States of America had hundreds or at least over 100 affiliations with Communist fronts and causes. Since then we have made careful, but yet incomplete checks, and it is a complete understatement. Thus far of the leadership of the National Council of Churches of Christ in America, we have found over 100 persons in leadership capacity with either Communist-front records or records of service to Communist causes. The aggregate affiliations of the leadership, instead of being in the hundreds as the chairman first indicated, is now, according to our latest count, into the thousands, and we have yet to complete our check, which would certainly suggest, on the basis of the authoritative sources of this committee, that the statement that there is infiltration of fellow-travelers in churches and educational institutions is a complete understatement.25

* * * *

Mr. Nittle: Will counsel please identify himself for the record. Mr. Cooper: My name is Clement Theodore Cooper. I am a member of the State Bar of Michigan and the District of Columbia. I am representing Mr. [X] through the American Civil Liberties Union as a volunteer attorney.

The Chairman: May I ask you whether or not you know that the


purpose of your organization is the abolition of this committee, its stated purpose in its literature?

Mr. Cooper: I am not at liberty, Mr. Chairman, to give any information on that point, inasmuch as I am not a spokesman for the American Civil Liberties Union.

The Chairman: No, you are not a spokesman. I just wondered if you know that is the purpose of your organization and whether or not one of the things it is doing to bring this about is preventing witnesses from testifying.

Mr. Cooper: With all due respect to the chairman, I don’t believe that that is a correct connotation or interpretation of the American Civil Liberties Union practice. Basically we are concerned with protecting the civil liberties of any persons where those liberties have been brought into question.

Mr. Scherer: Chiefly Communists, though, is it not?

Mr. Cooper: I would respectfully object to that question because basically I am not here as a subpoenaed [sic] witness; number two, that it is repugnant to the very purpose why I am here. The American Civil Liberties Union does not support any particular movement. It is concerned with protecting the civil liberties of all persons. We do not inquire into the political or social beliefs of any person. We are concerned with his legal rights and his protection.26

To summarize, the questioning seldom dealt with actual or even potential criminal activity. Overwhelmingly, the instances of wrongdoing in the eyes, and questions, of the Committee were the political views of the witness or of his associates.

4. Staleness

Another issue raised by the questions the Committee asked concerned the staleness of the information sought and hence its doubtful value for legislative purposes. Fully one-half the questions (49%) dealt with alleged misdeeds occurring 5 or more years before the hearing where the question was put (Table VII). As may be seen in the Chicago hearings of 1965, questions often went back 30 or more years:

TABLE VII

AGE OF EVENT IN MISDEED QUESTIONS

<table>
<thead>
<tr>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 5 years</td>
</tr>
<tr>
<td>5 years or older</td>
</tr>
<tr>
<td>100%</td>
</tr>
</tbody>
</table>

Mr. Nittle: Did you not, in fact, attend and be employed at Commonwealth College in Mena, Arkansas, during the period 1930 to 1933?27

... .

Mr. Nittle: Miss H., according to the information of the committee, in May of 1930 you made application for a United States passport, at which time you stated that you intended to travel in Denmark, Norway, Sweden, Germany, France, and England. Based upon this application you were issued a passport on May 30, 1930. Is that correct?28

... .

Mr. Nittle: ... However, it was not until May, 1949 that the first national and constitutional convention of the Congress of American Women was held in New York City — approximately 1 year prior to the invasion of South Korea by Communist North Korea.

It is our information that you were in attendance in New York City at the first national and constitutional convention of the Congress of American Women. Were you, in fact, in attendance at that convention?29

... .

Mr. Nittle: Miss H., while a social worker, have you been under the discipline of the Communist Party?

Witness: I decline to answer the question on the basis of all the grounds and reasons previously stated.

27 Hearings on Communist Activities in the Chicago, Illinois Area Before the House Comm. on Un-American Activities, 89th Cong., 1st Sess., 421 (1965) (Chicago, May 26th) [hereinafter cited as Chicago Hearings].
28 Id., at 500.
29 Id., at 505.
Mr. Nittle: Were you in 1941 a social worker in Massachusetts?
Witness: I decline to answer the question on the basis of all the grounds and reasons previously stated.
Mr. Nittle: Miss H., I have before me a copy of a magazine titled *Social Work Today* dated February 1952. At page 52 your name is listed, under the column for the State of Massachusetts, as being one of the 1941 "Social Work Today Cooperators" and it is noted that those listed men and women — "have made it possible for *Social Work Today* to strengthen and prepare itself for the supreme test of today."

I hand you this exhibit marked for identification as "H. . . . Exhibit No. 4." Are you the D. . . . H. . . noted as a 1941 cooperator?
Mr. Weltner: Counsel will rephrase the question.
Mr. Nittle: The Committee has just called to my attention that I had stated that article as being dated 1952. I correct that. That is the February 1942 issue. As I previously stated a moment ago, are you listed in that issue as a 1941 "Cooperator"?

. . . .

Mr. Nittle: Now, Mr. M., the pending question is whether you knew Yolanda Hall to be a member of the Illinois-Indiana regional board of the American Youth for Democracy at the time you served upon that board in October 1945?

Other hearings followed similar patterns:

Mr. Nittle: I hand you a copy of a January 1943 open letter to the Congress of the United States titled "A Message to the House of Representatives" . . .

As appears upon the exhibit, this letter was sponsored by the National Federation for Constitutional Liberties and opposed the renewal of the Special Committee on Un-American Activities in 1943. I direct your attention to the fourth page of the exhibit, where your name, . . ., identified as financial secretary, Local 1152, United Electrical, Radio & Machine Workers of America, Minneapolis, Minnesota, is among others listed as a signer of this message. Did you authorize your

---

30 *Id.*, at 506.
31 *Id.*, at 481.
name to be used as a sponsor of this message? [21 years earlier]32

* * * *

Mr. Nittle: Mrs. P... it is the Committee's information that you were employed as a teacher since 1922 in the New York City public school system, that you resigned as a teacher on September 4, 1952. Were you a member of the Communist Party fraction of the public school teachers during the course of your employment at the DeWitt Clinton High School in New York City? [10 to 40 years earlier]33

* * * *

Mr. Nittle: Our investigation discloses that at a meeting in the Music Hall, Cleveland, Ohio on April 30, 1949, it was announced that you were among the largest contributors to the Progressive Party. Was that announcement correct? [13 years earlier]34

... .

Mr. Nittle: You were also in attendance at a concert sponsored by the Progressive Party at Music Hall on March 20, 1950, which featured Paul Robeson, were you not? [12 years earlier]35

These exchanges give the flavor of the stale information sought by the Committee in one-half of its misdeed questions. The age of the events referred to ranged from 5 to 40 years.

5. Information Obtained from Uncooperative Witnesses

Overwhelmingly, the response of the 2,300 uncooperative witnesses to Committee misdeed questions was a refusal to answer. Once the uncooperative witness had refused to answer a Committee question —

32 House Comm. on Un-American Activities, Communist Activities in the Minneapolis, Minn. Area, 88th Cong., 2d Sess., 1784 (1964) (Minneapolis, June 25th).
34 House Comm. on Un-American Activities, Communist Activities in the Cleveland, Ohio Area, 87th Cong., 2d Sess., pt. 2, at 1147 (1962) (June 7th).
35 Id.
which on the average came by the time the second or third question was asked, and for over 50 percent of uncooperative witnesses came with the first question — the response pattern did not change. 73 percent of the misdeed questions then asked were either refused outright (63 percent) or received a nonresponsive answer (10 percent) (Table VIII). If one excludes the unique Ku Klux Klan hearing, fully 81 percent went unanswered. In the 1965 Chicago hearing, 100 percent went unanswered. Nonetheless, the Committee continued its interrogation and 91 percent of all misdeed questions came after the witness had refused to answer (Table IX), thus making a public record but not adding to Committee information.

**TABLE VIII**

RESPONSES TO MISDEED QUESTIONS
AFTER FIRST REFUSAL

<table>
<thead>
<tr>
<th>Uncooperative</th>
<th>All Other</th>
<th>Chicago</th>
<th>All Uncooperative</th>
</tr>
</thead>
<tbody>
<tr>
<td>KKK Witnesses</td>
<td>Uncooperative Witnesses</td>
<td>Chicago Witnesses*</td>
<td>Uncooperative Witnesses</td>
</tr>
<tr>
<td>Responsive</td>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>Refused to Answer</td>
<td>71</td>
<td>19</td>
<td>0</td>
</tr>
<tr>
<td>Unresponsive without outright refusal</td>
<td>26</td>
<td>70</td>
<td>87</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

(Number of Questions) (9,400) (52,000) (336) (61,400)

* Included in the previous column

**TABLE IX**

COMMITTEE PATTERN OF QUESTIONING
UNCOOPERATIVE WITNESSES

<table>
<thead>
<tr>
<th>Questions:</th>
<th>Number</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asked before 1st refusal</td>
<td>4,600</td>
<td>7</td>
</tr>
<tr>
<td>Receiving 1st refusal</td>
<td>1,200</td>
<td>2</td>
</tr>
<tr>
<td>Asked after 1st refusal</td>
<td>61,400</td>
<td>91</td>
</tr>
</tbody>
</table>

TOTAL 67,200 100%
The limited number of answers the Committee obtained from its continuing questioning of uncooperative witnesses came from a very small minority of these witnesses. As noted, 54 percent answered not a single question; another 30 percent supplied the Committee with 9 percent of the answers received. 91 percent of whatever responses the Committee received came from only 16 percent of the subpoenaed uncooperative witnesses (Table X).

### TABLE X

**PROPORTION OF UNCOOPERATIVE WITNESSES PROVIDING ANY INFORMATION TO COMMITTEE***

<table>
<thead>
<tr>
<th>Number of Misdeed Questions Answered</th>
<th>Percent of Uncooperative Witnesses</th>
<th>Percent of All Answers Provided</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>54</td>
<td>0</td>
</tr>
<tr>
<td>1 to 5</td>
<td>30</td>
<td>9</td>
</tr>
<tr>
<td>6 or more</td>
<td>16</td>
<td>91</td>
</tr>
<tr>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

* After first refusal

Two typical interrogations illustrate the Committee pattern of making a record after a witness' refusal. In a 1960 hearing during a period of controversial "loyalty screening" of seamen, the Committee queried one seaman as follows:

Mr. Arens: Do you have arrangements made to resume your vocation or avocation of seaman? Do you expect in the near future to resume as a seaman?

Witness: I refuse to answer that.

Mr. Arens: Why? Mr. M., would it be convenient for you to get closer to the microphone?

Witness: I lean on the fifth amendment because such a question may incriminate me.

Mr. Arens: Are you connected with the Seamen’s Defense Committee?

Witness: I refuse to answer.

Mr. Arens: We would like to display to you now a thermofax reproduction of an article appearing in the Daily Worker of November 8, 1956, which states:
"The Seamen's Defense Committee Against Coast Guard Screening, whose chairman is Capt. M... and consisting of merchant seamen denied 'clearance' within the last six years by the Coast Guard issued the following statement yesterday:" [Then the statement appears.] Kindly look at that article which I now display to you and tell this committee whether or not the designation by yourself in the Daily Worker as the chairman of the Seamen's Defense Committee is true and correct.

This interrogation continued for an additional 15 questions (including one concerning the witness' alleged attendance at a public meeting urging abolition of the Committee) with the predictable 15 refusals to answer on the grounds of the fifth amendment.36

In a Washington hearing in 1961, the Committee persisted in questioning a witness despite the clearest statements by the witness that no answers would be forthcoming:

Witness: And I will for the same reason refuse to answer other questions that I deem to be of the same character. I should like to say in conclusion that when and if you ask further questions of this nature, and I say I decline for the reasons already stated, I have reference to all of the reasons that I have just described to you.

Mr. Scherer: Now, Witness, are you still a member of the Communist Party?

Witness: Did you hear my statement just now, Mr. Scherer?

Mr. Scherer: Mr. Chairman, I ask that you direct the witness to answer the question—whether he is still a member of the party.

The Chairman: Answer the question.

Witness: Well, the reason I ask whether you heard my statement is because it is a categorical refusal to answer all such questions, and there should be no question in your mind that I am going to answer that question, and I refuse to answer it for all the reasons that I have just described.

37 Id., at 1828-30.
Mr. Tavenner: Were you a member of the Communist Party in 1958, the year of the publication of the Statement of the Awards Committee?
Witness: You are wasting your time. I am not going to answer your question. . . .
Mr. Tavenner: It is noted that the address given of the office for The Fund for Social Analysis is Room 2800, 165 Broadway. Have you met with the officers of this association at that address?
Witness: Don’t you understand my —
The Chairman: Answer the question, Mr. N. . . .
Witness: As I said before, I am not going to answer any questions regarding the Fund.
Mr. Tavenner: Then you refuse to answer. And I am going to continue to ask the questions that you ought to be asked.
Witness: Go right ahead.
Mr. Tavenner: And it is up to you —
Witness: You understand what I said?
Mr. Tavenner: I understand what you said, but I always live in the hopes that a person may change his mind, even you, Mr. N. . . .

To sense the full impact of the Committee’s pattern, one needs to put together several of the characteristics detailed above. What did the Committee get out of these 20 years of questioning? What was the yield? Table XI summarizes the answer.

TABLE XI

YIELD FROM ALL MISDEED QUESTIONS 
TO ALL UNCOOPERATIVE WITNESSES*

<table>
<thead>
<tr>
<th></th>
<th>Number</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Misdeed Questions</td>
<td>61,400</td>
<td>100</td>
</tr>
<tr>
<td>Responsive Answers</td>
<td>16,600</td>
<td>27</td>
</tr>
<tr>
<td>Affirmative Responses</td>
<td>7,900</td>
<td>13</td>
</tr>
<tr>
<td>About Events less than 5 years Old</td>
<td>5,100</td>
<td>8</td>
</tr>
</tbody>
</table>

* After 1st Refusal

Once the subpoenaed witnesses had refused to answer a question (which the majority did very early in the querying) the Committee went on to ask them 61,400 more questions alleging wrongdoing either on the part of the witness or his associates. The Committee obtained responsive answers to about one-quarter of these questions (a large share of the answers coming from a handful of the witnesses). Of the 16,600 answers they did receive, more than half were either denials of the allegations, or were statements indicating the witness had no knowledge or information to give. This leaves 7,900 affirmative responses. But if the criterion of recency is applied to help determine any likely legislative purpose, we find that more than one-third of these remaining 7,900 answered questions deal with events alleged to have occurred more than five years earlier. Thus, out of 61,400 questions asked, only 5,100 (eight percent) yielded any information having even the outward characteristics of possible utility.39 "Outward characteristics" is used because the fundamental characteristic of 93 percent of all the misdeed questions—fresh or stale, answered or unanswered—was that they dealt with the area of political views, associations, and acts, and were thus probing an area forbidden to the Committee by the first amendment.

It is illuminating to add one dimension to what the Committee achieved by continuing to question witnesses who had clearly indicated they would refuse to answer. A very large number—nearly 90 percent of the witnesses—refused on grounds that included the fifth amendment. The Committee, in hearing after hearing, used the occasion to build a public image that equated reliance on that amendment with admission of a misdeed. This technique resulted in effect in the Committee giving the testimony:

Mr. Clardy: That means you shall not be compelled to incriminate yourself. Let us not fence with the English language. You know what it means and that it is only invoked by people who are, in my humble opinion, apprehensive that they will do so. You leave that impression every time you raise it, and I don't care how many people argue to the contrary. I don't know of any innocent man that has ever appeared before this committee and invoked the fifth amendment on which we did not have evidence that he was a member of the Communist Party before we asked a question, and that, sir, applies to you as it does to every other one, and yet that would not incriminate you in any

---

39 If the hearings on the Ku Klux Klan, see note 7 supra, are excluded, the estimated final yield of affirmatively answered, non-stale questions is reduced to three percent.
way, shape, or form, because it is still not a criminal offense to be a member of that party. I am giving you a lecture on it because my patience is getting somewhat thin of hearing that raised and then hearing people go forth and prate about free speech, as the previous witness did, about an invasion of their right of privacy and all that sort of thing, as though they had something to hide. Now, if you have nothing to hide, you ought to tell us.\textsuperscript{40}

* * * *

Mr. Willis: Three witnesses who did not feel like you about it, and who felt an obligation truthfully to answer questions, answered under oath, subjecting themselves to the pains and penalties of perjury if they were not telling the truth, and said that you were a Communist. What are you talking about unjust prosecution if three witnesses swear that you were a Communist? If you want to invoke the privilege of the fifth amendment, don't give us the usual act of being cute around here. Are you invoking the protection of the fifth amendment because you feel that to honestly answer the questions might subject you to criminal proceedings?

Witness: I am answering under the first and fifth amendments of the Constitution. In relation to the fifth amendment, I am attempting to shield myself against an unjust prosecution.

Mr. Arens: Would the prosecution of yourself as a Communist be unjust?\textsuperscript{41}

* * * *

Mr. Nittle: Are you making that response [invoking the first, fifth, and sixth amendments] to the question, as to the place of your birth, as a result of instructions given to you by the Communist Party of the United States to make just such a response to each question of this committee? . . .

Mr. Senner: Mr. Witness, we are here to determine facts to establish legislation that will protect the security of this Nation. You have been subpenaed [sic] and have been given an offer to appear in a different capacity also, in an executive session. We


bend over backwards trying to afford you an opportunity to help this country. Is the reason that you raise the first, the fifth and the sixth amendment, to prevent this committee trying to find facts that will help us protect this country's security?\footnote{\textit{House Comm. on Un-American Activities, Communist Activities in the Minneapolis Minn. Area,} 88th Cong., 2d Sess., 1800-01 (1964) (Minneapolis, June 25th).}

* * * *

Mr. Doyle: Now may I reaffirm this? That I recognize and I am sure the committee recognizes that the opinions of our highest courts — and we follow the courts instead of our own personal opinion — have held that no inference is to be drawn of either innocence or guilt merely because a person claims his constitutional privilege. Therefore the policy of this committee, following the law, which we always respect, is that merely because a person claims the constitutional privileges there is no reason for us, inferentially or otherwise, to have any belief or take any position that that person is necessarily guilty of any crime. However, as long as a few minutes ago, my name was mentioned as having declared in the public press that the taking of the fifth amendment was a Commie line. I wish to restate now that to my knowledge, in the history of this Committee, the taking of the fifth amendment is a Commie line. That doesn't necessarily mean, in my book, that every person that takes it is one, but the records clearly show that taking the fifth amendment is a direction of the Communist Party.\footnote{\textit{House Comm. on Un-American Activities, Investigation of Communist Activities in the Pacific Northwest Area,} 83rd Cong., 2d Sess., pt. 4, at 6315 (1954) (Seattle, June 15th).}

6. Information Obtained from Cooperative Witnesses

With such a paucity of useful information gathered from some 2,300 uncooperative witnesses, perhaps the more than 20 years of interrogation can be justified by what the Committee learned from its 758 cooperative witnesses. Perhaps they made up for the lack of such information elicited from the uncooperative ones. Perhaps if such hearings had not been held much useful information obtained from the cooperative witnesses might have been lost. The facts indicate otherwise.

It is useful to see who the cooperative witnesses were. They turned out to be almost equally divided into three types (Table XII). One-third
(35 percent) were undercover agents of the Committee or other investigative agency, regularly reporting to their employers. One-third were government officials, with whatever information or expertise they may have had either on file or on tap. The final one-third were "recanters," persons who formerly belonged to proscribed organizations and, having recanted their past, were then cooperating with the Committee in examining these organizations.

### TABLE XII

**TYPE OF COOPERATIVE WITNESS**

<table>
<thead>
<tr>
<th>Type</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Undercover agent</td>
<td>35</td>
</tr>
<tr>
<td>&quot;Recanter,&quot; ex-member</td>
<td>32</td>
</tr>
<tr>
<td>Expert (usually government)</td>
<td>29</td>
</tr>
<tr>
<td>Other</td>
<td>4</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100%</td>
</tr>
</tbody>
</table>

(Number) (758)

A check on how much time had elapsed between each recanter's resignation from his organization and the date of his testimony about it revealed that nearly two-thirds had left their organizations five or more years before testifying about them (Table XIII). Thus the majority of the cooperative witnesses could not possibly have contributed anything except stale information. More important, the testimony of virtually all cooperative witnesses had been available to the Committee without the

### TABLE XIII

**TIME SINCE COOPERATIVE WITNESSES LEFT ORGANIZATION***

<table>
<thead>
<tr>
<th>Time Reference</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 5 years</td>
<td>25</td>
</tr>
<tr>
<td>5 or more years</td>
<td>63</td>
</tr>
<tr>
<td>No time reference</td>
<td>12</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100%</td>
</tr>
</tbody>
</table>

(Number) (508)

* Excludes those who never belonged to suspect organizations.
Case Against HUAC

formality of a hearing. Neither the reporting agents (many of whom, according to Committee admissions were paid to be witnesses\textsuperscript{44}) nor the government experts required an official hearing, particularly a public one.

Excluding this latter group of experts, the Committee had prior access to the testimony of 97 percent of the cooperative witnesses (Table XIV), either because they had testimony on record elsewhere, had testified in executive session before the Committee, turned over their testimony in conferences before the hearing, or were reporting agents.

\begin{table}
\centering
\caption{Prior Access of Committee to Testimony of Cooperative Witnesses*}
\begin{tabular}{lrr}
\hline
 & Percent	 \\
Undercover Agent & 50	 \\
Other Witnesses: & \\
Prior Conference & 22	 \\
Prior Executive Session & 22	 \\
Had testified elsewhere & 3	 \\
No reference to prior access & 3	 \\
Total & 100\% \\
(Number) & (538) \\
\hline
\end{tabular}
\end{table}

*Excludes expert witnesses

The Committee often entered into the record that they had prior access to such information:

Mr. Arens: Mr. Chairman, as the chairman knows and as the witnesses of course know, these witnesses have been in contact with the staff over the course of many months. We have had, under oath, extensive interviews and consultation with these two witnesses on some subjects covered here today, but there are other matters which, as the chairman knows, it would not be prudent at this time to develop with these witnesses in a public session.\textsuperscript{45}

\textsuperscript{44} See W. Goodman, supra note 1, at 464.
The 1965 Chicago hearing was a clear example of the access of the Committee to information prior to public interrogation:

Mr. Nittle: Now, in order to assist your memory and to expedite the hearing, you have furnished the committee with the names of those persons whom you recollect as being in attendance at the State convention [of the Communist Party]; is that right?

Miss H.: Yes.

Mr. Nittle: Now, you have before you a list prepared by you, which identifies some of those who were in attendance; is that correct?

Miss H.: Yes, I have.

Mr. Nittle: Now, will you tell the committee, please, whether you know those persons to have been in attendance at the State convention?

Miss H.: I know all of them very well: F... M... D...

The Chairman: Start reading the list and go slow so the reporter can get it. [The cooperative witness then proceeded to enter the names appearing on the list she had previously given the Committee.]\textsuperscript{46}

What function could summoning such witnesses to testify at the official hearing have served? Perhaps some light is shed by an examination of two other salient features of the hearings — their public nature and their location (Tables XV and XVI). Four-fifths of all hearings were held in public where testimony the Committee had already received in private from the cooperative witness was repeated and where the uncooperative witnesses were publicly exposed to the opprobrium that went along with a Committee subpoena. One-half of all hearings were scheduled for cities and towns across the nation. Local publicity enhanced and multiplied the exposure effect of the hearing. The public hearing was marked by another feature that gives further credence to the claim that exposure was a predictable outcome and perhaps the goal of such hearings. The cooperative witness (excluding the government expert witness) could count on putting into the public record the names of persons they would accuse of "un-Americanism" without being subjected to challenge, cross-examination, or constraints of any type. The total of persons so named reached the staggering number of 16,700 (Table XVII).

\textsuperscript{46} Chicago Hearings, supra note 27, at 358 (May 25th).
### TABLE XV

WITNESSES IN PUBLIC AND PRIVATE HEARINGS

<table>
<thead>
<tr>
<th></th>
<th>Uncooperative Witnesses</th>
<th>Cooperative Witnesses</th>
<th>All Witnesses</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>Private hearing</td>
<td>19</td>
<td>20</td>
<td>19</td>
</tr>
<tr>
<td>Public hearing</td>
<td>75</td>
<td>78</td>
<td>76</td>
</tr>
<tr>
<td>Partly public</td>
<td>6</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>(Number)</td>
<td>(2,321)</td>
<td>(758)</td>
<td>(3,079)</td>
</tr>
</tbody>
</table>

### TABLE XVI

LOCATION OF HEARINGS

<table>
<thead>
<tr>
<th></th>
<th>Uncooperative Witnesses</th>
<th>Cooperative Witnesses</th>
<th>All Witnesses</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>Washington, D.C.</td>
<td>44</td>
<td>68</td>
<td>49</td>
</tr>
<tr>
<td>Other Cities</td>
<td>56</td>
<td>32</td>
<td>51</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>(Number of witnesses)</td>
<td>(2,321)</td>
<td>(758)</td>
<td>(3,079)</td>
</tr>
</tbody>
</table>

### TABLE XVII

NUMBER OF PERSONS NAMED BY COOPERATIVE WITNESSES* AS BEING INVOLVED IN MISDEEDS

<table>
<thead>
<tr>
<th></th>
<th>Number of Cooperative Witnesses</th>
<th>Average number of persons named per Cooperative Witness</th>
<th>Total number of persons named</th>
</tr>
</thead>
<tbody>
<tr>
<td>All hearings</td>
<td>534</td>
<td>31.3</td>
<td>16,700</td>
</tr>
<tr>
<td>Chicago hearing</td>
<td>2</td>
<td>53</td>
<td>106</td>
</tr>
</tbody>
</table>

*Excludes expert witnesses
7. Exposure as the Aim of the Committee

When the Committee was created in 1939, its first chairman, Congressman Martin Dies of Texas, felt no constraint in assigning to the Committee the task of exposure:

I am not in a position to say whether we can legislate effectively in reference to this matter [un-American activities] but I do know that exposure in a democracy of subversive activities is the most effective weapon that we have in our possession. Always we must keep in mind that in any legislative attempt to prevent un-American activities, we might jeopardize fundamental rights far more important than the objective we seek, but when these activities are exposed, when the light of day is brought to bear upon them, we can trust public sentiment in this country to do the rest.\(^{47}\)

Over the course of the years, Committee members have not hesitated to echo Representative Dies' sentiments. For example, Chairman Walters said in 1956:

... I think these hearings have been a great success, because after all, while we have not forced anyone to tell what we hoped some of them would tell, nevertheless, charges that have been made have gone unanswered.\(^{48}\)

Thirty-six years after Representative Dies' avowal and seventeen years after the Court decision in *Watkins v. United States*\(^ {49}\) eschewing exposure of individuals as a legitimate goal of congressional committees, the last Chairman of the House Internal Security Committee, Congressman Richard Ichord, continued to avow the goal.\(^ {50}\)

\(^{47}\) 83 CONG. REC. 7570 (1938).


\(^{49}\) 354 U.S. 178 (1957).

\(^{50}\) In the Congressional debate that was to give the Committee a temporary reprieve before its final demise, the New York Times reported: Mr. Ichord, acknowledging that the committee was primarily an investigating group rather than a legislative one, said that "the best way to combat subversive activities is through disclosure." N. Y. Times, Oct. 3, 1974, at 19 col. 1.
CONCLUSION

One staggering fact emerges with clarity from the search of what was accomplished in the 20 years of public, peripatetic hearings held by the Committee. The principal end product of the Committee's labors was the placing into the public record of the names of some 16,700 political "misbehavers". No legislative purpose could have been served by the great majority of the information the Committee both sought and received. Focusing on political acts in its queries, it concentrated in areas where no constitutional legislation could emerge. From the thousands of uncooperative witnesses it subpoenaed, no more than 8 percent of the tens of thousands of questions it asked yielded affirmative responses with recent information. The majority of the subpoenaed witnesses answered not a single question. The bulk of the printed record on the appearance of the uncooperative witnesses consisted of the questions and comments put forward by Committee members and counsel. From the cooperative witnesses, the Committee gathered little or no information which had not been previously available to it. Yet, with such a paucity of end product, the questioning continued, the subpoenaing continued, and the public labelling continued. What remained were the lists of names made public in the 172 hearings, and the effect this public branding had upon lives and constitutional liberties.

As this report was being written, the Committee breathed its last. In its final years it had lost much of its old strength. It had changed its name; its hearings were held only in Washington, D.C.; it called only friendly witnesses; and it had reduced its hearings from an average of ten to less than one per year. This downhill course had begun shortly after the 1966 court decision in the Stamler case which held out the unwelcome possibility that the Committee would have to defend itself in the federal courts. 51

Whatever role this lawsuit may have played, it was played against the larger backdrop of history: the decline of McCarthyism, changes in

51 See 118 CONG. REC. 6310-11 (1972) (criticism of federal funds for criminal cases and lawsuits involving Committee on Internal Security (HISC)); 117 CONG. REC. 12, 492 (1971) (Stamler cited as example of excessive burden on prosecutorial and judicial resources caused by unnecessary cases involving HUAC and HISC); 115 CONG. REC. 3724 (1969) (Rep. Ichord: "Also the vagueness [of Rule XI] has unnecessarily caused the committee to become involved in many legal actions."); 114 CONG. REC. 15734-35 (1968) (judicial scrutiny of HUAC brought on by suits seeking to enjoin HUAC activities seen as threat to HUAC's operations).
the international situation, Watergate, and growing federal budgetary concerns. They all contributed towards making the Committee anachronism. In January 1975, with hardly a dissenting voice, the Congress finally ended the life of the House Internal Security Committee, née, the House Un-American Activities Committee.52