civilian and military weather services are fully coordinated and complementary, whether supporting meteorological research is adequately funded and—even more important—whether the results of that research are effectively integrated into operational programs in a timely fashion.

Mr. Speaker, remarkable progress has been made in recent years in weather observation and forecasting because of the advance of modern technology. Satellites, computers, radars, and modern research aircraft all have improved the science of meteorology. Yet every disaster survey report in recent years touches upon the thinness of manpower in the National Weather Service.

Moreover, despite the advance of technology, there are those who contend that weather services in the United States have deteriorated during the past decade. Thus, although modern technology has made great contributions and can be expected to make more in the future, there are many aspects of weather observation, analysis, and prediction that require trained manpower, and we cannot always substitute machines for men. Furthermore, while we recognize that automation can reduce manpower requirements, we should not overlook the fact that greatly expanded demands for weather services require more people to operate and maintain the various automated systems that make such services possible. For these reasons, we believe it is necessary to take a hard look at personnel ceilings and the subcommittee intends to do so during our hearings.

Mr. Speaker, it appears that there is a growing gap between what the National Weather Service is being asked to do and what it is able to do because of limited resources, particularly stringent personnel ceilings. I believe the time has come to restudy the entire system, and determine the best way to modify governmental policies so that the National Weather Service will be able to respond effectively to the many new demands for its services.

A NEW DAY AT THE FBI

(Mr. GONZALEZ asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. GONZALEZ. Mr. Speaker, on previous occasions I have talked about abuses and excesses of the FBI under its former Director. These included the systematic inclusion of inaccurate interpretations of information in FBI files on me and the wholesale collection of useless political information, among other questionable activities.

I am glad to say that a new day has dawned at the FBI. The new Director is cognizant of the need to shed past malpractices and to reform the Bureau so that it will once again live up to the enormous reputation it earned in better days.

There can be no question about the ability, the integrity, the dedication or the efficiency of the vast majority of people who work with the FBI. I am confident that Director Webster will be able to make the most of their talents.

I am hopeful, because it is clear that Director Webster wants reforms, and will get them.

I am hopeful, because Director Webster has gone to the lengths of seeing that my own files are corrected, that misleading statements about me have been ordered expunged, and has expressed his regret that this ever happened. Director Webster has shouldered his responsibility in a way that I can only express personal gratitude for, and more importantly in a way that provides genuine hope that the FBI will soon, once again, be what we once thought it was, and what we all want it to be now.

I ask consent to place a letter I received today from Director Webster, by way of completing the record on my complaint, and his action in satisfying it:

FEDERAL BUREAU OF INVESTIGATION,
Washington, D.C., April 27, 1978.

Hon. HENRY B. GONZALEZ,
House of Representatives,
Washington, D.C.

MY DEAR CONGRESSMAN: I have read your letter of April 17, 1978, wherein you expressed your displeasure with past practices of the FBI. The documents which you received from FBI files under the Freedom of Information and Privacy Acts, as you know, contained statements indicating that you had received Communist Party support during past election campaigns, according to reports received from informants. Admittedly, considering the lack of evidence that you either solicited or were even aware of such support, this information is susceptible to erroneous interpretation. I am therefore instructing that the statements in the documents made available to you be expunged from our files, consistent with the spirit and intent of the Privacy Act of 1974.

As you are aware, the provisions of that Act clearly proscribe the collection or recording of information concerning individuals unless such information is relevant and necessary to accomplish a specific purpose of this Bureau authorized by statute or Executive Order of the President. Certain statements therefore contained in the documents which have been released to you would not now be recorded by today's standards.

The unfortunate characterization of a member of your staff as reflected in FBI files is an action which I shall not attempt to defend. In fairness to your staff member, I am having this characterization removed from the document in question. I can assure you that it is not and will not be my practice to permit the injection of personal feelings or opinions in official documents when such does not advance the official mission of this Bureau.

I regret that certain practices of the past have caused you distress. I can assure you that during my incumbency as Director of the FBI I shall not countenance any practices which are at variance with the law or a sense of decency. I hope that in the future I may look forward to your support and that of other members of the Congress so that my direction of the FBI will be worthy of your approbation.

We are separately concluding our response to your Freedom of Information—Privacy Acts request for documents in our files concerning you.

Sincerely yours,

WILLIAM H. WEBSTER,
Director.

SELECT COMMITTEE ON ASSASSINATIONS TESTIMONY OF RAY FAMILY

(Mr. STOKES asked and was given permission to address the House for 1 minute and to include extraneous matter.

Mr. STOKES. Mr. Speaker, as chairman of the Select Committee on Assassinations, I believe that it is appropriate to bring to the attention of the House a matter that has arisen in the course of the investigation into the death of Dr. Martin Luther King, Jr.

James Earl Ray escaped from the Missouri State Penitentiary on April 23, 1967. From then until April 4, 1968, when Dr. King was killed in Memphis, the activities of Mr. Ray have been of prime focus in this investigation. The committee has determined the whereabouts and activities of Ray for certain portions of this period. Nevertheless, large gaps in time still exist, in which conventional investigative techniques have failed to disclose the needed information. The committee has, therefore, looked to the family of James Earl Ray for help in filling these time gaps. John Ray, his brother, and Carol Pepper, his sister, are believed to have knowledge of his activities that would be of assistance to the committee. John Ray is believed, for example, to have visited his brother the day before Ray's escape from Missouri State Penitentiary on April 23, 1967. Carol Pepper is believed to be the focal point for family communication, and she is known to have handled financial transactions for her brothers in the past.

Because of this belief, John Ray and Carol Pepper were subpenaed to appear before the select committee on April 17, 1978, and April 18, 1978. On April 17, 1978, John Ray did appear, and he did testify before the committee. Nevertheless, during the course of his testimony, Mr. Ray refused to disclose information clearly within his knowledge by systematically relying on a supposed lack of recollection to thwart and obstruct the committee's inquiry. Mr. Ray's testimony was, in effect, testimony in form only, and it constituted a clear case of contempt. On April 18, 1978, Carol Pepper also appeared and testified. Her testimony was equally evasive. Indeed, Ms. Pepper told the committee that she could not recall conversations occurring 4 hours prior to her appearing before the committee.

Mr. Speaker, it is not the committee's intent to create or pursue a vendetta against the Ray family. Our intent is simply to establish the truth for the benefit of the American people. The committee has taken great pains to insure that Carol Pepper and John Ray are aware of this fact. There was some indication expressed by John Ray that, because of the committee's interest in his testimony, his parole from prison was delayed. The committee immediately, upon being informed of this allegation, contacted Warden Wilkinson of the U.S. Penitentiary at Marion, Ill., and impressed upon him the committee's desire not to interfere in any way with Mr.

Ray's intended release. The committee wants only the truth.

The information that Carol Pepper and John Ray are believed to possess is essential to the committee's work, and their attempts to undermine our investigation must not be tolerated. During the course of the testimony of both Carol Pepper and John Ray, the committee members repeatedly cautioned them as to the consequences of their recalcitrancy and urged their respective counsel to advise them of the seriousness of their actions. Both John Ray and Carol Pepper are scheduled to reappear before the committee in order to continue their testimony. It is sincerely hoped that during the intervening time, they will choose to abandon their obstructive tack and respond to the committee's queries in a substantive manner reflective of the information which they so obviously possess.

Should Carol Pepper and John Ray continue to assert a convenient lack of recollection, the committee may have no alternative but to bring these actions either to the attention of the court for disposition under its civil contempt power or before the House for certification of contempt of Congress, as it did in the case of Claude Powell.

Mr. Speaker, in the near future I expect to report to this body our committee's recommendations as to the proper course of action. It is my sincere hope that I can report that Carol Pepper and John Ray have chosen to cooperate fully.

Mr. Speaker, I include in the RECORD a legal memorandum of the Library of Congress on evasive contempt.

EVASIVE CONTEMPT BEFORE A CONGRESSIONAL COMMITTEE

(By Kent M. Ronhovde)

"Contempt" has been said to consist of "an act of disobedience or disrespect toward a judicial or legislative body of government, or interference with its orderly process, for which summary punishment is usually exacted." Defined more broadly, it is "a power assumed by governmental bodies to coerce cooperation, and punish criticism or interference, even of a casually indirect nature." Goldfarb, *The Contempt Power* (New York: 1963), at 1. The question addressed here is whether refusal to respond in a manner considered satisfactoy to the questioning body—be it legislative or judicial—can properly be viewed as a contemptuous act, warranting coercive or punitive measures. Such "evasive contempt" must be distinguished from an unjustifiable refusal either to testify at all when called or to answer particular questions. While the context at issue here is a legislative one, i.e. evasive responses to questions propounded by a congressional committee, the paucity of case law in that setting requires substantial reference to the judicial arena where the issue has been dealt with in greater detail.

The power of the Congress to conduct investigations is inherent in the legislative process, and is broad. *Watkins* v. *United States*, 354 U.S. 178 (1957). "The power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function. It was so regarded and employed in American legislatures before the Constitution was framed and ratified." *McGrain* v. *Daugherty*, 273 U.S. 135, 174 (1927). The Congress of the United States thus has the power to investigate, to compel testimony, and to punish for contempt. The investigatory power of either House may be delegated to a committee either by the standing rules of the body or by special resolution. The issuance of subpoenas has long been held to be a legitimate use by Congress of its power to investigate. *Eastland* v. *United States Serviceman's Fund*, 421 U.S. 491, 504 (1975). And if a particular investigation is related to and in furtherance of a legitimate task of the Congress, it has been said by the Supreme Court that "[i]t is unquestionably the duty of all citizens to cooperate with the Congress in its efforts to obtain the facts needed for intelligent legislative action. It is their unremitting obligation to respond to subpoenas, to respect the dignity of the Congress and its committees and to testify fully with respect to matters within the province of proper investigation." *Watkins*, *supra*, at 187–188.

Contempt of Congress can be classified into two types: inherent and statutory. Congress' inherent contempt authority exists in the Congress as a necessary incident of its existence and does not require recourse to any other Branch of the Government for its exercise. *Anderson* v. *Dunn*, 19 U.S. (6 Wheat.) 204 (1821). Statutory contempt of Congress, on which focus is placed in this discussion, is derived from provisions authorizing the House concerned to direct that the contempt be certified and forwarded to the U.S. Attorney for prosecution. 2 U.S.C. 192 (R.S. § 102) and 2 U.S.C. 194 (R.S. § 104) provide:

"§ 192. Refusal of witness to testify or produce papers.

"Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months."

§ 194. Certification of failure to testify; grant jury action for failing to testify or produce records.

"Whenever a witness summoned as mentioned in section 192 fails to appear to testify or fails to produce any books, papers, records, or documents, as required, or whenever any witness so summoned refuses to answer any question pertinent to the subject under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee or subcommittee of either House of Congress, and the fact of such failure or failures is reported to either House while Congress is in session, or when Congress is not in session, a statement of fact constituting such failure is reported to and filed with the President of the Senate or the Speaker of the House, it shall be the duty of said President of the Senate or Speaker of the House, as the case may be to certify, and he shall so certify, the statement of facts aforesaid under the seal of the Senate or House, as the case may be, to the appropriate United States Attorney, whose duty it shall be to bring the matter before the grand jury for its action."

Section 192 is a criminal statute by which Congress invoked the aid of the Federal courts in protecting itself against contumacious conduct. The result is that a person prosecuted for this offense is entitled to every safeguard which the law accords in all other Federal criminal cases. *Russell* v. *United States*, 369 U.S. 749, 755 (1962); *Gojack* v. *United States*, 384 U.S. 702, 707 (1966). As a criminal statute it will be strictly construed. *United States* v. *Kamin*, 135 F. Supp. 382 (D. Mass. 1955).

The elements of the offense may be summarized as follows: (1) the individual questioned must have been properly "summoned as a witness by the authority of either House of Congress" (2) the witness must be called pursuant to a proper legislative purpose (3) the individual's refusal to properly respond must be upon a question which is pertinent to the subject under inquiry, and (4) there must either be willful default, or in the situation here at issue, a refusal to answer. All but the fourth element, including adequate legislative power, proper delegation to the committee and pertinent questioning will be assumed for the purposes of this discussion.

There can be no contempt of a congressional committee without a clear direction by the committee or its chairman to answer a question asked (notwithstanding objections of the witness). *Quinn* v. *United States*, 349 U.S. 155 (1955); *Emspak* v. *United States*, 349 U.S. 190 (1955). In a prosecution for refusal to answer it must be proved beyond a reasonable doubt that the refusal was deliberate and intentional. *Flaxer* v. *United States*, 358 U.S. 147 (1958). In *United States* v. *Deutch*, 147 F. Supp. 89 (D.C.D.C. 1956), aff'd 280 F. 2d 691 (D.C. Cir. 1960), rev'd on other grounds, 367 U.S. 456 (1961) the defendant was found not guilty of contempt when he answered that he did not remember and that if he did remember he would not answer in any case. The court treated the latter part of his statement as "more or less a surplusage" and added that "he may not be punished for contempt of Congress merely for stating that he does not remember." (at 92) It should also be noted that the Supreme Court has held that in prosecutions under the Federal perjury statute (18 U.S.C. 1621), that law does not permit prosecutions because of a witness' literally true but unresponsive answers to questions, even where the witness intended the questioner to be misled by the answers and even where the answers by negative implication, were false. The Court said "any special problems arising from the literally true but unresponsive answer are to be remedied through the 'questioner's acuity' and not by a federal perjury prosecution." *Bronston* v. *United States*, 409 U.S. 352, 362 (1973). While a perjury prosecution is fundamentally distinguishable from a contempt prosecution, the principle may extend to that setting to the extent that it may be imperative that the questions propounded be as specific as possible and that the questioner demonstrate as clearly as possible that the witness either directly, or through evasion, is refusing to respond.

The Supreme Court has said: "That the contumacious refusal of a witness to testify may so directly obstruct a court in the performance of its duty as to justify punishment for contempt is so well settled as to need only statement." *Ex Parte Hudgings*, 249 U.S. 378, 382 (1919). 18 U.S.C. 401 provides that a "court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice; . . . (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command." Rule 42 of the *Federal Rules of Criminal Procedure* additionally provides that "a criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court." (It is noteworthy that Rule 37(a)(3)

of the *Federal Rules of Civil Procedure*, providing sanctions for failure to make discovery, states that "for purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.")

One authority states that "testimony that is obviously false or evasive has been held equivalent to a refusal to testify within the intent and meaning of a statute making it contempt for a witness to refuse to answer any legal and proper interrogatory." 17 Am. Jur. 2d Contempt § 29 (1964). Cited as support is the Supreme Court of North Carolina's conclusion that "since the power of the court over a witness in requiring proper responses is inherent and necessary for the furtherance of justice, it must be conceded that testimony which is obviously false or evasive is equivalent to a refusal to testify . . . under North Carolina statutes." *Galyon v. Stutts*, 241 N.C. 120, 84 S.E. 2d 822 (1954).

In *United States v. Appel*, 211 F. 495 (S.D.N.Y. 1913), cited with approval in *Ex Parte Hudgings, supra*, Judge Learned Hand said that "[i]t is indeed impossible logically to distinguish between the case of a downright refusal to testify and that of evasion by obvious subterfuge and mere formal compliance." (at 495) He proposed the following rule: "If the witness' conduct shows beyond any doubt whatever that he is refusing to tell what he knows, he is in contempt of court. That conduct is, of course, beyond question when he flatly refuses to answer, but it may appear in other ways. A court, like any one else who is in earnest, ought not to be put off by transparent sham, and the mere fact that the witness gives some answer cannot be an absolute test. For instance, it could not be enough for a witness to say that he did not remember where he had slept the night before, if he was sane and sober, or that he could not tell whether he had been married more than a week. If a court is to have any power at all to compel an answer, it must surely have power to compel an answer which is not given to fob off inquiry. Nevertheless, this power must not be used to punish perjury, and the only proper test is whether on its mere face, and without inquiry collaterally, the testimony is not a bonafide effort to answer the questions at all." (at 495–496)

In *Haimsohn v. United States*, 2 F.2d 441 (6th Cir. 1924) an adjudicated bankrupt appealed his contempt conviction. The Court of Appeals affirmed, quoting the language of the language of the District Court: "The record discloses that in the course of his examination before the referee, as computed by counsel for the trustee, in answer to questions seeking to elicit information which would enable the creditors to ascertain what became of the assets of the estate he replied, 'I don't know' or words to that effect, 82 times, that to numerous questions he gave evasive answers, and the referee states that his demeanor on the whole was that of a man seeking to evade the truth rather than to honestly endeavor to aid the court and the creditors in arriving at the true condition of his estate. In fact that his conduct and his answers were such as to show on his part a disregard for the courtesy due the court and were on the whole contemptuous." (at 442) And in *In re Schulman et al*, 177 F. 191 (2d Cir. 1910), also a bankruptcy case, the court concluded: "The testimony as it appears in the record evinces a deliberate purpose to conceal the truth and prevent the trustee from becoming possessed of facts which would lead to a recovery of the missing property. The witness was being asked regarding transactions directly within his knowledge and facts which he must have known. When, therefore, he answered repeatedly, 'I don't remember,' it is obvious that he was deliberately withholding information to which the trustee was entitled. In effect his attitude was one of defiance. He did not affirmatively tell the referee to disclose the facts which would enable the trustee to follow the property, although these facts were well known to him, but his conduct produced the same result as if he had stated his purpose openly." (at 193) See also, *In re Stein*, 7 F. 169 (N.D. Cal. 1925).

In *Howard v. United States*, 182 F.2d 908 (8th Cir. 1950) vacated and remanded as moot, 340 U.S. 898 (1950) the appellant had been convicted of contempt in testifying evasively and falsely before a grand jury. In affirming that conviction the court said: "A wily witness who avoids the danger of a blunt refusal to answer by mere lip service to his duty and conceals the truth by the use of words may be as obstructive as his fellow of less mental agility who simply says nothing." (at 913) The court concluded that "a District Court has power to deal summarily with a witness before a grand jury who is guilty of a patent evasion equivalent to a refusal to give any material information." (at 915). Cited as authority was *Loubriel v. United States*, 9 F.2d 807 (2d Cir. 1926) where the Second Circuit argued that "the question is no less than whether courts must put up with shifts and subterfuges in the place of truth and are powerless to put an end to trifling . . . We have not the least doubt of the power of the District Court to punish a witness for an evasion patently put forward to avoid his duty. No doubt, since its exercise is drastic, it is to be used with caution, but at times no other means exists to prevent an entire miscarriage of justice. (at 808)

And in *Collins v. United States*, 269 F.2d 745 (9th Cir. 1959) the Ninth Circuit, citing a New York decision, summarized that "the power to punish for contempt can arise where from the testimony itself it is apparent that there is a refusal to give information which in the nature of things the witness should know. In such cases . . . the test is not whether the testimony was perjurious or false but whether without the aid of extrinsic evidence the testimony is so plainly inconsistent, so manifestly contradictory, and so conspicuously unbelievable as to make it apparent from the face of the record itself that the witness has deliberately concealed the truth and has given answers which are replies in form only and which, in substance, are as useless as a complete refusal to answer. *Finkel v. McCook*, 1936, 247 App. Div. 57, 286 NYS 755, 761." (at 750). *Collins* cited several examples of contumacious behavior held substantially equivalent to a refusal to testify: *United States v. Appel, supra* (witness could not remember what he had done with money withdrawn five days before); *O'Connell v. United States*, 40 F.2d 201 (2d Cir. 1930) (witness gave no information, answered only "I don't remember" or claimed a privilege against self-incrimination); *United States v. McGovern*, 60 F.2d 880 (2d Cir. 1932), affirming 1 F.Supp. 568 (S.D.N.Y. 1932) ("preposterous" and "unbelievable" answers to all questions concerning disposition of $380,000.00); *Schleier v. United States*, 72 F.2d 414 (2d Cir. 1934) ("inherently improbable" explanation of source and disposition of $10,000.00); *In re Meckley*, 137 F.2d 310 (3rd Cir. 1943), affirming 50 F.Supp. 274 (M.D. Pa. 1943), cert denied, 320 U.S. 760 (contradictory, unbelievable explanation of witness' disposition of funds and business dealings). (n. 1, at 750–751). See also, *Richardson v. United States*, 273 F.2d 144 (8th Cir. 1959); *Life Music Inc. v. Broadcast Music Inc.*, 41 F.R.D. 16 (S.D.N.Y. 1966); *In re Blim*, 5 F. Supp. 678 (N.D. Ill. 1933), reversed, 68 F.2d 484 (7th Cir. 1934); *Lang v. United States*, 55 F.2d 922 (2d Cir. 1932); *In re Gross*, 188 F. Supp. 324 (N.D. Iowa 1960), reversed, 302 F. 2d 338 (8th Cir. 1962).

A clear distinction must be drawn between obstructive responses designed to evade testimony which is truthful, and those which may themselves be perjurious. For it is well settled that a mere act of perjury on the part of a witness does not in and of itself, without something more, amount to contempt of a court proceeding. In order that contempt be found there "must be added to the essential elements of perjury under the general law the further element of obstruction to the Court in the performance of its duty." *Ex Parte Hudgings, supra*, at 382–384. The Third Circuit, in *In re Michael*, 146 F. 2d 627 (3rd Cir. 1944) elaborated on this question: "What additional element must be present then besides perjury in order to hold a witness in contempt of court? It seems to me, from an analysis of the cases, that the answers to the question or questions propounded to the witness must have a tendency to block the inquiry or to hinder the power and duty of the court in the performance of their functions . . . It seems to me the answers to the questions by the witness must have a tendency to mislead the court with respect to a material issue, by artful attempts at evasion; or a stalling of the court's inquiry by a palpable failing of memory concerning events of importance through repeated resort to 'I do not remember'; . . . or by conduct which is obstreperous or contumacious; or by answers no less, which though responsive, are yet wily and ambiguous and which by innuendo or indirection tend to shunt the focus of the inquiry." (at 631) The Supreme Court reversed in this case, distinguishing the facts from those in *Appel, supra*. It found that no adequate showing of an obstruction beyond perjury had been made. The Court expressed approval of the *Appel* decision, however, saying "for there the court thought that the testimony of Appel was 'on its mere face, and without inquiry collaterally, . . . not a bona fide effort to answer the question at all' " *Matter of Michael*, 326 U.S. 224, 228–229 (1945). The Court stressed that the element of "obstruction" must clearly be shown in every case the power to punish for contempt is exerted. See also, *Clark v. United States*, 289 U.S. 1 (1983); *Brown v. United States*, 356 U.S. 148 (1957). *Michael* also suggested that a court should use "the least possible power adequate to the end proposed" as was said of the congressional contempt authority in *Anderson v. Dunn, supra*, at 231. Thus perjury, while it may not of itself be punishable as a contempt apart from its obstructive tendency, "yet where it is attended with other circumstances of an obstructive tendency, inherently affecting and impeding the administration of justice, such is punishable as contempt." *United States v. Karns*, 27 F.2d 453 (N.D. Okla. 1928).

A New York criminal contempt statute reads:

"A person is guilty of criminal contempt in the first degree when he contumaciously and unlawfully refuses to be sworn as a witness before a grand jury, or when after having been sworn as a witness before a grand jury, he refuses to answer any legal and proper interrogatory." *N.Y. Penal Law* § 215.51 (McKinney).

The Second Circuit has held that in order to be guilty of contempt under this section a witness "need not flatly refuse to answer the questions put to him; false and evasive profession of an inability to recall, which amounts to no answer at all, is punishable as criminal contempt." *Langella v. Commissioner of Corrections, State of New York*, 545 F.2d 818, 823 (2d Cir. 1976), quoting *People v. Ianniello*, 36 N.Y. 2d 137, 142, 365 N.Y.S. 2d 821, 824, 325 N.E. 2d 146, 148 (1975). But, in line with the Supreme Court decision in *Bronston, supra*, New York courts have also held that a clearly unresponsive answer to a question before a grand jury, with no effective follow-up in-

quiry which could have elicited responsive and substantially binding answers, will not support a finding of contumacious evasion. *People* v. *Marinaccio*, 90 Misc. 2d 128, 393 N.Y.S. 2d 904 (1977).

Marianaccio summarized the nature of various types of evasive response found by New York courts: (1) the alleged errant replies were specious and indicative of a "distinctive intent to both mislead and obstruct the grand jury in the performance of its function" (*People* v. *McGrath*, 86 Mis. 2d 249, 257, 380 N.Y.S. 2d 976, 985); (2) the nature of the testimony was such that the record itself shows it to be false on its face without the necessity of extrinsic proof (*People* v. *Tilotta*, 84 Misc. 2d 170, 172, 375 N.Y.S. 2d 965, 969); (3) the answer was "so frivolous on its face that it does not constitute an answer at all" or "so absurd that mere inspection makes it necessary to conclude that the witness did not intend his answer to be seriously considered" (*Matter of Finkel* v. *McCook*, 247 App. Div. 57, 67 286 N.Y.S. 755, 765, affirmed 27 N.Y. 366, 3 N.E. 2d 460); (4) the responses consisted of such "persistent equivocations" as to constitute "a pattern of sophisticated evasion" (*People* v. *Renaghan*, 33 N.Y. 2d 991, 993, 353 N.Y.S. 2d 962, 963, 309 N.E. 2d 425, 426); (5) the defendants' conduct shows "beyond any doubt whatever" that he refuses to tell what he knows or that his responses are "obviously and apparently a mere effort to block the examination" (*Appel, supra*, at 495–496); or (6) so "evasive", "incredible" or "obstructive" that the replies "amount to a refusal to answer a legal and pertinent question" (*Matter of Ruskin* v. *Detkin*, 32 N.Y. 2d 293, 296, 297, 344 N.Y.S. 2d 933, 935, 298 N.E. 2d 101, 103). (at 909)

CONCLUSION:

It is obvious that the power of a congressional committee to seek and obtain punishment for contempt is closely related to the investigatory power of Congress. Indeed, it has been said that, in practical terms, "the inquisitorial authority of the Congress ends at the point where a witness will be excused by the courts for refusing to obey a congressional summons to appear or to produce papers, or for refusing to answer questions posed by a member or committee of Congress." 40 *Southern California Law Review* 189 (Winter 1967). In dealing with recalcitrance in their own forum the courts have exhibited a willingness to find contempt where something short of outright refusal to respond has occurred, suggesting, for example, that a defendant's "profession of forgetfulness was not so much false testimony as a refusal to testify at all" *United States* v. *Alo*, 439 F. 2d 751, 754 (2d Cir. 1971). As discussed above, other types of obfuscation short of refusal have been found tantamount to contemptuous conduct. Analogy of the judicial decision discussed here to the congressional setting would seem appropriate.

A few notes of caution are in order however. Section 192 provides for the punishment of one who "willfully" makes default, but as to refusal to answer no intent requirement is included in the statute. A reason for this was suggested in *Deutch* v. *United States*, 235 F. 2d 853 (D.C. Cir. 1955) reversed on other grounds, 367 U.S. 456 (1961), where the court said:

"The statute uses the word "willfully" as a word of art to define the offense of failing to appear, but it does not use the word "willfully" with respect to a person "who having appeared, refuses to answer . . ." The act of refusing (as distinguished from failing) to answer is a positive, affirmative act; the result is conscious and intended. Congress recognized that a failure to appear in response to a summons could well be due to other causes than willfulness or deliberate purpose to disobey the summons or the statute; a witness might be confused as to the time or place of the hearing, or inadvertently overlook it or become ill. To decline or refuse to answer a question however, is by its own nature a deliberate and willful act." (at 854)

In order that a refusal *by evasion* be construed as "a deliberate and willful" act it may be assumed that the courts will insist on a high standard of questioning technique. As suggested by *Bronston*, if there is any substantial possibility that "the questioner's acuity" could have solved the problem of obstinacy—either by eliciting a proper response or creating a clear case of perjury—it becomes unlikely that evasive answers will be accepted by the courts as a basis for a criminal contempt conviction. Further, it is imperative that the witness be under the clear direction of the committee or its chairman to respond to the specific question posed.

While only examination of the facts of a given instance of evasive conduct can constitute a basis for prediction as to the likelihood of conviction under 18 U.S.C. 192, it would appear that there is adequate precedent for such a finding, when the obstinate conduct is extreme, intentional, and obstructive of the business of a properly constituted and authorized legislative committee pursuing a proper legislative purpose.

A GOOD DEAL IN ALASKA

The SPEAKER. Under a previous order of the House, the gentleman from Vermont (Mr. JEFFORDS) is recognized for 5 minutes.

Mr. JEFFORDS. Mr. Speaker, not since 1867, when Uncle Sam purchased Alaska from Russia for less than 2 cents an acre, have U.S. citizens had such a great opportunity as we now have during this Congress. I am talking about the opportunity to protect a great part of our wilderness heritage through passage of H.R. 39, the Alaska National Interest Lands Conservation Act.

In start contrast to preservation efforts in the rest of the Nation, designation of new parks, refuges, wild rivers, and wilderness in Alaska will not be too complicated by people pressures and development patterns. We can start with practically a clean slate and protect unspoiled wilderness.

Moreover, we do not have to be concerned about buying lands, as the proposed conservation areas are lands that already belong to the American people. Compare this situation to the current one in California, where failure to protect complete watersheds in the Redwood National Park from the beginning is forcing us to spend millions of dollars to add new lands to the park—just to protect what we supposedly already protected when the park was created. Ironically, we now must buy back redwood lands that were once publicly owned.

On the other hand, the Alaskan conservation proposals contained in H.R. 39 give us a chance to do things correctly from the start. But we must act before it is too late to protect these special areas.

I would like to commend my colleague from Arizona, MO UDALL, and the other members of the Interior Committee for their hard work and dedication in developing this responsible piece of legislation. Mr. Speaker, I intend to give my full support to H.R. 39 and will vigorously oppose any weakening amendments. I strongly urge my colleagues to vote for this measure, because if we fail we will have committed a national error that can never be corrected.

LEGISLATION TO AMEND THE CONTROLLED SUBSTANCES ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Tennessee (Mr. BEARD) is recognized for 10 minutes.

Mr. BEARD of Tennessee. Mr. Speaker, earlier today, along with my colleagues Mr. WOLFF, Mr. GILMAN, Mr. MURPHY of Illinois, Mr. MANN, and Mr. GUYER, I introduced legislation to amend the Federal law relating to the possession of small amounts of marijuana for personal use. Prior to my introduction of this innovative legislation, Mr. WOLFF, Mr. GILMAN and I held a press conference to discuss why we feel this legislation is superior to both present law and the alternative of decriminalization. Mr. Speaker, I now insert in the RECORD the statements made at this press conference as well as the text of the legislation:

STATEMENT OF HON. ROBIN L. BEARD

By way of background, in March, 1977, the Select Committee on Narcotics Abuse and Control, of which I am a member and which Congressman Wolff is Chairman, held three days of public hearings on the issue of reduction of penalties for possession of small amounts of marihuana for personal use. The Select Committee heard testimony from over 30 individuals and received submissions from many others, representing both proponents and opponents of decriminalization, and amassed a record in excess of 600 pages. In May, 1977, the Select Committee issued a report entitled "Considerations for and Against the Reduction of Federal Penalties for Possession of Small Amounts of Marihuana for Personal Use" which summarized and condensed the major issues raised during the hearings.

Several months after the hearings Congressman Wolff and I began to discuss possible alternatives to the positions expressed by decriminalization proponents and opponents. In the ensuing months our two offices devoted countless hours toward the development of legislation embodying the concept that the possession of small amounts of marihuana should not subject one to the life-time stigma of a criminal record, while at the same time maintaining the position that marihuana use to any extent can be neither condoned nor encouraged by the Federal Government. The final product of this effort is the legislation we will introduce today. We have been joined by: Mr. GILMAN, Mr. MURPHY, Mr. GUYER, and Mr. MANN.

All members of the Select Committee. Mr. GILMAN, is also with us today.

Our bill would amend the Federal Controlled Substances Act of 1970 by establishing within the Department of Justice a Marihuana Pre-Trial Diversion Program. A section-by-section analysis of the bill has been available to you. But briefly, the diversion program would channel persons subject to criminal proceedings for possession of small amounts of marihuana out of the traditional criminal justice system and place them instead in an educational counseling program