

In the

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Supreme Court of the United States

PIPEFITTERS LOCAL UNION
NO. 562 et al.,

Petitioners,

vs.

UNITED STATES,

Respondent.

No. 70-74

Washington, D. C.
January 11, 1972

Pages 1 thru 44

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NO. 562 Et Al.,

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Washington, D. C.

Tuesday, January 11, 1972

The above-entitled matter came on for argument at
1:56 o'clock, p.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
WILLIAM H. REHNQUIST, Associate Justice
LEWIS A. POWELL, Associate Justice

APPEARANCES:

MORRIS A. SHENKER, ESQ., 408 Olive Street,
St. Louis, Missouri 63102, for the Petitioners

LAWRENCE G. WALLACE, ESQ., Office of the
Solicitor General, Department of Justice,
for the Respondent

INDEX

APPEARANCES	Page
MORRIS A. SHENKER, Esq., for the Petitioners	3
LAWRENCE G. WALLACE, Esq., for the Respondent	22
REBUTTAL ARGUMENT OF:	
MORRIS A. SHENKER, Esq., for the Petitioners	41

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in No. 70-74, Pipefitters Local Union against the United States.

Mr. Shenker, you may proceed whenever you are ready.

ORAL ARGUMENT OF MORRIS A. SHENKER, ESQ.,

ON BEHALF OF THE PETITIONERS

MR. SHENKER: Mr. Chief Justice, and may it please the Court:

The case involves an indictment that was returned in the City of St. Louis charging a labor union, Local 562, Pipefitters Local Union No. 562 and three individuals with conspiring to make unlawful -- to make political contributions from that local. The indictment indicates "alleged", but the political fund was established, for which fund contributions would be made and the indictment stated that this fund was the fund of the local union. There was no allegation in the indictment that the contributions were made involuntarily by the members of the union and nonmembers of the union who worked under the jurisdiction of the union, who made these contributions.

And the indictment alleges that as a part of that scheme for auditors that the funds were collected by officers, stewards, members and employees of the fund. That is, of the -- of the union and that those were also collecting -- that

the members and the officers of the union were collecting for the fund.

Pretrial motions were filed and in the pretrial motions it was alleged -- and the indictment was attacked on the ground that there was no charge that the contributions were made involuntarily, on the ground that it was not alleged on the indictment that the payments were union-used, and that the gist of the pre-trial motion was -- the gist was that this was really a parallel political fund that was set up by the union and that for purpose of receiving and for making political expenditures, for receiving political contributions and making political expenditures.

And we contended that there was no violation shown on the face of the indictment.

A Bill of Particulars was requested but instead of a Bill of Particulars, the government merely filed a court memorandum and in that memorandum the government stated that it was not necessary, there was no necessity to prove that the funds were not volunteered, that voluntariness was not an essence of the crime that was charged.

The government theory of the case at the trials was that they submitted an instruction, and that instruction, was to set up an Appellants and Petitioners Brief and pages 12 and 13 lists a number of grounds.

The original 10 grounds, which are listed on page 12,

were submitted by the government and at the request of the Defendants, additional grounds were added. And on that basis the court instructed the jury and gave back as to test the both of the matters which the jury could consider whether the -- whether the fund was, in fact, a fund of the union or whether it was a voluntary political fund that was established by the union.

The Defendants requested instructions for them that would specifically state as to that making voluntary payments as a defense and the court said, on the instructions, however, the mere fact that the payments into the fund may have been made voluntarily by some or even all of the contributors thereto does not of itself -- the court said, meaning that the monies so paid into the fund was not union money and it is on that theory on which the case was tried.

The Defendants also submitted two instructions which I will refer to later; they submitted many instructions, but two particular instructions which we thought set out specifically the -- the -- the law that should be governed in accordance with the trial decisions of this Court, but the court refused all of the requested instructions of the Defendants and the only one that the court incorporated are the -- those which are set out in the footnote on page 13.

Now, the facts are as follows -- but, first, let me say this -- the jury found the Defendants guilty and the

individuals as well as the union. The union was fined \$5,000 and each defendant was sentenced to one year in jail and a punishment, an additional fine of \$1,000.

The history of the fund is this: In 1949, a political fund was established by this -- a voluntary political fund was established by this union and it was administered independently throughout, openly and notoriously and they made contributions of hundreds of thousands of dollars from 1949 on until the date of the conviction. But there was one change that took place in this fund in 1963.

The union negotiated a contract with the employers for providing for the checkoff system, and when they provided for the checkoff system they consulted with their lawyer, the very prominent labor lawyer in St. Louis who has devoted most of his lifetime to labor law, Mr. Harry Craig, whose name is mentioned and who was a witness in the case and Mr. Craig at that time suggested in view of a decision that was -- the law that prevailed in the Eastern District of Missouri -- there was a case wherein the Teamsters were prosecuted, Local 688 was prosecuted for making contributions from the union to which the Judge sustained a motion to dismiss after the evidence was in on the ground that this was -- that money came in voluntarily to the union.

Mr. Craig first suggested that there should be a checkoff of the political contributions, that is, the

voluntary political contributions in the same manner as they checked off the other monies that was collected by the union, but it would be paid in specifically to the Voluntary Political Fund.

After awhile, Mr. Craig changed his mind and provided a form which was to be filled out by each of the members that wanted to contribute to the political fund and that is, they were provided with and they then stated in the form that they were willing to make voluntary contributions, they were willing to contribute so much per day's work and that they can cancel that whenever they desire. They could discontinue giving that money and that they understood it's voluntary and that they understood specifically that this money is being given for political and other purposes to be administered by this independent fund.

After that was done, then it was decided to continue to collect the money in the same manner that which they did before, that is, the foreman or the stewards on the job continued to collect the money and sent it in to this political organization, that is, to this Voluntary Political, Charitable and Educational Fund.

Q Mr. Shenker --

MR. SHENKER: Yes.

Q Could any of the contributors specify the candidates they wanted to contribute to or the particular

political party?

MR. SHENKER: No, sir. This was a complete fund, a fund that was all put in together of all the people that contributed and then those people -- and then -- those had political meetings often and would endorse candidates and -- but they had an administrator of the fund who could act as he saw fit. In other words, he would have broad powers to act. Well, in answering to that question, I might tell you that it so happens that most of the contributors that testified -- well, I'll tell you like this, all the witnesses that testified were -- testified that they were Democrats and they contributed to the Democratic Party and the one person that testified, he said he was a Republican and that he did not contribute to the fund. He was -- that was one of the witnesses that testified. So that that question will answer your question directly, they did not specify but they could stop contributing any time they wanted to.

Of the evidence that was offered, the government introduced 12 stewards and foremen who collected the money. Some of those, at least one foreman as I recall mentioned in the Record testified that even though he collected contributions he himself never contributed. He -- they also testified -- and remember, these are the government witnesses, they also testified that in many instances when some people did not contribute that he called and asked the Director or other

people who were in charge of the fund and they told him there was nothing, that nothing could be done, that it was strictly voluntary and that that went on for years. Additionally, 77 witnesses testified for the Defendant and for Article 7732, testified that they either never contributed to the local Voluntary Political Fund, either contributed at some time and not contributed at other times, or contributed whenever they felt like it, many times they did not contribute.

The testimony also showed that while there was a complete record kept of the money that was received, that there was no way from the records to determine if anyone paid up in full or continuously paid or whether there was a way of finding out from the records if a person was delinquent and did not pay.

The evidence also showed that no effort was ever made to get people to pay up anything that may have been delinquent or that they may not have paid in accordance with their written instrument whatever they had made to contribute to the voluntary fund.

Q Mr. Shenker: Does the Record show what percentage of the union members signed the contribution agreements?

MR. SHENKER: I do not recall that. It was not shown, Your Honor. It does not show. But --- but for the sake of discussion I think that while the Record does not

show, I would have to say that a large number of the people or the members of the union as well as the people that worked under the jurisdiction of that union did sign that agreement.

It was a fund that was administered, that had separate bank accounts, that had a separate name, they made payments out of that fund by check; it was audited, no discrepancies were found, the government agents had the books for over a period of a year. In fact, they returned them to us just before the trial and they testified they could find no shortages of any kind.

Q Was any of the money used for other than political purposes?

MR. SHENKER: Yes. It was used sometimes in connection with charitable contributions, substantial amounts were used in connection with charitable contributions. On one occasion there was a contribution made towards some payment in behalf of some people that were benefits. It was not for the union benefits, it was a contribution. They also invested some money in buying a place in Clarksville, Missouri which is about approximately 60 miles from the city where the main office is which place -- that is, we were going to have recreation facilities but it would also hold political meetings and that is --

Q Was this a union facility?

MR. SHENKER: No, sir. No, sir, it was a facility belonging to the Voluntary Fund, the Voluntary Political, Educational --

Q But the fund would use it for -- I mean, the union would use it for recreation?

MR. SHENKER: No, sir. The people that paid into the fund would use it and then -- and it was next to -- it was next to another facility that was held by the Welfare Fund of the same union.

Q Well, then I take it, Mr. Shenker, at issue here in this case is not the question of the constitutionality of the statute insofar as it prohibits the union from using membership dues normally paid in and checked off for political purposes?

MR. SHENKER: Well, we -- we say that that is not at issue but we say that this was money that was given specifically for that purpose.

Q Well, you're not challenging the law insofar as it would apply to the use of membership dues?

MR. SHENKER: Well, we are not challenging it directly unless -- unless this Court were to hold -- unless this Court were to hold that we are not permitted to do what we did. Then, of course, we would challenge it, but --

Q Well, do you?

MR. SHENKER: -- Let's put it like this --

Q Do you, or did you, in the lower courts, challenge the --

MR. SHENKER: We challenge the constitutionality --

Q Right across the board?

MR. SHENKER: Not in so many words, we didn't challenge it because we do not consider that dues. We never did consider it dues. In other words, the question is this: We did not consider that dues, so therefore, we did not challenge the law on that matter.

Q Well, you didn't ask for dismissal of the indictment on the basis of the law in its entirety was unconstitutional?

MR. SHENKER: I don't think so. We did not.

Q Then you've never claimed that in this case?

MR. SHENKER: We asked that it was vague, indefinite and uncertain. We did contend that, that the law was vague, that we will point out to you particularly that it is vague insofar as the manner in which it was construed by the lower court, that the law --

Q Well, Mr. Shenker --

MR. SHENKER: Yes, sir.

Q The statute reads as "contributions by any labor organization."

MR. SHENKER: Right.

Q And your position is that there is no

contribution here by any labor organization?

MR. SHENKER: Yes, sir.

Q Is that the basis of your --

MR. SHENKER: That's exactly our contention, that this is not the contribution by -- by a labor organization but we say that if it's being held -- constitutional -- in other words, if the interpretation that was given to it at the lower court, we say it's unconstitutional as applied here, but we're not challenging it at this point because we're really not concerned.

Q Well, I gather if any labor organization makes a contribution it's immaterial whether the fund from which the contribution is made is union dues or some other fund of the union. Is that right?

MR. SHENKER: Well, that seems to be the understanding excepting in our district. And if I may just -- if I may just state of course good faith, as far as we're concerned, is important in this case and that's why I'm going to say that, because we did have advice of counsel all along in it and that is this that we did have a case where the union, the Teamster's Union Local 688, made a contribution and -- and they tried them, and the court sustained a motion for judgment of acquittal and the court -- the government -- did not appeal.

What happened there is this; the data is the

following, that members were able to designate to the union a part, a certain part of their dues shall be used for political purposes. In other words, in --

Q There, I gather, the charge at least was, that the labor organization, to wit, the Teamsters, made the contributions.

MR. SHENKER: That is correct.

Q And your position here is that no labor organization is involved. The contribution is made by an organization separate from the labor organization. Is that it?

MR. SHENKER: That is correct. A parallel organization that's established by Local 562.

Q And you're also claiming that the union labor organization did not compel members to make the contribution to the separate organization?

MR. SHENKER: That is correct. You've brought me right to a very important question that we have here, the court construction on the question of law that it wasn't necessary that a contribution be voluntary. In other words, they said that it didn't make any difference whether the contribution was voluntary or not voluntary but in the trial below, the District Court, somehow the government just didn't get around to ever saying that it was perfectly proper to have a parallel organization which could make political contributions, as long as those contributions are voluntarily

received and that it was perfectly all right for the officers and the agents of the union and the employees of the union to participate in it.

Now, on appearing for the first time, the government in their Brief says that it is proper to have such an organization, as long as the contributions are voluntary. Now, we submit that the least we should have had is that question be submitted to the jury to determine whether the contributions were or were not voluntary.

Q Well, except as Mr. Justice Brennan has suggested, what the statute prohibits is the making of a contribution by a labor organization and if the contribution was by the labor organization, there is a violation of the statute regardless of where those funds of the labor organizations came from. Now, if I gave your union \$50,000 as a present last Christmas, right to the union, it would be a violation of the statute to make a political contribution with that \$50,000, even though my gift was wholly voluntary.

MR. SHENKER: That is correct with this exception, and, as I say, we don't have to reach that. We don't have to reach that because we complain that this was not the contribution by a labor union.

Q We understand that.

MR. SHENKER: We have always. But I want you to keep in mind that in the Teamster's case in St. Louis, which

was the law in our district at that time, which lawyers could rely on, when it said that if it's a voluntary contribution, that is, a voluntary contribution to the union, then the union could pass that money on.

Well, we don't have to reach that right now. We're not concerned with that because we contend that this was not a contribution by the union.

Q Mr. Shenker --

MR. SHENKER: Yes, sir.

Q On your parallel lines, you remember way back, if you look in the distance, they get together. How parallel were the lines here?

MR. SHENKER: Well --

Q Where did the -- do you have an office?

MR. SHENKER: We have an -- we had an office next door, right across the hall from the union. In other words, it's a building occupied by --

Q Are there any members who are not members of the union?

MR. SHENKER: Yes, sir. Here there were Local 562 had jurisdiction of certain large jobs. Now there were small unions in the areas outside of Missouri who are not equipped to handle all jobs, so Local 562 would have jurisdiction of large jobs. In those instances, some of the employees that were members of the other locals would come and

work on these jobs. Now, on the other workers there, originally, they used to pay \$8 a month as a contribution to work to the union. Under the Landrum-Griffin Law, Mr. Craig, the union attorney, said that it would be some question that if they are permitted to pay the \$8 per month that thereupon they would have to be permitted to join later the union, which would make this local entirely too big and that they wouldn't be justified in expanding their rolls that way. So for that reason they abandoned the \$8 completely, but the people that worked on those jobs, some of them did contribute to the Political Fund.

Q \$8?

MR. SHENKER: No, no, they contributed more than that. They'd contribute as much as \$2 a day -- a day. In other words, a contributor started off at \$1 a day and it finally went to \$2 a day. But it was all voluntary and the evidence showed that many of them testified that many of them didn't contribute at all and it did not affect their jobs.

Q Mr. Shenker, I had thought this case had been tried in the district court entirely on the theory that this whole thing was a scheme and a plan and a subterfuge to have this committee act like an independent committee when it was in fact the union functioning under another name. Now, wasn't that the government --

MR. SHENKER: That's where it finally wound up being

tried. We did not know just what was being tried, to be perfectly frank about it. But we finally wound up that that's what was being tried. It was tried that this was a sham and a scheme to -- for the union to make political contributions.

Now, the reason that the voluntariness was important because if the people made the contributions voluntarily, why would they make that contribution if the union wasn't putting on pressure unless it was voluntarily?

Q Well, wasn't the theory of the case much like the theory of cases where the government or some other litigant tries to pierce the corporate veil and show that what pretends and purports to be one thing is really something else? Wasn't that the whole idea of this case?

MR. SHENKER: I think that is correct. That was an attempt made to do it in that way. But we could --

Q Is that the thrust of the instructions to the jury?

MR. SHENKER: That is the thrust of the instructions to the jury and if you will look at pages 72 and 73 of the Defendants Briefs which were the instructions that were really drastic -- there were many others, but two of them in particular there and if I could just take one second to read one of them at least. I'm going to read -- that's on page 72 -- where we further instruct "the jury that the law permits labor union members to set up a fund or organization for the

collection of money to be used for making contributions to candidates for federal political office. The law merely prohibits labor union money from being used for such purposes. Therefore, if you find that contributions made to the Political, Educational, Legislative, Charity and Defense Fund were made made by members of Local 562 voluntarily and did not constitute the payment of union dues or labor union money, you must find the defendants not guilty."

Now the court refused -- we gave this instruction in various ways and various -- and the court refused this particular instruction in every way.

Now, it was not -- I'm sorry --

Q May I just ask you this? Did I understand you to answer Mr. Justice White earlier that if we agree that, indeed, this voluntary fund was simply an alter ego of the union --

MR. SHENKER: Yes.

Q -- that then you attack the face of the statute?

MR. SHENKER: Yes, sir.

Q As unconstitutional because you say what, the First Amendment prohibits Congress from enacting a law prohibiting labor unions from making contributions for political purposes?

MR. SHENKER: If those contributions are made voluntarily.

Q Only if made voluntarily.

MR. SHENKER: Only if they are made voluntarily.

In other words, and secondly, we would say that it is very -- that it doesn't square up, just what you can and you cannot do, and that it is the strictures as far as the First Amendment is concerned.

But, now, the point that we point out, there was a complete lack -- now, getting back to -- I'm sorry.

Q Did you say -- just to carry that on, Mr. Shenker, let's assume that a union collects regular dues from its members but it also has them donate, voluntarily, say, other monies and with a consent for the union to use it for political purposes.

MR. SHENKER: Yes, sir.

Q And they would be union funds. There is no separate fund or anything else. And the union uses that extra money for political purposes. Presumably the statute permits that.

MR. SHENKER: I would say certainly the way they handled the Teamsters case in St. Louis that it does permit it. In other words, it would automatically become a special fund.

Q Well, you mean the statute permits it?

MR. SHENKER: I would say it does. It would automatically become a special fund.

Q Well, if it didn't permit it -- if it didn't permit it, you would say the statute was, at least to that extent, unconstitutional?

MR. SHENKER: Yes, sir. In other words, if -- all the legislative history shows, it says, that it should not be union money. But if money is given for a special purpose, you can have a trust fund set up for political purposes. You can do anything else. And I am sure the Court is familiar with the legislative history, we set it out at great length in our Brief.

Q So you say the crucial thing in this case has to be whether or not the members voluntarily made contributions for political purposes and, really, it is irrelevant whether they made them into a separate fund or to the union?

MR. SHENKER: No, no, I'm going to go a little bit farther than that. I'm going to go a little farther than that. I say this; That the crucial thing is here that these people attempted to do everything and everything, the legislative history, the lawyers, as well as three Judges of the Court of Appeals, said was the right way to set up a parallel fund.

Q So you were taking more precautions than --

MR. SHENKER: That's right.

Q -- than my question --

MR. SHENKER: That's right, we did not go all the way, as the Teamsters are doing there. We took precautions. The thing that -- the thing that is really glaringly -- is so glaringly odd here in this case is this: There isn't anything that these people did that was a violation of law. You could take all the acts which the -- which the -- are enumerated in the instructions and they're all things which are set out which you can do by setting up a parallel organization, that you can have the business agent be active in it, you can have the stewards, you can have the foremen, you can have everyone else be active in it and still they are going on and turn this around and attempt to make this a violation -- make this a violation under a conspiracy.

Now, I see that I only have a few minutes left, and I would like to have permission to have some time for rebuttal.

MR. CHIEF JUSTICE BURGER: Very well, Mr. Shenker.
Mr. Wallace.

ORAL ARGUMENT OF LAWRENCE G. WALLACE, ESQ.,

ON BEHALF OF THE RESPONDENT

MR. WALLACE: Mr. Chief Justice, and may it please the Court:

Since 1907, Congress has prohibited corporations and national banks from making contributions to certain political campaigns. This legislation has been changed over the years and the history is recounted in previous opinions

of this Court, particularly in the Auto Workers case in volume 352 U.S. In 1943, Congress first extended the same prohibitions to labor unions on a temporary war-time basis and then, 25 years ago, in 1947, this prohibition against unions and against corporations -- the same prohibition -- was made permanent in the statute under which the present prosecution was brought.

The legislative history of these provisions, which have also been recounted in previous opinions, shows a dual Congressional purpose, (a), to protect the electoral process from undue influence which in some instances Congress believed threatened the very integrity and the representative character of the elections and, (b), to protect individual stockholders and individual union members from having their funds used to support political causes they might disagree with or that they might prefer not to support financially.

And it seems to us not to be coincidental that the extension of these prohibitions to unions followed upon the protective legislation of preceding decades such as the National Labor Relations Act and the Norris-LaGuardia Act. As a result of that legislation, like corporations, unions became aggregations of economic power fostered in important ways by government through the granting of special legal status and special prerogatives, legal powers which might induce individuals to pool their economic resources in these

organizations and the Congressional concern that is manifested through the legislative history was that payments made by individuals to these organizations for reasons other than a desire to support particular candidates for public office might be diverted to that use.

Congress sought to assure through this legislation that when individuals joined together for the purpose of supporting political campaigns, it will be done truly of their own volition, it will be a matter of their own deliberate choice and not something that results from the power of organizations being applied to them.

Now, in the present case, unlike the preceding ones in which this Court has considered the statute, disbursements from the Pipefitters Fund were made directly to federal political candidates. This was true in the sum of almost \$100,000 in the 1964 election and almost \$50,000 in the 1966 election, which are the only two federal elections during the indictment period. The indictment was in the spring of 1968. And there is no question but what these are contributions or expenditures within the meaning of the Act.

The entire issue is whether these contributions or expenditures were made by the union for purposes of applying the statute.

Q You state the issue, on page 24 of your Brief.

You say, ".....the issue which this case presents is whether Congress did -- and may validly -- prohibit labor unions from using regular union funds to make direct monetary contributions for political purposes to candidates in federal elections."

And, of course, that's not the issue at all, from the point of view of your opponents on the other side. They say that issue isn't here. This is -- basically here the issue is a factual issue and that is, whether or not these were union funds. But even the issue as you state it, Mr. Wallace, I am intrigued by that word "regular." That doesn't appear in the statute. Why did you feel the need to put that adjective in there?

MR. WALLACE: Well -- I don't think the statute requires it. I think the facts here permitted the word to be put in. It's the issue involved in this case, shown by the evidence in this case.

Q My brother White asked a question involving a hypothetical case of voluntary contributions, purely voluntary contributions by labor union members to the union and ear-marked for further contributions to political causes or candidates and those would be union funds, but they would not be regular union funds. Are you trying to carve out that case with that adjective?

MR. WALLACE: Well, we felt that we need not in

this case take on that case, and we're not arguing in this case that the union could never be the conduit for -- if you want to call them "voluntary contributions" that are made through a truly voluntary association.

I think much of the difficulty in the discussion here and in the argument is because the word "voluntary" is such an imprecise word. We mentioned this in our Brief, that the great difference between consenting and doing what you are told to do without protest, that kind of voluntariness, and what we think Congress was trying to assure would be the freedom of choice that individuals would have in choosing to associate together politically and make contributions to political campaigns which would be more an element of their own free deliberate choice, that this is what they desire to do, rather than merely the kind of consent that we think the evidence in this case pointed to, in the repeated testimony of many individuals, that their contributions were voluntary.

Q Well, Mr. Wallace, in that respect, what about the request to instruct, that the jury couldn't convict unless the contributions were involuntary? That was refused, wasn't it?

MR. WALLACE: That was refused. I think it was properly refused, considering the way the term "voluntary" had been used throughout that trial.

Q You mean the statute would permit conviction

even though the contributions were voluntary?

MR. WALLACE: Under the statute, mere consent of the kind involved here that the use of the word "voluntary" implied throughout this trial, is not a defense to the use by a corporation of its monies for political campaigns or the use by a union of its money.

Q I take it, then, you are willing to defend the instructions as given here and not rely on the failure to object to the instructions at the trial?

MR. WALLACE: We think the instructions were entirely proper. We also think that the Court of Appeals acted properly in holding that a deliberate choice had been made on appeal not to preserve objections to the instructions and that it was within the prerogative of the Court of Appeals to refuse to pass on that issue.

Q And you rely on that ground here?

MR. WALLACE: Well, I believe that this Court sitting as a Court of Error should uphold the Court of Appeals judgment on that. But we also stand on the instructions. We think there was nothing wrong with these instructions in the context of this case and --

Q You defended it on alternate grounds?

MR. WALLACE: We were defending on both grounds, Mr. Justice --

Q Mr. Wallace, suppose this very union, with all

the force that you can imagine, went to each one of its members and insisted that they contribute to the Democratic Party of St. Louis, it wouldn't violate the statute one iota, would it?

MR. WALLACE: No, this statute is about contributions by the union of union funds. That is what Congress sought to reach here.

Q Well, that's what I was trying to get to. Just where does the union contribute to funds here?

MR. WALLACE: Well, that, we believe, was the question put to the jury. As with any statute of this type, the question is whether the facts show that what the statute makes unlawful happened here, and --

Q How many employees contributed to the fund in all? The figures are not too clear to me. I see a figure of 2,063 and another figure of 2,064. Was it some such number as that?

MR. WALLACE: I don't see that the record really establishes exactly how many contributed to the fund. There are indications in the record that the parties were acting as if the great majority, practically all of them, contributed to the fund.

Q Let me put this question to you that I put to Mr. Shenker. I read this record and the opinion of the Court of Appeals and the instruction of the trial judge

to see a case in which the government was alleging that this committee was just a front. It was in the same building on the same floor. It was run by the officers of the union and that they called the contributions, among themselves, assessments and that, with a lot of other bits and pieces of fact, added up to the proposition that this committee really was, in fact, the union, even though, in name, it had another name. Now, is that the theory that the government is standing on?

MR. WALLACE: That was the theory of our case throughout. I think it was set forth very clearly in the indictment and on page 14 of the Appendix, paragraph 10 of the indictment, presents the case under that theory. The theory is that this was a device being used by the union to make contributions of union funds to political campaigns.

Q If this verdict can't be read as a verdict by the jury, that this committee was a front for the union and was, in fact, the union, the conviction could not stand, could it?

MR. WALLACE: I don't believe so. That's exactly the issue that was put to the jury. We have reproduced the pertinent portion of the instructions to the jury in our brief and if Your Honors want to turn to page 17 of our brief, the paragraph in the middle of that

page put that precise issue to the jury. It seems to me that that is what the jury was asked to decide and, if you don't mind, I'll just very quickly read through that paragraph:

"In this case, evidence was offered by the Government to the effect that funds were contributed to or on behalf of candidates for federal office and that such funds were paid out upon checks drawn upon the Pipefitters Fund" I'll call it. "It is necessary, therefore, that the evidence establish that the Pipefitters Fund was in fact a union fund, that the money therein was union money, and that the real contributor to the candidates was the union. As to this issue, the defendants contend that the fund in question was a bona fide entity separate and apart from the union, established by the voluntary good faith act of members of Pipefitters Local 562 and others, from which contributions to candidates were made on behalf of the persons who created the fund and not on behalf of the union. On the other hand, the Government contends that the fund was a mere artifice or device set up by the defendants and others as a part of the alleged conspiracy to give the outward appearance of being an independent and separate entity but in fact constituting a part of union funds."

Q Mr. Wallace, is there any later instruction

explaining that one?

MR. WALLACE: Not explaining that one. There were then 19 factors listed which the jury should take into account in answering the question, but the question is put, I think, most succinctly, in this paragraph and much of the argument in the briefs on the other side and the oral argument on the other side seems to be based on the premise that the jury decided this issue of fact in favor of the Defendants but, of course, the verdict indicates that the actual issue was decided in support of the government's theory of the case, that the fund was an artifice or device through which the union was making contributions of union money and we think there is ample evidence in the case to support this factual determination by the jury.

I'd like to briefly recount some of that evidence to the Court. In the first place, Local 562 had jurisdiction over all the major jobs in more than half of the State of Missouri and contractors in this area had to get their pipefitters for major jobs from Local 562 during this period even though there were three other locals located in the area whose members regularly worked on jobs under 562's jurisdiction. Those jobs paid more than the jobs under the jurisdiction of the other locals. And the principal operating revenues of this local came from assessments imposed as fixed sums per day worked on each

member of this local or each out-of-towner working under the Local's jurisdiction in the pre-indictment period and smaller monthly dues were paid by the members which were passed through the international in large part.

The fund involved here, the Pipefitter's Fund, was begun in 1949 and at first, the assessments for the fund and for the union dues were made together in exactly the same way and applied in exactly the same way to both the members of the local and the out-of-towners. At first, 25 cents per day was paid by each man as a union assessment and 25 cents per day to the fund. Later, it was 50 cents per day to each. And, starting in January, 1963, which is the indictment period, the local stopped collecting assessments from the nonmembers but a pattern was established whereby each of these nonmembers would contribute to the fund at the same rate as the total of the daily contribution of a member of the local to the fund and I added, to his assessment to the union. And these were still being treated, for all practical purposes, collected in the manner that they had previously been collected as assessments.

Q Was there any evidence of coercion or reprisal against employees who did not contribute?

MR. WALLACE: Well, there was evidence that they didn't question but what the contribution was an obligation that they had to the union. There was some individual

testimony that after failing to contribute, a man was not hired after that week again.

Q These were the out-of-towners?

MR. WALLACE: These were the out-of-towners. But we don't rely on that testimony alone because most of the evidence, it seems to us, indicates that both the union leadership and the members and the out-of-towners considered this just part of their regular obligations to the union that would be regularly paid and that, indeed, were regularly paid and at one point the union -- the union's executive board conveyed this impression to the membership quite clearly. This is recounted at page 11 of our brief.

In the middle of page 11: At the time that there was a 50 cent increase in the assessment, the daily assessment of union members, the Executive Board minutes distributed to the members explicitly tied this to a 50 cent decrease in the contribution to the fund that would then be expected of the members of the local and the quotation from the minutes distributed to the members was, "We believe, when the details are explained to all of you, all will agree as we do on this matter. Because this will not be one extra penny cost to members of Local Union 562."

The whole assumption is that every member pays the prescribed contribution to the fund and therefore, because the union treasury needed more money, an adjustment would

be made, 50 cents more to the treasury, 50 cents less to the fund for internal bookkeeping purposes. It would not affect the financial obligations of the members at all.

Q The difficulty is, of course, or one of the many difficulties in this case, is the members of the jury were instructed that they could return the verdict of guilty in this case even if they found every contribution to the fund was voluntary. And that is correct, isn't it?

MR. WALLACE: That is correct. But that instruction was given in the context of the entire instruction here.

Q You're asking us to second-guess the jury and to say, "Well, they couldn't have found that, that reasonable men must have found that all the contributions were involuntary." Isn't that what you are asking us to do with this phase of your argument?

MR. WALLACE: Well, what we're really saying is that the basic question put to the jury was, were these really union monies that had been collected in the manner that union monies are collected or paid in as union money --

Q Well --

MR. WALLACE: -- which is --

Q If the union was just a conduit for voluntary contributions, I gather that you implicitly hinted at least, at the outset of your argument that those might not be regular union funds, so if --

MR. WALLACE: We think that is not the case.

Q -- these were all voluntary contributions then -- even then though this was simply an alter ego of the union, if they were all voluntary contributions, made for political purposes by the contributors --

MR. WALLACE: Well, now, that's -- you see, that's where I stopped.

Q Well, but --

MR. WALLACE: The instruction wasn't made for political purposes. The instructions were even if these were voluntary contributions. If they were union monies, they were being used illegally under the statute.

Q Regular union monies, you mean.

MR. WALLACE: That's right, not political monies, not funds that were voluntarily being contributed for the purpose of supporting political causes, but assessments that were being made as part of their obligations to the union. What Congress was concerned about was that the economic power of the organization would be brought to bear to get money that people were really giving for other reasons and use that money, and that money would be used by the organization for political purposes. The issue put to the jury was, was this really money being given by these individuals to the union for union purposes because they wanted to support the union or thought that they were obligated to support the

union. Even though they were voluntarily doing it, in the sense that they consented to make the payments that were asked of them, nonetheless the question that the jury decided was that these were union monies, not separate monies for political purposes that were intended to be used for that.

Q Well, the jury may have decided that every single one of these contributions was a voluntary contribution under the instructions.

MR. WALLACE: Voluntary? Just as the assessments are voluntarily paid. When you are asked to pay your union assessment, you pay it.

Q The difficulty is, as you rightly point out in your brief, that the adverb "voluntary" is a difficult one to define and no attempt was made to define it at the trial of this case. Isn't that correct?

MR. WALLACE: That's right. It was used over and over again in the testimony/who said that they paid what they were asked to, "voluntarily." And this portion of the instruction starts off, "A great deal of evidence has been introduced on whether the payments were voluntary." And this is relevant, but not the total answer to the question, the judge said.

Q Well, I suppose it is not inconsistent for somebody to give something to a union for political purposes and also be able to say that after it has been given the

money is union money? I mean, it belongs to the union and they just are going to use it for political purposes. Isn't that true? Now, you say it is inconceivable, under these instructions, that the jury could have found that there were -- that these monies were union monies even though voluntarily given for political purposes?

MR. WALLACE: I think the instruction was clear on that. The whole trial was based on the question of whether this was a bona fide political fund where people were making contributions for political purposes or whether they were really paying obligations that they thought they had to pay to be union, because of the union's economic power. This was the whole theory of the case and much of the testimony looked in this direction. I'd like, if I may, to refer Your Honors to the testimony of one man who was an out-of-towner working in this jurisdiction, which is in Volume II of the Record on page 757. The cross-examination begins, "Sir, your testimony is that you get from thirty to forty dollars more per week when you are working on a St. Louis job." Answer, "Yes. Approximately."

Question. "Is that why you were willing to pay this \$10.00 a week into the Fund?" Answer. "Yes."

And then, after some intervening questioning on page 759 the Witness says, "It is to my interest to pay the voluntary donation, because the wages are better under the

St. Louis scale than they are in the Cape Girardeau scale."

Question. "Yes, sir. And it is a good deal for you to pay \$10.00 a week in order to get thirty to forty dollars more pay a week out of that job?"

Answer. "Yes."

"That's the type of deal that you are saying is better for you?"

"Yes."

And then the question, "And except for that, you wouldn't be voluntarily paying anything, would you?"

Answer. "No."

Now, in the context of the trial in which "voluntary payments" is used in that manner, this instruction was made and I think, if you read it as part of the entire instruction, the theory of the case follows through from the indictment right through the instructions and, it seems to us, implements this long-standing Congressional purpose.

Q Mr. Wallace --

Q Mr. Wallace, there is nothing in the record, is there, that this money was used for "union purposes"?

MR. WALLACE: The record does indicate that strike benefits were paid and that the money was also used to purchase this retirement or recreation center. There was also a time when the Gift Fund for Petitioner Calanan, who is now deceased, was substituted for the --

Q At which time, as I understand it, it was comingling with the regular union funds, when they made those payments?

MR. WALLACE: The payments? Yes, sir.

Q Well, anyway, Mr. Wallace --

MR. WALLACE: All we had was a record, an accountant's record, of disbursements from the funds. There isn't much in the way of indication of how the funds were handled.

Q Well, in any event, in essence, aren't you telling us that even those payments that were made for political purposes, the political purposes were union purposes, not the individual contributors' purposes, necessarily? Aren't you?

MR. WALLACE: Disbursements from the funds?

Q The \$100,000, whatever it was, in one instance, and \$50,000, that those were paid for union purposes, to serve union ends, not to serve the ends of the individuals whose contributions made up the fund.

MR. WALLACE: What the jury decided was that those were payments really made by the union and that's what the statute forbids.

Q Then why do you have to rely on pensions and strike benefits and all the rest, if you are right?

MR. WALLACE: Well, it's just an indication that

the leadership of the union treated this money as available to them not merely for political expenditures but for any union purposes.

Q Including political expenditures to serve --

MR. WALLACE: Including political expenditures.

Q Mr. Wallace, to follow up on a question of Justice White's, it is conceivable as a matter of fact that you could have voluntary contributions to a union and still not have the union merely a conduit for those payments? That the union itself could exercise some judgment in how those voluntary contributions were in turn to be spent?

MR. WALLACE: Quite so, Your Honor, I didn't mean to say that the statute would permit the union to make political contributions in a situation where voluntary contributions were being made to the union. I do think --

Q Even though they were voluntarily made for political purposes?

MR. WALLACE: Even though they were voluntarily made for political purposes, it would be a different case from this one and I think, a more difficult case.

Well, we believe that in light of the instructions given and the testimony before them, the verdict here properly applied the statute to these facts. It was a complicated factual determination, but that does not mean that the statute is unconstitutionally vague. It was the

kind of factual determination that often has to be made in cases under the Sherman Act or in criminal fraud cases involving complex business transactions where factual judgment has to be made as to the substance of the transaction that was placed before the jury. Nor, in light of the purposes Congress had in mind, does the statute reach too broadly here, because I think the evidence in this case shows quite persuasively that it was a reasonable judgment for Congress to make that no lesser measure would adequately protect individual members from having the economic power of these organizations brought to bear upon them in ways that would cause their funds to be exacted to support political causes when their preferences might really be not to support those causes or any causes.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Wallace.

Mr. Shenker, you have about one minute left.

REBUTTAL ARGUMENT OF MORRIS A. SHENKER, ESQ.,

ON BEHALF OF THE PETITIONERS

MR. SHENKER: One minute. Mr. Chief Justice, and may it please the Court:

Just two things. One, there was no comingling of funds and, two, that the Political Fund was given, the name of it was, the full name, was Political, Educational, Legislative, Charity and Defense Fund, and there was no comingling.

Now, I invite you to please -- which I know you

will -- read the instructions, particularly those that are given in our brief on pages 72 and 73, where we specifically asked instructions which would have further been in line with the position that they are taking, the government is taking now.

I want to call the Court's attention that the government did not take this position at the trial, and they would not -- did not take the position that they did not question that the union has a right to establish a political organization for the purpose of receiving earmarked political monies that are elective and voluntary contributions.

Q Mr. Shenker: What was the legislative purpose of this fund? What were they going to do with the money for legislative purposes?

MR. SHENKER: Well, there was such a thing that they would be authorized to hire a person to attend the sessions of the legislature, and to keep advised on the manner in which the Legislature of Missouri as well as in other states wherein their people may be doing work with that. They would --

Q Laws with respect to unions?

MR. SHENKER: Relating to all matters. In other words, they contribute a substantial amount -- in excess, I believe, during that period -- in excess of \$100,000 to charity during that period and --

Q What kind of charity? What kind --

MR. SHENKER: One of the things that we contributed to the United Fund, for instance -- as I recall, I do not remember all the charities. They have contributed to various hospitals, as I recall. I don't know if it was in the same years, they contributed substantial sums to the Business Club Foundation. They contributed money to --

Q Some of it went to retired members of the union?

MR. SHENKER: No, no. No, these which I mentioned did not. All these charities which I mentioned had nothing to do with the union.

Q Not from the Charity Fund, but from the fund generally, was there not --

MR. SHENKER: No, there was only one instance, as I recall, where there -- there was a certain contribution made towards helping to pay some of the retirees, and I do not recall another. I think it was \$10,000 out of some, practically million dollars. There was no -- there were no comingling of funds at all.

Q Going back to this Legislative Fund, were they interested in supporting legislation that affected the union, or was it an activity like the League of Women Voters that is for everybody's benefit?

MR. SHENKER: I would say that it was for everybody's benefit, but naturally, they were laboring people and

undoubtedly, they were interested in liberal legislation, legislation which would be good not necessarily for their union, but for labor generally. They were constantly supporting liberal candidates, candidates with liberal backgrounds and the same thing with legislation.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Shenker.

MR. SHENKER: Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Wallace.

The case is submitted.

(Whereupon, at 2:59 p.m., the case was submitted.)