

**“Who Can Define the Meaning of Un-American?”
The Story of Ed Yellin and the Era of Anti-Communism**

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A thesis submitted in partial fulfillment of
the requirements for the degree of

BACHELOR OF ARTS WITH HONORS

DEPARTMENT OF HISTORY

UNIVERSITY OF MICHIGAN

March 29, 2010

Advised by Professor Howard Brick

For Ed.

*Whose story inspired me in my writing,
and whose courage inspired me in my life.*

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ACKNOWLEDGEMENTS

When I first met my advisor, Professor Howard Brick, in the spring of 2009, my thesis topic was in serious need of refinement. I told him that I wanted to study all the legal cases during the era of anti-Communist repression, spanning a time frame of nearly fifty years and an incomprehensible amount of cases. Professor Brick soon suggested that perhaps I focus my research on just one case: the case of Edward Yellin. Ed Yellin had been called before the House Committee on Un-American Activities (HUAC) in the late 1950s, convicted of contempt of congress, and eventually had his case reviewed by the Supreme Court. In fact, based on a contact he had, Professor Brick told me he could even put me in touch with Ed Yellin himself. I decided immediately to pursue the topic.

In the fall of 2009, I contacted Ed Yellin by e-mail. I informed him of my plan to write about his case, and he informed me that he was more than willing to help in any way he could. He shared with me the official transcript from his HUAC hearing, as well as the recording of an interview conducted by his granddaughter. On October 30, 2009, I was able to speak with Ed on the phone. He graciously shared with me details about his upbringing, his membership in the Communist Party (CP), and his contempt conviction—which was finally overturned by the Supreme Court in 1963.

In November of 2009, I applied for a research grant through the LSA Honors Program in order to interview Ed in person. After receiving the grant, I was able to fly to Ed's home in Sarasota, FL and spend an entire day with Ed and his wife Jean. It was an honor to be invited into the Yellins' home and experience their incredible hospitality. During my second interview with Ed, we discussed the details of his story even further, which gave me a strong foundation from which I could then write.

It would be an understatement to say that this thesis would not have been possible without the help, hospitality, and generosity of Ed Yellin. His willingness to share details about his life and his dedication to preserving the truth about the era of anti-Communist discrimination provided me with invaluable material with which I could work. I thank Ed and Jean Yellin for their continuous support throughout the writing of this thesis, and I hope that the work I have done helps them in their own endeavors.

INTRODUCTION

In 1957, Chief Justice Earl Warren asked, “Who can define the meaning of Un-American?” He was asking the question in reference to *Watkins v. United States*—the case of a man facing a criminal charge after appearing before the House Committee on Un-American Activities (HUAC). His crime? Watkins had been a member of the Communist Party (CP), and in testifying before HUAC he refused to give the names of other individuals who had also been members of the CP. His testimony challenged the jurisdiction of HUAC—one of the most influential anti-Communist organizations in American history—to ask questions about a person’s political affiliations. He was convicted of contempt of congress as a result. The Supreme Court, however, overturned his conviction in 1957.¹ Suddenly, the *Watkins* case offered a glimmer of hope to those who felt oppressed by decades of anti-Communist discrimination.

Specifically, it offered hope to a man named Edward Yellin, who received a subpoena to appear before HUAC in February of 1958. By many standards, Ed Yellin’s life is the epitome of the American experience. The son of immigrant parents, Yellin was an excellent high school student and served in the military at the end of World War II. He believed in social justice, racial equality, and the rights of the American worker. In the late 1940s Yellin moved to Gary, Indiana where he spent eight years working for U.S. Steel. After his work in Gary, Yellin went on to complete an undergraduate degree from Colorado State University in 1959 and a PhD in Mechanical Engineering from the University of Illinois in 1963. His contributions to medical science have been invaluable to the scientific community, the country, and the world. There is only one element of Yellin’s story that makes him, in the eyes of some, “un-American.” From the time Yellin

¹ *Watkins v. United States*, 354 U.S. 178 (1957).

was a young boy until 1956, he was active in the Communist Party of the United States of America (CPUSA).

Of course, the freedom to choose one's political beliefs is a right that many Americans assume are standard in society. The backing of the constitution, bill of rights, and a long list of legal precedents make the freedoms of speech and political association two of the most protected rights in the American legal system. These freedoms have not only become standard in American society, they have become emblematic of what it means to be an American. But for those Americans who chose to become members of the CPUSA—like Ed Yellin—they faced decades of political repression and discrimination. Lasting from the early 1920s to the mid 1970s, the United States government, Congress, and even private institutions systematically treated a Communist identity as if it were an infectious disease—an “un-American” belief that needed to be eradicated from American society. Throughout those 50 years of repression, there was one decade in particular that contained the worst trend of anti-Communist discrimination of the century: the decade following World War II.

In the post-war decade alone, the U.S. government took a number of measures to erase Communism from the America political landscape. In the late 1940s, the government began prosecuting CPUSA leaders for “advocating the violent overthrow” of the American government. During the 1950s, congressional committees such as HUAC and the Senate Internal Security Subcommittee (SISS) subpoenaed hundreds of witnesses to gain information about the activities of American Communists. President Truman even issued an executive order in 1947 requiring all federal employees to pledge their absolute devotion to the U.S. and to reject all “un-American” political ideologies like

Communism.² Thousands of federal employees were dismissed from their jobs in the 1950s because they were deemed a “security risk.” In time, these government actions also led to an intense anti-Communist reaction from the American public. Private and academic institutions soon began to mimic the actions of government agencies in their concern over Communist influences. Universities formed committees to investigate potential Communists, fired faculty members, and denied funding for individuals suspected of having Communist affiliations. For thousands of Americans, membership in the CPUSA quickly became a legal, professional, and social liability. Ed Yellin’s story is no exception.

In 1958, Yellin was an undergraduate student at Colorado State University, although he was not a typical undergraduate. Instead of being in his early 20s, Yellin was in his early 30s. He had a wife, three children, and a history with the CPUSA. From 1949 to 1957, Yellin lived in Gary, Indiana where he worked at the local steel mill. His choice to work in the steel industry had been part of a Communist colonization program, which involved placing young, usually college-aged CP members in basic industries like steel or automobile production. The program was designed to heighten Communist influence on the labor movement after many American Communists had been unceremoniously expelled from the Congress of Industrial Organizations (CIO) in the late 1940s. Yellin had agreed to participate in this program in 1948. He had the choice of working in the automobile industry in Detroit, Michigan, or the steel industry in Gary, Indiana. Yellin chose Gary.

In 1958, however, Yellin was no longer in Gary. After leaving the CP in 1956, Yellin and his family decided to relocate to Fort Collins, Colorado, where Yellin would

² Ellen Schrecker, *Many are the Crimes* (New York: Little, Brown and Company, 1998), 274.

finish his undergraduate degree in Mechanical Engineering. About a year after arriving in Colorado, however, Yellin received something that would alter the rest of his life. In January of 1958, Yellin received a subpoena to appear before HUAC. The hearing was scheduled for February 10th, 1958, and it was called to investigate the very colonization program of which Yellin had been a part.

As a former CP member, Yellin was familiar with HUAC and all that it stood for. He knew that it was an agency dedicated to uncovering and humiliating current American Communists. Not only would the Committee ask Yellin about his own membership in the CPUSA—the answer to which could be disastrous for Yellin’s professional career—the Committee would also likely ask him to “cooperate” and name the names of others that he knew in the Party. If one thing was clear to Yellin once he received his HUAC subpoena, it was that he did not intend to be a “cooperative witness.” Yellin believed strongly that the government did not have the right to information about his political background, and he intended to resist the Committee’s inquiries as a result. His attorney—Victor Rabinowitz—supported Yellin’s decision.

Witnesses who intended to resist HUAC’s inquiries historically had two main alternatives: the Fifth Amendment defense, and the First Amendment defense. The Fifth Amendment defense was simple: it claimed the right to not incriminate oneself. In 1950, the Supreme Court ruled that using the Fifth Amendment before a congressional committee did not constitute contempt of congress. Had Yellin taken the Fifth in 1958, he could have guaranteed that he would not face a criminal conviction. It was the First Amendment defense, however, that interested Yellin more. Instead of claiming the right not to incriminate himself, Yellin would be claiming that HUAC did not have the proper

jurisdiction to inquire about his political activities or beliefs by citing his First Amendment rights. The history of this defense, however, made it a much more likely that Yellin would face a criminal charge for employing it.

Beginning in 1947 with the Hollywood Ten cases, witnesses called before HUAC began to use the First Amendment defense.³ In the case of the Hollywood Ten, all ten witnesses were convicted of contempt of congress and their convictions affirmed by the Supreme Court.⁴ Unlike the Fifth Amendment defense, there was no legal precedent for the legality of the First Amendment defense in 1958. Congressional committees like HUAC and SISS immediately began to cite “First Amendment” witnesses for contempt of congress. It wouldn’t be until 1957 that the Supreme Court would overturn an individual’s conviction after using the First Amendment defense in *Watkins v. United States*.⁵ In light of the small hope that the *Watkins* case offered for the legality of the First Amendment defense, Rabinowitz and Yellin decided that Yellin would use the First Amendment in his refusal to testify before HUAC in 1958.

This decision would lead Yellin into a five-year legal ordeal, including a contempt conviction as well as two hearings before the Supreme Court. In addition to the legal trouble this defense caused him, Yellin also faced anti-Communist as he continued to pursue an undergraduate degree and eventually a PhD in engineering. In 1961 and 1962, Yellin received National Science Foundation (NSF) and National Institute for Health (NIH) fellowships, respectively. Both of these fellowships, however, were revoked when the agencies found out about Yellin’s history with the CP and his contempt conviction. Although the Supreme Court finally overturned Yellin’s conviction in 1963,

³ Victor Navasky, *Naming Names* (New York: The Viking Press, 1980), 83.

⁴ *Ibid.*, 84.

⁵ *Watkins*, 354 U.S. 178.

the discrimination and hardships that Yellin and his family faced are not to be underestimated. Yellin's experiences are indicative of the repression experienced by so many Americans who also had Communist ties in the post-war decade.

This thesis will discuss Ed Yellin's story in great detail, with particular focus on his appearance before HUAC and his ensuing legal case. Yellin's experiences before the Committee—and the discrimination that he faced in academia afterwards—will be indicative of the post-war era of anti-Communist repression. Yet Yellin's bold response to HUAC and his vindication in 1963 signaled the declining force of anti-Communist inquisitions that began in the late 1950s. The discussion of Yellin's story helps to further define this historical trend through an authentic human experience. His story functions like one more piece in a larger puzzle of understanding not only the era of anti-Communist discrimination, but also its decline.

In its first chapter, this thesis will discuss the historical background necessary to place Yellin's story in context. Beginning with the creation of American Communism after the Bolshevik Revolution of 1917, the first chapter will discuss the history of the American Communist movement and the resistance it faced from government officials and agencies. The first chapter will emphasize a period of greatest success for the CPUSA known as the Popular Front Era, which lasted from 1935-1945. It will also emphasize the anti-Communist hysteria that developed after World War II, which drew from and contributed to the Cold War with the Soviet Union beginning in 1946. The era of post-war anti-Communism led to the rise of congressional committees such as HUAC and SISS—the history of which will be essential to understanding Ed Yellin's case. The first chapter will also chronicle the early life of Ed Yellin, including his upbringing in a

Communist housing cooperative in the Bronx, NY called “The Coops.” It will explain the events of Yellin’s life up until his move to Gary, IN in the late 1940s—a move that would ultimately lead to his experiences with HUAC and the Supreme Court.

The second chapter will begin to discuss Yellin’s experiences in Gary, IN, as well as his decision to leave Gary and the CPUSA in 1956. Most importantly, however, the second chapter will discuss Ed Yellin’s HUAC subpoena and his decision to use the First Amendment defense before the Committee. It will go on to discuss the HUAC hearing itself, as well as Yellin’s contempt conviction that followed in 1960. The chapter will discuss the legal trouble Yellin faced after his conviction, and the arguments that would be necessary for Yellin and Rabinowitz to get his conviction overturned.

Finally, the third chapter will discuss Yellin’s process of appeals. This process included an opinion by the 7th Circuit Court of Appeals affirming his conviction, as well as two Supreme Court hearings. The first of these hearings resulted in Yellin’s case being scheduled for reargument, and the second hearing resulted in the overturning of Yellin’s contempt conviction in 1963. The third chapter will also discuss the numerous incidents that Yellin faced in academia a former Communist. Through this discussion, as well as the discussion of his appeals, it will be clear that Yellin’s experiences exemplify the era of anti-Communist repression perfectly.

CHAPTER ONE: American Communism and its Critics: 1919-1955

The discrimination that Ed Yellin and his family endured as a consequence of his membership in the CPUSA seems to violate a multitude of civil liberties that most Americans take for granted. From a criminal conviction to the discrimination that Yellin faced as a graduate student, it is clear that Yellin's membership in the CPUSA became much more than just a political identity. But Yellin's story seems to beg the question: How did American society reach the point in the 1950s that, for individuals like Ed Yellin, former membership in the CPUSA was a legal liability? The answer to this question lies in decades of history pertaining to the CPUSA and the anti-Communist response from the government, private institutions, and even the world of academia. This chapter will explore the history of the CPUSA, as well as the anti-Communist sentiment that erupted in response, from 1919 to 1955.

This era can be broken down further into three distinct periods of history relating to the CPUSA and anti-Communism. First, the period of 1919 to 1935 will chronicle the formative years of the CPUSA, or CP, and its earliest periods of repression. Second, 1935 to 1945 will include the CP's First and Second Popular Front movements, both of which attempted to incorporate the American Communist movement into mainstream American politics. Finally, the post-war decade of 1945 to 1955 contains the most dramatic increase in anti-Communist discrimination and repression in U.S. history.

Ed Yellin's own story provides even further background for these historical periods. His upbringing in a Communist housing cooperative known as "the Coops" provides specific examples of CP policy during the Popular Front years. Yellin's young adult years provide further elaboration on the post-war decade as he became involved in

the Communist program of labor colonization in the late 1940s—a program that the CP launched after the CIO ousted all Communists from the organization. It was his participation in this program that would eventually prompt HUAC to subpoena Yellin in 1958—an event that would change the course of Yellin’s life forever.

American Communism before the Popular Front

The CPUSA has a very different history from most political parties in the United States. Instead of a mainstream political party with distinct organization and leadership, the American Communist movement struggled throughout its early existence to find stability as a political organization. A simple way to frame the beginning of the American Communist movement is to say that the movement grew out of the left-wing portion of the American Socialist Party (SP)¹ as a reaction to the Bolshevik Revolution in 1917. Prior to the Bolshevik Revolution—which established the first Socialist regime in the world—SP members worldwide were divided between “revolutionaries” and “reformers.”² When a socialist revolution succeeded in Russia in 1917, “revolutionary” members of the SP took the opportunity to split from the SP and join the fledging Communist movement instead.³ Soon after the Bolshevik Revolution, Communist parties formed in countries across the globe, including the United States of America. In the U.S., the movement originally consisted of two separate parties that both formed in 1919: The Communist Party, and the Communist Labor Party. The two parties would not merge to form the CPUSA for several years.

¹ Schrecker, *Many are the Crimes*, 10.

² Ibid.

³ Ibid.

The American Communist movement attracted immediate membership from former SP and Industrial Workers of the World (IWW) members—another leftist organization focused on the needs of the working class. Even with immediate membership, however, the American Communist movement was anything but a mainstream political party in its early years of existence. It was not until 1923 that the two American parties merged to form the CPUSA, and it was nearly a decade more before a CPUSA candidate appeared on an American presidential ballot.⁴ Instead of gaining political power domestically, American Communists drew most of their support in the early years from the Soviet Union.⁵ In 1919 Lenin—the leader of the Soviet Union—established the Communist International (Comintern),⁶ which served as a collective decision-making body for the international Communist movement. The American Parties were immediate members,⁷ allowing the Comintern to directly dictate the policies of the American Communist movement in the early decades of its existence. For example, it was Moscow that forced the two American parties to merge in 1923 and create the CPUSA.⁸

The CPUSA's willingness to follow Moscow contributed immensely to the way Americans perceived the Party. Advocating for a socialist revolution like the one that had taken place in the Soviet Union, for example, pushed the boundaries of mainstream politics in America. Although the Cold War would not begin until after World War II, declaring unfettered support for the Soviet Union was still a radical political philosophy

⁴ Datapedia of the United States, 1790-2005, *Electoral And Popular Vote Cast For President, By Political Party: 1789 To 1996 [Part 02: 1920-1948]* (Bernan Associates, 2002), 494.

⁵ Schrecker, *Many are the Crimes*, 10.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid., 11.

in the 1920s. In addition to the CPUSA's closeness to Moscow, several other party policies in the 1920s and early 30s helped to shape how America perceived the CPUSA—namely Communist policies on labor and racism. These were policies that, to some, seemed to challenge many traditional American values with their attempt to erase class and race boundaries. This is why, perhaps, so many viewed American Communists as inherently “un-American” for so long.

Policies concerning American labor, and more broadly the working class, were vital to the CP's ideology and functioning. It is widely understood that Communist doctrine championed “the working class as the repository of revolutionary values,”⁹ and that Marxist theory called upon the working class to overthrow the bourgeois class in a worldwide socialist revolution. It is no surprise, then, that the CP sought to be involved in the American labor movement immediately after the Party's creation. In the early 20th century, the American Federation of Labor (AFL) was the only substantial trade union organization in the United States, and many Communists criticized it as a “reformist” organization. Broadly speaking, the AFL only sought to unionize skilled workers, leaving out all workers that were considered “unskilled.” Due to the Communist commitment to the working class, American Communists pushed for a more progressive type of unionism that would organize all workers in a particular industry, regardless of skill level. This was called “Industrial Unionism.” American Communists adopted several different labor policies throughout its existence in an attempt to realize this vision.

⁹ Bert Cochran, *Labor and Communism: the conflict that shaped American unions* (Princeton, N.J.: Princeton University Press, 1977), 20.

In 1921, the CP adopted a policy to revolutionize AFL unions “from within.”¹⁰ In order to execute this policy, the Party recruited William Z. Foster to help carry out the new Party line.¹¹ Foster was the leader of the Trade Union Educational League (TUEL), and had particular experience with union organizing.¹² In 1921, TUEL and Foster became the force behind CP labor activities in the United States. It wasn’t long, however, before TUEL had proven largely ineffective at influencing AFL unions. Though Foster attempted to form alliances with various leaders in the AFL, these leaders eventually found TUEL members to be problematic and rejected an alliance with TUEL and, by association, with Communists as well. By 1924 TUEL was, as Cochran describes, “an ash heap.”¹³ American Communists, however, continued in their attempt to affect the American labor movement even after the failure of TUEL. In fact, the CP involvement in the labor movement during the 1930s and 1940s would eventually come to define much of the Communist legacy in the United States.

In addition to policies concerning American labor, the CP emphasized other policies in the 1920s and early 30s that helped to define the Party in American society. One such policy was the American Communist stance on racism. As a political theory, Communism called for complete social equality for all people regardless of race or class. An anti-racist stance, therefore, was a natural extension of Communist principles.¹⁴ From the very beginning, Communists attacked white supremacy as “Fascist” and called for racial equality and an end to Jim Crow laws in the South. In the early years of its

¹⁰ Cochran, *Labor and Communism*, 21.

¹¹ Ibid.

¹² Ibid., 44.

¹³ Ibid., 25.

¹⁴ Glenda Gilmore. *Defying Dixie: The radical roots of civil rights, 1919-1950* (New York: W.W. Norton & Co., 2008), 29.

existence, the CP embarked on distinctly anti-racist and anti-Jim Crow campaigns in the American South. As Glenda Gilmore writes, “It was the Communists who stood up to say that black and white people should organize together; eat together, go to school together; and marry each other if they chose.”¹⁵ Gilmore argues broadly that the Communists played a pivotal role in the eradication of Jim Crow Laws in the South, both because of Communist principle and “Because the South represented the least industrialized and least unionized part of the United States, the region weighed heavily on Communist minds.”¹⁶

The CP immediately attracted Black leaders who were anxious to bring about racial equality to America—particularly in the South—by way of Communism. One such leader was Lovett Fort-Whiteman. Glenda Gilmore calls Fort-Whiteman “the first American-born black Communist.” Fort-Whiteman was an actor and writer who came to Communism by way of his Socialist background. In 1924, Fort-Whiteman traveled to Moscow to speak the Fifth World Congress of the Comintern about the “Negro question.” He urged American Communists to work on behalf of black sharecroppers in the South, claiming that Negroes were, “destined to be the most revolutionary class in America.”¹⁷ In the 1930s, the CPUSA seemed to take Fort-Whiteman’s advice and began the process of organizing sharecroppers, primarily cotton workers, in the South. The CP’s involvement in the “Negro question,” in America continued for the remainder of the Party’s existence. It would also continue to be a policy that challenged traditional values for the majority of Americans.

¹⁵ Gilmore, *Defying Dixie*, 6.

¹⁶ *Ibid.*, 30.

¹⁷ *Ibid.*, 43.

It is clear that the 1920s were a time for the CPUSA to establish its Party tenets as well as its involvement in the international Communist movement. It was not, however, a time of widespread political success for the Communists in the United States or internationally. The CPUSA's factionalism and failure to affect the American labor movement in the early 1920s, for example, was not a good indicator of success. Further, the 1920s were also a time of intense factionalism for Communists in Moscow. In 1924, Lenin—the father of the International Communist movement—died. Following his death, the Soviet Union's leaders engaged in a struggle for power until 1928. The fledgling Communist movement struggled to stay afloat as Moscow leaders battled for the chance to assume ultimate leadership of the Party and the Soviet Union. In 1928, however, the Sixth World Congress of the Comintern brought a new direction to the Communist movement both internationally and in the United States.

The 1928 Sixth World Congress marked the beginning of a new era in Communist history known as “Third Period Communism.” At the Congress, Joseph Stalin claimed that “humanity had entered the ‘third period’”¹⁸ and that the collapse of world capitalism was imminent. As a result, Stalin predicted, “a new revolutionary upsurge”¹⁹ was on the horizon, and demanded that Communist Parties across the globe engage in this upsurge as a matter of policy. In addition to the establishment of “Third Period Communism,” Stalin emerged from the Congress as the undisputed ruler of the Soviet Union as well as the Comintern. He effectively eliminated the ongoing factionalism in the Soviet Union and the Party by assuming ultimate leadership of both.

¹⁸ Cochran, *Labor and Communism*, 43.

¹⁹ *Ibid.*, 43.

The Sixth World Congress, however, affected more than just the leadership in Moscow. The announcement of Third Period Communism spoke to the CPUSA policies on labor and racism as well. First, the Sixth World Congress brought about a more radical labor policy in the United States. Inspired by Stalin's programs of collectivization and industrialization in the Soviet Union, Foster took the opportunity to push for greater Communist control of American labor unions.²⁰ In 1929, TUEL became the Trade Union Unity League (TUUL) and adopted a "ferociously revolutionary program" actively calling for the overthrow of capitalism.²¹ Bert Cochran describes this new policy as "Red Unionism."²² The basic premise of Red Unionism was to try and unionize industries that were not yet organized by the AFL, and to make those unions consciously revolutionary in nature.

The new push for these "red unions" in 1928 and 1929 also coincided with the worst economic crisis to the date: The Great Depression. With skyrocketing unemployment rates and millions of Americans devastated by the economic crisis, Party membership grew from 7,500 in 1930 to 19,000 in 1933.²³ Nonetheless, CP success at organizing labor movements during the 1920s and early 30s remained largely unsuccessful. It wouldn't be until the rise of the Popular Front and the creation of the Congress of Industrial Organizations (CIO) that the CP's involvement in labor would become markedly more effective.

At the 1928 Sixth World Congress, the Comintern also stepped in to comment on the racial situation in the American South. The Comintern boldly claimed in 1928 that,

²⁰ Cochran, *Labor and Communism*, 44.

²¹ *Ibid.*, 44.

²² *Ibid.*, 43.

²³ *Ibid.*, 46.

“the blacks concentrated in the black belt counties of the Deep South constituted an oppressed nation.”²⁴ As an “oppressed nation,” the Comintern maintained that the Black American South had the right to self-determination—in other words that it could secede from the rest of the United States.²⁵ While extremely unrealistic, the Comintern’s recognition of Black oppression in the American South highlights the Communist awareness of race-related issues in the 1920s and 30’s. This awareness would become even more prominent in 1931 with the CPUSA defense of the Scottsboro Boys—a group of nine African-American teenagers falsely charged with raping two white women.²⁶ The defense of the Scottsboro Boys was politically unpopular with the majority of white America, to say the least. Nonetheless, the CP stepped up to provide the black defendants with a legal defense. The CP’s own publication in the South—the *Southern Worker*—even played a pivotal role in the coverage of the case itself. Gilmore even argues that without the *Southern Worker*, the Scottsboro Boys would have all been executed.²⁷

Throughout the 1920s and early 30s, the CPUSA slowly established itself as a political party with radical ideas about the class and racial divisions that had become a signature part of American culture. With the establishment of these principles, however, came an immediate backlash from American society—the beginning of anti-Communist hysteria in the United States. Early anti-Communist repression can arguably be seen as a continuation of the anti-*radical* sentiment that existed in the United States as early as the 1800s. As Schrecker puts it, “a strong current of hostility to the left had always been a

²⁴ Robin D.G. Kelley, *Hammer and Hoe: Alabama Communists during the Great Depression* (Chapel Hill: University of North Carolina Press, 1990), 13.

²⁵ *Ibid.*

²⁶ *Ibid.*, 23.

²⁷ Gilmore, *Defying Dixie*, 119.

staple of American political life.”²⁸ As early as the 1870s and 80s, public and sometimes violent worker strikes—such as the Haymarket tragedy of 1886—caused many businessmen and members of the American middle class to fear radical worker movements.²⁹ Additionally, the fact that many industrial workers at the end of the 19th century were immigrants only intensified this fear. In fact, Schrecker notes that many businessmen and their allies in the government used the existing “demonization of immigrants” to arouse intense hostility toward radical worker movements in the late 1800s.³⁰

Several decades later, World War I presented another opportunity for American policy makers to target political radicals in America. This time, they did so by identifying leftwing dissent as a threat to national security.³¹ The most prominent left-wing groups at the beginning of World War I were the Socialist Party (SP) and Industrial Workers of the World (IWW). Both of these groups openly opposed America’s involvement in the war.³² The American government immediately acted on this “subversive” behavior in a number of ways. In 1917 federal agents raided IWW offices and used the information they found to jail IWW leaders for “opposing the American war effort.”³³ In 1917 and 1918, Congress passed the Espionage and Sedition Acts, respectively. The Espionage Act of 1917 made it “illegal to interfere with the draft.”³⁴ The Sedition Act of 1918 made it a criminal act to speak out against the government, the Constitution, the American flag, or

²⁸ Schrecker, *Many are the Crimes*, 48.

²⁹ *Ibid.*

³⁰ *Ibid.*, 49.

³¹ *Ibid.*, 52.

³² *Ibid.*, 52.

³³ Maurice Isserman, *Which Side Were You On? The American Communist Party During the Second World War* (Connecticut: Wesleyan University Press, 1982), xiii.

³⁴ Schrecker, *Many are the Crimes*, 53.

even the military during World War I.³⁵ By their nature, these laws targeted left-wing groups, their publications, and their activities. As Schrecker notes, the Wilson administration brought 2,168 people brought to trial under these acts by the end of their term.³⁶

Following World War I, the nation's anti-radical sentiment became, more specifically, anti-*Communist* sentiment. Many Americans, for example, reacted strongly to the Bolshevik revolution of 1917 and the resulting international Communist movement. The Bolsheviks shocked and frightened many Americans with the establishment of the world's first Socialist regime—an institution that opposed American capitalism. The Bolshevik Revolution also represented a country that had abandoned the Allied war effort during World War I. As Schrecker puts it, “Not only did the events in Russia seem to threaten the stability of the capitalist world, but they also directly affected the Allied War effort.”³⁷ For many reasons, the Bolshevik Revolution of 1917 left Americans feeling uneasy about the amplified Communist presence in the world.

Following the Communist revolution in Moscow, the American government reacted immediately, marking a time period known as the “First Red Scare.” Lasting roughly from 1919 to 1920, this first bout of Communist hysteria was directed primarily at foreign-radicals—continuing the earlier tradition of capitalizing on Americans' fear of immigrants. The Palmer Raids, which lasted from November 1919 through January 1920, are the best example of this. The raids, named for Attorney General A. Mitchell Palmer, included mass round-ups and deportation of foreign-born radicals across the nation.³⁸

³⁵ Schrecker, *Many are the Crimes*, 53.

³⁶ *Ibid.*, 54.

³⁷ *Ibid.*, 55.

³⁸ Schrecker, *Many are the Crimes*, 55.

While Palmer had been the one to envision the raids, he put a 24-year-old law school graduate named J. Edgar Hoover in charge of carrying out the details of the assignment. At the time, Hoover was serving as the head of the future FBI Radical Division.³⁹ The Palmer Raids mark Hoover's entrance on to the anti-Communist scene. Hoover would go on to become one of the most prominent figures in both the first and second red scares and notorious for his relentless fight against the Communists for decades. His work on the Palmer Raids was only the beginning of his work to eradicate Communism from the American landscape.

In addition to government policy, Americans reacted in other ways to the new Communist presence in the United States. The forming of the American Legion after World War I is a great example of this. The American Legion was a veterans organization whose agenda consisted of: "veteran's benefits, good works, Americanism, and fun."⁴⁰ The Legion was also decidedly anti-Communist, and it used its promotion of "Americanism" and patriotism to contrast Communist ideology in a negative light. This notion of painting Communism as "un-American" would reappear repeatedly throughout the repression of Communists in the United States, taking full form in one of the most famous anti-Communist organizations in American history: the House Committee on *Un-American Activities* (HUAC).

The First Red Scare and its aftermath in the 1920s mark the beginning of a long history of hysteria and repression. Although the CPUSA would become a more potent political force during the Popular Front years, the 1920s and early 30s also denote a time of minimal impact for the CP in America. Nonetheless, it is clear that starting as early as

³⁹ Ibid., 57.

⁴⁰ Ibid., 62.

the Party itself, Americans reacted negatively to the Communist cause. This is a trend that would only continue to develop and strengthen over the years—eventually leading to the point where individuals like Ed Yellin faced legal trouble because of their CPUSA membership.

Edward Leon Yellin was born on July 7, 1927 to Alex and Sarah Yellin. Yellin’s parents were Jewish immigrants from the border of Poland and Russia, although Yellin notes that his parents felt closer to their Polish identity than their Russian identity. Yellin’s father was from a small town in Poland, and Yellin is uncertain about where his mother was from originally. Yellin did recall that his mother spent most of her young adult life in Bialystok, a city very close to Warsaw, Poland.⁴¹ It is clear that both sides of Yellin’s family experienced the turmoil of the Russian Revolution. Two of his mother’s brothers were politically active in the anti-Czar movement for the years leading up to the revolution. Yellin’s Father was actually drafted into the Czar’s army, but his mother was able to save him from serving by injecting poison into his leg as he was waiting in the draft line. Soon after the Bolshevik Revolution, Yellin’s parents immigrated to the United States. Although Yellin’s parents supported the revolution, he notes, their fear of Russian anti-Semitism overcame their support for the Red Army and, in his own words, “wisely” brought them to the United States.⁴²

Yellin and his family, which included one older sister named Ethel who was four years Yellin’s senior, lived in the Bronx, NY until Yellin was about eight years old. Yellin’s parents were both members of the Communist Party, and Yellin and his sister both seemed to adopt this ideology from an early age. In 1935, when Yellin was eight and

⁴¹ Edward Yellin, interview by author, January 16, 2010.

⁴² Ibid.

Ethel twelve, Ethel took the subway to downtown New York with a group of Young Pioneers—a Communist youth organization—for the May Day Parade. Ethel and her Young Pioneer friends were dressed in their easily recognizable uniforms and were harassed on the train for being Soviet supporters and Communists. Yellin recalls that when Ethel returned home that night and told their mother of the harassment, his mother said, “That’s it, we’re moving to the Coops!”⁴³ “The Coops,” more formally known as the United Workers Cooperative Colony, was a cooperative housing unit in New York City nicknamed “Little Moscow” for its high concentration of Communist families. Yellin and his family moved to the Coops during a phase of CP history known as the Popular Front era. This era would mark a new beginning for the CP in the United States, and it would have a profound impact on the CP’s relative success as a political party during the 1930s.

The First and Second Popular Fronts: 1935-1945

In 1935, the Comintern met for its Seventh World Congress and announced the beginning of the Popular Front Era. The First Popular Front, which lasted from 1935-1939, marks the period of greatest influence for the CPUSA. In stark contrast to Third Period Communism, which focused acutely on the imminent socialist revolution, the announcement of the Popular Front presented a Communist stance with much less emphasis on revolution. Popular Front doctrine, instead, encouraged Communists across the globe to collaborate with other liberal and leftist groups. In the U.S., this meant

⁴³ Edward Yellin, interview by author, January 16, 2010.

becoming involved in FDR's New Deal coalition. While in the past Communists criticized the Socialists for failing to take a revolutionary stance, during the First Popular Front CP members were willing to work with SP members, as well as liberal Democrats, on common issues. Namely, this included a mutual opposition to Fascism.

Although the CP had never supported Fascism, the Popular Front marked a reinvigorated anti-Fascist stance for the Party abroad and in the United States. With the slow rise of Fascist parties and leaders in Germany and Italy, the Comintern took a decidedly anti-Fascist stance with the announcement of the Popular Front in 1935. The CPUSA, in typical fashion, followed suit, and became a fierce anti-Fascist group during the First Popular Front. In 1936, the CPUSA had a chance to demonstrate its commitment to anti-Fascism with the outbreak of the Spanish Civil War. The conflict erupted between Republican loyalist forces and rebel forces led by Fascist General Francisco Franco. As Schrecker notes, the Soviet Union was the only major power backing the Republican government, while Germany and Italy supported Franco.⁴⁴ Following the example of the Soviet Union, 2,800 Americans volunteered to fight in the Abraham Lincoln Brigade—a Party-led unit that mobilized to fight against Franco's army in the 1930s.⁴⁵ In the United States, CP members young and old participated in fundraising events for the loyalist forces. Ed Yellin remembers as a young boy collecting aluminum foil—which could be turned in for cash—in order to raise money for the cause. In any avenue that was available, the CPUSA made their anti-Fascist stance known during the First Popular

⁴⁴ Schrecker, *Many are the Crimes*, 15.

⁴⁵ *Ibid.*

Front—a stance that helped to contribute to what some scholars have called the “Americanization” of the CP during the Popular Front years.⁴⁶

By all accounts, during the First Popular Front the CPUSA became a political party that appealed to more Americans and functioned more like a mainstream political entity. The slogan, “Communism Is Twentieth Century Americanism” became the trademark slogan of the era. Between the near abandonment of a revolutionary stance, a fierce anti-Fascist agenda, and the willingness to work and compromise with other leftists, the CPUSA appeared to be far less “un-American” than it had during the Third Period. Contributing to this image even further in the United States was the fact that the Popular Front emerged at a time coinciding with the rise of Franklin Roosevelt’s New Deal policies. CPUSA members formed alliances with New Deal politicians to such a degree that scholars such as Schrecker argue that the CPUSA served as the “unofficial left wing of the New Deal.”⁴⁷ Fulfilling their instructions from Moscow, the CPUSA developed ties to other leftist organizations during the Popular Front, which in turn pushed the CP toward greater involvement in mainstream American politics at an unprecedented level.

In addition to a coalition with other leftists, the Popular Front years also brought about a new era for American Communist involvement in the labor movement. During the 1930s and 40s, the Communist Party’s connection with labor movements intensified as a result of several factors that included the creation of the Congress of Industrial Organizations (CIO), and the Wagner Act of 1935—factors that helped to bring about,

⁴⁶ Isserman, *Which Side Were You On?* 9.

⁴⁷ Schrecker, *Many are the Crimes*, 15.

“the most important unionization drive in American history.”⁴⁸ This drive to unionize, and the unions that formed as a result, provided American Communists with a greater opportunity to affect the labor movement. As Cochran notes, “unions inevitably became for the Communists the major arena of preoccupation and ambition because of both ideology and circumstance.”⁴⁹

First, the passage of the National Labor Relations Act—more commonly known as the Wagner Act—in 1935 immediately gave more power to the American labor movement.⁵⁰ Simply put, the Wagner Act championed the power of collective bargaining. Under the law, American employers were required to allow their employees to form trade unions and to recognize the collective bargaining power of those unions. This legislation spurred a massive movement to unionize basic industries,⁵¹ which gave American Communists more opportunities to affect the American labor movement.

In addition to the Wagner Act, the creation of the Congress of Industrial Organizations (CIO) in 1935 provided American Communists with an even greater opportunity to influence American labor unions. As noted earlier, the CPUSA had always supported industrial unionism for both practical and ideological reasons. The CIO offered American workers a long awaited alternative to the American Federation of Labor (AFL), who did not make it a priority to organize unskilled industries. As an organization that was founded on industrial unionism, the CIO also offered the CPUSA a much friendlier forum through which to organize American labor.

⁴⁸ Schrecker, *Many are the Crimes*, 27.

⁴⁹ Cochran, *Labor and Communism*, 20.

⁵⁰ Schrecker, *Many are the Crimes*, 27.

⁵¹ *Ibid.*

It is important to note that the CIO was not a Communist organization. The CIO did, however, actively recruit American Communists to be organizers for CIO unions because they were already active in the industries that the CIO aimed to embrace. Maurice Isserman points out that CIO president John L. Lewis did not support Communist political aims, but he nonetheless respected Communist union organizers for their dedication and work ethic.⁵² In return, CP members were permitted to organize and lead a number of CIO unions in the 1930s and 40s through which they fulfill Communist doctrine and organize the working class.

As a result of these factors, the 1930s and early 40s were the most successful years for CPUSA influence on the labor movement. Communist leaders helped to organize, among others, the steel, automobile, maritime, and electrical industries through their charismatic and diligent leadership.⁵³ Compared to the dismal success of the CP unions during the 1920s, CP-influenced unions had a number of successful endeavors in the 1930s. These included the historic 1937 sit-down at the Fisher Body plant in Flint, MI, which forced General Motors to recognize the United Auto Workers.⁵⁴

In addition to their influence on the labor movement, American Communists remained strong in their anti-racist stance during the 1930s and 40s—a time when combating racism was still not a mainstream American ideal. Schrecker notes that Communists were active in desegregation in housing, employment, and even entertainment.⁵⁵ Unlike the other Popular Front tenets, however, it did not increase the CP's popularity among whites. The integration policies of the Communist Party were

⁵² Isserman, *Which Side Were You On?* 4.

⁵³ Schrecker, *Many are the Crimes*, 28.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*, 33.

especially problematic for white workers, who were expected to unionize side-by-side with black workers pursuant to Communist ideology.⁵⁶ Nonetheless, anti-Racism was an important and prominent feature of the Communist Party during the Popular Front years and beyond.

The leader of the CPUSA during the Popular Front was a man named Earl Browder, who had been elected as the Party's General Secretary in 1934.⁵⁷ Browder had been the voice behind many of the "American" characteristics of the CP during the Popular Front. It was Browder who released the slogan, "Communism is Twentieth Century Americanism." In 1937, Browder even "restructured the party along county and assembly-district lines so it more closely resembled traditional American political organizations."⁵⁸ It was Browder who would take the credit—and eventually the blame—for making the CPUSA an "Americanized" political party.

For nearly a decade before Browder's rise to power, the CPUSA had been plagued with a great deal of factionalism. Mimicking the factionalism in Moscow following Lenin's death in 1924, the CPUSA had two major factions in mid-to-late 1920s: one led by William Z. Foster—the leader of the Trade Union Education League (TUEL)—and one led by a man named Jay Lovestone. Speaking broadly, Lovestone was closely connected to Joseph Stalin's political rival, Nicoali Bukharin.⁵⁹ In 1929, after Bukharin was ousted in Moscow, Lovestone was also ousted as Party Secretary in the United States.⁶⁰ In the late 1920s, Browder was not necessarily the next logical choice for Party Secretary. Isserman points out that during the 1920s, Browder was a relatively quiet

⁵⁶ Schrecker, *Many are the Crimes*, 32.

⁵⁷ Isserman, *Which Side Were You On?* 6.

⁵⁸ *Ibid.*, 8.

⁵⁹ Schrecker, *Many are the Crimes*, 12.

⁶⁰ Isserman, *Which Side Were You On?* 6.

person who did not appear to be involved in Party factionalism. By 1934, however, he was elected Party Secretary, replacing the more radical William Z. Foster. It was under Browder that the Party would experience its greatest political influence in the United States—and also under Browder that it would begin to experience some of the greatest anti-Communist sentiment.

The same year that the Popular Front movement began, Yellin and his family moved to The Coops—a housing cooperative started by Jewish workers in 1927.⁶¹ More formally known as the United Workers Cooperative Colony, The Coops housed about 750 apartments and had a no eviction policy for its inhabitants. If any family couldn't afford to pay the rent for a given month, the other members of the cooperative simply covered the cost until the family could afford to pay rent again.⁶² It was a community founded on socialist principles, and the vast majority of The Coops' residents, including Yellin's parents, were members of the CPUSA. The Coops even gained such a reputation for its Communist affiliation that many outside the community referred to it as “Little Moscow.”⁶³

Yellin describes the Coops as nothing short of a wonderful place to grow up. It was a community in which Yellin could learn, socialize, as well as be exposed to Communism at an early age. As a young boy, Yellin had at his disposal an extensive library, a range of social clubs and activities, as well as a full-service cafeteria where he could get dinner on the nights his mother worked late. In a recent film on the Coops,

⁶¹ *At Home in Utopia*, DVD, written and produced by Michal Goldman (San Francisco, CA: Filmmakers Collaborative, 2008).

⁶² Ibid.

⁶³ Ibid.

many former residents of The Coops praise the circumstances of their upbringing in the same way that Yellin does.⁶⁴

Yellin also recalls that The Coops fostered a very political environment for its young residents. From raising money for the Spanish Civil War effort to discussing major Party events and issues, Yellin was very aware of what was happening politically during his upbringing. One of the most important issues he remembers his neighborhood discussing was also the issue that put an end to the First Popular Front movement. It was an event that brought the CP's "mainstream" image to a screeching halt, and marks the beginning of the era of greatest anti-Communist repression in the United States.

In late August of 1939, Joseph Stalin signed a non-aggression pact with Adolph Hitler—an agreement known today as the Nazi-Soviet Pact. Now allied with a Fascist regime, the Soviet Union and in turn the Comintern quietly retreated from its anti-Fascist agenda. In the United States, the CPUSA followed closely behind Moscow. While during the Popular Front years CPUSA members allied themselves with FDR's New Deal Policies, after the signing of the Pact CPUSA members began attacking FDR for moving towards intervention rather than peace.⁶⁵ The CPUSA alliance with American liberals vanished nearly overnight, and many liberals even felt betrayed by their former allies.⁶⁶

Although CPUSA members ultimately defended the USSR's actions, their initial reaction to the Pact was one of confusion. Most CP leaders, including Earl Browder himself, had not foreseen this alliance. As such, he had no planned reaction to it. As the signing of the Pact greatly contradicted the Popular Front's anti-Fascist stance, many party leaders did not know whether to continue with Popular Front tenets or forge a new

⁶⁴ *At Home in Utopia*, 2008.

⁶⁵ Isserman, *Which Side Were You On?* 37.

⁶⁶ *Ibid.*

path altogether.⁶⁷ Ultimately, however, CPUSA reaction to the Pact amounted to a haphazard justification of the alliance and defense of Stalin's actions. Yellin recalls that CP members in *The Coops* did not view the Pact as an "alliance" with Hitler, but rather that Stalin was doing what was in the best interest of the Soviet Union by staying out of armed conflict.⁶⁸ This sentiment is echoed in a statement released by the *Daily Worker*—a Communist run publication—two days after Germany invaded Poland. The CP publication stated, "We maintain that as long as there is one Socialist state in the world surrounded by hostile capitalistic powers, it is the most important and first duty of that Socialist state to prevent by all means at hand any kind of move that would threaten its destruction."⁶⁹ Although sentiments relating to the Pact were reversed somewhat in 1941 with the Nazi invasion of the Soviet Union, the Nazi-Soviet Pact of 1939 can be seen as a precursor to the Cold War sentiments that would emerge following World War II.

Although the era of the First Popular Front, lasting from 1935-1939, represented the period of greatest political "success" for the CPUSA, this didn't stop anti-Communist sentiments from brewing beneath the surface. Politicians and others truly committed to the fight against Communism never stopped in their relentless investigation and repression of the CPUSA and its members. In the late 1930s and early 40s, American politicians began to put some of the most important anti-Communist structures in place. Namely, these included the creation of HUAC in 1938 and the Smith Act of 1940.

The Dies Committee, the precursor to the House Committee on Un-American Activities (HUAC), was created in 1938 and headed by Congressman Martin Dies. From 1938-1945, the Dies Committee was not a permanent Congressional body. Nevertheless,

⁶⁷ Isserman, *Which Side Were You On?* 34.

⁶⁸ Edward Yellin, interview by author, January 16, 2010.

⁶⁹ Isserman, *Which Side Were You On?* 33.

Congress voted to renew the Committee every year by an overwhelming vote.⁷⁰ In 1945 the Committee was made a permanent Congressional Committee. To those concerned with civil liberties, HUAC was a controversial committee even from the outset because of its ability to conduct investigations and hold hearings. This is a privilege that would be challenged by many who went before the Committee in later years.

As a committee, the Dies Committee's primary responsibility was to investigate radical organizations, movements, leaders, and followers. In the late 1930s, this task was directed expressly at the CPUSA and other radical leftist groups which some felt were causing too much disruption to American society. The Committee initially investigated programs like the Works Progress Administration (W.P.A), the Federal Theatre and Writing Project, and it attracted "informants" such as John P. Frey—president of the Metal Trades Department of the AFL—who came forward to testify about the Communist "infiltration" of the CIO.⁷¹ Newspapers brimmed with stories of the Committee's investigations and the sensationalist hype over the Communist infiltration of America resurged in full swing.

Just two years after the creation of the Dies Committee, and one year after the Nazi-Soviet Pact, Congress passed the Smith Act of 1940, more formally known as the Alien Registration Act. The Smith Act would prove to be one of the most important pieces of legislation pertaining to American Communists, and it was used to prosecute

⁷⁰ Walter Goodman, *The Committee: The extraordinary career of the House Committee on Un-American Activities* (New York: Farrar, Straus and Giroux, 1968), 25.

⁷¹ Cochran, *Labor and Communism*, 28.

individuals with Communist backgrounds and affiliations throughout the 1940s and 50s.

The Smith Act carried a \$10,000 fine and a ten-year jail term⁷² for any person to:

(1) Knowingly or willfully advocate, abet, advise, or teach the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence

(2) With the intent to cause the overthrow or destruction of any government in the United States, to print, publish, edit, issue, circulate, sell, distribute, or publicly display any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence

(3) Organize or help to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any government in the United States by force or violence; or to be or become a member of, or affiliate with, any such society, group, or assembly of persons, knowing the purposes thereof.⁷³

The Smith Act did not explicitly outlaw the Communist Party, but rather targeted any and all groups that Congress felt intended to overthrow the American government. In fact the first group of people to be prosecuted under the act were not Communists, but members of the Socialist Worker's Party, or "Trotskyists."⁷⁴ It is clear, however, that the legislation targeted radical groups who may be at odds with the American government, such as the CPUSA. The Smith Act also targeted foreigners by requiring that all "aliens" be registered and fingerprinted and allowing for the deportation of aliens who had belonged to an organization "that advocated force and violence."⁷⁵ Just as in the early days of the First Red Scare, the origins of the Second Red Scare also targeted foreign radicals.

For the first time since the first Red Scare of the early 1920s, American society began to reflect an increasing anti-Communist resistance in the late 1930s and early 40s.

⁷² Beverly Gage, *The Day Wall Street Exploded: a story of American in its first age of terror* (Oxford: Oxford University Press, 2009), 323.

⁷³ *Alien Registration Act of 1940*, U.S. Code 18 (1949) § 2385.

⁷⁴ Schrecker, *Many are the Crimes*, 104.

⁷⁵ *Ibid.*, 97.

Although the Smith Act and Dies Committee both emerged before the end of World War II, these political structures would become especially critical to the post-war repression of the CPUSA and its members. Before the CPUSA could enter the post-war period, however, the Party would make another attempt to insert itself in mainstream American politics with the start of the Second Popular Front campaign beginning in 1941 and lasting until the end of World War II in 1945.

In June of 1941, the Nazi army invaded the Soviet Union. While the Nazi-Soviet Pact had ousted American Communists from its anti-Fascist coalitions, Hitler's invasion of the USSR brought American Communists back into opposition with Fascism once again. In light of this redeeming event, the Party adopted its Second Popular Front campaign in 1941, which lasted until 1945. The most important characteristic of the Second Popular Front was that the Party became extremely patriotic and supportive of the ongoing war effort. Similar to the First Popular Front, the Second Popular Front focused on patriotism, specifically in the context of supporting the American military so as to defeat Nazi Germany. Of course the underpinning of this patriotic urge was to support and protect the Soviet Union,⁷⁶ as Moscow was still the CPUSA's primary source of political guidance. Nevertheless, Schrecker notes that, "By January 1943, one-fifth of the men in the CP were serving in the military."⁷⁷ The CP was also very active in other war-supporting activities, such as blood drives and war bonds.⁷⁸ Again, like the First Popular Front, the Second Popular Front aimed to make the CP blend more easily with mainstream American politics.

⁷⁶ Schrecker, *Many are the Crimes*, 17.

⁷⁷ *Ibid.*, 75.

⁷⁸ *Ibid.*, 75.

Ed Yellin himself joined the military during the Second Popular Front. Yellin recalls that in 1945, he graduated from high school at the age of seventeen and a half and planned to enlist in the military. Specifically, he planned to enlist in a Naval program designed to train young men in the use of specific electronic equipment. When he and several of his friends went to enlist, however, he failed his test for color blindness and was not allowed to participate in the program after all. Later that year, Yellin was drafted into the military. He notes, however, that this was at the very end of the war effort. By the time Yellin completed his basic training, the Japanese had surrendered and the war was officially over. Yellin has always liked to tell people the Japanese surrendered because they knew he had enlisted.

Yellin's eagerness to join the military in the mid-40s is a great example of the effect that the Second Popular front had on individuals within the CPUSA community. It is important to note here that at this point Yellin was, for all intents and purposes, a member of the CPUSA. Having grown up in a Communist neighborhood, Yellin had been surrounded by the CPUSA for most of his life. There was, therefore, no distinct moment when Yellin became a Party member. Yellin's eagerness to join the military during the Second Popular Front campaign is an important example of how the CPUSA attempted to blend with mainstream politics by emphasizing a patriotic and anti-Fascist stance.

This attempt, however, was somewhat short-lived. The end of World War II in 1945 brought major changes for the CPUSA and for the growing anti-Communist sentiment that had been building since the late 30s. The decade following World War II proved to be the most dangerous decade in American history to call oneself a

Communist. Some scholars, such as Ellen Schrecker, argue that World War II and the following post-war era single-handedly transformed Communism from an unpopular political ideology to an issue of “national security.”⁷⁹ It is crucial, therefore, that the post-war era be examined closely in order to make sense of this transformation and, more specifically, how it affected individuals like Ed Yellin.

The Post War Era

Following the World War II, the United States and the Soviet Union emerged as the two world superpowers, which put them into immediate competition with one another. The two countries therefore began to compete over everything from nuclear weapons, to spacecrafts, to kitchen appliances. The rivalry between the U.S. and the USSR grew to be one of the most hostile relationships between two countries in the last century. In fact it was so hostile, the period of time following World War II and reaching all the way to the 1980s is known as the Cold War.

The hostile relationship between the USSR and the U.S. was complicated by one important factor: The United States was the leading capitalist power in the world, while the Soviet Union was the world’s first and most powerful Socialist regime. Since the Bolshevik Revolution of 1917, the capitalist world had seen Socialism—a political ideology that resolved to eliminate capitalism from the globe—as a threat. In the post-war era, this sentiment intensified. The building of postwar American suburbia emphasized the capitalist—as opposed to Communist—nature of the “American dream.” Many

⁷⁹ Schrecker, *Many are the Crimes*, 86.

contrasted the ownership of one's own home with the perception that citizens of Communist countries, like the USSR, had no freedom of choice. Bill Levitt, creator of Levittown suburbs in Long Island and Pennsylvania, said in 1948, "No man who owns his own house and lot can be a Communist."⁸⁰

This inherent opposition between Communism and Capitalism led to the creation of several American policies after World War II that were designed to contain the spread of worldwide Communism. These policies included the Truman Doctrine and the Marshall Plan—both of which provided economic and military aid to achieve this "containment."⁸¹ These containment policies would resurface again and again throughout the second half of the 20th century, manifesting themselves in conflicts such as the Korean and Vietnam Wars. And while the fear of Communism spreading throughout the world grew, so did the fear that it would infiltrate or disrupt American domestic life. Fear of the Soviet's dropping a nuclear bomb led to the creation of bomb shelters all across the country in both public places as well as many American homes. In the post-war period, it became clear that the Soviet Union, and by association Communism itself, was a dangerous enemy that threatened the American way of life.

At the same time that the anti-Communist sentiment was rising in the post-war decade, the CPUSA was undergoing significant changes in leadership and ideology. These changes would only weaken its position in the American political landscape even further. During the First and Second Popular Front movements in the Communist Party, spanning the decade of 1935-1945, the CPUSA had moved further and further away from a "revolutionary" stance that was pivotal to pure Marxist doctrine. Earl Browder, the

⁸⁰ Matthew Lassiter, *History of American Suburbia* (lecture, University of Michigan, Ann Arbor, MI, October 8, 2009).

⁸¹ Navasky, *Naming Names*, 6.

Party head during the Popular Front years, had championed this shift attempting to make the party more mainstream and acceptable in the American political landscape. Browder even decided to dissolve the Party itself on May 20, 1944, replacing it with the Communist Political Association—a decision that created deep divisions within the CPUSA.⁸²

These divisions intensified in 1945 when the *Daily Worker* reprinted an article from the French Communist Party's theoretical journal. The article featured a letter written by Jacque Dulcos—a French Communist leader—in which Duclos openly criticized Earl Browder for his “notorious revision of Marxism.”⁸³ The Duclos Letter, as it came to be known, had an enormous impact on the CPUSA. In fact, Yellin remembers the Duclos letter as being one of the most controversial topics of conversation during his upbringing in The Coops.⁸⁴ Although it was a French Communist leader who authored the letter, American Communists knew the letter must have been influenced by Moscow.⁸⁵ Given the close connection to Moscow that the CPUSA had always tried to maintain, the CPUSA immediately ousted Earl Browder and dissolved the Communist Political Association that he had created in 1944.⁸⁶ The CPUSA returned in full force, and so did its revolutionary stance that had been lost during the Popular Front years. Schrecker describes the new era of Party policy as emphasizing an impending collapse of capitalism—just as the Party had done during the Third Period. Unlike the patriotism and more mainstream stances of the Popular Front years, the post-war era led the party into a renewed period of militancy.

⁸² Isserman, *Which Side Were You On?* 1.

⁸³ *Ibid.*, 2.

⁸⁴ Edward Yellin, interview by author, January 16, 2010.

⁸⁵ Schrecker, *Many are the Crimes*, 18.

⁸⁶ *Ibid.*

Unfortunately for the CPUSA, this return to a more radical and revolutionary stance coincided with the most potent decade for anti-Communist repression and discrimination in the United States. While the circumstances of the decade were enough to make CPUSA membership a legal and social liability, the fact that the Party was no longer making an effort to blend with mainstream America only made these circumstances worse. As a result, one could likely mention elements of anti-Communist sentiment in nearly every aspect of American life during this decade. The remainder of this chapter, however, will focus specifically on the areas of anti-Communist repression that pertain specifically to Ed Yellin’s story. These areas include anti-Communist legislation, the rise of investigatory congressional committees, as well as anti-Communist discrimination in academia. Although the FBI also played a crucial role in anti-Communist repression during this era, for the purposes of this thesis, the role of the FBI and J. Edgar Hoover will only be discussed insofar as it relates to the topics already mentioned.

The post-war era proved to be an important time for anti-Communist legislation. In 1950, Congress passed the Internal Security Act of 1950—more commonly known as the McCarran Act. This piece of legislation called for the official registration of “Communist-action” and “Communist-front” organizations.⁸⁷ This tactic, in theory, was designed to make Communists “easier to find.”⁸⁸ In 1954, Congress went a step further and passed the Communist Control Act of 1954. While the Smith Act of 1940 outlawed “advocating the violent overthrow” of the American government, the Communist Control Act explicitly identified the Communist Party as one such organization:

The Congress hereby finds and declares that the Communist Party of the United States, although purportedly a political party, is in fact an instrumentality of a

⁸⁷ Goodman, *The Committee*, 291.

⁸⁸ Schrecker, *Many are the Crimes*, 141.

conspiracy to overthrow the Government of the United States. It constitutes an authoritarian dictatorship within a republic, demanding for itself the rights and privileges accorded to political parties, but denying to all others the liberties guaranteed by the Constitution.⁸⁹

In addition to marking the Communist Party as part of a conspiracy to overthrow the government, the Communist Control Act went a step further to identify the Party as a threat to international security and suggested that the Party should be outlawed. The act reads:

Holding that doctrine, its role as the agency of a hostile foreign power renders its existence a clear present and continuing danger to the security of the United States. It is the means whereby individuals are seduced into the service of the world Communist movement, trained to do its bidding, and directed and controlled in the conspiratorial performance of their revolutionary services. Therefore, the Communist Party should be outlawed.⁹⁰

While the Communist Control Act of 1954 did not actually outlaw the Party—it only suggested that it *should* be outlawed—it is still an important reflection of the anti-Communist sentiments that were present in Congress in the post-war decade. The early-to-mid 1950s were the height of anti-Communist hysteria in this decade, and this piece of legislation illustrates that circumstance even further.

In addition to the explicitly anti-Communist legislation in the decade following World War II, the government also used existing legislation—the Smith Act—to prosecute CPUSA leaders in the late 1940s. Although the first Smith Act prosecutions had been of Socialist Workers Party “Trotskyites,” in the early 40s, in 1949 the government used the Smith Act to successfully prosecute 11 CPUSA leaders. They became known as the “Smith Act Eleven.”⁹¹ Their trials set the standard for this era in terms of what Victor Navasky calls the “Informer Principle.” This refers to the fact that during the trials of the Smith Act Eleven, and in particular the Dennis case, the

⁸⁹ *Communist Control Act of 1954*, Public Law 637, 83d Congr., 2d sess., (August 24, 1954).

⁹⁰ *Ibid.*

⁹¹ Navasky, *Naming Names*, 4.

government used political “informants” that ranged from FBI agents to former members of the Party as evidence of a defendant’s involvement in the Party and therefore their guilt under the Smith Act.⁹² Navasky writes, “The Informer Principle held not merely that there was nothing wrong with naming names, but that it was the litmus test, the ultimate evidence, the guarantor of patriotism.”⁹³ This practice of “naming names” continued well beyond 1949. The use of informants would actually become extremely important to the investigations performed by investigatory congressional committees, that were also gaining power during the post-war decade.

The Dies Committee, or House Committee on Un-American Activities (HUAC), became a permanent congressional committee on January 3, 1945.⁹⁴ For the next three decades, HUAC would rise and fall as the most influential anti-Communist organization in American history. Its task was to investigate “un-American” activities, propaganda, and organizations for legislative purposes. This involved calling witnesses before the Committee and often times asking these witnesses the famous question, “Are you now, or have you ever been, a member of the Communist Party?” Before discussing the specifics of those investigations, however, it is important to discuss further what the official task of the Committee truly was. As cited in Yellin’s 7th Circuit opinion, Rule XI of the House Rules 17 (b) reads:

The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (1) the extent, character, and objects of un-American activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of

⁹² Navasky, *Naming Names*, 28.

⁹³ *Ibid.*

⁹⁴ Goodman, *The Committee*, 168.

government guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.⁹⁵

According to this rule, HUAC had the ability to determine what qualified as “un-American” in terms of their investigations. It is clear from decades of records that the Committee defined “un-American” as membership in the CPUSA or other organizations determined to be subversive. It is also clear from this rule that the Committee’s investigations were supposed to have a legislative purpose. As the Committee gained power, witnesses, activists, and even the courts would begin to question what was truly within the jurisdiction for the Committee to investigate. Witnesses like Ed Yellin, for example, would assert that HUAC did not have the right to inquire about an individual’s CP membership or any other political affiliation.

These attacks on the Committee’s jurisdiction, however, would not gain momentum until the late 1950s. In 1945, HUAC was just beginning its attack on American Communists. That year, HUAC’s members launched an all-out attack on the CPUSA, first investigating the Party itself, and then moving on to other groups that the Committee suspected were Communist-front organizations.⁹⁶ HUAC tackled such figures as Gerhart Eisler—an international Communist leader—in 1947 and Alger Hiss—a state department official—in 1948.⁹⁷ In 1949, HUAC specifically targeted individuals suspected of atomic espionage—reflecting the ongoing fear that the Soviet Union would overtake the United States in nuclear weapons race.⁹⁸

Although Joseph McCarthy and SISS would receive the most attention for its work during the 1950s, HUAC also reached its period of greatest influence during this

⁹⁵ *United States v. Yellin*, 287 F.2d 292 (7th Cir. 1961).

⁹⁶ Goodman, *The Committee*, 176.

⁹⁷ *Ibid.*, 226.

⁹⁸ *Ibid.*, 274.

decade. From 1951 to 1952, HUAC investigated Hollywood for suspected Communists.⁹⁹ Although HUAC had already investigated the famous Hollywood Ten cases in 1947, it is clear that the Committee felt there was still work to be done in purging Hollywood of suspected subversives. In 1952, HUAC went after a group of doctors and lawyers in California.¹⁰⁰ In 1953 and 1954, HUAC questioned a number of American academics, claiming that dangerous subversives were infiltrating even the most educated and elite members of American society.¹⁰¹ By 1955, although the reign of Joseph McCarthy—the country’s most popular and famous red hunter—had been censured in the Senate, HUAC continued its investigations in earnest under the chairmanship of Francis Walter. Walter would be the chairman of the committee when Yellin was called to testify before it in 1958.

The amount of HUAC investigations would not start to decrease until 1957, and even this was a reluctant act on the part of the Committee. There is no question, however, that the 1950s were the most formative years for HUAC and its investigations. The range of those investigations and the vigor with which HUAC members attacked suspected Communists set the tone of repression for the decade. Not only did witnesses called before HUAC face public humiliation and exposure during their hearing, but many also lost their jobs and reputations within their community after being questioned by the Committee. And to make matters worse, HUAC was not the only congressional committee dedicated to the exposure of Communists.

The Senate equivalent of HUAC, known as the Senate Judiciary Committee’s Internal Security Subcommittee (SISS), contained one of the most famous red-hunters of

⁹⁹ Goodman, *The Committee*, 313.

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*, 327.

all time: Joseph McCarthy. The accusations and investigations of Senator Joseph McCarthy are, perhaps, the most well known stories of the post-war anti-Communist era. His influence was so great, in fact, that the era itself is often referred to simply as “McCarthyism.” Although Ed Yellin would be called before HUAC, as opposed to SISS, it is impossible to tell the story of anti-Communist repression in the United States without chronicling the rise and fall of Joseph McCarthy.

Joseph McCarthy was a Republican Senator from Wisconsin, and he was a member of SISS—also known as the McCarran Committee. He was elected in 1946 as a “traditional Midwestern conservative,” and engaged openly in “red-baiting”—the act of finding and punishing Communist Party members and associates.¹⁰² Schrecker notes that McCarthy’s anti-Communist stance was “unexceptional” for his time, considering that the destruction of Communism was a Republican Party mantra during the 40s and 50s.¹⁰³ What McCarthy did between 1950 and 1954, however, was bring a new level of urgency, vigor, and publicity to the act of “hunting” American Communists.

His campaign began on February 9, 1950, when McCarthy announced that he possessed a written list of 205 Communists in the State Department.¹⁰⁴ Accusing members of the State Department of being Communist was also not a new phenomenon. The Alger Hiss case of the late 40s was a perfect demonstration of the fear that Communists had “infiltrated” the American government. It was likely the *amount* of names that McCarthy claimed to have that was astonishing and even frightening to many people. What was even more astonishing, however, was the fact that McCarthy’s story rarely remained the same from one day to the next. McCarthy changed his 205 number

¹⁰² Schrecker, *Many are the Crimes*, 241.

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*, 245.

several times after he announced it on February 9th.¹⁰⁵ Despite his changing story, however, McCarthy's tirade against American Communists was only gaining momentum in 1950.

Until his censure in 1954, McCarthy pushed for the investigation of the "Communist infiltration" of the State Department, Hollywood, and finally even the military. McCarthy developed a cast of "professional witnesses" that he used as informants to accuse various individuals and organizations of engaging in Communist activity. He championed the Republicans as the protectors of American freedom while pegging the Democrats as being "soft" on Communism¹⁰⁶—even blaming the Truman administration for "losing" China to the Communists in 1949.¹⁰⁷ Even when other members of his party disagreed with his tactics, McCarthy's popularity was undeniable, and his campaign against the Democrats appeared to be working.¹⁰⁸

In 1954, however, McCarthy went after the military as an organization that had been corrupted by the Communist influence. Earlier that year, McCarthy had discovered Irving Peress, a dentist from Brooklyn who invoked the Fifth Amendment when filling out the Military's standard loyalty questionnaire.¹⁰⁹ Somehow Peress's paperwork had been overlooked after he was drafted in 1952, and McCarthy saw this as his opportunity to implicate the United States military as a Communist organization. The "Army-McCarthy hearings" lasted for two months and were broadcast on live television for the entire country to view.¹¹⁰ During the Army trials, McCarthy repeatedly badgered

¹⁰⁵ Schrecker, *Many are the Crimes*, 245.

¹⁰⁶ *Ibid.*, 242.

¹⁰⁷ *Ibid.*, 244.

¹⁰⁸ *Ibid.*, 244.

¹⁰⁹ *Ibid.*, 261.

¹¹⁰ *Ibid.*, 263.

witnesses and made “insulting remarks.”¹¹¹ Suddenly McCarthy’s public popularity dropped as America witnessed McCarthy’s crude and abrasive tactics. The true “emptiness” of his claims was revealed through journalists and other news media, and on December 2, 1954, the Senate voted to censure Joseph McCarthy.¹¹²

The McCarthy era, however, did not end with McCarthy’s censure. The investigatory activities of the McCarran Committee and HUAC continued well after 1954. Congressional committees such as HUAC and SISS continued to investigate into the 1970s, although their clout within congress, and American society, would take a serious hit in the late 1950s and early 60s. Perhaps the most important legacy of both Joseph McCarthy and HUAC in the post-war decade was the rise in power of investigatory committees during this era. During the 1950s, the process of investigating suspected Communists or other subversives in the form of investigatory committees soon began to appear in other aspects of American society. Many states and cities, for example, created their own Committees on Un-American Activities. Private institutions and employers formed investigatory committees if it came to light that there were suspected Communists in the organization. The world of academia also adopted this trend. In fact, Ed Yellin would eventually face one of these committees during his time as a graduate student at the University of Illinois.

The history of anti-Communist repression in academia, particularly in the post-war era, is especially relevant to Ed Yellin’s story. Following World War II, there was an upsurge in left-wing political activism on college campuses. Organizations such as the American Youth for Democracy (AYD), the Young Progressives, and the Labor Youth

¹¹¹ Schrecker, *Many are the Crimes*, 263.

¹¹² *Ibid.*, 264.

League soon became targets for University officials to quell leftist tendencies on campus.¹¹³ Universities also fought against Marxist student groups. Ed Yellin would join such a group during his time at the University of Michigan in the late 1940s. Many Universities, for example, required these radical student groups to submit membership lists to university officials, and even banned student groups like the AYD entirely.¹¹⁴ Some Universities, such as Harvard, prevented radical student groups from releasing publications,¹¹⁵ and formed University Committees to discuss how officials should handle these “threatening” student organizations. University officials even routinely banned outside speakers who were affiliated with the CPUSA in the late 1940s and early 50s.¹¹⁶ According to Schrecker, “By the early fifties...the student left was all but extinct on American campuses, its demise the product of external repression and personal prudence.”¹¹⁷

Many universities, however, did not stop at eliminating radical *students* from their campuses in the post-war era—they actually eliminated radical faculty members as well. It was a tradition that had actually begun long before the post-war era. During the First Red Scare following World War I, some states mandated by law that teachers take an oath pledging their allegiance to the United States and renouncing radical tendencies. These “loyalty oaths” would become a staple of the anti-Communist era. Legislation requiring loyalty oaths for teachers and academics grew tremendously in the 1930s. According to Schrecker, by 1936 twenty-one states and the District of Columbia had

¹¹³ Ellen Schrecker, *No Ivory Tower: McCarthyism and the Universities* (New York: Oxford University Press, 1986), 84.

¹¹⁴ *Ibid.*, 87.

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*, 89.

¹¹⁷ *Ibid.*, 93.

imposed laws requiring loyalty oaths for teachers.¹¹⁸ These loyalty oaths also spurred what Schrecker calls “loyalty investigations,” during which teachers and academics were investigated by an academic or school committee upon suspicion that they were a Communist or a leftist-sympathizer.

This tradition continued into the post-war era. On March 21, 1947, President Truman issued Executive Order 9835 establishing the loyalty-security program.¹¹⁹ According to Schrecker, this program established anti-Communism as the nation’s “official ideology.”¹²⁰ The program initiated a name check of every federal employee in FBI, HUAC, and Civil Service Commission files.¹²¹ If an individual proved to be suspicious, the FBI carried out a full investigation and, in many cases, sent a report to the individual’s employer notifying them of the FBI’s findings.¹²² Combined with the example of committees such as HUAC or SISS, this procedure set the standards for investigation in government agencies, private institutions and, indeed, in academia as well.

During the 1950s, it was commonplace for universities to form investigatory committees to examine certain students or faculty members who were suspected “subversives.” Sometimes, these university committees were closely linked to the local or federal government. According to historian Jonathan Wiener, in 1952 twenty-eight colleges and universities in California agreed to cooperate with the state legislature’s

¹¹⁸ Schrecker, *No Ivory Tower*, 68.

¹¹⁹ Schrecker, *Many are the Crimes*, 274.

¹²⁰ Schrecker, *No Ivory Tower*, 5.

¹²¹ Schrecker, *Many are the Crimes*, 275.

¹²² *Ibid.*

Committee on Un-American Activities.¹²³ This cooperation even led to the placement of an official representative of the committee on each campus. Wiener notes that, “In the first year of operation, this system resulted in more than one hundred dismissals or resignations and the prevention of about two hundred new appointments.”¹²⁴ And this was in just one state, in one *year* of the post-war decade alone.

There is no question that the anti-Communist discrimination in academia was widespread during the 1950s. In fact, some of the most famous Communist cases from the post-war decade involved academics. Lloyd Barenblatt—whose Supreme Court case of 1959 would set an important precedent for Yellin’s case in particular—was an instructor at Vassar University.¹²⁵ Chandler Davis, whose case was very similar to Barenblatt’s, was a Professor of mathematics at the University of Michigan. Both men were fired from their jobs after being subpoenaed by HUAC. In the case of Chandler Davis, he refused to answer questions posed by HUAC as well as a committee that the University of Michigan put together to examine his case.¹²⁶ To defy both of these committees was relatively risky for Davis, and in the end it landed him not only unemployed, but in jail as well.

Yellin would face some of this discrimination during his time as a graduate student at the University of Illinois. He would face a university committee as well as the denial of several academic fellowships in the late 1950s and early 60s. Before Yellin could even think about entering academia, however, he would have to complete his undergraduate

¹²³ Jonathan Weiner. “Radical Historians and the Crisis in American History, 1959-1980,” *The Journal of American History*, Vol. 76, No. D (Sep., 1989), 402.

¹²⁴ *Ibid.*

¹²⁵ Schrecker, *No Ivory Tower*, 129.

¹²⁶ *Ibid.*, 219.

education—a process that would be interrupted by his dedication to the CPUSA and its cause.

After being drafted into the military at the very end of World War II, Yellin spent one year in the Navy. After a year of service, Yellin was permitted to leave the service because, according to Yellin, he was college bound and was granted an early discharge.¹²⁷ Before joining the Navy Yellin had spent one semester at City College in New York City, and after returning from his brief military stint he resumed classes there in engineering.

Yellin remained at City College for another year and a half after returning from the Navy. With the passage of the GI Bill, however, Yellin was given the opportunity to leave New York City and resume his engineering studies at the University of Michigan in January of 1948. Yellin continued his engineering studies in Ann Arbor, but was also very active in CP activities on campus and was an open member of the Party by this time.¹²⁸ It was at the University of Michigan that Yellin became involved in the CPUSA's labor colonization program in the late 1940s. Before continuing with Yellin's involvement in this program, however, it is important to provide some historical background for its creation and significance. This background involves, specifically, the changing nature of the relationship between the CPUSA and the American labor movement in the post-war era.

Unlike the congenial relationship that the Party forged with American labor during the first Popular Front, the post-war period turned out to be disastrous for Communist-labor relations. Labor leaders such as Walter Reuther who had once been allied with the

¹²⁷ Edward Yellin, interview by author, January 16, 2010.

¹²⁸ Edward Yellin, interview by author, October 30, 2009.

CPUSA became hostile to the Party after World War II. Reuther even helped to found Americans for Democratic Action (ADA)—an anti-Communist liberal organization—in the late 1940s.¹²⁹ Although Reuther had been friendly with American Communists in the early 1930s, he became a fierce anti-Communist within the CIO. His actions even contributed to the CIO ousting of Communists in the late 1940s.¹³⁰ This “purge” of Communists from the CIO meant that the CPUSA would have to find another way to influence basic industries that were still crucial to the fulfillment of CP doctrine.

American Communists found this alternative route in the form of a labor colonization program that they launched in the late 40s and early 50s. This program was aimed at strategically placing Communist leaders in various industries.¹³¹ Yellin was recruited for this program in 1949. Yellin notes that recruiters for the program often targeted college-educated Party members who had no previous work experience in basic industry, and Yellin fit this description perfectly in 1949. Yellin said that, as he understood it, the program was an extension of the Marxist/Leninist belief that the workers would lead the proletarian revolution—a belief in which Yellin believed strongly.¹³² Because of his strong beliefs, Yellin recalls not hesitating at all before agreeing to participate in the colonization program. So after spending a year and a half at the University of Michigan, Yellin and his new wife Jean moved to Gary, Indiana where Yellin began work in the steel industry. Yellin would continue working in Gary for the next six to seven years. It would be his work with the Communist Party in Gary, IN, specifically, that would bring Yellin before HUAC in 1958.

¹²⁹ Schrecker, *Many are the Crimes*, 79.

¹³⁰ Cochran, *Labor and Communism*, 252.

¹³¹ Edward Yellin, interview by author, October 30, 2009.

CHAPTER TWO: The Hearing and its Aftermath: 1958-1960

The height of the anti-Communist hysteria in the late 1940s and 50s left an irreversible mark on American history. A modern day “witch hunt,” anti-Communist repression in the decade following World War II painted a radical, sometimes even evil picture of American Communists. The espionage trials from the 1940s and 50s seemed to indicate that to be Communist was to be a Soviet spy and a traitor. The McCarthy crusade of the 1950s seemed to claim that Communists were infiltrating every aspect of American life. The anti-Communist repression had a forceful presence in American society by the 1950s. By this time, however, there was a small but noticeable resistance forming among the civil rights community. Attorneys, academics, and other activists began to fight back against the civil liberties violations of anti-Communist agencies such as congressional committees. This resistance movement included a series of legal defenses designed to challenge the actions of HUAC and SISS. Ed Yellin would attempt such a defense after receiving a subpoena to appear before HUAC in 1958.

Additionally, the political environment of the late 1950s and early 60s suggested that the era of anti-Communist repression might be declining. With Joseph McCarthy’s censure in 1954 and the Supreme Court asking in 1957, “Who can define the meaning of un-American?”¹ it seemed that while the 1950s began as a decade of extreme anti-Communist repression, it ended as one of declining discrimination and hysteria. Nevertheless, Ed Yellin and his family would still face this repression after receiving Yellin’s subpoena in 1958.

After participating in the CP’s labor colonization program for eight years, Yellin decided to leave the CP and Gary, Indiana in 1956. Due to the changing nature of the

¹ *Watkins*, 354 U.S. 178.

CPUSA in the late 1950s, Yellin—along with many other CP members—felt it was time to move on from his Party membership. After leaving the CP, Yellin never expected to encounter legal issues relating to his former political activities. In January of 1958, however, Yellin received a HUAC subpoena—a notice that he would be called before the Committee on Un-American Activities and questioned about his membership in the CPUSA. The subpoena was only the beginning of a long ordeal with the legal system that Yellin and his family would endure for the next five years.

After receiving the subpoena, Yellin faced a difficult decision ahead: How would he answer—or refuse to answer—the questions posed to him by the Committee? While Yellin knew immediately that he would not be a “cooperative witness,” he still had to decide whether he was going to refuse to answer the Committee’s questions by citing the Fifth Amendment, or the First Amendment. Yellin sought the advice of attorney Victor Rabinowitz to make his decision.

Based on the historic ruling of *Watkins v. United States* (1957), Yellin and Rabinowitz felt it was time to create a precedent for the legality of the First Amendment defense before a congressional committee. Even though they both knew the First Amendment defense would likely bring about a contempt citation, it was a risk both men were willing to take. After relying on his First Amendment rights at the hearing, Yellin was promptly cited for contempt of congress. His citation was followed by an indictment, as well as a conviction by a District Court in Hammond, Indiana.

Yellin’s willingness to employ the First Amendment defense—even when he knew he might receive a criminal conviction because of it—speaks to the increasing resistance to anti-Communist repression that was gaining strength in the late 1950s and early 60s. A

harsh critique of HUAC's legitimacy, Yellin's defense fits into a larger trend of individuals, activists, and organizations that resolved to challenge HUAC and anti-Communist repression on constitutional grounds. This was a resistance movement that would ultimately help bring about the decline of these repressive elements of American society, and it was spearheaded by an organization called the Emergency Civil Liberties Committee (ECLC).

The 1950s: Anti-Communist Resistance and Changes in American Communism

In 1951, the ECLC appeared on the civil rights scene as a strong opponent to HUAC. It emerged at a time when the American Civil Liberties Union (ACLU) formally refused to be involved in Communist cases. After a HUAC accusation in 1939 that the ACLU was a Communist organization, the ACLU adopted an informal policy of distancing itself from the Communist movement.² The ACLU actually wrote such a position into their constitution in 1951—an event that prompted the emergence of the ECLC in the same year.

Even with such a policy, however, the ACLU could not completely remove itself from Communist cases given that such cases often involved important issues of civil liberties protection. In practice, this meant that the ACLU deferred involvement in many Communist cases until the appeals stage. At this stage, the ACLU would often enter a

² Navasky, *Naming Names*, 49.

case as *amicus curiae*, or a “friend of the court.”³ In Ed Yellin’s case, for example, the ACLU filed an *amicus curiae* brief before his second Supreme Court hearing.⁴

Regardless of their willingness to write amicus briefs, however, the fact remains that during the height of the post-war anti-Communist repression, the ACLU refused to take legal cases involving individuals with a Communist history. This left a void in the civil rights community that the ECLC formed to fill. As an organization, the ECLC consisted of activists and intellectuals who, in the words of Navasky, “vigorously fought domestic repression.”⁵ Members of the ECLC released pamphlets and advertisements, as well as aided in the defense of Communist clients in order to bring about the end of HUAC and the oppression it created. In Ed Yellin’s case, ECLC member Thomas Emerson actually testified as an expert witnesses at his District Court trial. The ECLC would continue to gain even more momentum in the late 1950s, coinciding with the declining trend of anti-Communist repression.

As the resistance to congressional committees grew in the 1950s, the CPUSA was undergoing several major changes. On February 24th and 25th, 1956, Nikita Khrushchev spoke at the famous Twentieth Congress of the Comintern exposing the crimes of Joseph Stalin’s regime.⁶ Information about mass killings, corrupt government, and other atrocious actions on behalf of the Soviet government during Stalin’s reign was hard to accept for most CPUSA members. Isserman refers to this event as the “deStalinization crisis.”⁷ As Schrecker points out, many CP members had refused to accept the reality of

³ Navasky, *Naming Names*, 50.

⁴ Brief of the American Civil Liberties Union as Amicus Curiae on Reargument, *Yellin v. United States*, No. 35 (November 20, 1962).

⁵ Navasky, *Naming Names*, 50.

⁶ Schrecker, *Many are the Crimes*, 20.

⁷ Maurice Isserman, *If I had a Hammer...The Death of the Old Left and the Birth of the New Left* (New York: Basic Books, Inc., Publishers, 1987), 3.

Stalin's show trials during the 1930s, when many Soviet Communists were killed or imprisoned on absurd or completely fabricated charges.⁸ When the reality of these horrible events became undeniable in 1956, it was a massive blow to CP credibility and Party membership. Long-time CPUSA leader, Steve Nelson, commented on Khrushchev's remarks by saying, "This is not the reason I joined the Party. From now on we have to reject this; we have to make our own decisions; there are no more gods."⁹ He left the party shortly after.

The crisis of 1956, however, continued to worsen as the year progressed. In November of 1956, Hungarian Prime Minister Imre Nagy announced that Hungary would be withdrawing from the Warsaw Pact—an announcement that challenged Soviet authority over Hungary.¹⁰ On November 4, 1956, Soviet troops and tanks descended upon several Hungarian cities, violently suppressing public resistance and ultimately removing Nagy from power.¹¹ It was an assertion of brute force that sent a strong message to all Soviet-controlled territories, as well as the rest of the world.

In the United States, the CPUSA immediately became divided over the issue of the Hungarian Revolution. Some party leaders, such as Eugene Dennis, advocated that the Soviet Union had the right to suppress the rebellious behavior of the Hungarian government.¹² Others, such as John Gates, strongly disagreed and cited the Leninist belief in national self-determination.¹³ The Party was so divided on the issue that the National Committee of the CPUSA was forced to come up with a statement that neither denounced

⁸ Schrecker, *Many are the Crimes*, 21.

⁹ Isserman, *Which Side Were You On?* 250.

¹⁰ Isserman, *If I had a Hammer*, 29.

¹¹ *Ibid.*

¹² *Ibid.*, 27.

¹³ *Ibid.*, 27.

nor supported the Soviet suppression of Hungarian forces.¹⁴ Like the “deStalinization crisis,” the Party split over the Hungarian Revolution prompted many Party members to abandon their membership completely. Many felt that the Soviet Union had overstepped its bounds in suppressing Hungarian forces, and that they could no longer back the Soviet Union simply because it was a Communist nation. This created a deep divide in the Party between those who still advocated strong support for the Soviet Union, and those who did not.

The events of 1956 took their toll on CPUSA membership. Between 1956 and 1958, the CPUSA saw a significant decrease in membership. By 1958, CPUSA membership was down to just 3,000 members.¹⁵ One of these lost members was Ed Yellin. By 1956 Yellin had lived in Gary, IN and worked for U.S. Steel for nearly seven years. Over those seven years, Yellin lost considerable connection to the CP. Because of the Cold War, Yellin says, the CP lost most of its effectiveness, and the CP leadership didn’t do enough to preserve the Party in spite of this.¹⁶ According to Yellin, by 1956 the party was barely present in places like Gary, IN—a unionized, working-class town that should have been a hotbed for CP membership.

His disillusionment, however, was only part of the reason Yellin would eventually leave the Party. In 1956, the suppression of the Hungarian Revolution was the final piece of the puzzle. Yellin, like many other American Communists, found the suppression of the Hungarian Revolution to be unjust and contradictory to his principles. Yellin even spoke out against the Soviet Union’s actions in a party meeting shortly after the news of

¹⁴ Isserman, *If I had a Hammer*, 30.

¹⁵ Schrecker, *Many are the Crimes*, 20.

¹⁶ Edward Yellin, interview by author, October 30, 2009.

the suppression was released.¹⁷ The following day at work, two FBI agents met him in the parking lot asking if he was “ready to talk.” Yellin recalls that before this encounter, the FBI had never approached him, so he wasn’t sure why they asked him if he was “ready to talk.”¹⁸ Whatever the reason this language, Yellin immediately declined and assumes they must have had some way of knowing about his behavior in the party meeting the day before.

It is after this incident that Yellin considered himself no longer a member of the CPUSA. While he may have attended a few meetings after the Hungarian Revolution, this incident really “tipped the scales” as far as he was concerned.¹⁹ In the absence of an actual card to turn in—a practice that Yellin says the CP stopped years before—Yellin’s departure from the CP was not formalized or documented in any way. So just as there was no distinct moment when Yellin joined the CP, there was no distinct moment when he left it either.

The final event that pushed Yellin to leave Gary, however, would have nothing to do with his politics. As a steel worker, Yellin faced a dangerous job every day. One day in 1956, the same year that Yellin was recognizing his disillusionment with the CP, Yellin was burned badly on his hand at work. When he came home that evening, he and his wife decided it was time to leave Gary. He took a course in integral calculus at Purdue University to “make sure he could still think,” and then decided it was time to finish his undergraduate education—an endeavor that had been disrupted by his participation in the CP’s colonization program.²⁰

¹⁷ Edward Yellin, interview by author, October 30, 2009.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

In 1957, Yellin, his wife Jean, and their three children—all of whom had been born in Gary—relocated to Fort Collins, Colorado, where Yellin began attending Colorado State University. Once again, Yellin pursued an engineering degree. As an undergraduate, Yellin thrived in the engineering department at Colorado State. He says he was, “the star of the department,” and that the head of the department—Stuart Taylor—loved him for his impressive academic performance as well as his real world experience. Yellin was, by all accounts, paving the way for an excellent academic career in 1957. But Yellin had not yet encountered what would become the biggest obstacle to his academic career.

Subpoena and HUAC Hearing

In January of 1958, a U.S. Marshall came to Yellin’s front door. He and his family were home at the time, and he remembers answering the door to a man dressed in a “ten-gallon hat”—as any Colorado cowboy would be.²¹ The Marshall simply said, “I have to give you this. Good luck,” as he handed him the subpoena. Upon inspection, Yellin saw that this was a HUAC subpoena—a mere glimpse of the ordeal that Yellin would face over the next five years. The subpoena instructed Yellin to be present in Gary, IN on February 16, 1958 to give testimony before the House Committee on Un-American Activities. When asked about his reaction to the subpoena, Yellin simply replied, “We said ‘Oh shit!’”²²

²¹ Edward Yellin, interview by author, October 30, 2009.

²² Edward Yellin, interview by author, January 16, 2010.

Yellin's full reaction to the subpoena, however, was more complicated than that. More than anything, he was surprised. By the late 1950s, Yellin recalls that he thought most of the anti-Communist repression and hysteria had subsided. He had left the Party, left Gary, and was beginning to pursue an academic career as an undergraduate student in Colorado. In 1958, Yellin said that he and his family never expected to be haunted by his Communist past. As it turns out, they were wrong.

After receiving the subpoena, Yellin and his wife immediately called his wife's sister, Ann Fagan Ginger. Ginger was a prominent left-wing lawyer, and naturally the Yellins called her for advice after receiving the subpoena. Despite her familiarity with cases like Yellin's, Ginger didn't have much experience with litigation. Therefore she put Yellin in touch with a man who had much more experience—an attorney named Victor Rabinowitz. Rabinowitz represented Yellin first before HUAC in 1958, and eventually before the Supreme Court in 1963. As a member of the CPUSA himself, Rabinowitz was committed to defending the civil liberties of those involved in the CP. In his memoir he writes, "I dreamed of one big movement someday—maybe in ten years, maybe in one hundred—might lead to a socialist society on earth."²³

At the time he took Yellin's case, Victor Rabinowitz was a partner in his own firm in New York City. Rabinowitz's career, however, began under much different circumstances. After graduating from the University of Michigan Law School in 1934, he began his career at Hays, Podell, and Schulman—a small firm in New York City that dealt mostly with stockholder actions.²⁴ From 1935 to 1938, it seemed that Rabinowitz's work would have nothing to do with his ultimate career in defending individuals like Ed

²³ Victor Rabinowitz, *Unrepentant Leftist: A Lawyer's Memoir* (Chicago: University of Illinois Press, 1996), 20.

²⁴ *Ibid.*, 13.

Yellin. It was during these years, however, that Rabinowitz became involved in his first left-wing organization: the International Labor Defense (ILD). After a brief introduction to the organization by a junior partner at his firm, Rabinowitz became active in the ILD—a Communist-front organization that worked to support left-wing radicals facing legal trouble.²⁵ Rabinowitz himself claims that the years he spent working with the ILD were some of the most formative of his life. In addition to his firm job, he spent a few hours a week working for the ILD as well as the American Labor Party—organizations that opened Rabinowitz up to the left-wing world.²⁶

In 1938, Rabinowitz left Hays, Podell, and Schulman and joined the Boudin Law firm—a firm dedicated specifically to the practice of labor law. Louis Boudin, the senior partner of the firm, was a left-wing radical committed to defending American labor.²⁷ While Rabinowitz notes that Louis Boudin was close to the CPUSA, he does not believe that he was ever an official member.²⁸ While working at the Boudin office, Rabinowitz represented a number of trade unions and organizations, including the American Communications Association—an organization closely tied with the CPUSA. Additionally, Rabinowitz spent much of his early career working with the National Labor Relations Board (NLRB)—a federal agency developed to enforce fair labor practices. In 1944, Rabinowitz decided to open his own practice with two other colleagues at a firm titled Neuburger, Shapiro, and Rabinowitz.²⁹ The firm became Neuburger, Shapiro,

²⁵ Rabinowitz, *Unrepentant Leftist*, 15.

²⁶ *Ibid.*

²⁷ *Ibid.*, 20.

²⁸ *Ibid.*, 20.

²⁹ *Ibid.*, 28.

Rabinowitz, and Boudin in 1947 when Leonard Boudin, Louis Boudin's nephew, agreed to join the firm.³⁰

Having joined the Communist Party in 1942,³¹ it is perhaps no surprise that when Rabinowitz opened his own practice he began to represent American Communists in legal disputes. On many occasions his representation of CPUSA members—or those closely linked to the Party—led him to represent individuals who were called before HUAC and SISS. During the 1950s, Rabinowitz represented an estimated 150 clients before both of these committees, even dealing with Joseph McCarthy himself on a number of occasions.³² It was typical for Rabinowitz to represent witnesses before these committees, and then continue to represent them in any further legal matters that followed, as he did with Ed Yellin's case.

The 1950s proved to be a very formative decade for Rabinowitz and his legal practice. Not only did Rabinowitz involve himself heavily in Communist cases, he became connected to the larger resistance movement that was forming in the early part of the decade to challenge the authority of HUAC and other anti-Communist agencies. After the formation of the ECLC, for example, Rabinowitz's law partner and close friend Leonard Boudin became its general counsel.³³ In his memoir, Rabinowitz notes that he and Boudin worked on many cases that were sponsored by the ECLC. His connection to an organization, therefore, made Rabinowitz far more than just an attorney who happened to represent Communist clients—he became a warrior for civil liberties in an era when the suppression of those liberties seemed acceptably rampant.

³⁰ Rabinowitz, *Unrepentant Leftist*, 29.

³¹ *Ibid.*, 29.

³² *Ibid.*, 112.

³³ *Ibid.*, 159.

When Rabinowitz agreed to take Yellin's case in 1958, Yellin had actually never heard of Rabinowitz. Yellin does note, however, that he had heard of Rabinowitz's partner, Leonard Boudin.³⁴ Nevertheless, Yellin recalls that he trusted Rabinowitz—whom he refers to as “Vic”—completely. Before his HUAC hearing, Yellin and his wife met with Rabinowitz in Chicago to discuss Yellin's defense strategy. Yellin remembers that the restaurant at which they ate was so fancy that as soon as you pulled out a cigar, there was a waiter there to light it.³⁵ It was at this restaurant that Rabinowitz and Yellin discussed how he was going to handle his testimony before the Committee. History had left him with several options.

Yellin's first option was to be an informer or a “friendly witness” as many called it. Congressional Committees like HUAC depended on testimony from informers to draw out information on other CPUSA members or left-wing activists who refused to talk. Most of the time, the Committees were interested specifically in an informer's ability to “name names” of other individuals involved in the CPUSA. Some individuals, like Elizabeth Bentley, even made careers out of their positions as informers. For others, to be an informer was an act of treason in the left-wing world. Rabinowitz himself writes, “To me, all of the informers are sinners, and I find it difficult to forgive any of them.”³⁶ For Rabinowitz and Yellin both, choosing to be an “informer” was not a viable option. In addition to the treasonous stigma such a defense would have garnered, Yellin believed strongly that an individual's political affiliation was a private matter. Yellin recalls that he had no intention of releasing any such information about himself or anyone else.³⁷

³⁴ Edward Yellin, interview by author, January 26, 2010.

³⁵ Edward Yellin, interview by author, October 30, 2009.

³⁶ Rabinowitz, *Unrepentant Leftist*, 119.

³⁷ Edward Yellin, interview by author, October 30, 2009.

Beyond being an informer, Yellin still could have chosen to admit Party membership while refusing to relay information about anyone else. Again, Yellin believed firmly that his political affiliation was not for the government to know, demand, or criticize. Additionally, it is not likely that Yellin would have wanted to cooperate with an organization that had infamously exposed and humiliated members of the CP for two decades by the late 1950s. When asked about his eventual contempt conviction, Yellin noted, “I guess I always knew I was guilty of contempt of congress. I certainly had contempt for them.”³⁸ Yellin’s beliefs about privacy as well as his “contempt” for HUAC would both play a role in Yellin’s choice of a defense before the Committee.

The last two options for Yellin were to deny Party membership entirely, or refuse to answer any questions posed to him by the Committee. Denying CP membership would have run the risk of a perjury conviction. As noted in his memoir, Rabinowitz never advised his clients to deny Party membership—if they had in fact been CP members—at the risk of such a conviction. As for refusing to answer the Committee’s questions, it seems there was a long history for Yellin and Rabinowitz to consider before choosing this route. Since the 1940s, many witnesses called before HUAC had refused to answer questions posed by the Committee by citing their constitutional rights. The only two amendments ever cited for these refusals were the First Amendment and the Fifth Amendment.

The Fifth and First Amendment defenses, although both derived from the constitution, were very different in nature and had very different legal consequences in the late 1950s. The Fifth Amendment, which provides that no person, “shall be compelled

³⁸ Edward Yellin, interview by author, January 16, 2010.

in any criminal case to be a witness against himself,”³⁹ affords an individual the right not to incriminate himself. The use of this defense before Congressional Committees began in the 1940s. By the late 1940s and early 50s, it was clear that many committee members were becoming frustrated over the fact that they could not obtain “valuable information” from witnesses who cited their Fifth Amendment rights.⁴⁰ In 1950, HUAC cited 56 persons for contempt for refusing to answer questions before the Committee on Fifth Amendment grounds.⁴¹ They were, in a sense, the test cases for the Committee to see how much they could challenge the self-incrimination plea used before congressional Committees.

From the original 56 individuals cited, the courts found all but three of the individuals not guilty, and the remaining three had their cases overturned by the Supreme Court in the mid-fifties.⁴² Many of these defendants relied successfully on the 1950 precedent established by *Blau v. United States*, in which the Supreme Court overturned the contempt conviction of Patricia Blau.⁴³ Blau had refused to answer questions about her CP membership before a federal grand jury after citing the Fifth Amendment, and the government cited her for contempt on the grounds that her answer to this question would have supported a criminal conviction under the Smith Act.⁴⁴ Because Blau withheld this information, the government argued, her reliance on the Fifth Amendment constituted a charge of contempt. In the Supreme Court opinion for Blau’s case, Justice Black wrote, “Whether admissions of a witness by themselves would support a conviction under a

³⁹ U.S. Const. Fifth Amendment.

⁴⁰ Goodman, *The Committee*, 284.

⁴¹ *Ibid.*

⁴² *Ibid.*, 285.

⁴³ *Ibid.*

⁴⁴ *Watkins*, 354 U.S. 178.

criminal statute is immaterial in determining the existence of his constitutional privilege against self-incrimination.”⁴⁵

Even once the legality of the Fifth Amendment defense had been affirmed, however, the use of the Fifth Amendment before congressional Committees in the 1950s still had an incriminating effect on many individuals who invoked it. Many of those who used the Fifth Amendment—the “Fifth Amendment Communists”—lost their jobs and careers as if they were convicted criminals. They faced discrimination in their communities as punishment for the fact that they had invoked their protection against self-incrimination. As Walter Goodman puts it, “the self-incrimination plea... would subject the pleader to public skepticism regarding his innocence.”⁴⁶ Red hunters like McCarthy even interpreted the self-incrimination plea to be “proof” of an individual’s party membership.⁴⁷

For Yellin and Rabinowitz, using the Fifth Amendment defense in 1958 would not push any new boundaries as far as the authority of the Committee was concerned. Combined with the stigma that was almost certain to follow, using the Fifth Amendment as a defense before HUAC was not an appealing option. There was one more defense, however, that still had the potential to derail the inner workings of HUAC and present the ultimate challenge to its authority—this was the refusal to answer questions posed by HUAC on First Amendment grounds.

The history of the First Amendment defense begins in 1947 with the famous “Hollywood Ten” cases. The Hollywood Ten, originally a group of nineteen, were a group of Hollywood writers and producers who were called before HUAC in 1947

⁴⁵ *Blau v. United States*, 340 U.S. 159 (1950).

⁴⁶ Goodman, *The Committee*, 286.

⁴⁷ Schrecker, *Many are the Crimes*, 251.

because of their suspected Communist affiliations and activities. A public and large spectacle, it was the birthplace of a new defense before congressional Committees—the First Amendment defense. While all “uncooperative” HUAC witnesses prior to the Hollywood Ten had relied on the Fifth Amendment rights, the Hollywood Ten relied on their First Amendment right of free speech in 1948. With this defense, they maintained that HUAC did not have the jurisdiction or province to inquire about their political affiliations. All ten were cited for contempt of congress, convicted, and served a jail sentence of up to a year.⁴⁸ Hollywood executives also responded by vowing not to knowingly hire anyone who was Communist.⁴⁹ Many Hollywood stars that were known members of the CPUSA were “blacklisted” by their profession, which denied them jobs and even respect among their colleagues in the entertainment industry. Although others would attempt the First Amendment defense over the next decade, no cases provided hope for the legitimization of the defense until the *Watkins v. United States*, the opinion for which was released from the Supreme Court on June 17th, 1957.

John Watkins, a union organizer for the United Auto Workers, had been a witness before HUAC in 1954.⁵⁰ He had admitted that he had been very closely affiliated with the Party during the 1940s, and even gave testimony about other individuals who he believed were still Party members. Where Watkins rebelled was in refusing to answer questions about individuals whom he believed had left the party. Without clearly relying on any particular constitutional right, Watkins argued that the Committee’s questions were not relevant to their legislative purpose.⁵¹ Watkins was subsequently charged with and

⁴⁸ Navasky, *Naming Names*, 82.

⁴⁹ *Ibid.*, 83.

⁵⁰ Rabinowitz, *Unrepentant Leftist*, 121.

⁵¹ *Watkins*, 354 U.S. 178.

convicted of contempt of congress, and his case reached the Supreme Court in 1957. To be charged with contempt of congress, Watkins was convicted under 2 U.S.C.S. § 19.⁵² Enacted in 1938—the year the Dies Committee was established. As cited in the Watkins case, 2 U.S.C.S. § 19 states:

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.⁵³

After refusing to testify before HUAC in 1958, Ed Yellin was also convicted of contempt under 2 U.S.C.S. § 19. It was a statute that was continuously used to charge individuals with contempt after they refused to testify before HUAC. The essence of the statute claimed that HUAC had the right to compel a witness to give information “pertinent to the question under inquiry.” In the mid-to-late 1950s, when witnesses like Watkins or Yellin refused to answer such questions—on grounds other than the Fifth Amendment—they ran the risk of receiving a citation for contempt.

In the case of Watkins, however, The Supreme Court found that the questions posed to Watkins were so vague that Watkins could not have known whether or not he was within his rights to refuse to answer them. The true precedent of *Watkins* insisted that the Committee needed to make the subject and purpose of its investigation extremely clear to the witnesses called before it. In an annual report released by the ACLU in 1962, the *Watkins* case was interpreted in the following manner, “the high court held that if a

⁵² *Watkins*, 354 U.S. 178.

⁵³ *Ibid.*

witness challenged an investigating committee, the committee must make clear the subject it is investigating.”⁵⁴ Though the precedent of the *Watkins* case itself did not comment explicitly on the First Amendment defense, the majority opinion for the case did. In fact, the Supreme Court’s decision and majority opinion said a lot about the legitimacy of the Committee itself. The *Watkins* majority opinion, written by Chief Justice Earl Warren, stated:

There is no general authority to expose the private affairs of individuals without justification in terms of the functions of Congress. Nor is Congress a law enforcement or trial agency. These are functions of the executive and judicial departments of government. No inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of Congress. Investigations conducted solely for the personal aggrandizement of the investigators or to "punish" those investigated are indefensible.⁵⁵

Rather than affirming that the Committee had an unlimited right to demand information that was “pertinent to the question under inquiry,” the *Watkins* opinion seemed to place limits on what the Committee could investigate. Specifically, the opinion demanded that the inquiry be related to a “legitimate” task of Congress, and that the Committee make the purpose and subject of their inquiry known before questioning witnesses. This language left room for attorneys, like Rabinowitz, to argue that inquiring about an individual’s political affiliation was not related to a “legitimate” congressional task. The *Watkins* opinion also commented on the importance of the First Amendment as it pertained to the power of the Committee. The opinion states:

The Bill of Rights is applicable to investigations as to all forms of governmental action. Witnesses cannot be compelled to give evidence against themselves. They cannot be subjected to unreasonable search and seizure. Nor can the First Amendment freedoms of speech, press, religion, or political belief and association be abridged.⁵⁶

⁵⁴ American Civil Liberties Union, *42nd Annual Report* (July 1, 1961 to June 30, 1962), 33.

⁵⁵ *Watkins*, 354 U.S. 178.

⁵⁶ *Ibid.*

The *Watkins* decision engendered new hope for attorneys like Victor Rabinowitz who were anxious for the courts to accept the legitimacy of the First Amendment defense before congressional Committees. In his memoir, Rabinowitz described a meeting of a group of left-wing attorneys that was called when the *Watkins* decision was released. He noted that the meeting included, among others Abe Unger, Dave Freedman, and Harry Sacher. Unger and Freedman were apparently attorneys for the CPUSA, and Harry Sacher had defended CPUSA leaders prosecuted under the Smith Act.⁵⁷

The meeting was held in New York, and it was called to discuss the legal ramifications of the *Watkins* decision. Specifically, as stated by Rabinowitz, the attorneys met to discuss whether or not they should encourage their clients to rely on the First Amendment before congressional committees.⁵⁸ The group seemed to be divided on the issue. Some attorneys felt that *Watkins* provided new hope that the First Amendment defense might eventually gain acceptance in the courts. Others disagreed, arguing that using *Watkins* to pursue a First Amendment defense was too risky for their clients, as they would likely be cited for contempt.⁵⁹

Rabinowitz himself fell into the First Amendment camp.⁶⁰ He felt that the Fifth Amendment defense had damaged the party and had not challenged the jurisdiction of the congressional Committees enough. Although the CPUSA had no official policy on how witnesses should testify before HUAC, Rabinowitz wrote in his memoir that he hungered for a CP policy that would have officially advocated the use of the First Amendment

⁵⁷ Rabinowitz, *Unrepentant Leftist*, 122.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*, 123.

⁶⁰ *Ibid.*

rather than the Fifth.⁶¹ Nonetheless, Rabinowitz recognized that the First Amendment defense, even with the Watkins decision, still ran a much higher risk of a contempt citation for his current and potential clients. Yellin and Rabinowitz would consider all of these things when determining Yellin's defense strategy in 1958.

All things considered, Yellin and Rabinowitz decided that Yellin would pursue a First Amendment defense before HUAC. Yellin describes the decision process as simple. He and Rabinowitz held very similar principles, and so their decision to use the First Amendment was a natural one for both men.⁶² When asked if he thought about the consequences of such a defense, Yellin simply responded that he was well aware of the consequences, but that he and Rabinowitz both felt that it was time to re-test the waters with a more radical stance—a stance that had been attempted in the past, but never accepted by the courts. It was a stance that would use the First Amendment to challenge the very authority of HUAC to inquire about Yellin's political background. As Yellin puts it, “the times were changing,” and they thought it was time to fight back in full force.⁶³

So fight back they did. Yellin and his wife took the train from Colorado to Gary, Indiana in time for Yellin to arrive at his hearing scheduled for the morning of February 10, 1958. The hearing was to be held in the town post office. The newspapers had been announcing the Committee's arrival for some time leading up to the hearing—an indication that a Committee hearing was big news for a small city like Gary.⁶⁴ The scene upon which Yellin and his wife arrived on the morning of February 10, 1958 proved this

⁶¹ Rabinowitz, *Unrepentant Leftist*, 120.

⁶² Edward Yellin, interview by author, October 30, 2009.

⁶³ Edward Yellin, interview by author, January 16, 2010.

⁶⁴ *Ibid.*

fact even further. When Yellin and his wife arrived in Gary on the morning of his hearing, they encountered a chaotic blend of media and spectators. Reporters hounded Yellin to answer questions as he made his way up the post office stairs. Jean Yellin remembers standing at the bottom of the steps that morning, unable to see how she was going to make it to the top. She stood frozen at the bottom of the steps for a few moments, when suddenly an old acquaintance—someone she and her husband had known distantly during their time in Gary—took her arm and began leading her up the stairs. He calmly led Mrs. Yellin through the mess of reporters and spectators, telling reporters along the way that she had no comments to make. The acquaintance was not someone that the Yellin's had known very well before the morning of February 10, 1958, but he became someone to whom Jean Yellin would be forever grateful.⁶⁵

Once the Yellins made it into the hearing room, the scene was no less chaotic. The American Legion was positioned strategically in the room complete with all of their regalia. The school children of Gary were even allowed to break their academic routine for a special viewing of the hearing. The room was packed with spectators leaving only room for individuals to stand. The entire hearing would last for two days, consisting of eighteen witnesses subpoenaed by HUAC to testify. Three of these witnesses also testified in an executive session after the public hearing. In addition to Ed Yellin, Rabinowitz was also representing a man named Nicholas Busic at the hearing.⁶⁶ Busic testified immediately after Yellin on February 10th, 1958.

According to the transcript of the hearing, the hearing itself was conducted for the purpose of investigating, "Communist techniques and tactics of infiltration and the

⁶⁵ Jean Yellin, in discussion with the author, January 16, 2010.

⁶⁶ House Committee on Un-American Activities, *Investigation of Communist Infiltration and Propoganda Activities in Basic Industry (Gary, Ind., area)*, 85th Cong., 2d sess., 1958, 1989.

extent, character, and objects of Communist Party propaganda activities in basic industry.”⁶⁷ Pertinent to this inquiry, according to the Committee, was the Party’s colonization program that led individuals like Ed Yellin to work in the steel industry in Gary, IN. Yellin was to be the second witness called before the Committee that morning. Before he could testify, however, he would have to listen to the testimony of one witness who testified in a manner very different from what Yellin had planned for himself.

The first witness of the morning was a man named John Lautner. Lautner turned out to be one of HUAC’s star informers for the Gary, IN hearing. Lautner, who had previously held several leadership positions in the CP, described the process of Communist colonization for the Committee, emphasizing the importance of basic industry to the objectives of the Party. During his testimony, Lautner stated:

The Communist Part must win, first of all, the decisive section of the working class on its side. Now, where are the decisive sections of the working class? In the basic industries, such as mining, steel, metal, auto, packing, railroad, transportation—these are the industries on which the Communist Party must concentrate all its efforts, its talent, money, everything, to win these sections, first of all, over to the cause of Marxism and Leninism.⁶⁸

Through his testimony, Lautner provided seemingly crucial testimony for the Committee relating directly to the extent of Party activities in basic industries. While it does not appear from Lautner’s testimony that he had a direct connection to the Party in Gary, IN, it seems that the Committee used his testimony as background information to which all other witnesses would have to answer. Ed Yellin included. In fact, Yellin was the very next witness to testify after Mr. Lautner, making him the first “unfriendly witness” of the hearing.

⁶⁷ House Committee, *Communist Infiltration of Basic Industry*, 1953.

⁶⁸ *Ibid.*, 1964.

Before Yellin's testimony, however, Rabinowitz would have a few words to say that would eventually contribute to Yellin's Supreme Court decision of 1963. Prior to the hearing, Rabinowitz had requested that Yellin be allowed to testify in an executive session. An executive session simply meant a hearing that would not include any non-Committee spectators—one that would be removed from the public eye. Rabinowitz's request for an executive session, however, had been denied. At Yellin's hearing, Rabinowitz asked the chairman if he could read the exchange of telegrams regarding the executive session onto the record. Rabinowitz stated, "I do want it to appear that the exchange of telegrams occurred. I did not do it just to increase the revenue of the telegram company."⁶⁹ But just as his request for the executive session was denied, Rabinowitz's request to document the denial was also rejected by the Committee. The Committee Chairman, Francis Walter, replied, "Do not bother. You know the privileges given you by this Committee. You have appeared before it often enough. You know as well as anybody."⁷⁰ Five years later, this would contribute to the Supreme Court's decision to overturn Yellin's contempt conviction.

After Rabinowitz's attempt to read his telegrams, Yellin began his testimony before the Committee. The first question posed to him by a committee member, Congressman Tavenner, was simply the following, "Mr. Yellin, where did you reside prior to September 1957?"⁷¹ While a simple question, Yellin's answer was anything but simple. Yellin informed the Committee immediately that he was refusing to answer the Committee's questions on the grounds that he had objections to such questions even being asked. Yellin was eventually permitted to state his grounds for his refusal, namely

⁶⁹ House Committee, *Communist Infiltration of Basic Industry*, 1974.

⁷⁰ *Ibid.*, 1974.

⁷¹ *Ibid.*, 1974.

that he did not like the social stigma associated with the Committee's hearings and the violations of First Amendment rights that the committee sought. Yellin was immediately cut off by the Chairman and asked, "Isn't this the best place to clarify the atmosphere?"

Yellin replied:

Mr. Walter, I do not feel that this is the place for myself, as an individual and as a citizen, to discuss my beliefs, my associations, or whatever expression of opinion I have ever made. I feel that ideas in the democratic process should be settled, should reach some kind of understanding, in the market place of ideas and not at a congressional investigation. This is a personal opinion of mind. I believe the entire democratic process revolves around settling things in a free and open market, and this is not the place for it. This is a hearing. It is not an expression of public opinion.⁷²

True to his word, Yellin had no intention of being a "friendly" witness before the Committee. After Yellin's formal refusal to testify, one of the Committee members questioning Yellin pointed out that the Committee had only asked about his address—a question he should surely feel comfortable answering. Yellin replied, "It is pretty obvious where the questions will lead from what has gone before. So it is no sense in pinning it down and waiting to later."⁷³ It is clear from this exchange that Yellin was not only using the First Amendment to refuse to answer questions pertaining to his political affiliations—he was using it to deflect any questions posed by the Committee outside of what his name was.

Even when it became clear that Yellin would not cooperate, Committee members continued to question him about his CP membership, his participation in the colonization program in Gary, and even his political ties with the Party during his time at the University of Michigan.⁷⁴ Each time Yellin refused to answer and relied on his First

⁷² House Committee, *Communist Infiltration of Basic Industry*, 1975.

⁷³ *Ibid.*, 1976.

⁷⁴ *Ibid.*

Amendment rights, challenging the right of the Committee to pose questions regarding political affiliation. Yellin specifically mentioned the Watkins decision as part of his defense, reminding the Committee that pursuant to this opinion, it may only investigate areas “pertinent to legislation.”⁷⁵ The Chairman fired back with reference to the Barenblatt case—a case in which an individual had relied specifically on his First Amendment rights in refusing to testify before the Committee and was convicted of contempt. In 1958, the Supreme Court had not yet ruled on the Barenblatt case. In fact, the court had refused to even grant certiorari to Mr. Barenblatt at the time of Yellin’s hearing. The Court of Appeals, however, had ruled on Barenblatt’s case and had affirmed his contempt conviction. When Yellin pointed out to the Chairman that the Supreme Court had not ruled on Barenblatt’s case, the Chairman responded with, “What the Supreme Court did was to say that the decision of the Circuit Court of Appeals should stand and they refused to grant certiorari to review it.”⁷⁶

In responding this way, the chairman used the Barenblatt case as an example of the illegality of the First Amendment defense—perhaps to dissuade Yellin from continuing to rely on it during his hearing. Nevertheless, Yellin continued to rely on his First Amendment rights and refused to answer any questions for the remainder of his time on the stand. This would not be the last time, however, that Yellin would hear about the Barenblatt decision. The Supreme Court would eventually rule on the Barenblatt case a year after Yellin’s hearing, and the outcome of the case would, ironically, greatly affect Yellin’s legal fate.

⁷⁵ House Committee, *Communist Infiltration of Basic Industry*, 1976.

⁷⁶ *Ibid.*

After Yellin's testimony, 13 more witnesses were called before the Committee for the remainder of February 10th and 11th. Three additional witnesses testified in an executive session on the afternoon of February 11th.⁷⁷ It is not clear why these three witnesses were allowed to testify in an executive session while Yellin was not. During the course of the hearing, Yellin was one of eleven witnesses who refused to answer questions posed by the committee on First Amendment grounds. It is important to note, however, that not all of those who cited the First Amendment defense refused to answer *all* questions posed by the Committee, as Yellin had done. Some witnesses, for example, only used the First Amendment response when directly asked about their CP membership.

In addition to the eleven who cited the First Amendment, two witnesses at Yellin's hearing admitted prior CP membership, but claimed they could not remember the names of others that had been in the Party with them.⁷⁸ One individual denied CP membership completely, and another admitted to being a member of Communist-front organizations but denied official Party membership.⁷⁹ Finally, two witnesses at Yellin's HUAC hearing acted as informers. John Lautner was the first, and a man named Joseph LaFleur was the second. According to the hearing transcript, LaFleur told the Committee that Yellin—as well as several other witnesses who were called at the hearing—had been a member of the CP.⁸⁰ LaFleur's actions were unfortunately typical for at least some HUAC witnesses in the 1950s, and they caused further duress for witnesses like Yellin who refused to answer questions about their Party membership.

⁷⁷ House Committee, *Communist Infiltration of Basic Industry*.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*, 2017.

According to HUAC's annual report issued in 1958, four witnesses from Yellin's hearing, including Yellin, were cited for contempt of congress.⁸¹ The other three included Robert Lehrer, Alfred Samter, and Victor Malis—all of whom had also relied on the First Amendment defense.⁸² It seems that these three individuals, although they were cited, were never indicted for or convicted of contempt. According to Rabinowitz, their indictments were actually dismissed by the government after Yellin's Supreme Court decision in 1963.⁸³ It is unclear why these three individuals never faced a contempt conviction while Yellin did. Yellin only notes that when Rabinowitz spoke to the Federal Attorney about it, he indicated that the government felt they had the best chance of convicting Yellin. The attorney also noted that if his conviction went through, then the government could go back and try the others.⁸⁴

After Yellin's testimony before HUAC concluded, he and his wife returned to Colorado. He does not remember staying to listen to any of the other witnesses. Returning to Colorado, it seemed that for Ed and Jean Yellin their ordeal was over for the time being. Of course, there was still the risk of a contempt citation—a reality that Yellin was prepared to face. And face it he did. Shortly after Yellin's hearing, he was cited for contempt of Congress. Yellin says that the citation was not a surprise; in fact it was something he had anticipated. It was also not a cause for immediate concern, because Rabinowitz had told Yellin that it would be a long time before Yellin was actually indicted, if he ever was.

⁸¹ House Committee on Un-American Activities, *Annual Report for the Year 1958*, 86th Cong., 1st sess., 1958, H. Rep. 187, 83.

⁸² *Ibid.*

⁸³ Rabinowitz, *Unrepentant Leftist*, 125.

⁸⁴ Edward Yellin, interview by author, March 21, 2010.

Indictment and Conviction

Unfortunately for the Yellins, this did not turn out to be the case. On July 17th, 1959, Ed Yellin was indicted for five counts of contempt of Congress—each count potentially carrying a jail sentence of up to a year. The government eventually dropped the fifth count before Yellin’s District Court case. According to Yellin, there had been a special Grand Jury called in Gary, IN regarding a high profile case in the summer of 1959.⁸⁵ Although the Grand Jury had not been called specifically to indict Yellin, the Grand Jury was presented with his charge as well. As a result, Yellin’s criminal indictment—which his lawyer had told him may not even happen—suddenly became a reality in July of 1959. Yellin’s situation, it seemed, became drastically more serious almost overnight.

But Yellin’s indictment would prove to be only one of many events during 1959 that altered the course of his life. In 1959, Yellin graduated from Colorado State University with an undergraduate degree in Engineering. He had achieved top grades at Colorado State, securing special attention from the head of his department. Yellin’s performance in Colorado had been so impressive that upon graduation, he was awarded the Westinghouse Summer Fellowship—a prestigious internship opportunity for engineering students. On the evening of the awards banquet at which Yellin was to formally receive his fellowship, the Dean of Students called Yellin into his office and informed him that he wouldn’t be receiving the Westinghouse Fellowship after all. The University, the Dean said, refused to award Yellin the fellowship because of his history

⁸⁵ Edward Yellin, interview by author, October 30, 2009.

with the Communist Party.⁸⁶ Yellin was devastated. The Dean told him that he was welcome to try and apply for a different fellowship, but seeing as it was the evening of the awards banquet, Yellin notes there was no time to apply for a different award.⁸⁷

After the denial of the Westinghouse Fellowship, Stuart Taylor—the head of Yellin’s department—approached Yellin to have a serious discussion about his future. Taylor knew that Yellin was no longer a member of CP, and he asked Yellin why he didn’t just go the FBI and clear his name. If he didn’t, Taylor told him, Yellin could ruin his career as a scientist.⁸⁸ Yellin’s response to this advice was simple: what political party Yellin chose to join was none of the FBI’s business. Based on his principles, Yellin vowed that he would never relinquish such information to the FBI or any other government agency. This had been the reasoning behind his First Amendment defense before HUAC in 1958, and it would continue to guide Yellin throughout his dealings with prejudice and discrimination regarding his Communist past.

After his indictment, Yellin and Rabinowitz began preparing for Yellin’s District Court case, scheduled for March 11th, 1960. Like at Yellin’s HUAC hearing, Rabinowitz planned to rely on the *Watkins* decision to defend Yellin’s First Amendment Rights and question the jurisdiction of the Committee to inquire about such things as a person’s political affiliations. The legal environment, however, had changed between Yellin’s hearing and his District Court case. On June 8th, 1959 the Supreme Court ruled on *Barenblatt v. United States*, handing down a decision that jeopardized the legitimacy of the First Amendment defense before a congressional Committee.

⁸⁶ Edward Yellin, interview by author, October 30, 2009.

⁸⁷ Edward Yellin, interview by author, October 30, 2009.

⁸⁸ Edward Yellin, interview by author, October 30, 2009.

Lloyd Barenblatt appeared before HUAC in 1954 and, like Watkins, refused to answer questions posed by the Committee. In Barenblatt's case, he specifically refused to answer on the grounds that their inquiry violated his First Amendment rights.⁸⁹ During his HUAC testimony, Barenblatt attacked the Committee saying that it did not have the jurisdiction to inquire about a person's political affiliations.⁹⁰ Also like Watkins, Barenblatt was cited for contempt and convicted in a District Court.⁹¹ Barenblatt's case made its way to the Supreme Court in 1959. Unlike with Yellin's case, however, the Supreme Court affirmed Barenblatt's conviction on the grounds that, "the Committee had been duly authorized to investigate Communist activities and...the inquiry did not violate the defendant's constitutional rights of association."⁹²

In just two years, the Supreme Court seemed to have changed its stance on the First Amendment defense entirely. While *Watkins* gave individuals like Ed Yellin hope that the courts would finally legitimize the First Amendment defense, the *Barenblatt* decision destroyed any such belief. There were, it seems, a few reasons for this important shift in the Supreme Court's treatment of the First Amendment. The first was a change in the composition of the bench itself, and the second was an important dissimilarity between the facts of the *Watkins* and *Barenblatt* cases.

In terms of the Supreme Court justices themselves, between the *Watkins* and *Barenblatt* decisions two new justices—Potter Stewart and Charles Whitaker—had been added to the bench.⁹³ In terms of the facts for the two cases, there was one important difference between them. While Lloyd Barenblatt refused to answer *any* questions posed

⁸⁹ *Barenblatt v. United States*, 360 U.S. 109 (1959).

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ Goodman, *The Committee*, 362.

to him by the committee, John Watkins had only refused to answer questions about other individuals who may or may not have been members of the CP. The *Watkins* opinion, while it made important statements about the jurisdiction of the Committee and the First Amendment, ultimately boiled down to the fact that the Committee had not properly informed Watkins of the subject or pertinence of their questions.⁹⁴ In the case of *Barenblatt*, there appeared to be no such uncertainty.⁹⁵

In a five to four vote, the Supreme Court voted to uphold Lloyd Barenblatt's contempt conviction.⁹⁶ Rabinowitz and Yellin knew immediately that the Barenblatt decision would complicate Yellin's case. Rabinowitz wrote in his memoir, "the Barenblatt decision had in effect overruled *Watkins*, so far as my attack on the jurisdiction of the Committee was concerned."⁹⁷ After the Barenblatt decision, it was clear that Rabinowitz and Yellin would need a modified defense for Yellin's District Court case. And the language of the Barenblatt decision provided new language that prompted Rabinowitz to try a new defense strategy.

The Barenblatt decision introduced the language of competing private and public interests. The opinion stated, "Where First Amendment rights are asserted to bar governmental interrogation, resolution of the issue always involves a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown."⁹⁸ Rabinowitz describes this aspect of the ruling as "a shock" to the civil liberties community.⁹⁹ For the courts to claim that an individual's First

⁹⁴ Goodman, *The Committee*, 361.

⁹⁵ *Ibid.*, 362.

⁹⁶ *Barenblatt*, 360 U.S. 109.

⁹⁷ Rabinowitz, *Unrepentant Leftist*, 125.

⁹⁸ *Barenblatt*, 360 U.S. 109.

⁹⁹ Rabinowitz, *Unrepentant Leftist*, 126.

Amendment rights were inferior to a public interest was contrary to everything the civil liberties community had been arguing for decades. Nevertheless, Rabinowitz embraced this part of *Barenblatt*, trying to make the ruling work for Yellin's case as well.

At Yellin's District Court case, which was held in Hammond, Indiana, Rabinowitz called Professor Thomas Emerson of Yale Law School. Professor Emerson was an expert on the subject of competing private and public interests in terms of civil liberties, and he was also a member of the ECLC. Emerson testified that the Communist Party had little influence relative to national security, and that Ed Yellin's testimony would have no significant bearing on the Committee's actions. Therefore, the Committee was unjustified in compromising Yellin's civil liberties.¹⁰⁰ It was, once again, a bold attack on HUAC's actions. Unfortunately for Rabinowitz and Yellin, however, the District Court did not accept Emerson's testimony. In quoting the District Court, the 7th Circuit stated:

It seems to me that expert testimony of this kind is not material in that it is not a question of fact as to what elements go to make up the balance of interests, public and private, but a legal matter, which is within the province of the Court to decide; and it is not a subject of expert testimony.¹⁰¹

At his District Court case, Yellin chose not to have a jury trial. According to Yellin, Rabinowitz was under the impression that the judge assigned to the case was fairly liberal, and that they had a better chance of convincing him of Yellin's innocence over a jury in northern Indiana.¹⁰² This too proved to be a faulty assumption. Shortly after Yellin's trial, the District Court for the Northern District of Indianan found Yellin guilty of four counts of contempt. The judge sentenced Yellin to four years in jail—one year for

¹⁰⁰ Rabinowitz, *Unrepentant Leftist*, 126.

¹⁰¹ *Yellin*, 287 F.2d 292.

¹⁰² Edward Yellin, interview by author, January 16, 2010.

each count of contempt—to be served concurrently.¹⁰³ Yellin had lost his first battle but the war was far from over. Rabinowitz would still pursue Yellin’s case through the Seventh Circuit Court of Appeals, and eventually the Supreme Court. Yellin’s conviction in 1960 was only the first step of a long legal process that Yellin and his family would endure over the next three years.

¹⁰³ Edward Yellin, interview by author, March 21, 2010.

CHAPTER THREE: Yellin's Case on Appeal: 1961-1963

In March of 1960, Ed Yellin was convicted of contempt of Congress. He was also a husband, a father of three, and working to complete his PhD in Mechanical Engineering at the University of Illinois. Now, he faced the possibility of serving a multiple-year jail sentence because of his political background. Over the next three years, Yellin and his attorney Victor Rabinowitz would work relentlessly to appeal his case. Rabinowitz argued first before the 7th Circuit Court of Appeals, and eventually twice before the Supreme Court. The arguments that Rabinowitz and Yellin made during these appeals are crucial to the understanding of Yellin's case as well as its larger historical context. Rabinowitz crafted arguments from the *Watkins* and *Barenblatt* decisions, and also continued his attack on the Committee by claiming it did not have the jurisdiction to ask Yellin about his political past. These appellate arguments not only provide more insight into Yellin's case, but also demonstrate what defense strategies were available to people in Yellin's position in the early 1960s.¹

In addition to Yellin's appeals, between 1960 and 1963, Yellin also faced multiple roadblocks to his academic career in the form of fellowship and scholarship denials. Specifically, organizations such as the National Science Foundation (NSF) and the National Institute for Health (NIH) granted and then revoked funding for Yellin to continue his PhD research. For a talented and hard-working student like Yellin, these denials happened for one reason and one reason only: Yellin's background with the

¹It is important to note that there are some limits to the historical record regarding this portion of Yellin's case. Certain court documents—such as briefs, motions, or petitions—are not available in some cases. Additionally, Ed Yellin himself knows very little about the specifics of his process of appeals, since Rabinowitz handled most of the work for it. Furthermore, there is also limited information in Rabinowitz's memoir regarding Yellin's appeal. This means that there are, unfortunately, certain questions about Yellin's appeal that cannot be answered with the historical record.

Communist Party. As late as the 1960s, it is clear Yellin’s story is still an example of the anti-Communist repression that became so commonplace in American society.

Yellin’s story is also indicative, however, of the steady decline in this repression in the late 1950s and early 60s. In 1963, Yellin received news that put an end to his five-year ordeal: the Supreme Court overturned his contempt conviction. Despite the troubles Yellin faced with research grants and fellowships, he went on to finish his PhD at the University of Illinois in 1964 and continued his academic career—devoid of discrimination—until his retirement in 2002. From his overturned conviction in 1963 to the measures that some fellow academics took to protect Yellin during his ordeal, Yellin’s story is one that falls into a much larger historical trend—a trend that was only beginning to draw the era of anti-Communist repression to a close in the late 1950s and early 60s.

Arguments before the Seventh Circuit

Just a year before his conviction, Yellin began his PhD in Mechanical Engineering at the University of Illinois under a Ford Foundation Fellowship.² When the university received news of his conviction Yellin was immediately suspended and, in typical fashion, a faculty-committee formed to investigate his case. In Yellin’s own words, the committee was established to make sure that Yellin was a “bona fide student.”³ This process would include direct questions about Yellin’s activism in the Communist movement.

² Edward Yellin, interview by author, October 30, 2009.

³ Ibid.

Similar to his HUAC hearing of 1958, the university hearing in 1960 presented an important decision for Yellin: Would he choose to disclose information about his Communist past, or would he, once again, refuse to answer the committee's questions? Yellin's decision in this matter marked a significant turning point in the treatment of his Communist past. Although he had refused to answer questions posed to him by HUAC in 1958, by 1960 Yellin says he was ready to be forthcoming about his political background. During his committee hearing at the University of Illinois in 1960, Yellin informed the committee that he had been a member of the CPUSA in the past, but that he was no longer a member.⁴ Employing this tactic actually changed Yellin's perspective on the disclosure of his Communist past. In fact, Yellin says now that he wishes he had told HUAC—as he told the University committee—that he had been a member of the CPUSA in the past, but that he was no longer a member.⁵ Yellin did not indicate, however, that he would have been willing to name the names of other individuals who were also in the CP with him. Based on Yellin's belief that political affiliations were a private matter, it is likely that Yellin would not have been willing to testify about other individuals who had been in the CP with him.

Nonetheless, had Yellin told HUAC in 1958 about his former CP membership, it is likely that he would not have received a contempt citation. The pain and hardship that his conviction caused his family, Yellin says, therefore could have been avoided.⁶ So while in 1958 Yellin was steadfast in refusing to answer questions about his past membership in the CP, it is clear that by 1960 Yellin was willing to take a new approach to protect himself and his family from further hardships relating to his political past.

⁴ Edward Yellin, interview by author, January 16, 2010.

⁵ Ibid.

⁶ Ibid.

After testifying before the university committee and operating with full disclosure about his background, Yellin was reinstated as a student roughly ten days after his suspension. Additionally, the funding that Yellin received through his Ford fellowship remained intact.⁷

The appearance before a university committee, however, was far from Yellin's biggest concern in March of 1960. The fact remained that he was now convicted of contempt of congress—a high misdemeanor—and facing a four-year jail sentence if an appellate court failed to overturn the conviction. Between 1960 and 1963, Yellin and Rabinowitz challenged Yellin's conviction through a process of appeals—the first step of which was the hearing of Yellin's case before the 7th Circuit Court of Appeals in Chicago, Illinois.

Rabinowitz proceeded with oral arguments before the 7th Circuit in February of 1961, and he argued with the hope that the court would overturn Yellin's conviction.⁸ According to the 7th Circuit opinion, Rabinowitz crafted his appellate arguments around the recent cases of *Watkins* and *Barenblatt*, which were decided in 1957 and 1959 respectively. Both of these cases had been influential in Ed Yellin's HUAC hearing, as well as his District Court trial. *Watkins* had been the basis for Rabinowitz and Yellin to try a First Amendment defense before HUAC, while *Barenblatt* had been the basis for his conviction. Rabinowitz sought to use the rulings from both of these cases as well as other rules specific to HUAC to make Yellin's case on appeal. According to the 7th Circuit opinion:

⁷ Edward Yellin, interview by author, March 21, 2010.

⁸ It is likely that there is a record of Rabinowitz's oral arguments before the Court, however this record is no longer available. Similarly, it likely that Rabinowitz filed a brief to the appellate court for Yellin's case, but any such document is also no longer available. Therefore, all of the information about Yellin's 7th Circuit case must be ascertained from the 7th Circuit Opinion itself.

Defendant argues that he was subpoenaed in February 1958, a few months after the United States Supreme Court had decided *Watkins vs. United States*, and that relying on *Watkins*, he believed that he was not required to answer the questions put to him. Therefore, he contends that he cannot be said to have had the requisite criminal intent to support conviction.⁹

It is clear from this argument that Rabinowitz was attempting to show that Yellin believed in good faith that he did not have to answer questions posed to him by HUAC based on the recent *Watkins* ruling, which would eliminate any “criminal intent” from his actions. It is important to bear in mind that Rabinowitz and Yellin originally relied on *Watkins* as the basis for Yellin’s First Amendment defense before HUAC. With the *Barenblatt* decision of 1959—in which a defendant’s contempt conviction was upheld by the Supreme Court after using a First Amendment defense—Yellin’s defense suddenly looked less justified. Rabinowitz even noted in his memoir that, “the *Barenblatt* decision had in effect overruled *Watkins*.”¹⁰

Unable to use *Watkins* to justify Yellin’s First Amendment Defense, Rabinowitz attempted to use the case in his appellate arguments to say that Yellin’s response to the Committee did not demonstrate criminal intent because of his understanding of the *Watkins* decision.¹¹ In other words, Rabinowitz argued that Yellin had relied in good faith on the *Watkins* decision as a precedent for the First Amendment defense, and therefore did not have the “intent” to be convicted of contempt of Congress. Since Rabinowitz could no longer rely on the *Watkins* decision to justify Yellin’s First Amendment claim, he attempted to use it to say that Yellin had not intentionally committed contempt of Congress.

⁹ *Yellin*, 287 F.2d 292.

¹⁰ Rabinowitz, *Unrepentant Leftist*, 125.

¹¹ *Yellin*, 287 F.2d 292.

In addition to his *Watkins* arguments, Rabinowitz incorporated the *Barenblatt* decision into his arguments before the 7th Circuit as well. Specifically, Rabinowitz used the *Barenblatt* language of competing public and private interests. The *Barenblatt* decision had stated, “Where First Amendment rights are asserted to bar governmental interrogation, resolution of the issue always involves a balancing by the courts of the competing private and public interests at stake.”¹² In light of this, Rabinowitz drew the 7th Circuit’s attention to some of the issues that Professor Thomas Emerson had raised during Yellin’s court trial. Professor Emerson had testified at Yellin’s District Court trial about the nature of competing private and public interests, highlighting the interests of individuals like Ed Yellin in their “right of expression,” ultimately concluding that Yellin’s private interests outweighed the public interests of HUAC.”¹³ In effect, Emerson had argued that any information that HUAC could have obtained from Yellin during the 1958 hearing would not have served any public interest great enough to violate Yellin’s constitutional rights to freedom of speech and association.

This testimony, however, had not been well received by the District Court. When the government raised an objection to Emerson’s testimony at Yellin’s trial, the court sustained the objection on the grounds that the opinion “constituted opinion evidence on matters of law and invaded the province of the Court.”¹⁴ During his arguments before the 7th Circuit, Rabinowitz attempted to argue again that Yellin’s First Amendment rights “outbalanced” HUAC’s interest in Yellin’s testimony. Unfortunately for Rabinowitz and Yellin, the 7th Circuit had an opinion similar to the District Court on this matter. The decision reads:

¹² *Barenblatt*, 360 U.S. 109.

¹³ Rabinowitz, *Unrepentant Leftist*, 126.

¹⁴ *Yellin*, 287 F.2d 292.

The court held that where First Amendment rights were asserted to bar governmental interrogation, resolution of the issue involved the balancing of the competing private and public interests. Based on the record the court held that the balance weighed in favor of the public interest.¹⁵

In addition to the 7th Circuit's rejection of the argument of competing interests, they also rejected Rabinowitz's argument relating to *Watkins* and Yellin's lack of criminal intent. The opinion states, "Defendant's mistaken reliance on *Watkins* as a basis for refusal to testify does not rob that refusal of willfulness."¹⁶ While the court rejected the *Watkins* argument as well as the argument of competing interests, there was one other notable argument that can be ascertained from Yellin's 7th Circuit opinion. Specifically, this argument had to do with HUAC's refusal to grant Yellin an executive session—as opposed to a public hearing—back in 1958.

In his arguments before the 7th Circuit, Rabinowitz recounted how he sent a telegram to the HUAC office several days before Yellin's hearing in Gary requesting an executive session instead of a public one. Frank Tavenner—the Chief Counsel for HUAC—testified at Yellin's District Court trial that he never received the telegram because he had already departed from Washington to Gary by the time it arrived at the HUAC office.¹⁷ Additionally, however, a HUAC representative named Richard Arens formally denied Rabinowitz's request for an executive session on February 6, 1958—a full four days before Yellin's hearing.¹⁸ At Yellin's hearing in Gary, Rabinowitz attempted to read the telegram correspondence onto the court's record, but Committee Chairman Francis Walter denied his request. According to Rabinowitz's arguments, the

¹⁵ *Yellin*, 287 F.2d 292.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

Committee had an obligation to consider Yellin's request for an executive session under House Rule IV-A (1) which, as quoted in Yellin's 7th Circuit opinion, states:

If a majority of the Committee or Subcommittee, duly appointed as provided by the rules of the House of Representatives, believes that the interrogation of a witness in a public hearing might endanger national security or unjustly injure his reputation, or the reputation of other individuals, the Committee shall interrogate such witness in an Executive Session for the purpose of determining the necessity or advisability of conducting such interrogation thereafter at a public hearing.¹⁹

Rabinowitz argued that pursuant to this rule, the Committee had failed to follow its own procedures in failing to at least poll Committee members about Yellin's request for an executive session. In response to this argument, however, the 7th Circuit replied by arguing that Rule IV-A, "leads us to conclude that it confers no rights on the witness...No provision is made for the witness to compel the Committee to poll its members on this question with respect to any specific witness."²⁰ In short, the 7th Circuit rejected Rabinowitz's procedural argument. This was not the last time, however, that Rabinowitz would raise this argument for Yellin's case. In fact, when Rabinowitz would finally raise this issue with the Supreme Court, it would be the argument that finally overturned Yellin's conviction.

Before Yellin's case reached the Supreme Court, however, the 7th Circuit ruled to uphold Yellin's contempt of congress conviction in February of 1961.²¹ According to Yellin's court documents, Rabinowitz petitioned to have the case re-heard by the 7th Circuit, only to have his request denied in April of 1961.²² It is unclear why Rabinowitz petitioned to have the case reheard by the 7th Circuit. Rabinowitz makes no mention of this request in his memoir, and the court documents themselves do not give a reason for

¹⁹ *Yellin*, 287 F.2d 292.

²⁰ *Ibid.*

²¹ *Ibid.*

²² Brief for the United States, *Yellin v. United States*, No. 35 (February 26, 1962).

the request. It is clear, however, that after being denied a rehearing by the 7th Circuit, Rabinowitz petitioned for a writ of certiorari for the Supreme Court in May of 1961. The petition was granted on October 9, 1961, which granted Ed Yellin the right to have the Supreme Court review his conviction.²³ Yellin’s first argument before the Supreme Court, however, would not take place until April of 1962, and the 7th Circuit decision was far from the only obstacle that Yellin faced in 1961.

Yellin and the National Science Foundation (NSF)

In March of 1961, Yellin was awarded an academic fellowship by the National Science Foundation (NSF). The fellowship provided Yellin with \$3,800 to be used during the 1961-1962 academic year of his PhD studies at the University of Illinois. Yellin had been awarded the fellowship based on his superior performance on the fellowship’s exam and letters of recommendation from University of Illinois professors. The fellowship provided Yellin with much needed funding for his graduate work at the University of Illinois, but it would also present a problem for Yellin just a few months after receiving it.

In 1950, Congress passed the National Science Foundation Act of 1950. With this Act, Congress established the NSF—an independent federal agency—“to develop and encourage the pursuit of a national policy for the promotion of basic research and education in the sciences.”²⁴ Part of this mission included providing funding for individuals performing pertinent scientific research. The act established the structure,

²³ *Yellin v. United States*, 368 U.S. 816 (October 9, 1961).

²⁴ *National Science Foundation Act of 1950*, Public Law 81-507, 81st Congr., (May 10, 1950).

leadership, and functions of the new agency, as well as certain restrictions for NSF funding. In particular, the act stated:

No part of any funds appropriated or otherwise made available for expenditure by the Foundation under authority of this Act shall be used to make payments under any scholarship or fellowship to any individual unless such individual (1) has executed and filed with the Foundation an affidavit that he does not believe in, and is not a member of and does not support any organization that believes in or teaches, the overthrow of the United States Government by force or violence or by any illegal or unconstitutional methods, and (2) has taken and subscribed to an oath or affirmation in the following form: “I do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America, and will support and defend the Constitution and laws of the United States of America against its enemies, foreign and domestic.”²⁵

The legislation clearly made use of a “loyalty oath,” which was common practice during the 1950s for employers, government agencies, as well as academic institutions. It required applicants to “solemnly swear” that they were not a member of a subversive organization like the CPUSA. According to Yellin, since the oath only prohibited *current* membership in an organization like the CPUSA, he signed it reluctantly.²⁶

In 1961 members of HUAC found out about Yellin’s NSF fellowship and immediately contacted the University of Illinois and the NSF to express their discontent. It is unclear exactly how HUAC members discovered this information. According to Yellin, it was specifically Congressman Gordon H. Scherer of Ohio—one of the congressmen who questioned him at his hearing in 1958—who made the University of Illinois aware of the issue.²⁷ It was Yellin’s understanding that when Scherer and other HUAC officials contacted the University of Illinois about the NSF fellowship, they were particularly concerned about the fact that several University of Illinois professors had written Yellin

²⁵ *National Science Foundation Act of 1950*, Public Law 81-507, 81st Congr., (May 10, 1950).

²⁶ Edward Yellin, interview by author, March 21, 2010.

²⁷ Edward Yellin, interview by author, January 16, 2010.

letters of recommendation for the NSF fellowship even after they were aware of his history with the Communist Party.²⁸

The circumstances of Yellin's story, however, raise an important question: Why were HUAC members so upset over Yellin receiving the NSF fellowship if the law prohibited *current*, rather than past, membership in organizations like the CPUSA? One possibility is that HUAC members may have believed that Yellin was still an active member of the Party. Since Yellin did not divulge any information about his Party membership at the 1958 hearing, it is possible that HUAC believed he was still active in the CP. Another possibility is that even if HUAC knew that Yellin was no longer a member of the CP, they were still outraged by him receiving the grant because of his former membership and his "contemptuous" refusal to testify before the Committee. If the latter was true, HUAC did not have much basis to ask for Yellin's NSF grant to be revoked since the NSF legislation clearly prohibited current, not former, membership.

Regardless of the specific circumstances, however, as soon as HUAC members made their concerns known, the House Committee on Science and Astronautics convened for a special hearing about Yellin's case. The Committee on Science and Astronautics was the congressional committee with specific jurisdiction over the NSF.²⁹ At the hearing for the Committee on Science and Astronautics, some committee members expressed their discontent over Yellin being awarded the NSF fellowship. In a letter written by committee member and congressman Richard Roudebush, he stated: "I think it is high time our committee looked into some of these grants which are being made by the National Science Foundation...It is quite possible that there are many "pinkos" being

²⁸ Edward Yellin, interview by author, January 16, 2010.

²⁹ House Committee on Science and Astronautics, *Awards of Fellowships and Scholarships Under the National Science Foundation Act: Hearings on H.R. 7806, 87th Cong., 1st sess., 1961*

subsidized in their study...so that they may aptly assist in the overthrow of our Government.”³⁰ It is clear from the hearing record that several committee members were extremely disgruntled over the fact that Yellin—a former Communist—had been awarded a government-funded research grant. Congressman Scherer himself even testified at the hearing, stating boldly, “I am shocked and sickened by what has happened in the case of Edward Yellin.”³¹

In addition to the hearing conducted by the House Science and Astronautics Committee, HUAC also conducted a hearing about Yellin’s case. At both hearings, members of Congress questioned NSF members—specifically NSF director Alan Waterman—about Yellin’s case. Committee members wanted to know, for example, why the NSF hadn’t looked into Yellin’s background further when they awarded him the grant. Why hadn’t the NSF checked to see whether or not Yellin had been a member of the CPUSA? Waterman responded that it was not within their bounds to conduct these kinds of investigations, and that they had accepted Yellin’s affidavit as his word.³² According to an article printed in the *Bulletin of the Atomic Scientists*, Waterman went on further to testify at his HUAC hearing on June 15 that, “unless we can prove fraud or perjury, we cannot revoke this fellowship.”³³

Although there is no evidence to suggest that the NSF ever discovered proof of “fraud or perjury” in Yellin’s case, the Foundation convened its Executive Committee and decided to revoke Yellin’s fellowship in June of 1961.³⁴ The Foundation notified

³⁰ House Committee, *Awards of Fellowships and Scholarships*, 16.

³¹ *Ibid.*

³² *Ibid.*, 52.

³³ “Grant Revoked,” *Bulletin of the Atomic Scientists* XVII, no. 7299 (September 1961), 299.

³⁴ “One in Eighteen Thousand,” *American Association for the Advancement of Science* 133, no. 3470 (30 June 1961).

Yellin of this decision on June 21, 1961 in the form of a telegram.³⁵ Yellin was further denied a hearing by the Foundation after the revocation of his fellowship, denying him any opportunity to question the Foundation about their grounds for doing so.³⁶ According to an American Association for the Advancement of Science (AAAS) article written in June of 1961, the Foundation rendered this decision because of their concern that Yellin's fellowship term may be interrupted by jail time if his criminal conviction were upheld.³⁷

Additionally, it is clear that Yellin's criminal conviction also played a role in the NSF's decision to revoke Yellin's grant. Although the fellowships were supposed to be awarded solely on the basis of ability, the AAAS article contends that, "the Foundation interprets ability to include, in addition to intellectual capacity, motivation, independence, objective judgment, accuracy, and integrity."³⁸ It was the Foundation's finding, the article claims, that under this definition of ability, Yellin did not meet the proper qualifications for the NSF fellowship. Namely, the fact that Yellin's record contained a criminal conviction was cause for the committee to find that Yellin did not meet these requirements.³⁹

Although this seems to indicate that Yellin's fellowship was not revoked strictly because of his history with the Communist Party, it is crucial to note that the NSF would never even have reviewed Yellin's case had it not been for the anti-Communist sentiments of HUAC members like Gordon Scherer. Additionally, it is clear that while NSF director Alan Waterman seemed hesitant during the congressional hearings to

³⁵ "Grant Revoked," 299.

³⁶ Ibid.

³⁷ "One in Eighteen Thousand."

³⁸ Ibid.

³⁹ Ibid.

revoke Yellin's fellowship, he ultimately folded under the pressure of the congressional committees and revoked Yellin's fellowship after all.

According to the AAAS article, Yellin's case was extremely unique. The article claims that prior to Yellin's case, the NSF had awarded 18,000 grants to students like Yellin and had never encountered a case like his.⁴⁰ It is also clear that Yellin's case received a fair amount of publicity in both the scientific community and beyond. Yellin's case was mentioned in two AAAS articles, one article from the Bulletin of the Atomic Scientists, as well as over five different New York Times articles.

Still pursuing his PhD at the University of Illinois, Yellin had suddenly lost his funding for the rest of the 1961-1962 academic year. As a husband and a father of three, Yellin depended on fellowships from organizations like the NSF to fund his time in graduate school. Losing the NSF fellowship was a setback for Yellin and his family. In light of this, however, the University of Illinois allowed Yellin to take university loans with which he was able to fund the remainder of his time as a PhD student. Every year that Yellin taught Engineering, he recalls, the University would write off his loan and provide Yellin with a stable economic situation with which to finish his PhD.

In talking about his ordeal with the NSF and even appearing before the University committee, Yellin notes that he did not know of anyone else at the University or elsewhere who were in a similar situation to him.⁴¹ Additionally, Yellin notes that there were people within the University of Illinois who were willing to help Yellin during his ordeal. Based on Yellin's examination of records from the University, Yellin notes that the dean of his department—Dean Wall—actually suspended Yellin to prevent the

⁴⁰ "One in Eighteen Thousand."

⁴¹ Edward Yellin, interview by author, March 21, 2010.

University taking more severe action against him.⁴² He was, in a sense, protecting Yellin through the very act of suspension.

Yellin's Case Before the High Court

Regardless of his status at the University of Illinois, however, Yellin still had to face his criminal charge before the high court. After being granted the writ of certiorari, Rabinowitz and the government filed briefs for the case and the first oral arguments took place on April 18th and 19th of 1962. Yellin recalls that he attended both sets of oral arguments before the Supreme Court, each time traveling from Illinois to Washington, D.C. with his wife Jean and, for the second round of arguments, his oldest son Peter. Yellin recalls that when they traveled to D.C. for the second time, his younger children Michael and Lisa, aged 7 and 8 at the time, remained at home in Illinois. At some point while Yellin was in D.C., Michael told Lisa that he was worried that their dad might go to jail while he was gone and never come back. Lisa immediately corrected her younger brother and reasoned that if their dad were really not going to return after his trip, he would not have taken Peter with him.⁴³

Yellin's legal case clearly affected even the youngest members of Yellin's family. He recalls, however, that during the appeals process he tried not to let his case interfere too much with his life.⁴⁴ He focused mainly on his PhD work and put all of his trust in the expertise of Rabinowitz, whom he knew would fight diligently for his conviction to be overturned. But with his conviction upheld by the 7th Circuit, Yellin and Rabinowitz were

⁴² Edward Yellin, interview by author, March 21, 2010.

⁴³ Edward Yellin, interview by author, October 30, 2009.

⁴⁴ Edward Yellin, interview by author, January 16, 2010.

left with one final opportunity to overturn the conviction with the Supreme Court.

Rabinowitz's arguments before the Supreme Court were not vastly different from his arguments before the Appellate and District Courts. In his brief for the court, Rabinowitz clearly outlined the arguments that he saw as being sufficient to overturn Yellin's conviction. His arguments can be summarized with five points. First, Rabinowitz argued that Yellin's interests in the protection of his First Amendment rights and right of privacy outweighed any public interest HUAC had in securing information from Yellin.⁴⁵ Second, he argued that the Committee violated its own rules in failing to consider Yellin's request for an Executive Session.⁴⁶ Third, Rabinowitz contended that the rule outlining the duties of HUAC (Rule XI) read in conjunction with the statute outlining the charge of contempt of congress (2 U.S.C. § 192) was too vague to support a criminal conviction.⁴⁷ Fourth, he submitted that the questions contained in counts 2 and 4 of Yellin's conviction were too vague to support an indictment.⁴⁸ And Fifth, Rabinowitz argued that the Committee acted in violation of the First Amendment to the Constitution and in excess of its authority.⁴⁹

In arguing his first point, Yellin re-introduced the language of competing private and public interests that had been the focus of his two previous arguments before the District and Appellate Courts. In Rabinowitz's memoir, he comments on this argument saying, "This was an attack on all the congressional committees whose pretense of being engaged in legislative investigation was a façade to cover Communist-bashing."⁵⁰

⁴⁵ Brief for Petitioner, *Yellin v. United States*, No. 35 (January 26, 1962).

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ Rabinowitz, *Unrepentant Leftist*, 127.

Although Yellin's case did not generate a precedent that challenged the province of anti-Communist agencies like HUAC, this argument summarizes the crux of Yellin's case. From his refusal to testify in 1958, to his lawyer's arguments before the Supreme Court, Ed Yellin maintained that his rights to free speech and privacy were paramount compared to any interests of HUAC as an investigatory committee.

In making this argument, before the Supreme Court, Rabinowitz broke down the argument into two parts. In the first part of this argument, Rabinowitz argued that the information HUAC could have obtained from Yellin was, "at most cumulative," and "the public interest in securing such trivial information could not outweigh the substantial public and private interests protected by the First Amendment."⁵¹ In other words, Rabinowitz argued—as he did through the testimony of Professor Emerson at Yellin's District Court trial—that Yellin's information could not possibly be important enough to the Committee's investigations that it warranted a violation of his constitutional rights. Rabinowitz further argued his "balancing interests" argument by claiming that the District Court "erred in excluding the proffered testimony of Professor Emerson, offered on the issue of the balancing of public interest."⁵² Rabinowitz argued this point by elaborating on why Emerson's testimony had been admissible at the time of Yellin's trial and how the Supreme Court should accept the testimony now in the deliberation over Yellin's fate.

The second point in Rabinowitz's arguments dealt with the failure of HUAC to grant Yellin an executive session at his 1958 hearing. This would actually prove to be the most successful before the court. Virtually identical to the argument Rabinowitz had

⁵¹ Brief for Petitioner, *Yellin v. United States*, No. 35 (January 26, 1962).

⁵² *Ibid.*

raised before the 7th Circuit, Rabinowitz insisted again that the Committee had failed to follow its own procedure in their flat out denial of Yellin's request for an executive session. In his brief, Rabinowitz recounts the procedure that actually took place before Yellin's hearing:

The telegram was sent to the Committee four days before the hearing and the request for an executive session was denied by an authoritative representative of the Committee within a few hours. Counsel was prevented from renewing the request at the hearing itself by the action of Congressman Walter.⁵³

Citing rule IV-A once again, Rabinowitz insisted that Committee members should have been polled or consulted about Yellin's case before the denial of the request. By contrasting the procedure dictated by the Committee's own rules with the account of the actual procedure followed in Yellin's case, Rabinowitz pointed out a fatal flaw in the actions of the Committee in Yellin's case—a flaw that the court would finally agree was enough to overturn Yellin's conviction.

In Rabinowitz's third argument before the court, he cited House Rule XI as well as criminal statute 2 U.S. § 192. Citing these two authorities, Rabinowitz argued that House Rule XI, read in conjunction with 2 U.S.C. § 192, was too vague to support a criminal conviction. House Rule XI allowed HUAC to investigate "un-American propaganda and activities," while 2 U.S.C. § 192 claimed that a witness who refused to answer questions "pertinent to the question under inquiry" of the Committee should be found in contempt of congress. He argued that it was unreasonable to expect that Yellin "would understand that the word "un-American" really meant "Communist Party."⁵⁴ In other words, Yellin could not have known that the questions about his CPUSA membership were truly "pertinent to the question under inquiry," especially when Chief

⁵³ Brief for Petitioner, *Yellin v. United States*, No. 35 (January 26, 1962).

⁵⁴ *Ibid.*

Justice Warren had released an opinion just before Yellin testified before HUAC asking the question, “Who can define the meaning of Un-American?”

This is one of the more complex legal arguments that Rabinowitz made on behalf of Yellin. Indirectly, Rabinowitz argued here that CP membership was not “pertinent” for HUAC to question, and that it is unreasonable to think that Yellin would have understood differently. Challenging the authority and province of HUAC to inquire about an individual’s political affiliations had been the essence of Yellin’s First Amendment defense, and it seems that Rabinowitz continued this argument in a more subtle fashion during his appellate arguments on Yellin’s behalf.

The final points of Rabinowitz’s arguments before the Supreme Court included a statement about the First Amendment as well as the Sixth Amendment. The basis of Rabinowitz’s Sixth Amendment argument was that the questions posed to Yellin in counts 2 and 4 of his conviction were “too vague to support the indictment” and therefore violated Yellin’s Sixth Amendment rights. Rabinowitz argued that the terminology in these questions did not meet the requirements of the Sixth Amendment, which states he quoted as stating, “in all criminal prosecutions the accused shall be informed of the nature and cause of the accusation.”⁵⁵ Rabinowitz’s use of the Sixth Amendment in this argument is particularly interesting, because it actually mimics the language of the *Watkins* decision. In *Watkins*, the Supreme Court had ruled that the committee had to make the purpose and subject of its investigations known before inquiring witnesses. Since the Committee did not do this adequately in *Watkins*’ case, the court argued, he was within his rights to refuse to answer the Committee’s questions.

⁵⁵ Brief for Petitioner, *Yellin v. United States*, No. 35 (January 26, 1962).

Rabinowitz made a similar argument with Yellin’s case as well. The first of two questions that he claimed were “too vague,” was, “Will you tell the Committee, please, whether or not incidents came to your attention of the colonization of the steel unions in Gary by the Communist Party at any time prior to September 1957?”⁵⁶ The second question was, “Will you tell the Committee, whether or not in 1957 there were present in any of the 33 steel unions at Gary, Indiana, persons who were known to you to have been colonizers of the Communist Party?”⁵⁷ Rabinowitz makes it clear in his arguments that he was not contending that the petitioner—Ed Yellin—did not understand the questions posed to him, but rather that Yellin had not been properly informed about the reasons for these questions being asked pursuant to Yellin’s Sixth Amendment rights. It is important to note here that the *Watkins* precedent held that the Committee had to make the subject and purpose of its investigations known to the witnesses that it questions.⁵⁸ Although Rabinowitz does not cite the *Watkins* case in this portion of his argument, he clearly uses language that signals the *Watkins* precedent.

Finally, Rabinowitz reminded the members of the Court that several petitioners in recent years, Ed Yellin included, had directly challenged HUAC’s “legislative purpose” and alleged that the Committee violated the First Amendment rights of those called before it.⁵⁹ Rabinowitz went on to argue:

This Court has on several occasions now by closely divided vote rejected these arguments and we shall therefore not set them forth again. We mention them here merely as a reminder to the Court that in the opinion of many this Committee constitutes a basic threat to American freedom and that it has over a period of a

⁵⁶ Brief for Petitioner, *Yellin v. United States*, No. 35 (January 26, 1962).

⁵⁷ *Ibid.*

⁵⁸ *Watkins*, 354 U.S. 178.

⁵⁹ Brief for Petitioner, *Yellin v. United States*, No. 35 (January 26, 1962).

generation functioned in violation of the constitutional rights of those who have been called before it.⁶⁰

Although the transcript of Rabinowitz's oral arguments before the Supreme Court is not available, one can reasonably assume that his oral arguments were akin to the issues that he argued in his legal brief. The arguments took place on April 18th and 19th of 1962, with Yellin and his wife Jean listening closely to every word. Just a few days after arguments, Yellin and Rabinowitz got an unexpected answer from the High Court: the Court had ordered that Yellin's case be reargued during the next court session. According to Rabinowitz, no explanation was given for the Court's action.⁶¹ Yellin suspects that Chief Justice Earl Warren, who was an established opponent of HUAC, knew the court's composition of justices was about to change and wanted Yellin's case to be heard in the next session for this reason.⁶² Other than Yellin's suspicions, however, there is nothing in the historical record to confirm or deny this.

Before Yellin's case was reargued before the high court, however, he would encounter one final roadblock to his academic career as a result of his former activism in the American Communist movement. In the spring of 1962, Yellin received a grant from the National Institute for Health (NIH) to conduct the remainder of his PhD research at Johns Hopkins University. Like the NSF, the NIH is a government agency—a fact that would, again, invoke the remnants of his history with the Communist Party. According to Yellin, the purpose of the NIH fellowship was to study with a professor at Johns Hopkins who worked in the field of Yellin's interest—the mechanics of cardiovascular function.⁶³ After receiving the fellowship and the offer to conduct research at Johns Hopkins, Yellin

⁶⁰ Brief for Petitioner, *Yellin v. United States*, No. 35 (January 26, 1962).

⁶¹ Rabinowitz, *Unrepentant Leftist*, 129.

⁶² Edward Yellin, interview by author, January 16, 2010.

⁶³ Edward Yellin, interview by author, October 30, 2009.

and his family moved to Baltimore in the summer of 1962, where Yellin planned to finish his PhD research. Yellin recalls that he and his family packed up all of their belongings and drove from Champagne-Urbana, Illinois to Baltimore, Maryland.⁶⁴ Once they reached Baltimore, they rented a house, and began to unpack their life.

Not long after Yellin and his family reached Baltimore, however, Yellin was confronted by the very man who recruited him to do research and was told he could no longer stay at Hopkins. Yellin and his family would have to re-pack their belongings and travel back to Illinois, because Yellin was no longer welcome to do research at Johns Hopkins. The reason? Because of Yellin's political background, he was told, if he was caught using even a pencil that was paid for by government funds, Johns Hopkins could lose all of their government funding.⁶⁵ Unlike the NSF grant, there is no evidence that there was any specific legislation that prevented Yellin from receiving an NIH grant. Nonetheless, the nature of the NIH being a government agency is enough to explain the concern that Johns Hopkins had in allowing Yellin to do research under the grant at the university.

Outraged by the sudden change of events, Yellin and his wife arranged a meeting with Milton Eisenhower—the president of Johns Hopkins University. Eisenhower told Yellin that he could, in fact, stay at Johns Hopkins and even receive the \$300 per month stipend that had been promised to him originally. However, the one caveat to this was the Yellin wouldn't be allowed to do any research. Yellin immediately declined the offer to

⁶⁴ Edward Yellin, interview by author, October 30, 2009.

⁶⁵ Ibid.

stay at Hopkins, and prepared to return to the University of Illinois for the remainder of his research.⁶⁶

The surprising part of Yellin's experience with Johns Hopkins was that, according to Yellin, the University had known about Yellin's background before they recruited him to conduct research.⁶⁷ Yellin, to this day, is not entirely sure what happened to change Johns Hopkins mind. He suspects that someone from the National Institute for Health called Johns Hopkins to inform them of his background. Yellin also speculates that someone from Congress may have called the university, just as they had done with Yellin's NSF fellowship, and expressed their discontent over Yellin receiving the NIH fellowship.⁶⁸ Whatever the specifics, Yellin was denied a fellowship for the third and last time as he and his family traveled back to Illinois where Yellin would conduct the remainder of his PhD research.

Meanwhile, Yellin still awaited a ruling on his Supreme Court case. His case had been set for reargument in the spring of 1962, and in December of 1962 the Supreme Court heard Yellin's case for the second time. Although it was a different hearing, Rabinowitz's arguments remained the same. After the arguments, it would be six long months before the Supreme Court finally handed down a decision on Yellin's case. On June 17, 1963, the Supreme Court overturned Yellin's contempt conviction and declared Yellin's ordeal, which began five years earlier, officially over.⁶⁹ In an opinion by Chief Justice Earl Warren, the Supreme Court ultimately held that the Committee had violated

⁶⁶ Edward Yellin, interview by author, January 16, 2010.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ *Yellin v. United States*, 374 U.S. 109 (1963).

its own rules by not granting Yellin an executive session before his HUAC hearing in 1958. The opinion reads:

The court reversed petitioner's conviction for contempt of Congress because the congressional committee failed to consider petitioner's request to hold an executive session as provided by the rules. The court held that it was not too exacting to require that the committee had to meticulously obey its own rules.⁷⁰

According to Rabinowitz, the Court opted not to comment on the First Amendment issues raised in arguments because the case could be decided on another issue: the failure of the Committee to consider his request for an executive session. In reaction to this tactic, Rabinowitz wrote in his memoir, "This was fine for Yellin, who was home free, but a disappointment to me and of no significance to all the struggle for First Amendment rights."⁷¹

In contrast to the "disappointment" Rabinowitz may have felt about Yellin's case, the relief that Yellin and his family felt after receiving the news of the Supreme Court decision was hard for Yellin to express. Although Yellin probably would not have received more than a few years in jail for his misdemeanor charge, he acknowledges that this would have been a huge roadblock for himself and his family.⁷² Not only would it have been difficult for Yellin to continue his PhD studies while incarcerated, but the time spent away from his family would have been physically and emotionally taxing as well. Thanks to the expertise and diligence of attorney Victor Rabinowitz, Yellin narrowly escaped the consequences of a criminal conviction resulting from his political affiliations.

Today, Yellin openly volunteers that he is a "recovering Communist"—a phrase that, perhaps, refers to the hardships that Yellin had to face as a result of his choice to be

⁷⁰ *Yellin*, 374 U.S. 109.

⁷¹ Rabinowitz, *Unrepentant Leftist*, 129.

⁷² Edward Yellin, interview by author, January 16, 2010.

a member of the Communist Party. But Ed Yellin's story stretches far beyond the parameters of his life or even the lives of those who hear it. Yellin's story is part of a historical narrative which chronicles a crucial period of civil liberties violations in the United States. More importantly, however, the true legacy of Yellin's case highlights the changing tides of American politics through the decline of anti-Communist hysteria and repression in the late 1950s and early 60s. Although the years of 1960-1963 proved to be the toughest years for Yellin in terms of his political background, the Supreme Court overturned his conviction by holding HUAC to the integrity of its own procedures. While Yellin's case did not legitimize the use of the First Amendment defense before an investigatory committee, as Yellin and Rabinowitz had once hoped, his case is still a triumph. The opinion for Yellin's Supreme Court case demonstrates that the courts were beginning to put HUAC on a tight leash in the late 1950s and early 60s—a leash that would only continue to shorten as time wore on.

As for Yellin's academic career, though it was delayed at times because of deep-rooted anti-Communist legislation and policies, it took off in full force upon the completion of his PhD in 1964. Although Yellin's legal battle spanned nearly five years of his adult life, with his Supreme Court ruling in 1963, Yellin was able to move forward from his conviction and forge a successful life for himself and his family. And as for the discrimination that Yellin had faced as a graduate student, that discrimination would prove to be non-existent during Yellin's work as a Professor. It seems that both legally and professionally speaking, the hardships caused by his activism in the Communist Party had ceased by 1963.

CONCLUSION

Edward Yellin graduated from the University of Illinois with a PhD in Mechanical Engineering in 1964—just one year after the Supreme Court overturned his conviction. He went on to do his post-doctorate work at the University of Washington, and was eventually offered a position with the Einstein College of Medicine in New York City. Yellin taught and performed research at Einstein for over 35 years until his retirement in 2002. Professor Yellin is considered an expert in cardiovascular research as it relates to the mechanics of pulmonary function. At some point during his time at Einstein, the son of a family friend came to attend school there. One day another student asked this young man if he had heard the gossip about Professor Yellin. The young man said he hadn't. The other student went on to say excitedly that Professor Yellin was a Communist. The young man responded by asking, "Okay, so what's the gossip?"¹

Despite the obstacles that Ed Yellin faced because of his political background, following his Supreme Court decision in 1963 Yellin ceased to experience the same level of discrimination and repression that had come to dominate his life during the 1950s and early 60s. In fact, Yellin recalls that after his Supreme Court case in 1963, he encountered no discrimination or repression for his former beliefs whatsoever. So how was it that between 1958 and 1963, Yellin went from facing a contempt citation from HUAC to encountering no discrimination for his background?

In 1963—the year the Supreme Court overturned Yellin's case—Joseph McCarthy had been censured for nine years. He had been dead for six. Although HUAC continued their investigations of Communists well into the 1970s, the public support of HUAC was on a steep decline by the early 1960s. Anti-HUAC resistance movements like

¹ Edward Yellin, interview by author, January 16, 2010.

the Emergency Civil Liberties Committee (ECLC) were moving with full force by this time, and HUAC itself was slipping further and further in terms of its respect among the American public as well as the rest of Congress. Additionally, American courts began to release decisions during this time that placed small but significant limitations on the Committee. Ed Yellin's Supreme Court decision of 1963 is one such case.

In light of this, one can see Ed Yellin's case as one small piece of the larger trend of declining anti-Communist repression. While there are many avenues through which one could chronicle the decline of anti-Communist sentiment and repression, for the purposes of this narrative it will discuss almost exclusively the decline of HUAC—the anti-Communist agency that was central to Ed Yellin's case specifically. That narrative will proceed in terms of the increasing amounts of resistance that HUAC faced from Congress, the public, civil rights organizations, as well as the courts beginning in the late 1950s.

The decline of HUAC within Congress is essential to one's understanding of this time period. Between the creation of HUAC in 1938 and the late 1950s, HUAC had produced just one significant piece of legislation—the Internal Security Act of 1950.² HUAC had spent the vast majority of its time on investigations and hearings, leaving little time for actual legislation. HUAC Chairman Francis Walter, who had once been part of an inner circle of policymakers in the House, found himself on the outside of this circle in the late 50s due to HUAC's lacking congressional record. Increasingly fewer bills were even being referred to HUAC by the late 50s, and the number of HUAC hearings decreased between 1957-1960.³

² Goodman, *The Committee*, 411.

³ Goodman, *The Committee*, 402.

At the same time that the Committee was losing power, it also faced increasing amounts of resistance from the public, the courts, and civil rights organizations like the Emergency Civil Liberties Committee (ECLC). The emergence of the ECLC in the 1951⁴ presented a fierce opposition to the activities of the Committee on civil rights grounds, and their movement grew even stronger in the late 1950s. The ECLC was an organization that dedicated almost all of its resources to defending Communists or ex-Communists facing legal trouble because of their political activities. ECLC members distributed pamphlets, organized demonstrations, and even served as expert witnesses in the trials of current or ex-Communists—Yale Law Professor and ECLC member Thomas Emerson performed this task for Ed Yellin at his District Court trial in 1960.

The ECLC was also a famous and public critic of HUAC, and this critique intensified in the late 1950s and early 60s. In 1957, the Supreme Court released the *Watkins* decision—an opinion that seemed to challenge the very authority of HUAC. The same year the opinion was released, the ECLC released a pamphlet that included a copy of *Watkins*, calling it “an historic rebuke” to HUAC.⁵ Pamphlets like this one were distributed frequently by the ECLC, and there is also evidence to suggest that some members of the government were concerned about such activities. After the release of the pamphlet, J. Edgar Hoover sent a copy of the pamphlet to Chairman Walter stating, “This booklet depicts another example of the apparent ease with which the Communists have

⁴ Goodman, *The Committee*, 423.

⁵ *The Watkins Decision of the United States Supreme Court, June 17, 1957: An Historic Rebuke to the Committee on Un-American Activities of the House of Representatives* (New York: Emergency Civil Liberties Committee, 1957) The Labadie Collection, University of Michigan, Ann Arbor.

been able to enlist the support of misguided individuals to assist them in obscuring their subversive workings.”⁶

Although political figures like Hoover and Francis Walter were still clearly continuing their red hunting in earnest, organizations like the ECLC seemed to be fighting back with equal amounts of force. And not only did the ECLC intensify their efforts in the late 1950s, but they seemed to have more support for their cause than ever before. A series of demonstrations and riots in the 1960s proved that many members of American society had come to reject the actions and purpose of congressional committees such as HUAC. These demonstrations were indicative not only of the anti-HUAC sentiment that was emerging in the 1960s, but also the magnitude of that sentiment specifically.

In May of 1960, an anti-HUAC demonstration took place outside of San Francisco’s City Hall—the location of a HUAC hearing.⁷ The demonstration had been organized by a group of Berkeley activists, who felt that the Committee and all it stood for was a violation of individual and political freedom. In addition to their belief about the Committee, members of the Berkeley collegiate community had particular reason to be angry with HUAC. In 1959, the Committee had released the names of many local teachers and professors to the press, and many of these teachers lost their jobs as a result. One of the instructors was a professor at Berkeley. When HUAC subpoenaed a Berkeley student in the spring of 1960, activists immediately organized a demonstration.

⁶ *The Watkins Decision of the United States Supreme Court, June 17, 1957*, Emergency Civil Liberties Committee, The Labadie Collection.

⁷ W.J. Rorabaugh, *Berkeley at War: The 1960s* (New York: Oxford University Press, 1989), 16.

On May 13, 1960, a group of 100 demonstrators sat outside of San Francisco's city hall after they were denied admission to the hearing itself.⁸ Police responded by using fire hoses against the students, which sent them spilling down the marble steps of city hall.⁹ The police proceeded to arrest sixty-four of the demonstrators, thirty-one of which were Berkeley students.¹⁰ The following day, 5,000 people gathered at city hall to demonstrate their dissatisfaction with the Committee and with the actions of police the day before. The ensuing riot has become one of the most famous examples of anti-HUAC sentiment in United States history. The sheer magnitude of the event is a testament to the growing public resentment and distrust of HUAC in the late 1950s and early 60s. In fact, historian W.J. Rorabaugh writes, "The large turnout showed that the McCarthy era was over, and that student activists could tap mass support if they were able to identify and use popular issues."¹¹

Nevertheless, Committee members still did not take demonstrations like this seriously. Congressman Scherer—one of the Congressmen who questioned Yellin in 1958—called the rioters, "victims of this despicable propaganda plot."¹² His failure to recognize the student protestors as a potentially influential force in 1960 was, in a sense, a failure to recognize the beginning of the end for his own committee. In addition to the failure to recognize its own decline, HUAC actively fought back against the resistance of groups like the ECLC and demonstrations like the San Francisco protests. In 1960, HUAC released the film *Operation Abolition*. The 45-minute film showed clips of violent "Communist-led" demonstrations—with a particular focus on footage from the San

⁸ Rorabaugh, *Berkeley at War*, 16.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Goodman, *The Committee*, 433.

Francisco riots of 1960.¹³ Though the government clearly intended such a film to greatly influence public opinion of the ECLC, there is little evidence to suggest that this desired effect occurred. In fact, there is evidence to suggest that, to the contrary, public opinion of HUAC was declining in the late 1950s and early 60s.

To make matters worse for the Committee, their continued investigations appeared even more outrageous to the American public in light of the fact that the CPUSA no longer seemed like a serious threat to national security. By the 1960s, the Party had low membership and resources. Movements such as the peace or the civil rights movement would occasionally let CP members join their causes, but the days of the CP being the center of the radical political world were long over.¹⁴ Instead of responding to the declining nature of the Party, however, the Committee continued to conduct investigations and hearings into the 1970s. And as the investigations continued, so did the public protests. In May of 1965, a notable demonstration took place in Chicago outside of the U.S. Court of Appeals building. In addition to the demonstration outside the building, three individuals who had been subpoenaed for the hearings walked out on the hearing itself after stating their objections to the Committee.¹⁵ This demonstration was further evidence of the public willingness to fight back against the Committee and the importance of such demonstrations to the decline of the Committee itself.

HUAC's declining popularity with the public, however, was not the only example of its decline in the late 1950s and early 60s. During this same period, the Supreme Court began to release decisions that challenged the province of HUAC itself. The *Watkins* decision of 1957 was the first notable decision of this nature. As previously mentioned,

¹³ Rorabaugh, *Berkeley at War*, 16.

¹⁴ Goodman, *The Committee*, 456.

¹⁵ *Ibid.*

the *Watkins* opinion seemed to place important limitations on the Committee's powers, stating that, "There is no congressional power to expose for the sake of exposure where the predominant result can be only an invasion of the private rights of individuals."¹⁶ Additionally, Chief Justice Earl Warren asked the all-important question, "Who can define the meaning of "un-American?"¹⁷ While HUAC had been asserting for decades that to be Communist was inherently "un-American," it seems that in *Watkins*, the court was beginning to question that belief.

Due to a change in the composition of the Court between 1957 and 1959, however, the *Barenblatt* decision of 1959 effectively overruled any hope of such a precedent. In 1961 the court handed down similar decisions in the Wilkinson and Braden cases—Frank Wilkinson was a leader of the ECLC, and Carl Braden a field secretary for the Southern Conference Educational Fund.¹⁸ Both defendants used the First Amendment defense when called before HUAC, and both of their contempt convictions were upheld by the High Court in February of 1961.¹⁹ Given the series of cases that followed these decisions, however, it appears now that the Wilkinson and Braden decisions were the last gasp of Committee power in the courts.

In June of 1961, the Supreme Court overturned the contempt conviction of Bernhard Deutch—a defendant who had, again, refused to answer some questions posed to him by the Committee. Though the Court had just ruled in the Committee's favor a few months earlier, in June of 1961 Justice Potter Stewart authored an opinion that

¹⁶ *Watkins*, 354 U.S. 178.

¹⁷ *Ibid.*

¹⁸ Goodman, *The Committee*, 420.

¹⁹ *Ibid.*

championed the rights of the petitioner.²⁰ Walter Goodman points out that after the *Deutch* decision, Justice Stewart joined Justices Douglas, Black, Brennan, and Chief Justice Warren in their aversion to the Committee. Justice Stewart effectively shifted the balance of the Court regarding HUAC cases after 1961. In 1962 the Supreme Court rejected a series of six contempt convictions on the grounds that the indictments had “not identified the specific subject under inquiry at the time of the defendants’ alleged default.”²¹

In 1963, the court ruled on Ed Yellin’s case. In fact, Walter Goodman refers to the court’s decision on Yellin’s case as an “ominous” one. In ruling to overturn Yellin’s contempt conviction, Goodman argues that the decision marked yet another shift in the high court. After the Supreme Court heard Yellin’s case for the first time in April of 1962, but before his case was reargued in December of that year, Justice Arthur Goldberg replaced Justice Felix Frankfurter on the bench of the Supreme Court. Yellin’s case was the first contempt case that the Supreme Court heard after change.²² In Yellin’s case, Justice Stewart, who had recently shifted in his opinions regarding HUAC cases, actually swung back the other way and voted to uphold Yellin’s conviction. With the presence of new justices on the bench, however, Yellin’s conviction was not upheld. Justice Goldberg voted with four other justices to overturn the conviction—creating a 5-4 majority and a victory for Yellin. Goodman notes that, “even with Stewart joining Clark, Harlan, and White in dissent, the five-to-four majority which had given the Committee the victory in

²⁰ Goodman, *The Committee*, 420.

²¹ *Ibid.*, 421.

²² *Ibid.*, 422.

the Barenblatt case and the Braden-Wilkinson case had conclusively swung the other way.”²³

It is important to mention here that at the outset of Yellin’s case, Rabinowitz and Yellin had both wanted to create a precedent that legitimized the First Amendment defense before congress. In fact, Rabinowitz saw the decision in Yellin’s case as a failure since it was decided on a technical issue rather than a constitutional one.²⁴ The fact remains, however, that neither Yellin’s case nor any case after Yellin’s created a precedent for the unlimited use of the First Amendment defense before a congressional committee. In light of this fact, the real question becomes, how much significance should we give cases like Yellin’s? Without a First Amendment precedent, is Yellin’s case significant at all to the rights of individuals who appear before congressional committees like HUAC?

The answer is most certainly yes. Though Yellin’s case did not establish the First Amendment precedent that he and Rabinowitz had hoped for, it still made an important contribution to the legal community. Yellin’s case has become a precedent for the courts forcing congressional committees to follow their own rules. Since the Supreme Court overturned Yellin’s case on a matter of Committee procedure, his case is often used for its precedent in this area. Yellin’s case has been cited in five Supreme Court cases. For four of those cases, Yellin’s case was cited in the dissenting opinion. The one Supreme Court case that used Yellin’s case in the majority opinion, however, was *Gojack v. United States*. In this case, the petitioner had been called before HUAC in 1955, relied on

²³ Goodman, *The Committee*, 422.

²⁴ Rabinowitz, *Unrepentant Leftist*, 129.

his First Amendment rights, and was convicted of contempt of congress as a result.²⁵ The Supreme Court overturned his conviction in 1966 on the grounds that the Committee had violated its own procedure during Gojack's hearing.²⁶ Specifically, the court held that the hearing to which Gojack had been called to testify was never "authorized" by the Committee. Violating a procedural rule of the House, the court ruled, was enough to overturn the petitioner's conviction pursuant to the precedent of Yellin's case.²⁷ The opinion of the court even quoted directly from Yellin's case, stating, "When a committee rule relates to a matter of such importance, it must be strictly observed."

Since Yellin's Supreme Court case in 1963, 115 decisions (both dissenting and majority opinions) have cited his case. These citations have occurred in District Courts, the Court of Appeals, as well as the Supreme Court's own opinions. Additionally, 48 Law Review articles have mentioned Yellin's case—some of them as recently as 2008. It appears that within the vast majority of these articles, Yellin's legacy is intimately connected to the history of congressional committees in this country. The titles of two of these articles include, for example, "Does Congress find facts or construe them?"²⁸ and "Are Congressional Committees Constitutional?"²⁹ Like the legal cases in which Yellin's case is used, his case is also referenced in many of these articles in terms of its procedural precedent.

It is clear that although we cannot view Yellin's case as a legal precedent for the First Amendment defense before a congressional committee, it would be a misnomer to

²⁵ *Gojack v. United States*, 384 U.S. 702 (1966).

²⁶ *Gojack*, 384 U.S. 702.

²⁷ *Ibid.*

²⁸ Elizabeth Decoux, "Does Congress Find Facts or Construct them? The Ascendance of Politics over Reliability, perfected by *Gonzales v. Carhard*." 56 *Clev. St. L. Rev.* 319 (2008).

²⁹ John C. Roberts, "Are Congressional Committees Constitutional?: Radical Textualism, Separation of Powers, and the Enactment Process." 52 *Case W. Res. L. Rev.* 489 (2001).

say that his case did not restrain Committee powers at all. Yellin's case set a precedent for holding the Committee to its own rules and procedures, even in the case of ex-Communists like Ed Yellin. While this may be a small restraint on Committee power, it is still significant. Given that HUAC was one of the most famous and prominent anti-Communist organizations in American history, it is no small feat that Yellin's case was able to restrict the Committee's investigations in some capacity.

In 1969, HUAC was "abolished" and became the House Committee on Internal Security (HCIS).³⁰ Nathaniel Nathanson notes, however, that the Committee's membership, staff, and basic functions remained largely the same.³¹ The House resolution that established HCIS gave the Committee power to investigate, "Communist and other subversive activities affecting the Internal Security of the United States."³² The former HUAC continued its investigations of "subversive" groups into the 1970s. Investigating the groups such as the Progressive Labor Party, the National Peace Action Coalition, and the People's Coalition for Peace and Justice, HCIS carried on the HUAC tradition of attempting to erase the radical left from the American political landscape.³³

By the 1970s, however, there was a strong sentiment within the Congress to abolish the Committee entirely. During the 92nd and 93rd congress, spanning from 1971 to 1974, several congressmen introduced resolutions to formally abolish the Committee.³⁴ These resolutions also suggested that the powers of HCIS be transferred to the judiciary committee. Congressman Yates of Illinois spoke about this measure, claiming, "We could

³⁰ Nathaniel L. Nathanson and Kelby Fletcher, "The Case for Abolishing The House Internal Security Committee and Transferring Part of its Jurisdiction to the Judiciary Committee," *Chicago Bar Record* 55 (March-April 1974), 226.

³¹ Ibid.

³² Ibid., 227.

³³ Ibid.

³⁴ Ibid., 226.

therefore achieve some additional assurance that its investigations would be germane to our internal security and not merely showcases for ideological problems which breed discord.”³⁵ In 1975, Congress voted to abolish HCIS. After nearly four decades of allowing a congressional committee to violate civil liberties through investigations in the name of “national security,” Congress finally put the Committee and all of its powers to rest.

Although the era of anti-Communist discrimination and repression was clearly in decline by the late 1950s and early 60s, the true legacy of this era must not be understated. The era of anti-Communist discrimination, particularly in the post-war period, had enormous effects on thousands of Americans who lost their jobs, friends, and their reputation as a result of overzealous congressional committees and determined red hunters within the United States government. From 1953 to 1954—the height of the era of anti-Communist repression—2,611 federal employees were dismissed from their jobs because they were a “security risk.”³⁶ 4,315 other civilian employees resigned from their positions because of “unfavorable” information in their files.³⁷ Many scholars, Schrecker included, also believe that the era of discrimination against Communism not only destroyed the CPUSA, but it destroyed the American left entirely.³⁸ In a book edited by Yellin’s sister-in-law, Ann Fagan Ginger, she argues that the true legacy of the Cold War was the destruction of the American labor movement.³⁹

³⁵ Nathanson and Fletcher, “Case for Abolishing House Internal Security Committee,” 230.

³⁶ *Encyclopedia of American History*, 7th ed., s.v. “Communist Control Act of 1954.”

³⁷ *Ibid.*

³⁸ Schrecker, *Many are the Crimes*, 361.

³⁹ Ann Fagan Ginger, ed. *The Cold War Against Labor* (Berkeley, CA: Meiklejohn Civil Liberties Institute, 1987).

In addition to the broad reaching effects of this era of repression, there are smaller, more personal effects on the lives of many individuals—some of which are still alive and well today. Schrecker notes that there were at least 10 suicides related to the stress that individuals faced during this era, and that the psychological effects on many who faced discrimination and repression were immense.⁴⁰ In addition to the effects on the individuals themselves, it is also clear that this era affected their families and loved ones as well. Margaret Singer’s book, *Legacy of a False Promise*—published in 2009—tells the tale of a “red-diaper baby” whose life was deeply affected by the fact that her father was called before HUAC in the mid 1950s.⁴¹ Ed Yellin himself still struggles to cope with the effect that his challenges had on his wife and three children.

In 1958, Ed Yellin appeared before the House Committee on Un-American Activities (HUAC). Because he exercised his right to freedom of political affiliation, Yellin was suddenly less “American” than someone who had joined the Democratic or Republican parties. After a criminal conviction and two Supreme Court hearings, Yellin’s story has produced a legacy that is invaluable to our understanding of this time period. His legal case and the ensuing precedent, although not as radical as he would have hoped for, placed restrictions on a government agency that helped to create and prolong a long period of civil rights violations and political repression.

It is true that Ed Yellin’s is not the most famous case from the era of anti-Communist discrimination. It was not a case that received a large amount of press, the most scrutiny, or even an enormous amount of analysis after the fact. His case did not create a precedent for the First Amendment, abolish HUAC, or make the front page of the

⁴⁰ Schrecker, *Many are the Crimes*, 361.

⁴¹ Margaret Fuchs Singer. *Legacy of a False Promise: A Daughter’s Reckoning* (Tuscaloosa: The University of Alabama Press, 2009).

New York Times. Yellin's case has been mentioned in only a limited number of articles and books, and it has never before been mentioned in great depth. Yellin's story, to some, might seem like an insignificant one. From a historical perspective, however, Yellin's case is invaluable in that his story is one small part of a larger narrative of repression, discrimination, and civil rights violations that went unchecked in the United States for decades. Perhaps more importantly, however, it is a story of people and forces that started to check that repressive power, challenge those repressive agencies, and ultimately bring about the decline of anti-Communist repression and discrimination in American life.

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