

REVISITING THE “MCCARTHY ERA”:^{*}
LOOKING AT *WILKINSON V. UNITED STATES*
IN LIGHT OF *WILKINSON V. FEDERAL*
BUREAU OF INVESTIGATION

*Frank Wilkinson***

Frank Wilkinson was an administrator with the Los Angeles Public Housing Authority responsible for recommending sites for the post-World War II public housing program. In this capacity, he recommended and the City Council and Housing Authority approved sites outside the barrios or ghettos of Los Angeles. The placement of these sites was characterized as “creeping socialism” by those opposed, and suddenly, Wilkinson’s personal affiliations became an issue, and his life as a target of government harassment and scrutiny began. This unwanted, and often unconstitutional attention lasted for more than thirty years. Mr. Wilkinson offers a compelling example of how the cold war took its toll on our society’s protection

* Most people know the years that the House Committee on Un-American Activities (HUAC) conducted hearings to root out suspected Communists and Communist sympathizers as the “McCarthy Era.” It is a total misnomer to characterize the repressive years of the HUACs, the anti-Communist laws of the 1940s and 1950s, the witch-hunting and blacklisting that continued at least into the early 1970s as the McCarthy Era. Joseph McCarthy was only briefly on the scene.

** Frank Wilkinson, Executive Director Emeritus of National Committee Against Repressive Legislation and Executive Director of the First Amendment Foundation, recently received the Roger Baldwin Medal of Liberty. Frank Wilkinson has also received the American Civil Liberties Union Eason Monroe Courageous Advocate Award, the Earl Warren Civil Liberties Award, and the 1997 National Lawyers’ Guild Legal Worker of the Year. The author would like to thank the following dedicated attorneys: *Wilkinson v. United States*, Rowland Watts and Nannste Dembitz, Of Counsel, from the National Office of the American Civil Liberties Union; *Wilkinson v. FBI*, Philip J. Hirschkop, Of Counsel, Virginia, Fred Okrand of the American Civil Liberties Union Foundation of Southern California, and Douglas E. Mirell and Paul Hoffman, Volunteer American Civil Liberties Union Counsel of Loeb & Loeb, LLP.

of individual freedoms.

Like other aspects of government, the American legal system felt the influence of anti-Communist fervor. Mr. Wilkinson's testimony before the House Committee on Un-American Activities, his life as a subject of covert FBI activities, and the litigation that resulted from those experiences all make Frank Wilkinson uniquely representative of this important and troubling period. The Loyola of Los Angeles Law Review is grateful for his reminiscences and his contribution to the "Trials of the Century" Symposium.

I. INTRODUCTION

In 1958, I was subpoenaed to appear at a hearing before the House Committee on Un-American Activities (HUAC)¹ in Atlanta, Georgia. After refusing to answer HUAC's questions about my political affiliations on the grounds that those affiliations were protected by the First Amendment,² I was held in contempt of Congress. With counsel provided by the National Office of the American Civil Liberties Union (ACLU), we fought that subpoena all the way to the United States Supreme Court. But in 1961, by a five to four vote, the Court denied my First Amendment challenge to HUAC's subpoena.³ As a result, I was sentenced to serve the maximum twelve months on the contempt charge, but since I received three months off for good time, I ultimately spent ninth months incarcerated in federal prisons.

In 1980, the National Committee Against Repressive Legislation (NCARL), of which I was the executive director, filed suit against the Federal Bureau of Investigation (FBI) under the Freedom of

1. HUAC became a permanent standing committee in 1946. See RICHARD CRILEY, *THE FBI V. THE FIRST AMENDMENT* 8 (1997). HUAC was "mandated to investigate 'subversive and un-American propaganda activities.'" *Id.* at 24. This power came from congressional acts like the Smith Act and the Communist Control Act of 1954. See Smith Act, 18 U.S.C. § 2385 (1940); Communist Control Act, 50 U.S.C. § 842 (1954). "[HUAC] was armed with the power to compel testimony under subpoena, and to punish with citations for contempt of Congress." CRILEY, *supra*, at 24-25.

2. See U.S. CONST. amend. I.

3. See *Wilkinson v. United States*, 365 U.S. 399, 400 (1961). The Supreme Court denied a companion case, brought by Carl Braden, by the same vote at the same time. See *Braden v. United States*, 365 U.S. 431, 435 (1961).

Information Act⁴ to compel the FBI to release their files on me. In the fourth year of that trial, a federal district court judge ordered the FBI to turn over, with minor redactions, approximately 132,000 pages of reports the FBI had collected on NCARL and me over the course of thirty-eight years.⁵ The files revealed that the FBI, under the direction of J. Edgar Hoover, had me under surveillance from the time I was twenty-eight, through 1980, when I was sixty-five, and had targeted NCARL under various FBI “neutralization” programs for thirty-eight years. In my capacity as executive director of NCARL and its predecessor—the National Committee to Abolish HUAC—I was a prime target of J. Edgar Hoover’s infamous COINTELPRO⁶ program. COINTELPRO was a secret, anti-democratic campaign waged by the FBI from the 1950s to 1975.

The extent of the FBI’s attacks, unknown to me as I testified before HUAC, justify a fresh look at *Wilkinson v. United States*.⁷ Every negative aspect of my life for a thirty-eight year period was directly orchestrated by the FBI and J. Edgar Hoover. The 132,000 pages of FBI reports represented repeated examples of violations of my rights under the Constitution.

In the light of this new information, *Wilkinson v. United States* and the HUAC hearings that led up to that decision evidence a

4. See The Freedom of Information Act, 5 U.S.C. § 552 (1999).

5. See *Wilkinson v. FBI*, 633 F. Supp. 336, 338 (C.D. Cal. 1986); see also CRILEY, *supra* note 1, at 8 (noting that Wilkinson’s counsel received 132,000 surveillance documents from the FBI during pre-trial discovery in *Wilkinson v. FBI*).

6. COINTELPRO—COunterINTELigence PROgrams—“is the FBI acronym for a series of covert programs directed against domestic group[s] . . .” like the United States Communist Party, the Socialist Labor Party, Students for Democratic Society, the Black Panther Party, and briefly in 1965 and 1966, the Ku Klux Klan. See CRILEY, *supra* note 1, at 9.

Many of the techniques used would be intolerable in a democratic society even if all of the targets had been involved in violent activity, but COINTELPRO went far beyond that. . . . [The] Bureau conducted a sophisticated vigilante operation aimed squarely at preventing the exercise of First Amendment rights of speech and association, on the theory that preventing the growth of dangerous groups and the propagation of dangerous ideas would protect the national security and deter violence.

Id.

7. 365 U.S. 399 (1961).

concerted effort to harass, obstruct, and otherwise neutralize—fortunately unsuccessfully—the movement to abolish HUAC!⁸

II. A NEW LOOK AT *WILKINSON V. UNITED STATES* IN LIGHT OF *WILKINSON V. FBI*

A. *General Perspective and Context*

During the McCarthy Era or post-World War II cold war era of the 1950s, HUAC and the many states' "little HUACs"⁹ were holding many hearings under the guise of attempting to weed-out suspected Communist sympathizers. California averaged five hearings each year from 1950 to 1960.

During the 1950s, I received three subpoenas from various inquisitorial committees of government. First, in 1952, I received a subpoena from the California State Senate "little HUAC."¹⁰ Second, in 1956, I received a subpoena from the House of Representatives' HUAC to come to appear in Los Angeles.¹¹ Finally, in 1958, I received a subpoena from HUAC to appear at a hearing in Atlanta, Georgia. My refusal to testify at that time based on my First Amendment rights became the subject of *Wilkinson v. United States*.¹²

B. *FBI Involvement in HUAC Hearings*

At that time, I did not believe that the FBI was directly involved

8. In 1960, a group of civil rights activists from across the country, including myself, met to formally announce the formation of the National Committee to Abolish HUAC (Committee). See CRILEY, *supra* note 1, at 31. Immediately thereafter, the FBI put the Committee under surveillance. See *id.*

9. Inquisitorial organizations on the state level during this era were known as "little HUACs." See CRILEY, *supra* note 1, at 24.

10. In a closed session, I refused to answer questions relating to my political associations. As a result, I was fired from the Housing Authority. The witch-hunt continued, and the housing program subsequently collapsed. See CRILEY, *supra* note 1, at 36.

11. I refused to answer questions at this hearing by invoking the First Amendment. The full committee of HUAC at that time voted to cite me for contempt, but did not bring the case before the full Congress for a vote. See CRILEY, *supra* note 1, at 40.

12. 365 U.S. 399 (1961).

in any of those subpoenas; however, some who were subpoenaed thought there might be a connection between a hostile home visit by the FBI a month or two before the HUAC subpoena was received and the subpoena process. Looking at my own case, the FBI appeared to have had significant participation in the decisions of HUAC and California's little HUAC to subpoena me.

In 1952, there was a contest between the California little HUAC and the House of Representatives' HUAC to see who could be first to subpoena me. The fervor to subpoena me arose out of the political criticism I was receiving for recommending sites for the Public Housing Act of 1949.¹³ I chose large low-income housing sites, the Chavez Ravine and Rose Hill projects, outside the barrios and ghettos, in the area where Dodger Stadium now sits instead. This political criticism was apparent in a related eminent domain proceeding where I, testifying as an expert on the conditions of the barrios and ghettos, was asked about my political associations. I declined to answer any questions as to my political associations from the lawyers representing the slum landlords.¹⁴

The FBI clearly had a hand in creating this controversy. I learned at that time that Los Angeles Chief of Police Parker contacted, or was contacted by, J. Edgar Hoover, after which, Hoover provided the chief of police with some sort of dossier on me. This document was apparently then given to the attorneys for the slum landlords and, presumably, was the basis for my unanswered question. The same dossier was later utilized by the chief of police in the 1953 mayoral election to make a "guilt by association" charge

13. See Housing Act of 1949, Pub. L. No. 81-171, 63 Stat. 413 (enacted with the goal to "remedy the serious housing shortage, the elimination of substandard, and other inadequate housing through the clearance of slums and blighted areas"). I chose such sites in conformance with *Shelley v. Kraemer*, 334 U.S. 1 (1948). *Shelley* was a United States Supreme Court case ending restrictive covenants on land based on race, and thus allowed integrated projects. See *id.* at 13-23.

14. My refusal to answer such questions invited public speculation. The Housing Authority was accused of being "Red" controlled, and I was subsequently dismissed from my position with the Housing Authority. As a result, the housing placement project collapsed. In the Chavez Ravine and Rose Hill projects, 5500 units of the 10,000 unit program were cancelled. Instead, the Housing Authority decided to build those lost units in the very barrios and ghettos I had tried to avoid.

against Mayor Fletcher Bowron, who utilized my services on a pro-public housing educational TV program.

Out of all this controversy and fervor, the California little HUAC located me with its subpoena first at the Good Samaritan Hospital where I was then undergoing knee surgery. The information below came to me from the doctors.

On awakening from the knee surgery, the medical staff told me that three men, described as a Los Angeles police officer, a representative from the FBI, and an officer from the California little HUAC, came to the surgery unit asking to speak to me. The hospital staff informed the three men that I was under the effects of sodium pentothal. The three men waited until I was moved, still unconscious, to a recovery room. Although stopped initially from entering the room by the nurses, the three men later demanded entry. Unsuccessful in awakening me by shouting and manually opening my eyes to see their badges, they took a safety pin from a nurse and pinned the subpoena from the California little HUAC on my surgical gown!

C. 1956 HUAC Case: FBI Involvement Increases

With the release of information pursuant to *Wilkinson v. FBI*,¹⁵ evidence surfaced of the FBI's advance planning to interfere with my new work with the Citizens Committee to Preserve American Freedoms (CCPAF).¹⁶ CCPAF had been successful in defending those subpoenaed before HUAC hearings in both Southern and Northern California.

The FBI files reported the preparation of data by all agents following me—at times eight agents a day—to be used as “Prosecuting Summaries.” The agents then submitted these summaries to the Justice Department for possible indictment and prosecution under the 1940 Smith Act.¹⁷ Altogether, a dozen of such “Summaries”

15. 633 F. Supp. 336 (C.D. Cal. 1986).

16. The attempted FBI interferences in CCPAF began in the 1950s but continued at least until 1975.

17. 18 U.S.C. § 2385 (1990). This Act makes it a felony to advocate the overthrow of the government of the United States. Being a member or affiliate of a group who advocates the overthrow of the government provides a basis for prosecution under the Smith Act. *See id.*

were submitted and returned by those Attorneys General to J. Edgar Hoover. In doing so, they indicated that he lacked meaningful evidence of wrongdoing against me.

At the same time, J. Edgar Hoover instructed agents investigating my case to locate an informer who might name me as a “Communist.”

D. First Amendment Challenge Surprised HUAC in 1956

By coincidence, on the night before I received this first HUAC subpoena, I read the testimony of Dr. Alexander Meiklejohn¹⁸ before the 1955 United States Senate Subcommittee on Constitutional Rights (Subcommittee), headed by Senator Thomas Carey Hennings Jr. In that testimony, Dr. Meiklejohn best expressed his judgment in regard to the First Amendment’s application in a political arena. Dr. Meiklejohn told the Subcommittee:

The First Amendment seems to me to be a very uncompromising statement. . . . Congress and, by implication, all other agencies of government are denied any authority whatever to limit the political freedom of the citizens of the United States. It declares that with respect to political belief, political discussion, political advocacy, political planning, our citizens are sovereign, and Congress is their subordinate agent. . . . No subordinate agency of the government has the authority to ask, under compulsion to answer, what a citizen’s political commitments are.¹⁹

With Dr. Meiklejohn’s testimony fresh in my mind, I reflected later that night on just what my position might be if I were to be subpoenaed before HUAC. I had only been involved in civil liberties work for four years, but I had witnessed many hearings and seen the damage done by HUAC. Indeed, my wife and other teachers had been discharged by the Board of Education after appearances before HUAC committees. Even my own Methodist Bishop, James C.

18. Dr. Meiklejohn was widely respected. He served on the ACLU National Board and his interpretation of the First Amendment was respected by several United States Supreme Court justices. See CRILEY, *supra* note 1, at 38-40. Dr. Meiklejohn was also a recipient of the Congressional Medal of Freedom from President Kennedy.

19. CRILEY, *supra* note 1, at 38.

Baker, had seventeen citations for un-American activities. While respectful of the parallel common law antecedents of the First and Fifth Amendments, and knowledgeable of a recent Supreme Court decision accepting the Fifth Amendment as a valid protection at such hearings,²⁰ I decided that as a matter of conscience and personal responsibility, I would take my stand on the First Amendment.

Amazingly, at seven o'clock the next morning, there was a knock on my front door by a subpoena server for HUAC. How prescient of HUAC and the FBI!

1. Preparing to confront HUAC

In preparation for the hearing, I sought the advice of a number of lawyers on how to frame my First Amendment argument so that there would be no extraneous issues raised. If possible, I wanted to confront the Supreme Court as narrowly as possible, testing the Meiklejohn First Amendment thesis. I desired that the Court either remove from HUAC the power of the compulsory processes in such a political interrogation, or send me to prison. The response of the assembled lawyers—all good friends—was both surprising and troubling. All but three left, indicating in a variety of ways that they did not wish to participate. The remaining three were Abraham Lincoln Wirin, Fred Okrand of the ACLU, and Daniel Marshall of the Catholic Lawyers Association. My supportive wife at the time, Jean Benson, perturbed by the lack of legal support, turned to the sweet and somewhat mystical Dan Marshall, and asked Dan what he thought. He replied, “Jeannie, sometimes you have to listen to the still small voices.” It helped us both.

2. Confronting HUAC

I had prepared a response to any HUAC questions as to my political associations. I felt that the First Amendment prohibited such questioning under compulsion. So at the hearing, I read the following sentences we had prepared:

I challenge, in the most fundamental sense, the legality of the House Committee on Un-American Activities. It is

20. See *Quinn v. United States*, 349 U.S. 155, 165 (1955); see also *Emspak v. United States*, 349 U.S. 190 (1955) (companion case to *Quinn*).

my opinion that this committee stands in direct violation by its mandate and by its practices of the [F]irst [A]mendment to the United States Constitution. It is my belief that Congress had no authority to establish this committee in the first instance, nor to instruct it with the mandate which it has.

I have the utmost respect for the broad powers which the Congress of the United States must have to carry on its investigations for legislative purposes. However, the United States Supreme Court has held that, broad as these powers may be, the Congress cannot investigate into an area where it cannot legislate, and this committee tends, by its mandate and by its practices, to investigate into precisely those areas of free speech, religion, peaceful association and assembly, and the press, wherein it cannot legislate and therefore it cannot investigate.²¹

HUAC counsel interrupted repeatedly, but I stated my reasons. Thereafter, I said, over and over again, "My answer is my answer." Richard Arens, HUAC counsel, could not reconcile that I was not using the Fifth Amendment. They went on and on with sarcastic insinuations, and they divided among themselves as to whether I had used the Fifth Amendment. They had the clerk re-read my testimony. Finally, a member noted that I was wearing a hearing aid. The HUAC chair left the dais and came to examine my ears, asking loudly if I had heard them ask if I was invoking the Fifth Amendment. I raised my voice slightly and replied that I had.

As important to me as the First Amendment stand I was taking was, I was also equally appalled to witness the reckless and unprincipled abuse HUAC was giving to the Fifth Amendment. If one took the Fifth Amendment, it clearly meant to them that one was admitting "guilt" and just "hiding" behind that Amendment.²²

HUAC voted to cite me for contempt of Congress. Then, it was

21. *Wilkinson v. United States*, 365 U.S. 399, 405-06 (1961) (reproducing the words Wilkinson used at both the 1956 hearing and the 1958 HUAC hearing where he was cited for contempt).

22. Recently this mode of thinking reared its ugly head when Oliver North used the Fifth Amendment before Congress. Some of my own knowledgeable friends immediately commented: "So, he's guilty."

our turn for a surprise. As my attorney and I prepared to depart, we were sternly instructed to remain seated and under oath. Their counsel called out a name. "Is Anita Belle Schneider in the audience?" A woman at the back of the room rose and identified herself as Schneider and agreed to be sworn in. She was asked if she knew me, and she replied that she did. However, I had no recollection of having ever before seen or heard the name of the woman. She identified herself as living in San Diego and as having been invited by the FBI in 1951 to become an undercover Communist. She reported that the FBI so approved of her work infiltrating the Communist Party in San Diego that they promoted her to infiltrate the Democratic Party. It was only then that I recalled who she might be.

In 1955, while speaking at a Bill of Rights luncheon in Los Angeles, a woman came to the podium, asking me to speak before the Democratic Party in San Diego. I assured her that I would and offered to give her some names of civil liberties supporters in San Diego from our file. I did not see her again.

When she called the following year, she asked me to come to San Diego to debate a HUAC subcommittee chair at a Democratic Party affair. I told her that our CCPAF chair, Reverend A. A. Heist, a retired director of the ACLU, would do better, and he agreed to go. I never saw or heard from her again and had no recollection of her appearance or name as she was sworn in.

At the hearing, HUAC counsel Richard Arens sought information from her against me, as she had been found to identify me as a Communist. Mr. Arens sought to establish a nexus between us by asking her leading questions regarding my well-known work with the CCPAF, as follows:

Mr. Arens. Was it [the Citizens Committee to Preserve American Freedoms] Communist-controlled?

Mrs. Schneider. Yes.

Mr. Arens. Who was the ringleader in that organization?

Mrs. Schneider. I didn't work in that organization, and I don't know who the ringleader was. My contact on that occasion was with Frank Wilkinson, I believe.

Mr. Arens. Did you know him as a Communist?

Mrs. Schneider. Yes.²³

Unfortunately, I was not allowed to cross-examine her. When I received my subpoena and when I entered the hearing, I was given a booklet from HUAC entitled: Rules of Procedure.²⁴ The booklet categorically stated that the Rules of Evidence, including the right of cross-examination, did not apply in such proceedings.²⁵

Throughout its thirty-eight years of political witch-hunting, over 3500 witnesses were called and subject, with rare exceptions, to public obliquity! HUAC's informers, while disliked, as have been all informers of all ages, were in most cases protected by both the FBI and HUAC. The informants knew they would be protected from charges of perjury and that their inquisitorial patrons could not survive or obtain convictions without them. Thus, we had a flat conclusive statement from an informant I did not know and would not recognize if she came to a podium today. She perjured herself, but HUAC was not concerned.

My hearing before HUAC in Los Angeles occurred on December 6, 1956, just a little over a fortnight before that Congress adjourned. However, Congress provided for such an event; the Rules of the House allowed the Speaker of the House to submit contempt citations when Congress was adjourned. But for reasons still not known, HUAC allowed me to walk away free with my First Amendment challenge, and I was not cited for contempt. It was obvious from HUAC's questioning that they were neither expecting nor comfortable with my narrow First Amendment challenge. The record invites speculation.

The FBI had now publicly exposed its informant. However, it was not until 1989, in the tenth year of *Wilkinson v. FBI*, that we received documentation from the FBI indicating that they knew Anita Belle Schneider was what their internal documents characterized as "emotionally unstable." Nevertheless, beginning in 1957, the FBI

23. *Wilkinson*, 365 U.S. at 419 n.6 (Black, J., dissenting) (emphasis added).

24. COMMITTEE ON UN-AMERICAN ACTIVITIES, UNITED STATES HOUSE OF REPRESENTATIVES, RULES OF PROCEDURE (1961).

25. *See id.* at 7 n.5. "The Committee has given frequent and diligent consideration to this subject, and has determined that in order to carry out its responsibilities, imposed by law, the rules of evidence, including cross-examination, are not applicable." *Id.*

published thousands of handbills quoting her as saying that I was a "Communist." For the next twenty-three years, the FBI or HUAC had a summary of her testimony against me printed as a flier and placed on the seats of auditoriums where I spoke.

E. 1958 HUAC Hearing

1957 and 1958 were somewhat more positive times. While not intended as a tactic, the public response to Carl Braden's and my initial First Amendment challenges of HUAC in 1956 was significant. CCPAF itself shifted from merely providing a defense of those subpoenaed by HUAC to an open call for HUAC's abolition. In May of 1957, I was invited to come to New York to launch a campaign initiated by the Emergency Civil Liberties Committee (ECLC) leaders: Corliss Lamont, Harvey O'Connor, I.F. Stone, Carey McWilliams, James Imbrie, Hugh H. Wilson, and others. Arriving in the heat of August, we immediately rented Carnegie Hall as an appropriate place to launch the campaign. Before departing from Los Angeles, I had invited Dalton Trumbo to be the keynote speaker. He had just broken through the Hollywood blacklist with his Oscar-winning screenplay under the pseudonym of Robert Rich. A professor of politics at Princeton, Hugh Wilson, participated in the program with an added call to our focus on the abolition of HUAC. Hugh Wilson urged Congress to enact legislation that would limit the term of office of the director of the FBI. However, even at that time, we still did not know of the undermining COINTELPRO efforts launched by FBI director J. Edgar Hoover against us. J. Edgar Hoover covertly carried on an intense redbaiting attack on ECLC, labeling it a "Communist Inspired Campaign to Abolish the House Committee on Un-American Activities and to Destroy the FBI." The extent to which these attacks emanated directly from the FBI was not revealed until the 1980s discovery findings in *Wilkinson v. FBI*.

At the same time, I also asked Dr. Alexander Meiklejohn to draft a petition to Congress which in final form was co-signed by 100 professors of public law. With the help of that petition, I sought editorial support from the editors of the *Denver Post*, *St. Louis Post Dispatch*, and others, for the abolition of HUAC as I crossed the country with my family.

Although picketed by several hundred Hungarian Freedom Fighters and interrupted for a half-hour midway by a stink bomb, the Carnegie Hall meeting was a sell-out success.

Our publicity efforts increased throughout 1957. In December of 1957, 800 people attended ECLC's Bill of Rights Dinner where \$25,000 was raised to organize on the national level what we had done in California, namely the defense of those subpoenaed at HUAC hearings anywhere in the country.

ECLC continued to move forward despite the full-court press against it. But in July 1958, in Atlanta, HUAC made its next public move by subpoenaing me.

My Atlanta subpoena came as one of a series of defensive responses we were making to each HUAC hearing. Atlanta was HUAC's first incursion into the South. We had almost no notice. As in Los Angeles in 1956, eleven others had been subpoenaed before I received mine. At one day's notice, I was asked to meet with leaders of the Southern Conference Educational Fund (SCEF) at the Atlanta Biltmore Hotel at three o'clock the following afternoon. A petition was being drafted for circulation to black churches, and I was asked to come to assist. I arrived, went to my room, and within one minute a federal marshal was at my door with a subpoena. I was dumbfounded and asked him to tell me how he knew I was there, especially as I had never been in the South before. He simply told me that the FBI had called from Washington the day before and told him that they were sending a courier down with a subpoena, and that I could be found at the Biltmore Hotel at 3:00 P.M. Although I am still not sure how the FBI found out where I was, I have suspicions that it was by a bug or a wiretap. I only made three calls: one to my wife, one to the airline, and one to the National ACLU asking for information regarding available lawyers in Atlanta. Later, in the 1980s, I learned that for thirty-eight years all my phones had been tapped without court search orders, and bugs had been planted, too. Further, we also learned that the Washington, D.C. director of the ACLU was an FBI informant who had been reporting some of my activities directly to high FBI officials.

Although HUAC did not allow direct assistance by counsel for those who were subpoenaed,²⁶ Rowland Watts, my ACLU counsel, set up one appointment after another with ACLU lawyers in Atlanta for me to see and to arrange for them to at least sit beside me during my testimony. Each was friendly and willing, but fearful of the damage to their law practice if they accepted. By the day before the HUAC hearing, I had eleven declinations.²⁷ Rowland Watts then asked the leading ACLU lawyer in Atlanta to see me. He met me with apologies. His law partner was in Europe, he had no cable address, and could not sit with me without his agreement. I made an emergency call to Rowland Watts for direction. Without a lawyer beside me, my case might be thrown out on the basis of no legal representation. Rowland Watts thus directed me to decline if HUAC asked me if I wanted a lawyer. So when the question was asked I said no. As I did so, I looked toward the jury box in the federal courtroom being used by HUAC. Some of the ACLU volunteer lawyers were present to witness the hearing, yet the intimidation was such that none felt they could afford to represent me.

The actual hearing in Atlanta was nearly identical to the 1956 hearing in Los Angeles. However, HUAC counsel Richard Arens extended HUAC's rationale for questioning me, and Anita Belle Schneider's informant role was incorporated only by reference. Following HUAC's formal vote to cite me for contempt of Congress, the House of Representatives voted 365-0 to indict me. Representative Nix of Pennsylvania, an African American, cast the single supporting vote for Carl Braden, my co-defendant.

The ACLU's Rowland Watts contacted the Justice Department

26. "Counsel shall not be permitted to engage in oral argument with the Committee, but shall confine his activity to the area of legal advice of his client." COMMITTEE ON UN-AMERICAN ACTIVITIES, *supra* note 24 at 4.

27. As could be seen in the very realistic fears of the civil liberties lawyers, there was tension in Atlanta. It was only four years after *Brown v. Board of Education*, 347 U.S. 483 (1954), and Georgia was leading a stonewall of southern states in the refusal to implement integration per the *Brown* decision.

At this time during a gubernatorial race, I was appalled to see a full-page advertisement in an Atlanta newspaper by the incumbent governor containing a montage of press clippings expressing his opposition to integration. A middle page box boldly promised that if the incumbent was reelected, no white child would ever sit in an integrated classroom.

prosecutors to offer my presence for the formal arraignment and posting of bond at a place of their convenience: Los Angeles, Atlanta, New York, etc. Instead, they literally laid in wait for me at the Princeton Inn where I was scheduled to meet privately with Mrs. Eleanor Roosevelt and a number of writers, faculty, and organizational leaders, to plan strategy and an ad in the *Washington Post*. I did not know several of those attending, and a spectacle was made as I arrived and was arrested on the doorstep, taken away to Trenton, New Jersey, and then held while the ACLU sent a messenger from New York to post the usual bond. While being fingerprinted, the lone agent in charge informally expressed appreciation for the stand that I was taking. When I asked how he had located me at the Inn, as I had not even known where we were to gather, he handed me a sheaf of FBI inter-agency telegrams. They read like a searching guide for a wanted criminal. The sheaves labeled me a suspect, indicated that I might be found in Los Angeles, listed my private phone line among others, and proclaimed that at 10:00 A.M. on that date I would be found in Conference Room B at the Princeton Inn.

At the trial, since there was no factual dispute in the case, only a matter for judicial judgment regarding precedents, we waived our right to a jury trial. However, the government insisted on a jury trial, but it was unnecessary and ridiculous under the circumstances. I told Rowland Watts to accept the first twelve potential jurors. When they were seated, the federal district court judge summoned counsel for both sides to the bench and told them I was probably a stranger, and therefore he would allow me a second chance to remove one of the jurors, a member of the Atlanta Ku Klux Klan. I chose to let him remain on the jury. The trial was most brief. It took the jurors only twenty-three minutes to convict me and twenty-one minutes to convict my co-defendant, Carl Braden.²⁸ The Fifth Circuit Court of Appeals quickly dispatched the matter, and as hoped, the United States

28. Under 2 U.S.C. § 192 (1999),

[e]very person who having been summoned as a witness by the authority of either House of Congress to give testimony . . . having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine . . . and imprisonment in a common jail for not less than one month nor more than twelve months.

Supreme Court granted certiorari.²⁹

An unusual event happened during oral arguments before the Supreme Court. Alexander Meiklejohn and I attended together. As he was to visit with one of the justices, I waited in the foyer until called by a page, and was seated with Meiklejohn in the family section of the Court. As the arguments proceeded, Justice Frankfurter spotted Dr. Meiklejohn, called a page who delivered a note to him, which Meiklejohn later handed to me with a look of disappointment. Justice Frankfurter's note expressed his feeling that Meiklejohn's First Amendment position was incorrect. We had, until then, held an outside hope of securing his vote!

The Supreme Court's decision was rendered on February 27, 1961.³⁰ It was five to four to uphold the convictions of Carl Braden and me.³¹ Justice Potter Stewart based his decision for the majority on the fact that Schneider was a "credible" witness.³² Good dissents were filed by Chief Justice Warren, and Justices Douglas, Brennan, and Black.³³ Justice Black read his decision in full and with force, joining the others' dissents. And, as stated above, Black's dissent was truly prescient. He wrote:

So far as appears from this record, the only information [HUAC] had with regard to [Wilkinson] was the testimony of an informant at a previous [HUAC] hearing. The only evidence to the effect that petitioner was in fact a member of the Communist party that emerges from that testimony is a flat conclusory statement by the informant that it was so. No testimony as to particular happenings upon which such a conclusion could rationally be based was given at that hearing. When this fact is considered in conjunction with the fact that petitioner was not accorded the opportunity to cross-examine the informant . . . such testimony is almost totally worthless for the purpose of establishing probable

29. See *Wilkinson v. United States*, 272 F.2d 183 (5th Cir. 1959), *cert. granted*, 362 U.S. 926 (1960).

30. See *Wilkinson v. United States*, 365 U.S. 399, 399 (1961).

31. See *id.*

32. See *id.* at 412 n.9.

33. See *id.* at 415 (Black, J., dissenting); *id.* at 423 (Douglas, J., dissenting); *id.* at 429 (Brennan, J., dissenting).

cause.³⁴

After sixty days of appeals, we began serving our year sentences in segregated hostile drunk tanks at Atlanta's Fulton County jail. We had been deeply moved the prior evening when Dr. Martin Luther King Jr. honored us with a reception with leading African American clergy at Morehouse College.

Carl Braden and I served our time in South Carolina, Virginia, Lewisburg Penitentiary in Pennsylvania, and at a minimum security prison in Allenwood. During our term, we know now, all our correspondence and activities fell under constant and intense FBI surveillance. On some occasions we were nearly denied our good time because of FBI sponsored frame-ups. And on the day of our release, we were kept under a technical rule until late in the day. It was the FBI's attempt to prevent us from attending a massive welcome home Pete Seeger Concert in New York City.

III. CONCLUSION

With the help of Watergate prosecutor Archibald Cox, we later uncovered thirty-eight years of FBI surveillance and the COINTELPRO operations of the FBI, including the initial 4000 pages of documents which gave us grounds to file our suit against the FBI.³⁵ In 1989, we received an internal FBI document reading that Anita Belle Schneider should not be used as a witness against me because she was emotionally unstable and not creditable. Because Ms. Schneider's declaration that I was a Communist was the only evidence on which HUAC relied, we then filed a writ of error coram nobis³⁶ to overturn my conviction, eighteen years after having served

34. *Id.* at 418-19.

35. That lawsuit became *Wilkinson v. FBI*, 633 F. Supp. 336 (C.D. Cal. 1986). Further, our FBI lawsuit availed us of another "smoking gun." In a March 4, 1964, memorandum to J. Edgar Hoover, a Los Angeles FBI agent in charge described a request for the FBI's assistance in my assassination.

36. If the petitioner has already served his sentence on a criminal conviction, he can file a writ of coram nobis. "In federal coram nobis proceedings pursuant to 28 U.S.C. § 1651, the relief granted usually consists of vacatur—that is, the vacating and setting aside—of the conviction." WILKES, FEDERAL POSTCONVICTION REMEDIES AND RELIEF §§ 1-8 (1998 ed.).

my sentence, on the grounds that the FBI had withheld exculpatory evidence.

Upon arrival in the federal district court in Atlanta, the judge informed us that he had failed to notify the FBI legal staff of the time and date of our hearing. After a lunch delay, the judge invited both sides into his chambers. He advised both sides that he would act on the briefs, without hearing oral arguments. The judge ruled that because I was registered at a hotel under the ECLC, a suspected Communist organization, HUAC had enough probable cause to call me to testify before them, even without Ms. Schneider's testimony. Therefore, he dismissed our *coram nobis* petition.³⁷

Since my attorneys and I felt that no evidence corroborated any belief that ECLC was Communist controlled, other than Ms. Schneider's testimony, we appealed the dismissal to the Eleventh Circuit.³⁸ Unfortunately, that three-judge panel was equally unreceptive to our arguments. On that record, we decided not to appeal to the United States Supreme Court.

The injustice I received at the hands of HUAC and the FBI illustrates the extreme fears and prejudices gripping this nation during the so-called McCarthy Era. My stand against HUAC and its constitutionality changed my life. It made me an absolutist, in the political sense, on the First Amendment. It made me strive to ensure that the protections of the First Amendment and the rest of the Bill of Rights be afforded to all of us, even in times as repressive as the cold war.³⁹

37. *See* *Wilkinson v. United States*, 774 F. Supp. 1360 (N.D. Ga. 1991).

38. *See* *Wilkinson v. United States*, 959 F.2d 973 (11th Cir. 1992).

39. I learned a great deal in writing this Essay and it is hoped that others can read this, share my experience, and learn from it.