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STEREOSCOPE



Of Congressional Witch-Hunts in Academia: The Case of *United States of America v Horace Chandler Davis*

By Patrick E. Mears, Barnes & Thornburg LLP

MR. AHRENS: Are you cognizant of the fact that your play, *The Crucible*, with respect to witch-hunts in 1692, was the case history of a series of articles in the Communist press drawing parallels to the investigations of Communists and other subversives by Congressional Committees?

MR. MILLER: The comparison is inevitable, sir.

Exchange between Richard Ahrens,
Staff Director of HUAC, and Arthur
Miller, playwright and graduate of The
University of Michigan, June 21, 1956

Introduction

On June 25, 1957, U.S. District Judge W. Wallace Kent issued an eight-page opinion declaring that a non-tenured mathematics instructor at The University of Michigan, Horace Chandler Davis, was in contempt of the Congress of the United States under 2 U.S.C. § 192¹ by refusing to answer certain questions posed by the Un-American Activities Committee of the United States House of Representatives ("HUAC"). Professor Davis refused to answer 26 questions asked by HUAC on the ground that they infringed his First Amendment rights of free speech and association. On August 5, 1957, Judge Kent sentenced Davis to six months' imprisonment and a fine of \$250. Davis appealed to the Sixth Circuit Court of Appeals and, on August 21, 1959, the Sixth Circuit affirmed

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Davis' conviction.² Davis thereafter petitioned the United States Supreme Court for a writ of certiorari, which was denied on December 7, 1959, by a 7 to 2 vote of the Justices.³ Professor Davis subsequently served his sentence at the federal penitentiary in Danbury, Connecticut and was released.

The foregoing, bare-bones summary of this criminal prosecution does not properly describe the importance and tragedy of this case, involving as it did issues concerning the propriety of Congressional inquiries of witnesses made during the "Red Scare" period and the nature and extent of academic freedom at public universities. Could a witness refuse to answer questions concerning his political beliefs and the identity of his associates under the First Amendment? If a professor at a public university refused to answer these questions, could the university terminate his employment on those grounds? The answers given to these questions in the context of the Davis prosecution were "no" and "yes." These questions, and their answers, however, must be viewed and understood in the context of that era, which was the heyday of red-baiting by public officials, such as Senators Joseph McCarthy and Pat McCarran and U.S. Representative and HUAC member Kit Clardy, who represented the old 6th Congressional District that encompassed Lansing and Flint.

The Temper of the Times

The Communist Party of the United States of America and Domestic Subversion

The Communist Party of the United States of America ("CPUSA") was founded in 1919, only two years after the Bolshevik Revolution in Russia.⁴ Almost immediately after its formation, the CPUSA came under heavy fire from the United States Department of Justice, acting at the direction of Attorney General A. Mitchell Palmer. In 1919, Palmer organized a series of raids throughout the United States to corral suspected alien "Reds" and deport them under the Espionage Act of 1917 and the Sedition Act of 1918.⁵ Although the Palmer Raids were short-lived, the CPUSA was subjected to constant government repression during the 1920s and early 1930s. The public's general perception of American Communists was that they were henchmen of Lenin, Stalin and their cohorts, blindly following the despicable and treasonous line set down by the Soviet Politburo and the Comintern.

The election of Franklin Delano Roosevelt in 1932 and the institution of the New Deal marked the beginning of a slow thaw in America's relations with the Soviet Union. During the period from 1933 through 1945, underground Soviet espionage activity by CPUSA members reached its apex. Persons such as Elizabeth Bentley, Harold Ware, Lee Pressman, and Nathan Silvermaster formed and operated Communist cells in the federal government and passed classified documents and information to their Russian handlers. The end of World War II, however, signaled the end of America's honeymoon with the Soviet Union and "Uncle Joe" Stalin. One historian discusses the reason for this change in the international political climate as follows:

"In the fall of 1945 a prominent journalist observed: 'There is no use dodging what is now plain: a serious cleavage has developed between Russia and the Western democracies....' These were prophetic words. The wartime alliance had been just that — *a wartime alliance*. The takeover in Poland, the mass arrests in Hungary, the coup in Czechoslovakia, the Berlin blockade — all added to the fire...[T]he Gallup Poll showed more and more Americans agreeing that Russia was aggressive, imperialistic and determined to rule the world."⁶

In the immediate aftermath of World War II, federal investigators began to uncover evidence of Communist penetration of certain executive agencies, such as the Departments of State, Agriculture, and Treasury. HUAC, which had been made a permanent committee by the House of Representatives in 1945, initiated an investigation that painted Alger Hiss as an undercover agent of the Soviet Union in the State Department who passed classified documents to the Russians. This investigation ultimately resulted in Hiss' conviction in 1950 for perjury and the imposition of a five-year federal prison term.⁷ Also during this postwar period, the Truman administration established loyalty programs for federal employees and the Federal Bureau of Investigation, and the Justice Department investigated and prosecuted alleged Communist spies and other domestic subversives.⁸ By the time of Senator Joseph McCarthy's famous speech in Wheeling, West Virginia in early 1950, in which he charged that the State Department was honeycombed with "card-carrying" Communists,⁹ the internal security threat to the United States had significantly diminished. The CPUSA had lost a significant number of members, and its leadership had gone underground.¹⁰ Nevertheless, a large section of the American public believed that the Soviet Union and the CPUSA still remained a serious domestic threat. Something had to explain the "loss" of China to Mao Zedong, the Soviet acquisition of the atomic bomb, and North Korea's invasion of its southern neighbor. Right-wing politicians such as Joseph McCarthy and Pat McCarran were quick to blame these developments on internal Communist subversion. How else could the world's greatest military power and the beacon of freedom have suffered such an unbroken string of embarrassing military, political, and ideological defeats?

HUAC's Role as Torquemada

HUAC was born in May of 1938, when the House of Representatives created it as a special committee. The Committee's charge was to investigate

1) The extent, character and objects of Un-American propaganda 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 government as guaranteed by the Constitution; and 3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.¹¹

The first chairperson of the Committee was Representative Martin Dies of Beaumont, Texas. Due to his leadership, HUAC was commonly referred to as the "Dies



Committee."¹² Although the Dies Committee investigated a smattering of fascist groups prior to and during World War II, the Committee's primary focus was on left-wing groups such as the CPUSA:

"The major target of the Dies Committee was the left-wing; most of its fire was concentrated on the [CPUSA], the CIO and the Roosevelt administration. The Dies Committee essentially engaged in a wholesale vendetta against the left and sought to portray the New Deal as part of a vast Communist conspiracy. As U.S. entry into the war approached, Dies increasingly focused on charges of Communist influence and infiltration in the Roosevelt administration."¹³

One such instance of the Dies Committee's anti-New Dealism was its accusation made in the course of a 1938 investigation that Michigan Governor Frank Murphy was guilty of "treasonable" actions by failing to deploy troops to break the General Motors "sit-in" strikes held in Flint, Michigan during 1936-1937.¹⁴

In 1945, the House of Representatives voted to elevate HUAC from a special to a permanent committee. True to its roots, a reborn HUAC quickly assumed the role of primary investigator of the Communist menace. On March 26, 1947, J. Edgar Hoover addressed a HUAC hearing called to consider proposed bills to curb or outlaw the CPUSA. Hoover testified that, no matter what the CPUSA called itself

or how often it changed its line for tactical reasons, the Party “always came back to fundamentals and bills itself as the part of Marxism-Leninism. As such, it stands for the destruction of our American form of government; it stands for the destruction of American democracy; it stands for the destruction of free enterprise; and it stands for the creation for a ‘Soviet of the United States’ and ultimate world revolution.”¹⁵

HUAC’s Obsession With American Higher Education

The American educational system, especially higher education, was a flash point for anti-Communist activity in the late 1940s and early 1950s. At the 1952 Republican National Convention in Chicago, Senator McCarthy thundered to cheering delegates as follows:

“My good friends, I say one Communist in a defense plant is one Communist too many. *One Communist on the faculty of one university is one Communist too many.* One Communist among the American advisers at Yalta was one Communist too many. And even if there were only one Communist in the State Department, that would still be one Communist too many.”¹⁶

In 1948, HUAC published a pamphlet entitled *100 Things You Should Know About Communism and Education*.¹⁷ Six years later, however, HUAC concentrated its firepower on Communists in the American educational system. That year, HUAC conducted 23 days of hearings throughout the country devoted to this topic. In 1954, the political and legal climate in America was favorable to these probes.

In 1952, Dwight D. Eisenhower, running for President on a strong anti-Communist platform defeated his democratic opponent, Adlai S. Stevenson, in a landslide. In that same general election, Republicans regained control of both houses of Congress. One of the freshman Congressmen elected was Kit Francis Clardy from Michigan’s Sixth Congressional District.¹⁸ Clardy defeated his Democratic opponent by a 10,000 plus vote margin and was appointed to HUAC by the Republican leadership of the 83rd Congress.¹⁹

HUAC also began its intensive investigation of American education in 1953 only one year after the United States Supreme Court upheld New York’s Feinberg Law against a First Amendment challenge in *Adler v. Board of Education of the City of New York*, 342 U.S. 485 (1952). In *Adler*, a group of plaintiffs commenced a declaratory judgment action. They sought a determination that the Feinberg Law, which denied employment to any superintendent, principal, or teacher in any New York state

educational institution if that person was a member “of any society or group of persons which teaches or advocates that the government of the United States or of any state or of any political subdivision thereof shall be overthrown by force or violence or by any unlawful means,” was unconstitutional. 342 U.S. at 487, n. 3.

The Supreme Court, in an opinion written by Justice Sherman Minton, declared that a state had the authority in this manner to protect “young minds” from the disease of alien ideologies such as Communism:

A teacher works in a sensitive area in a schoolroom. There he shapes the attitude of young minds towards the society in which they live. In this, the state has a vital concern. It must preserve the integrity of the schools. That the school authorities have the right and the duty to screen the officials, teachers, and employees as to their fitness to maintain the integrity of the schools as a part of ordered society, cannot be doubted. One’s associates, past and present, as well as one’s conduct, may properly be considered in determining fitness and loyalty. From time immemorial, one’s reputation has been determined in part by the company he keeps. In the employment of officials and teachers of the school system, the state may very properly inquire into the company they keep, and we know of no rule, constitutional or otherwise, that prevents the state, when determining the fitness and loyalty of such persons, from considering the organizations and persons with whom they associate.

342 U.S. at 493.

Congress also passed two important pieces of anti-Communist legislation between 1950 and 1954. The first notable statute was the Federal Internal Security Act (also known as the Subversive Activities Control Act and the McCarran Act), which was enacted into law over President Truman’s veto in 1950.²⁰ This act declared it to be illegal for any person to knowingly “combine, conspire or agree with any other person or persons to perform any act which would substantially contribute to the establishment within the United States of a totalitarian dictatorship.” This legislation also required “Communist-action organizations” and “Communist front organizations” to register with the U.S. Attorney General and report names of officers, sources of funds and, in the case of Communist-action organizations, membership lists. The McCarran Act’s most controversial provision was the establishment of concentration camps for detention of suspected spies and saboteurs upon the declaration of an “internal security emergency” by the President.²¹

In 1954, Congress passed and President Eisenhower signed into law the Communist Control Act of 1954, which terminated the rights, privileges, and immunities of the CPUSA, among other things.²² This legislation also permitted the Attorney General to petition the Subversive Activities Control Board, established by the McCarran Act, to declare labor unions and other organizations as "Communist-infiltrated." Upon the SACB's designation of an organization as "Communist-infiltrated," that organization would forfeit all rights and privileges under existing law and its members were barred from employment in defense facilities.²³

With this overture, the stage was set for HUAC's prolonged and intensive investigations into the field of education in 1953 and 1954.

"Operation Mind" and HUAC's 1954 Investigation of Communist Activity at The University of Michigan

Horace Chandler Davis

Horace Chandler Davis was born in Ithaca, New York in 1926 to Horace Bancroft Davis and Marian Rubins Davis, both of whom were economists.²⁴ Professor Davis' childhood was spent largely in Boston, where his parents taught at Simmons College. In December 1943, Chandler Davis enlisted in the U.S. Naval Reserve and went on active duty soon thereafter. He was subsequently assigned to the Navy V-12 Program, continuing his undergraduate studies while still in uniform. In 1945, Harvard University awarded Chandler Davis a Bachelor of Science degree (which he received at age 18), and the next year he was commissioned as an ensign in the United States Navy. Davis remained on active duty until July 1946. Harvard granted him a Master's degree in 1947 and a Ph.D. in 1950, both in mathematics. In 1948, Professor Davis married Natalie Zemon, a native of Detroit, whom he had met campaigning for Henry



Chandler and Natalie Davis circa 1954

Wallace, the 1948 presidential candidate of the Progressive Party.²⁵ In the late 1940s and early 1950s, Professor Davis was a member of the CPUSA.²⁶

In 1950, Chandler Davis accepted the position of instructor in mathematics in the College of Literature, Science and the Arts at The University of Michigan. He and Natalie moved to Ann Arbor and developed a strong friendship with Eugene V. Douvan, an attorney, and his wife Elizabeth Douvan, who was a psychology professor at the University.²⁷ Retired professor of mathematics, Wilfred Kaplan, remembers Chandler Davis during his Ann Arbor years as a "very bright and promising young mathematician."²⁸

Operation Mind

During February 25-29, 1952, HUAC held a series of hearings in the Detroit area dealing with communist infiltration and influence. The testimony elicited from witnesses allegedly established that more than 50 persons in the area had been CPUSA members "and that many of them had been active on university campuses in Michigan."²⁹ Before HUAC hit town that February, however, two Ann Arbor-based organizations distributed a pamphlet entitled "Operation Mind" protesting the upcoming and "unwelcome" HUAC visit. Although not disclosed at the time, this work was authored by Natalie Zemon Davis and Elizabeth Douvan. In this tract, the authors argued that HUAC's investigation was aimed at intimidating individuals holding unorthodox political views and influencing upcoming union elections:

"[T]he Committee has consistently used its powers to intimidate and silence Americans whose political convictions and associations are different from its own norms. It has tried to obstruct legal political and union activities.

* * *

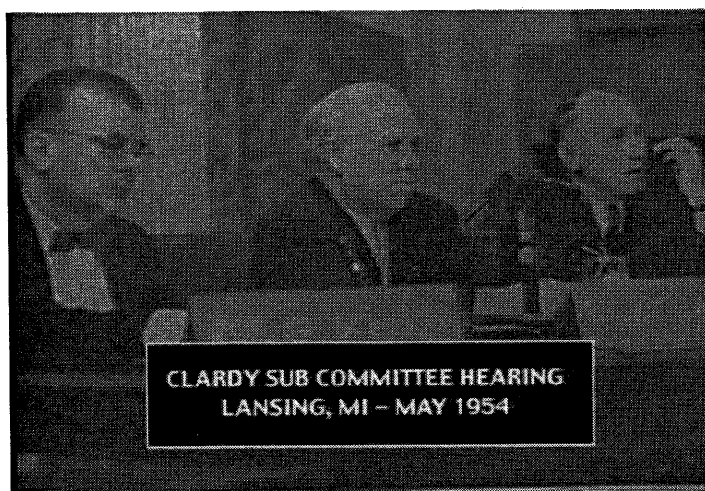
The committee, unconcerned with the investigation of *acts*, attempts principally to obtain from its witnesses as many *names* as possible of those with allegedly suspect political convictions. Moreover, not only the political convictions of those named or subpoenaed are suspect, but also *any* activities in which these people may engage."³⁰

HUAC was not to be dissuaded from conducting its investigations and went forward with the February 1952 hearings. HUAC followed up with two more rounds in the Detroit area on March 10-12, 1952, and April 29-30, 1952.³¹

HUAC's Investigation of Communist Activities at The University of Michigan

The Republican landslide in the 1952 general election gave the GOP control of Congress and its committees, including HUAC. In the Eighty-Third Congress, HUAC's members, in addition to Kit Clardy, were (i) its Chairman, Harold H. Velde (R-Illinois); (ii) Bernard W. Kearney (R-New York); (iii) Donald L. Jackson (R-California); (iv) Gordon H. Scherer (R-Ohio); (v) Francis K. Walter (D-Pennsylvania); (vi) Morgan M. Moulder (D-Missouri); (vii) Clyde Doyle (D-California); and (viii) James B. Frazier, Jr. (D-Tennessee). Kit Clardy quickly developed a reputation as an inveterate Red-baiter on the Committee, often being referred to as "Michigan's McCarthy" or "Junior McCarthy." Clardy was quoted as announcing at a HUAC hearing that "I don't know of any innocent man that has ever appeared before this Committee and invoked the Fifth Amendment."³² On another occasion, Clardy expressed approval of vigilante actions against unfriendly witnesses, as related by historian David Cauter:

"When Kit Clardy decided to boost his campaign for reelection by taking a subcommittee of HUAC into his native Michigan on a strident, red-baiting spree, Mervin I. Engle was roughed up and tossed out of the Chevrolet Manufacturing Plant, Flint; Sherwood Baunkel was threatened by co-workers at Buick, Flint; and Murray Borod was not only fired from Chevrolet, Flint, but had his house stoned and daubed with red paint. William Van de Does, fired from the Fisher Body plant, Flint, had his car stoned, while Howard Foster was attacked at the Chevrolet plant. Clardy commented, "This is the best kind of reaction there could have been to our hearings."³³



Kit Clardy Subcommittee

In 1953, HUAC decided to investigate Communism at The University of Michigan and, in the fall of 1953, served 15 faculty members with subpoenas to appear before the Committee. Chandler Davis received one of these subpoenas, which was served at his office in the West Engineering Building on November 10, 1953. Harlan Hatcher, then President of Michigan, negotiated with HUAC over the succeeding months to limit the number of witnesses. As a result of these negotiations, HUAC reduced its subpoenas to four: (i) Chandler Davis; (ii) Mark Nickerson, a tenured associate professor in the pharmacology department of the medical school; (iii) Clement Markert, an untenured assistant professor in the zoology department of the College of Literature, Science and the Arts; and (iv) Nate Coburn, a tenured associate professor in mathematics who ultimately failed to testify because of illness.

The May 10, 1954 HUAC Hearings

On May 10, 1954, a subcommittee of HUAC consisting of Representatives Kit Clardy, Gordon Scherer, and Morgan Moulder traveled to Lansing to hear the testimony of Nickerson, Markert, and Davis. Both Nickerson and Markert asserted their Fifth Amendment privilege against self-incrimination when asked whether they were present or past members of the CPUSA and other questions concerning their political beliefs and activities. Like Davis, both Nickerson and Markert had been members of the CPUSA; Markert had fought on the side of the Loyalists in the Spanish Civil War.

Chandler Davis, however, refused to answer HUAC's questions solely on the grounds of the First Amendment; he did not assert a Fifth Amendment privilege. Davis, expecting to be found in contempt of Congress because of his refusal to testify, wanted his case to be the test case on this First Amendment privilege issue. Other political activists called to testify before Congressional committees during this same period, such as Harvey O'Connor and Corliss Lamont, also asserted a First Amendment privilege.

Leading off the questioning of Chandler Davis on May 10, 1954, was Frank S. Tavenner, Chief Counsel to HUAC.³⁴ Davis appeared before HUAC without legal counsel. The eighth question posed by Tavenner to Chandler Davis resulted in Davis' initial claim of the First Amendment privilege:

MR. TAVENNER: During the period of time that you were at Harvard as an undergraduate, say between 1942 and 1945, were you aware of the existence on the campus or in Cambridge of an organized group of the [CPUSA] made up chiefly of members of the student body of Harvard?

DR. DAVIS: That is a question concerning my political associations, I believe, and I will refuse to answer all such questions before this committee.³⁵

When Kit Clardy directed Davis to answer this question, he explained his position as follows:

DR. DAVIS: Thank you. I wanted to explain in what respect I believe that this question exceeds your authority. It seems to me that such a question infringes my freedom of speech. It infringes my freedom of speech because it seeks to oblige me to discuss my political activities and my political opinions under highly abnormal circumstances. This is not the way you discuss politics for the purposes of arriving at the truth. These are abnormal circumstances. I am under oath where I have to watch every word. In addition, I think that it infringes freedom of speech because it focuses attention in the evaluation of political ideas or of individuals on how close they are to Communist ideas or to the Communist Party, and thereby takes attention off the question of whether the ideas are right and the question of the worth of the individuals. I believe that this stifles the type of discussion which is necessary in a democracy in order that the people may arrive at the conclusions which are in accordance with their will.

Finally, I would claim that in addition to these two respects it also infringes the freedom of speech of people who are not on the stand. It infringes the freedom of speech of everyone in that it acts as a threat; it implies a threat that if their opinions are not such as to meet with the favor of this committee, they may be subjected to the same sort of treatment that the witnesses today are being subjected to, and in that respect, it opens the way to stigmatization of political views which would lead the citizens to make political choice on the basis of fear rather than on the basis of reason.

Now, I would claim that it is highly essential to a democracy that this freedom of political choice be preserved; in fact, that this is the freedom which the first amendment is designed to protect. Therefore I claim that this question is improper, since it exceeds the authority of Congress. It oversteps the bounds placed on Congress by the first amendment. Therefore, I am under no compulsion to answer.³⁶

Representative Scherer then joined the fray, lecturing Davis on the conspiratorial nature of the CPUSA:

The Communist Party in this country has been declared by the Supreme Court of this land not to



Clement Markert, Mark Nickerson, and Chandler Davis

be a political party but a criminal conspiracy, and certainly we have the right and the duty to inquire as to the nature of the operation of that conspiracy in this country. That is the purpose of the questions being asked you, Doctor, so your whole premise is wrong. You consider it to be a political party, when it is not a political party. It is a criminal conspiracy seeking to overthrow this Government by force and violence. Now that has been clearly established, and you, with all the degrees behind your name, certainly know that, and you with your record in Communist Party activities certainly know that.³⁷

Later, Chandler Davis pointed out to Congressman Moulder in response to one of his inquiries that he was “opposed to violent revolution as a means of achieving political change.”³⁸

After a noon recess, Frank Tavenner asked Dr. Davis a series of pointed questions about “Operation Mind,” the anti-HUAC pamphlet authored by Natalie Davis and Libby Douvan in February, 1952:

MR. TAVENNER: Dr. Davis, there has come to the attention of the committee a pamphlet entitled “Operation Mind,” which was disseminated at the time the Committee on Un-American Activities arrived in Detroit for its hearing in 1952. This pamphlet calls upon all groups to oppose the committee’s presence in the area of Detroit. I have it before me; I see that there is a notation on it stating, “distributed by University of Michigan Council of the Arts, Sciences, and Professions, and the Civil Liberties Committee of The University of Michigan.” Were you a member of either of those two organizations at the time that that pamphlet was disseminated?

DR. DAVIS: I am sorry you are so distressed by this opposition.

MR. CLARDY: I didn’t hear what you said.

DR. DAVIS: I said I am sorry you are so concerned about this opposition.

MR. CLARDY: What makes you think we are concerned? We are merely seeking to get facts, and if you had anything to do with it, you should not hesitate at all to tell us. Don't try to lecture the committee, please.

DR. DAVIS: And this question is a question again about my association or lack of association with groups which as described are certainly political, and this certainly therefore comes under my previous refusal.³⁹

MR. SCHERER: Yes, but by this pamphlet, you seek to prevent the right of a committee to meet in the state of Michigan.

DR. DAVIS: I beg your pardon?

MR. SCHERER: You seek to prevent this committee meeting in the state of Michigan. You would deprive this committee of the very thing that you say you want protected.

MR. CLARDY: Yes, you want free speech for everybody.

MR. SCHERER: But you don't want free speech for this committee.

MR. CLARDY: You want free speech only for everybody who agrees with you, and you do not like anyone's viewpoint other than yours expressed, if I understand your "Operation Mind" pamphlet and your attitude here today.

DR. DAVIS: This is a question?

MR. CLARDY: I am telling you the facts, sir. Isn't the reason that you are refusing to answer this question or say anything about it because of its Communist origin, inspiration, and direction?

DR. DAVIS: Is this a question also?

MR. CLARDY: Yes, sir. If you don't understand questions, then that line of degrees that you have has misled me terribly. Now, can you answer it?

DR. DAVIS: Once before when I thought you were asking me a question, you weren't.⁴⁰

MR. TAVENNER: Didn't the composition of that document, its issuance, and dissemination, result from a meeting that was held on February 4, 1952, in the home of Betty Enfield?

DR. DAVIS: I refuse to answer that question for the same reason.

MR. TAVENNER: Isn't it a fact that you and several other members of the Communist Party, including Ed Shaffer and Lawrence K. Northwood, expecting that members of the Communist Party from Ann Arbor would be subpoenaed before the hearing contemplated to be conducted in Detroit in 1952, met and had counsel there to advise and discuss with you and your group what attitude should be taken in the event any of the members of the Communist Party from Ann Arbor were called as witnesses before the committee?

DR. DAVIS: This is a rather elaborate question, but it seems clear that it relates to my political activities, and accordingly I refuse to answer.

MR. SCHERER: It might relate to subornation of perjury, that might. That doesn't deal with political activities, sir.⁴¹

Finally, Chandler Davis was asked the "\$64 question" — was he then or had he ever been a member of the CPUSA. Davis refused to answer on First Amendment grounds.⁴² In the course of this questioning, Representative Scherer remarked that Davis was "obviously in contempt of the Congress of the United States," which statement Representative Clardy promptly agreed with.⁴³

Suspension and Termination of Professor Davis by The University of Michigan

In the early 1950s, the administrations of many public universities believed that they were over a barrel when confronted with the possibility that their institutions may be harboring communist professors. One of the corollaries of the principle of academic freedom was that universities should regulate the activities of their faculty members free from outside influences. University administrators feared that, if they were perceived by politicians and the public as being too lax in disciplining "subversive" professors, the federal and state governments might intrude upon the universities' prerogatives and impose their own restrictions on academic freedom that would likely be more repressive than those adopted by the universities themselves. The University

of Michigan, in responding to the political stir caused by the refusal of Nickerson, Markert, and Davis to testify, acutely felt these pressures and attempted, in its own way, to discipline these three faculty members while affording them a modicum of procedural and substantive due process.⁴⁴

Immediately after the HUAC hearing in Lansing, President Harlan Hatcher suspended Mark Nickerson, Clement Markert, and Chandler Davis. The next day, the university began its own internal investigation. The Executive Committee of the College of Literature, Science and the Arts ("LSA"), where Markert and Davis taught, listened to tapes of the hearing, questioned these two faculty members separately, and solicited input from the Zoology and Mathematics Departments concerning them. On June 7, 1954, the LSA executive committee recommended that both Markert and Davis be reinstated. Mark Nickerson's case, however, was handled by the executive committee of the medical school which, for various reasons, recommended that he be dismissed.

Thereafter, President Hatcher formed a special advisory committee of five professors to interview the three faculty members. This committee asked them a series of questions designed to determine their "integrity," as opposed to their technical competence in their respective fields. The special committee members also met with Donald Appell, a HUAC investigator, who shared evidence from HUAC's files on the three men. An unidentified "government investigator," most likely an FBI agent, also met with the Special Advisory Committee. While Nickerson and Markert cooperated with this Committee, Davis did not. The Special Advisory Committee and, later, the University Senate's Subcommittee on Intellectual Freedom and Integrity (which functioned as an appeal board) recommended that both Nickerson and Markert be reinstated. Because Davis steadfastly refused to answer questions posed by the two committees that were similar to those asked by HUAC, those two committees recommended that Davis be fired. Both of them thought that Davis had lied about his principled reasons for refusing to answer their questions. Professor Ellen Schrecker describes these committees' calculus as follows:

"Despite the virtually unanimous opinion of his colleagues in the mathematics department that Davis 'is absolutely sincere in taking this position,' the members of both faculty committees decided that Davis' avowed



Harlan Hatcher



adherence to principle was simply a clever trick to avoid having to answer questions about his politics."⁴⁵

Harlan Hatcher agreed. He stated that Davis' refusal to answer questions was "inexcusable in a member of our profession who seeks at the same time the protection and continued membership in the University whose policies he disdains and whose responsibilities he ignores."⁴⁶

In the end, the Regents of The University of Michigan fired Mark Nickerson and Chandler Davis but reinstated Clement Markert.

Nickerson was not prosecuted; he had claimed the protections afforded by the Fifth Amendment. Chandler Davis recently explained in an e-mail exchange with the author in July 2006, that he expected to be dismissed by the regents and subsequently indicted:

"I was intentionally opening myself to indictment, because only by being indicted could I argue before the courts that HUAC was behaving illegally. My mention of the First Amendment was not in an effort to protect myself against prosecution; it was only a preliminary exposition of the argument I intended to make before the courts."

Professor Davis' Contempt of Congress Citation and Grand Jury Indictment

In the meantime, HUAC busied itself with obtaining a resolution by the U.S. House of Representatives citing Chandler Davis for contempt of Congress under 11 U.S.C. § 192. On August 12, 1954, the House passed Resolution No. 704 which certified the HUAC report on Chandler Davis (H.R. Report No. 2456) under seal "to the United States Attorney for the Western District of Michigan, Grand Rapids, Michigan, to the end that the said Horace Chandler Davis may be proceeded against in the manner and form by law." The U.S. Attorney in Grand Rapids at that time was Wendell A. Miles, now a Senior United States District Judge for the Western District of Michigan. On August 16, 1954, the Speaker of the House, Joseph W. Martin, and the Clerk of the House of Representatives transmitted House Report No. 2456 and certified Davis' refusal to answer HUAC's questions to U.S. Attorney Miles for prosecutorial action.

A federal grand jury was thereafter empanelled by the district court and returned a 26-count indictment of Chandler Davis under 2 U.S.C. § 192 for his refusal to

answer questions propounded to him by HUAC. Counts 1 through 11 cited Davis' refusal to answer questions concerning his knowledge of certain named individuals and CPUSA activities in the Boston area during his college years. Counts 12 through 20 cited unanswered questions regarding "Operation Mind." Counts 21 and 22 involved questions surrounding the revocation of Davis's passport by the State Department in 1952. The final four counts of the indictment concerned questions about Davis' past and present affiliation with the CPUSA.

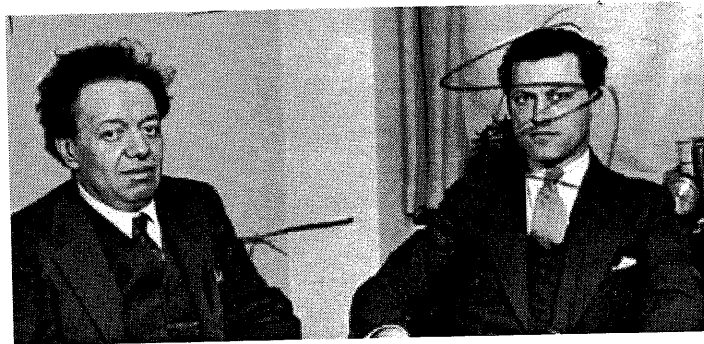
On February 2, 1956, Chandler Davis was arraigned in United States District Court in Grand Rapids and pleaded not guilty to the offenses charged in the indictment. Chandler Davis was thereafter released on a personal recognizance bond in the amount of \$5,000. Also on February 2, 1956, Chandler Davis' counsel, Philip Wittenberg of the New York City law firm of Wittenberg, Carrington & Farnsworth, filed a motion to dismiss the indictment. Judge Kent took this motion under advisement, and on September 14, 1956, he issued a written opinion and order denying that motion. On November 19, 1956, Chandler Davis's non-jury trial for contempt of Congress began in the federal courthouse on Ionia Avenue in downtown Grand Rapids (currently the home of the Grand Rapids Art Museum).

The Criminal Prosecution of Horace Chandler Davis

The Judge and the Lawyers

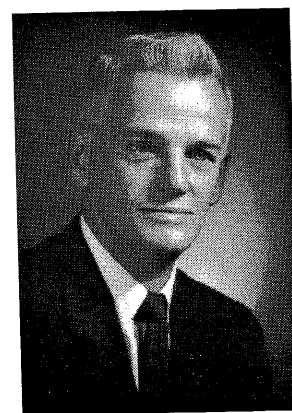
Judge W. Wallace Kent presided over the two-day trial of the criminal action entitled *United States of America v. Horace Chandler Davis* (Criminal Case No. 5978), which began on November 19, 1956. Judge Kent was born on May 1, 1916, in Galesburg, Michigan. He received his Bachelor of Arts degree from Western Michigan University in 1937 and his Juris Doctorate degree from The University of Michigan Law School in 1940. From 1941 through 1944, Judge Kent was an assistant prosecutor for Kalamazoo County, Michigan, and on February 2, 1945, he was appointed to the post of county prosecutor to fill an unexpired term. From 1946 to 1954, he engaged in private practice with the Kalamazoo law firm of Mason, Stratton and Kent. On July 1, 1954, Judge Kent was appointed to the United States District Court for the Western District of Michigan by President Eisenhower, becoming chief judge of the court in 1961.⁴⁷

The United States Attorney who prosecuted Chandler Davis for contempt of Congress was Wendell A. Miles. He was born on April 17, 1916, in Holland, Michigan, and received his Bachelor of Arts Degree from Hope College in Holland in 1938, a Master's degree from the University of Wyoming, and a Juris Doctorate degree from The University of Michigan



Philip Wittenberg and his client, Diego Rivera - 1933

Law School in 1942. In October 1942, he was inducted into the U.S. Army and fought in Europe during World War II. Judge Miles served as prosecuting attorney for Ottawa County, Michigan, from 1948 to 1952. In 1953, Judge Miles was appointed by President Eisenhower as U.S. Attorney for the Western District of Michigan, where he served until 1960.⁴⁸



Wendell A. Miles

Philip Wittenberg acted as trial and appellate counsel to the defendant, Chandler Davis. Wittenberg was born on April 4, 1895, in New York City and received his undergraduate degree from Cornell University. In 1916, he received his law degree from the New York Law School in Manhattan and was admitted to practice law in the state of New York that same year. Although active in the area of civil liberties, Philip Wittenberg was primarily known as a national authority on copyright law. He authored two seminal works on this topic: *The Protection and Marketing of Literary Property* (1937) and *The Law of Literary Property* (1957). In 1954, Philip Wittenberg was general counsel to the newly formed Bill of Rights Fund, which was organized to provide financial aid in civil liberties litigation that raised important constitutional issues. At the time that he was acting as Chandler Davis' counsel, Wittenberg was also representing Corliss Lamont, a political activist who refused to answer questions concerning his political beliefs and associations posed to him by a Senate subcommittee headed by Joe McCarthy. Lamont refused to answer these questions on First Amendment grounds, and Wittenberg successfully defended Lamont in his resulting criminal prosecution in the United States District Court for the Southern District of New York.⁴⁹

Trial Proceedings

At trial, a critical issue confronting the government concerned the pertinence of the questions posed to Chandler

Davis by HUAC. In 1955, the United States Supreme Court, in *Quinn v. United States*,⁵⁰ declared that the Congressional power to investigate, "broad as it may be, is also subject to recognized limitations. It cannot be used to inquire into private affairs unrelated to a valid legislative purpose."⁵¹ In an attempt to satisfy the *Quinn* standard, Frank Tavenner and former Congressman Kit Clardy testified on the nexus between the questions asked of Chandler Davis and the legislative purposes for those questions:

F. TAVENNER: Since the enactment of [the Internal Security Act of 1950], the committee has considered each year what its view was as to recommending legislation which would outlaw the [CPUSA]. . . . That is one matter in which the Committee was investigating in the hearings in Michigan.

W. MILES: Mr. Tavenner, to your knowledge, what if any other matter is of general legislative concern pertaining to this inquiry?

F. TAVENNER: Well, the question of passports, the illegal use of passports or the illegal obtaining of passports, and the supervision given by the State Department in the issuance of passports."⁵²

* * *

W. MILES: I will ask you if, in the interrogation of [Chandler Davis], the subcommittee was following up the recommendation of [HUAC] through prior years?

F. TAVENNER: Yes, it sought continuously to enlarge upon and perfect its information relating to those matters.

W. MILES: And in relation to the bills which had been recommended at previous Congresses for enactment?

F. TAVENNER: Yes, sir, the same applied to those."⁵³

Similar trial testimony was taken from former U.S. Representative Kit Clardy:

W. MILES: I will ask you if you made a statement at the outset of the hearings on May 10, 1954, at the time they were convoked, as to the purpose of the hearings in Lansing.

K. CLARDY: Yes, sir.

* * *

W. MILES: Now, then, I will ask you if certain matters of legislation were under consideration at the time of the inquiry of [Chandler Davis].

K. CLARDY: Yes, a great many, both by the committee and by myself, as an individual member of Congress. In fact, I had several bills already pending, and I introduced several bills afterwards; in particular, one that has already been mentioned here today, and that has to do with the use or the denial of the use of second-class mail privileges to the [CPUSA] or any Communist front."⁵⁴

Clardy testified that this proposed bill was inspired by the "Operation Mind" pamphlet, a copy of which was introduced into evidence as a government exhibit.⁵⁵

Conviction and Sentencing

On June 25, 1957, seven months after trial, Judge Kent issued an eight-page opinion finding Chandler Davis guilty of violating 2 U.S.C. § 192 on all 26 counts of the indictment. After describing the background of the case, Judge Kent declared that he was

" . . . completely satisfied that the questions were not for the purpose of determining the political beliefs of the witness but were for the propose of determining the extent, if any, of the practices of Communistic thinkers and thinking in the educational institutions of this country."⁵⁶

Judge Kent continued by noting his agreement that Congress "has and had on May 10, 1954, the right to investigate the influence of Communism in the education systems of this country." Furthermore, the trial judge stated that it was

" . . . so obvious that we need hardly state that the personnel of the schools of this country comes from the colleges of this country. Any communistic activity within the educational institutions must necessarily have the success of such Communist activity reflected in the thinking of the graduates of those institutions who in some instances will be sent out to teach the children of this country."⁵⁷

Consequently, Judge Kent reasoned that the questions propounded by HUAC to Chandler Davis were pertinent to this proper Congressional inquiry:

"It would appear to one as unfamiliar as this writer with the investigative procedures of Congressional committees that the questions which form the basis for the indictment in issue were directed toward a

determination not only of the attitude of the defendant toward Communists and Communism, but also as to the activities of other persons who may or may not have been involved in Communist activities in institutions other than The University of Michigan. To say that such inquiry is not pertinent to the subject of the investigation is to ignore the realities of the situation. To adopt the position taken by the defendant on this subject would result in a complete stagnation of such inquiry by the Congress of the United States. The committee must necessarily obtain information from one witness relating to the activities of other persons, exactly as is done in every investigative organization for the purpose of developing a complete picture of the situation."⁵⁸

Finally, Judge Kent distinguished the United States Supreme Court's recent decision in *Watkins v. United States*,⁵⁹ which reversed the conviction of a labor union leader under 2 U.S.C. § 192 for refusing to answer questions posed by a HUAC subcommittee on due process grounds because the pertinence of the questions posted to the witness was not established at the hearing. Judge Kent declared that it was

“. . . impossible for this Court to conceive of any possibility of claiming that none of the questions asked, upon which the indictment was based, were pertinent to the subject of the inquiry. The members of Congress who were present at the hearing and Counsel for the Committee did not stray from the subject of the inquiry in any material respect.”⁶⁰

On August 5, 1957, Chandler Davis and Philip Wittenberg appeared before Judge Kent for sentencing. In a one-page order, Judge Kent sentenced Davis to pay a fine of \$250 to the United States of America and “within 30 days from date hereof, to be committed to the custody of the Attorney General of the United States or his authorized representative for confinement in such common jail as may be properly designated by the Attorney General, for and during the term and period of SIX MONTHS.”⁶¹

At this hearing, Wittenberg renewed his motion to dismiss the indictment, citing *Watkins v. United States* and moved for a judgment of acquittal and an arrest of judgment, all of which were denied.⁶² Chandler Davis, upon Judge Kent's invitation, declared that he “did not intend to defy the law at any time; and, in fact, that I thought I was upholding the law.”⁶³

Before imposing sentence, Judge Kent explained the process by which he arrived at the sentence about to be imposed:

The Court has seriously considered for some time the matter of sentence and the sentence that should

be imposed in connection with this matter, and has considered the theory of sentence and sentencing. In that connection, we are faced with a dilemma, in that the basic theory of probation is that the person placed on probation faced with the same circumstances would not commit the same offense on another occasion. We are unable to reach that conclusion as to this respondent. From all that we have been able to learn from the pre-sentence investigation made by the Probation Department of the United States Courts, if the respondent were faced with the same situation, his attitude toward the Congressional committee and its work would be exactly the same as was his attitude on the occasion in question. So, for that reason, it is the Court's opinion that the respondent is not a fit subject for probation.

We have in mind the fact that he is an extremely intelligent person who has chosen the field of teaching for his life's work. We also have in mind the fact that there are and have been many teachers who felt that it was their aim and object in life to train young people to think for themselves. Unfortunately, we feel that this individual has not learned that lesson, that he is not thinking for himself, that he is following by rote the teachings of persons whose interests are adverse to the interest of the members of the general public of this country. We cannot escape the fact that the probability is that in the teaching field, without directly teaching in subjects which would directly influence the thinking of the individuals who were before him, yet this respondent could, and we cannot escape the conclusion that he would, use his position and his knowledge to influence what we consider improperly the thinking of his students. I have no thought that the sentence imposed in this Court will change any of that; I am satisfied, however, that those matters should all be taken into consideration.⁶⁴

After imposition of the sentence, Philip Wittenberg moved for a stay of judgment pending appeal which was granted, and Davis' \$5,000 personal bond was continued.⁶⁵

Appeals

On August 15, 1956, Philip Wittenberg filed Chandler Davis' Notice of Appeal with the federal district court clerk in Grand Rapids, and on September 9, 1956, the clerk transmitted the district court's case file to Cincinnati. At the same time, a similar appeal was winding its way through the federal appellate system: the appeal of a University of Michigan graduate student, Lloyd Barenblatt, from his

conviction for contempt of Congress arising from his failure to answer questions on First Amendment grounds about his past and present relationships with the CPUSA.⁶⁶

On June 8, 1959, the United States Supreme Court upheld Lloyd Barenblatt's conviction under 2 U.S.C. § 192 in a 5-4 decision with Justices Hugo Black, Earl Warren, William O. Douglas, and William Brennan dissenting. After dismissing Barenblatt's claim that HUAC's questions lacked "pertinency," as required by *United States v. Watkins*, the majority opinion authored by Justice John Marshall Harlan stated the "precise constitutional question" before the court was

"... whether the [HUAC] Subcommittee's inquiry into petitioner's past or present membership in the Communist Party transgressed the provisions of the First Amendment, which of course reach and limit congressional investigations."⁶⁷

In addressing this issue, the Supreme Court's majority opinion noted that it was "hardly debatable" that Congress has "wide power to legislate in the field of Communist activity in this Country, and to conduct appropriate investigations in aid thereof."⁶⁸ The Court's prior decisions have

"consistently refused to view the Communist Party as an ordinary political party, and has upheld federal legislation aimed at the Communist problem which in a different context would certainly have raised constitutional issues of the gravest character."⁶⁹

Justice Harlan continued by stating that Congressional investigatory power will not be denied "solely because the field of education is involved."⁷⁰ Barenblatt's position on appeal was that HUAC's investigation of him was "aimed not at the revolutionary aspects but at the theoretical classroom discussion of communism"⁷¹ to which Harlan objected:

"[It could not be] concluded that this investigation was directed at controlling what is being taught at our universities rather than at overthrow. The statement of the subcommittee Chairman at the opening of the investigation evinces no such intention and so far as this record reveals, nothing thereafter transpired which would justify our holding that the thrust of the investigation later changed."⁷²

Harlan raised one final point: that the record was "barren of other factors which in themselves might sometimes lead to the conclusion that the individual interests at stake were not subordinate to those of the state."⁷³ There was no attempt by HUAC to pillory Barenblatt, nor did appearance before HUAC "follow from indiscriminate dragnet procedures, lacking in probable cause for belief that he possessed information which might be helpful to

the Subcommittee."⁷⁴ As a consequence, the majority of the justices concluded that

"... the balance between the individual and the governmental interests here at stake must be struck in favor of the latter, and that therefore the provisions of the First Amendment have not been offended."⁷⁵

On August 21, 1959, more than two months after the Supreme Court issued its *Barenblatt* decision, the Sixth Circuit Court of Appeals, in a decision authored by Circuit Judge Shackelford Miller, Jr., affirmed the conviction of Chandler Davis and the decision of Judge Wallace Kent.⁷⁶ The parties had orally argued the case to the Sixth Circuit on April 21, 1958, but that court withheld its decision pending the decision of the Supreme Court in *Barenblatt*. In its opinion, the Sixth Circuit declared that the *Barenblatt* decision disposed of Davis' arguments on appeal that HUAC's questions were not pertinent but vague and that the First Amendment permitted him to refuse to answer HUAC's questions.

Thereafter, Chandler Davis filed with the United States Supreme Court a petition for a writ for certiorari to the Sixth Circuit Court of Appeals. This request was denied by the Supreme Court on December 7, 1959, with Justices Black and Douglas in favor of granting the petition.⁷⁷

Execution of Sentence

On January 14, 1960, Eugene V. Douvan entered his appearance as counsel to Chandler Davis in *United States of America v. Horace Chandler Davis* by filing a notice of appearance with the clerk of the United States District Court for the Western District of Michigan. Douvan that same day filed a motion to reduce Davis' sentence, which Judge Kent denied on January 28, 1960. Also on January 28, 1960, Judge Kent entered an order that Chandler Davis surrender himself to the United States Marshal for the Western District of Michigan before noon on Friday, February 5, 1960. Victor Douvan petitioned the court to permit Davis to serve his sentence at the federal penitentiary in Danbury, Connecticut, in order to be near his family, but Judge Kent denied this request. On February 3, 1960, Chandler Davis surrendered himself to the U.S. Marshal in Grand Rapids, Michigan, and he was that same day delivered to the federal prison in Milan, Michigan. From there, Davis was transported to Danbury, where he served his sentence and was released.

The Aftermath

The Immediate Impact of Davis' Conviction

In the years after being terminated from his instructor's position at The University of Michigan and his incarceration, Chandler Davis was blacklisted and was unable to secure

in the United States a regular faculty or equivalent position as a mathematician. In addition, Davis was unsuccessful in approaching major corporations for a position because of his inability to obtain a security clearance. In 1958, according to Professor Schrecker, Davis made inquiries of 150 college mathematics departments, but

“[h]e got few nibbles. One school actually made him a written offer, but just as he was about to accept it, he told his prospective employers what he assumed they already knew: his case was still in the courts. The job fell through. For a while, he did market research for an advertising company, but here he was very careful not to mention his case. He also got a few part-time teaching jobs, a fellowship at the Institute for Advanced Studies at Princeton, and an editorial position with a mathematical journal — all this, it must be noted, during the post-Sputnik years of the late fifties when the higher educational system was desperate for mathematicians.”⁷⁸

In 1957 and 1958, Chandler Davis taught mathematics in the evenings at the New School for Social Research and at Columbia University.⁷⁹ When he was taken into custody, Davis was employed by the American Mathematical Society, which granted him an unpaid leave of absence to serve his sentence. Upon his release from prison, Chandler Davis resumed his position with the Society as an editor of its publication, *Mathematical Reviews*. Chandler Davis described the period between 1954 and 1962 as follows:

“Then followed eight years in limbo: a precarious job in industry, part-time teaching when I could find it, fellowships, editing *Mathematical Reviews* (fun, that), prison. A broadening time. The experience of marginality is good for the soul and better for the intellect. And throughout, the joy of watching my children grow; always mathematics; always political struggle. My political activity in 1954-60 was mostly surrounding my court case. I fumed, even more than before, that defense of civil liberties was pre-empting all my energies, though it was only one of the burning issues. After my release from prison, it was relaxing to go on an anti-Bomb march with my wife again.”⁸⁰

Natalie Davis also experienced anger over her husband's treatment at the hands of HUAC. In a letter written to a friend in the late 1950s, Natalie Davis expressed her anger and resentment over the HUAC investigation and its aftermath:

“Our only problem is the future. We still do not know where we go. The Constant Uncertainty, the worries about the Case, etc. have lasted too long. This constant absorption with how one is going to live instead of living

and acting is a great waste, and takes one's mind off scientific work and humanistic political concerns that go beyond one's own problems. I am quite fed up.”⁸¹

After receiving her Ph.D. from The University of Michigan in 1959, Natalie Davis secured an assistant professorship at Brown University. Two years after Chandler Davis was released from prison, he and his family emigrated to Canada, where he was hired as an associate professor in mathematics with tenure by the University of Toronto.

A Welcome Change in the Political Climate

The Death of Joseph Stalin, the Korean Armistice, and the Demise of Joe McCarthy

Joseph Stalin died in Moscow on March 5, 1953, ending his iron-fisted rule of the Soviet Union. On July 27, 1953, an armistice was signed, ending the fighting in Korea. On June 9, 1954, less than one month after HUAC's hearing in Lansing, Senator Joseph McCarthy self-destructed on national television in the Army-McCarthy hearings in a verbal exchange with the U.S. Army's counsel, Joseph N. Welch. “Tail-Gunner Joe” was soon thereafter censured by the United States Senate and faded into obscurity. The thaw in U.S.-U.S.S.R. relations after 1954 and the demise of Joe McCarthy resulted in a ratcheting-down of anti-Communist hysteria in the United States. Although the domestic threat posed by Communism remained an important political issue in the United States, it had lost most of its sizzle.

Expansion of First Amendment Doctrines

Subsequently, the United States Supreme Court significantly limited the precedential value of its 5-4 *Barenblatt* decision. In 1963, the Supreme Court decided *Gibson v Florida Legislature Investigative Committee*.⁸² The *Gibson* decision was analyzed by one legal commentator as follows:

Although *Barenblatt* upheld the constitutionality of congressional inquiries into Communist activities and affiliations, the Court sharply narrowed the precedential force of *Barenblatt* several years later. In *Gibson v. Florida Legislative Investigating Committee*, a Florida legislative committee investigating the alleged infiltration of Communists into various organizations ordered Gibson, the president of the Miami branch of the NAACP, to disclose to the committee whether several individuals who had been identified as Communists were members of the NAACP. Gibson refused and was held in contempt.

The Court held that Gibson's conviction violated the First Amendment because the committee had failed to show ‘a substantial connection between the Miami

branch of the NAACP and Communist *activities*.' The Court explained that, in the absence of such a showing, there was insufficient justification to intrude 'into the area of constitutionally protected rights of speech, press, association and petition.'

* * *

The Court distinguished *Barenblatt* on the rather tenuous ground that *Barenblatt* involved an inquiry into Communist Party membership, whereas *Gibson* involved an inquiry into whether members of the Communist Party were members of the NAACP.⁸³

The Decline and Fall of HUAC

HUAC was never quite the same after McCarthyism lost its stranglehold on American politics and political discourse. The number of witnesses summoned yearly to testify before HUAC never reached the 1,000 plus peak that HUAC had achieved in the early 1950s. In addition, more and more voices against HUAC and the human tragedies that it spawned began to be raised and heard. HUAC's "exposure for exposure's sake," especially when the threat it attacked was chimerical, began to be denounced by critics that could not be smeared as "card-carrying Communists," "fellow travelers," or "dupes."

In the late-1950s, William T. Gossett, a future president of the American Bar Association, authored an article entitled "Are We Neglecting Constitutional Liberty? A Call to Leadership" published in the *Journal of the American Bar Association*. In this piece, Gossett took dead aim against the abuses of power inflicted upon individuals by Congressional committees like HUAC:

Congressional investigations which delve into matters of personal conduct assume the aspects of a trial and thus abridge the rights of individuals guaranteed by the Constitution. And there have been cases in which, as a result of the publicity of committee hearings, witnesses have been exposed to such penalties as dismissal from their jobs, loss of pension payments, character assassinations and injury to their reputations.

....

The practices of investigating committees thus are without proper standards. Persons are now subpoenaed before such committees and afforded no right to counsel. Although they often are subjected to the most searching cross-examination themselves, they are denied the right to cross-examine those who testify against them. If they are so-called hostile witnesses, they often are not even accorded the right to make a statement—prepared or otherwise; and if the behavior

of the witness is such as not to please the committee or some of its members, he can be summarily punished.

Some committee members seemingly have viewed the committee as a final court of justice sitting in judgment on the conduct of individuals appearing before the committee. Thus they usurp the judicial function. On the other hand, committee members can and do slander witnesses with impunity, secure in the knowledge that there can be no retaliation in court.

....

In such an inquiry, there is no assumption that the individual is innocent until proved guilty. There are none of the safeguards of a trial to which, by the Constitution and the law, each man is entitled. Instead, there is a type of trial by public opinion, a pillorying of individuals not accused of crimes—of individuals only suspected of being engaged in or knowing something about some improper activity. And the rules are the same whether the witness is innocent or guilty.⁸⁴

In May 1960, HUAC's presence in San Francisco sparked loud protests and, eventually, a riot at San Francisco City Hall resulting in scores of injuries to protesters and numerous arrests. In perhaps its last hurrah, HUAC in December 1968, subpoenaed Tom Hayden, Rennie Davis and David Dellinger to testify about the disturbances at the Democratic National Convention held in Chicago that year. On February 18, 1969, HUAC's name was officially changed to the House Committee on Internal Security and, six years later, the U.S. House of Representatives dissolved HUAC.

Coda

A New Life in Toronto

Chandler and Natalie Davis made a new beginning in 1962 by moving to Toronto. That year, Chandler Davis accepted a post as an associate professor of mathematics with tenure at the University of Toronto, where his principal research was in the areas of linear algebra and the theory of operators on Hilbert space. From 1991 to 1994, he served a term as vice-president of the American Mathematical Society. Chandler Davis is now professor emeritus at the University of Toronto. Natalie Davis is the Henry Charles Lea Professor of History emerita at Princeton University and an adjunct professor of history and medieval studies and a Senior Fellow of the Centre for Comparative Literature at the University of Toronto. Dr. Natalie Davis is the author of numerous books and articles in her field, including *Society and Culture in Early Modern France* (1975), *The Return of Martin Guerre* (1983) (the basis for the feature film), *Women on the Margins*:

Three Seventeenth-Century Lives (1997), *The Gift in Sixteenth-Century France* (2000), *Slaves on Screen: Film and Historical Vision* (2000), and *Trickster Travels: A Sixteenth Century Muslim Between Worlds* (2006).

*The University of Michigan Academic Freedom
Lecture Series and Fund*

In the late 1980s, renewed interest blossomed in Ann Arbor concerning the cases of Chandler Davis, Clement Markert, and Mark Nickerson. In 1988, former history professor David Hollinger authored an account of the university's treatment of the three academics for the Centennial Celebration Bulletin of the Rackham Graduate School. In 1989, a senior English honors student in LSA, Adam Kulakow, prepared a 90-minute film entitled "Keeping in Mind: The McCarthy Era at The University of Michigan," which premiered in Ann Arbor with the three professors in attendance. This activity resulted in The University of Michigan Chapter of the American Association of University Professors ("AAUP") proposing to the University's Senate Advisory Committee on University Affairs that The University of Michigan Regents apologize for their actions in 1954 in the wake of HUAC's "exposure for exposure's sake."

When the Regents declined to act on this request, the University's Senate Assembly passed a resolution in November 1990 that they deeply regretted "the failure of the

University Community to protect the values of intellectual freedom" in 1954. At the same time, the Senate Assembly established the annual University of Michigan Senate Davis, Markert, Nickerson Lecture on Academic and Intellectual Freedom and the Academic Freedom Lecture Fund. The first lecture in this series was given on February 18, 1991, by Robert M. O'Neil, general counsel to the AAUP and past president of the University of Virginia. Professors Davis, Markert, and Nickerson were present for this inaugural lecture and participated in a panel discussion thereafter.

Other lectures in this series have included (i) Federal District Judge Avern Cohn, who spoke in 1996 on the topic, "Academic Freedom: A Trial Judge's View" (1996); (ii) Anthony Lewis, columnist for *The New York Times* on the topic "Freedom: The Seamless Web" (2000); and (iii) Noam Chomsky, Professor at the Massachusetts Institute of Technology, on "Illegal But Legitimate: A Dubious Doctrine for the Times" (2004). Last year, the Davis, Markert, Nickerson Lecture was given by Floyd Abrams of the New York City law firm Cahill, Gordon & Reindel on "Whose Academic Freedom?"

Mark Nickerson passed away on March 12, 1998, in Ottawa, Canada. Clement Markert died on October 1, 1999, in Colorado Springs, Colorado. Chandler and Natalie Davis still reside in Toronto, Canada. They have three children and four grandchildren.

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Adam E. Kulakow, "Keeping in Mind: The McCarthy Era at The University of Michigan" (1989/2000)

Author Interviews

Honorable Wendell A. Miles, Grand Rapids, Michigan, June 2, 2006

Horace Chandler Davis, Toronto, Ontario, June 9, 2006

Eugene V. Douvan, Ann Arbor, Michigan, June 22, 2006

Honorable W. Wallace Kent, Jr., Caro, Michigan, June 23, 2006

Professor Peter Duren, Ann Arbor, Michigan, June 30, 2006

Professor Wilfred Kaplan, Ann Arbor, Michigan, July 3, 2006

Endnotes

1 Section 192 of Title 2 of the United States Code, enacted in 1938, reads as follows:

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.

2 *Davis v. United States*, 269 F.2d 357 (6th Cir. 1959).

3 *Davis v. United States*, 361 U.S. 919 (1959). Justices Hugo Black and William O. Douglas voted to grant Professor Davis' petition for a writ of certiorari.

4 *The Communist Party of America (1919-1946)* at www.marxists.org/history/usa/eam/cpa/communistparty.html. In its infancy, the CPUSA held two conventions in Bridgman, Michigan: a "Joint Unity Convention" in May 1920 and its "Second National Convention" in August 1922. *Id.* See generally, Theodore Draper, *The Roots of American Communism*, Viking Press (New York 1957); Albert Fried, *Communism in America: A History in Documents*, Columbia University Press (New York 1997).

5 For a discussion of the "Palmer Raids" of 1919 and 1920, see Geoffrey R. Stone, *Perilous Times: Free Speech in Wartime*, W.W. Norton & Co., Inc. (New York 2004).

6 David Oshinsky, *A Conspiracy So Immense: The World of Joe McCarthy*, p. 95, Oxford University Press, (Oxford 2005).

7 See, e.g., Whittaker Chambers, *Witness*, Regnery Publishing, Inc. (Washington, D.C. 1952); Richard M. Nixon, *Six Crises*, Doubleday & Company, Inc. (New York 1962); and Alger Hiss, *In the Court of Public Opinion*, A.A. Knopf (New York 1957) and *Recollections of a Life*, Seaver Books (New York 1983) for first-hand accounts of the Hiss-Chambers hearings before HUAC in 1948. Hiss was not prosecuted for espionage because the federal statute of limitations had expired. There has been continuing debate over whether Hiss was a Soviet espionage agent. Hiss consistently denied these allegations until his death at age 92 in 1996. The Venona Project, a joint attempt by Great Britain and America to decode Russian cable traffic between the United States and the Soviet Union, released documents in 1995 that pointed to Hiss as a Soviet espionage agent. This debate, however, has not yet ended and probably will never be finally resolved.

8 See, e.g., David Cauter, *The Great Fear: The Anti-Communist Purge Under Truman and Eisenhower*, pp. 267-293, Simon & Schuster (New York 1978).

9 It has never been finally determined whether McCarthy, in his Wheeling speech, charged that there were 205 of these Communists in Dean Acheson's State Department or some lesser number. The tape-recording of this speech was, unfortunately, erased shortly after the event. See generally, David Oshinsky, *A Conspiracy So Immense: The World of Joe McCarthy*, Oxford University Press (Oxford 2005).

10 Ted Morgan, *Reds: McCarthyism in Twentieth Century America*, pp. 545-46, Random House, Inc., (New York 2003).

11 Robert Justin Goldstein, *Political Repression in Modern America: 1870 to the Present*, Schenkman Publishing Company, Inc. (Cambridge, Massachusetts 1978).

12 Martin Dies was born in Colorado, Texas on November 5, 1900, graduated from the University of Texas at Austin in 1919 and received his law degree from National University in Washington, D.C. (now George Washington University) in 1920. Dies, whose father was also a Congressman from Texas, served in the U.S. House of Representatives from 1931 to 1945 and from 1953 to 1959. Dies passed away in Lufkin, Texas on November 14, 1972. In 1940, while Chairman of the Dies Committee, he authored an anti-Communist book entitled *The Trojan Horse in America*. For a review of the activities of the Dies Committee, see August R. Ogden, *The Dies Committee: A Study of the Special House Committee for the Investigation of Un-American Activities 1938-1944*, The Catholic University of America Press (Washington, D.C. 1945).

13 Robert Justin Goldstein, *Political Repression in Modern America: 1870 to the Present*, pp. 241-42, Schenkman Publishing Company, Inc. (Cambridge, Massachusetts 1978).

14 *Id.* at 242.

15 Investigation of Un-American Propaganda Activities in the United States — Hearings on H.R. 1884 and H.R. 2122, Part II, March 26, 1947.

16 (Emphasis supplied.) Quoted in Geoffrey R. Stone, *Perilous Times: Free Speech in Wartime* at page 338.

17 Although this pamphlet is simple-minded in its approach and discussion, it nonetheless reveals HUAC's view of how the CPUSA could infect the American educational system. Some examples follow:

3. What do the Communists want?

To rule your mind and your body from the cradle to the grave.

5. If Communism should conquer America, what would happen to the schools?

Real education would stop. Only training would be allowed.

13. Do you mean the Communists in this country take their orders from Stalin?

Just exactly that, and every one of them knows it sooner or later.

23. Why [did the Soviet Communist party 'wreck' the Russian school system after the Bolshevik Revolution]?

Because the Communists knew they could never control the public mind until they had first smashed the school system as it was.

After the break-down and explosion period, they rebuilt the school system into a tremendous machine for training rather than education.

This was done by installing a new group of teachers loyal to the Communists. These were allowed new and extreme authority over their pupils, who in turn have become cowed, uniformed puppets whose main lesson is to learn to worship Stalin as "teacher, leader, and father."

24. But what about academic freedom?

A teacher under Communism never has freedom, academic or otherwise.

He teaches only what the Government tells him to. And police watch to see that he does so.

35. How can we stop it?

Know Communism for what it is. Know Communists for what they are. Find them out, drive them out, and prosecute them by every means possible under the law.

We need more law than is at present on the books in order to do this effectively. See 100 Things You Should Know About Communism in the U.S.A. for more details.

96. Do many of our teachers play the Communist game?

The files of our Committee, running back over a ten-year period, show that the Communists have always found the teaching group the easiest touch of all the professional classes for actual Party zealots and fellow travelers.

97. What attracts so many learned men and women to such a murderous and destructive cause?

Sometimes it is frustration. Sometimes it is greed or love of power. Sometimes it is misplaced idealism. But ask them. See if they

can give you a good reason for having faith in Communism or any of its works.

98. Are people doing anything about all this?

In some places.

For instance, Ohio State University faculty members are now required to sign the equivalent of non-Communist affidavits. Then, too, in New Jersey, California, Michigan, and Washington State, among others, local authorities have begun investigations of Communist infiltration of schools.

99. Is this sort of the thing suppressing academic freedom?

Certainly not. People who demand freedom to teach Communism are demanding the right to teach murder, robbery, revolution, treachery, and disaster. They cannot justify any such demand on any grounds of law, morals, common sense, or reason.

- 18 Kit Francis Clardy was born in Butler, Missouri on June 17, 1892, and graduated from the William Jewel College in Liberty, Missouri. In 1925, Clardy received his Juris Doctorate degree from the University of Michigan Law School in 1925 and was admitted to practice in Michigan that same year. After being in private practice in Ionia for two years following graduation, he was appointed Assistant Attorney General by Governor Fred W. Green in 1927. From 1931 to 1934, Clardy was a member and chairperson of the Michigan Public Utilities Commission, returning to private practice in 1935, where he specialized in motor carrier law. In 1945, Clardy argued the case of *Interstate Commerce Commission v Parker*, 326 U.S. 60 (1945) before the United States Supreme Court. Elected to Congress in 1952, he lost his bid for reelection in 1954 by losing to the Democratic candidate, Donald Hayworth. In 1956, Clardy unsuccessfully sought the GOP nomination for his Congressional seat but was defeated in the Republican primary by Charles E. Chamberlain, who proceeded to unseat Donald Hayworth in the general election. After this defeat, Clardy moved to Palos Verdes Estates, California and joined the John Birch Society. Clardy passed away there on September 5, 1961.
- 19 This was a plum assignment for the freshman Congressman from Lansing. In 1953, 185 of the 221 House Republicans applied for a position on HUAC. David Oshinsky, *A Conspiracy So Immense: The World of Joe McCarthy* at p. 250.
- 20 U.S. Statutes at Large, Pub. L. 831, 81st Congress, 2nd Sess., Chapter 1024, pp. 987-1031 (1950). In vetoing this legislation, President Truman stated that the bill, if

enacted, "would make a mockery of our Bill of Rights [and] would actually weaken our internal security measures. . . . The idea of requiring Communist organizations to divulge information about themselves is a simple and attractive one. But it is about as practical as requiring thieves to register with the sheriff." Veto Message (September 22, 1950).

- 21 Robert Justin Goldstein, *Political Repression in Modern America* at pp. 321-325.
- 22 U.S. Statutes at Large, Pub. L. 637, 83rd Cong. 2d Sess., Chapter 886, pp. 775-780 (1954).
- 23 Robert Justin Goldstein, *Political Repression in Modern America* at pp. 340-341. In April 1952, Michigan enacted its own Communist Control Act, MCL 752.321, *et seq.* (also known as the Trucks Act), which remained on the books until its repeal in 1979. *See, e.g., Albertson v. Millard*, 345 U.S. 242 (1953). *See also* David Cauter, *The Great Fear: The Anti-Communist Purge Under Truman and Eisenhower* at pp. 72-73; William Albertson, *The Trucks Act: Michigan's Blueprint for a Fascist State*, New Century Publishers (New York 1952).
- 24 Horace Bancroft Davis and Marian Rubins Davis were radical intellectuals in their own right. *See generally* Marian R. Davis and Horace B. Davis, *Liberalism is Not Enough*, Orca Press (Berkeley n.d. circa 2000), which is their joint autobiography. Chandler Davis' father was born in 1898 and graduated from Harvard University in 1921. He was a college instructor in labor economics, teaching at various times at Cornell University, Simmons College, the University of Kansas City, Benedict College and Shaw College. In 1953 while teaching at UKC, Horace B. Davis was called to testify before the Senate Internal Security Subcommittee and refused to answer questions about his relationship with the CPUSA. As a result, he was fired by UKC although he had tenure. Thereafter, Horace B. Davis was firmly on the academic blacklist. Ellen W. Schrecker, *No Ivory Tower: McCarthyism and the Universities* at pages 233-34, 289. Horace Bancroft Davis authored a number of other books including *Brazil's Political and Economic Problems*, Foreign Policy Association (New York 1935), *Labor and Steel*, International Publications (New York 1933), *Shoes: The Workers and the Industry*, International Publishers (New York 1940) and *Nationalism and Socialism: Marxist and Labor Theories of Nationalism to 1917*, Monthly Review Press (1967). He was also a tournament Scrabble player. Chandler Davis' father died in 1999 at age 100.
- Marian Davis was a graduate of Smith College and taught at Simmons College from 1938 to 1942. Her passages in *Liberalism Is Not Enough* on sojourns in England, Germany, Pittsburgh, New York City, and Memphis provide valuable insight into the daily life of an activist family in the 1920s and 1930s. These writings are also, in many respects, pure poetry. Marian Davis preceded her husband in death in 1960. In 1961, the Davis family organized the Marian Davis

- Scholarship Fund for “veterans of the fight for equality and social justice who might not [be] able to get enough scholarship help from other sources.” Marian R. Davis and Horace B. Davis, *Liberalism Is Not Enough* at p. 256. This fund is now known as the Davis-Putter Scholarship Fund, and its mailing address is P.O. Box 7307, New York, New York 10116-7307.
- 25 Natalie Zemon Davis was born in Detroit, Michigan on November 8, 1928, attending Kingswood School Cranbrook, Smith College, Radcliffe College, and The University of Michigan, where she received her Ph.D. in 1959. She married Chandler Davis when she was 19 and he was 22 after six weeks of courtship. Natalie Davis has pursued a “life of learning,” which is exquisitely described in her 1997 Charles Holmes Haskins lecture to the American Council of Learned Societies. The text of this speech may be accessed at www.acls.org/op39.htm. In 1982, Professor Davis served as technical adviser to French film director Daniel Vigne for the film, *The Return of Martin Guerre*, starring Gerard Depardieu and Nathalie Baye. In 1983, she authored *The Return of Martin Guerre: Imposture and Identity in a Sixteenth-Century Village* published in 1983 by Harvard University Press and in 1985 by Penguin Books. Natalie Davis is the Henry Charles Lea Professor of History emerita at Princeton University and an adjunct professor of history and medieval studies and a Senior Fellow of the Centre for Comparative Literature at the University of Toronto.
- 26 Chandler Davis, “The Purge” at pages 419-20; Ellen W. Schrecker, *No Ivory Tower: McCarthyism and the Universities* at p. 220.
- 27 Victor Douvan was born in Chicago in 1923. After moving with his family to Detroit, he graduated from Northwestern High School there. He received a Bachelor of Arts degree in History from The University of Michigan in 1948 and his Juris Doctor from The University of Michigan Law School in 1952. Victor Douvan was in-house counsel for the Auto Club of Michigan (now the AAA) during his legal career and still resides in Ann Arbor.
- Elizabeth (“Libby”) Douvan was born on November 3, 1926 in South Bend, Indiana, and received her Bachelor of Arts degree from Vassar College in 1946. She then earned a Ph.D. degree in social psychology from the University of Michigan in 1951. Professor Douvan joined the Michigan faculty as a lecturer and was a professor emerita when she passed away in Ann Arbor on June 15, 2002. At Michigan, Professor Douvan was a senior research scientist at the Institute of Social Research and the Catherine Neaffie Kellogg Professor of Psychology and Women’s Studies. A fellow of the American Psychological Association, Libby Douvan authored numerous books and articles, including *The Inner American, Mental Health in America, Feminine Personality and Conflict*, and *Marital Instability*.
- 28 Interview with Professor Wilfred Kaplan, July 3, 2006.
- 29 William F. Buckley, Jr., *The Committee and its Critics: A Calm Review of the House Committee on Un-American Activities* at p. 295.
- 30 “Operation Mind” at pp. 4-5.
- 31 William F. Buckley, Jr., *The Committee and Its Critics: A Calm Review of the House Committee on Un-American Activities* at p. 295.
- 32 David Caute, *The Great Fear: The Anti-Communist Purge Under Truman and Eisenhower* at p. 95.
- 33 *Id.* at pp. 363-64.
- 34 Frank Tavenner was born in Woodstock, Virginia, in 1885. He received a Bachelor of Arts degree from Roanoke College in 1916, a Master’s degree from Princeton University in 1917, and a Bachelor of Laws degree from the University of Virginia in 1927. After graduating from law school, Tavenner entered the private practice of law in Woodstock, Virginia and, six years later, was appointed Assistant U.S. Attorney in the Western District of Virginia. In 1940, Tavenner was appointed U.S. Attorney for that district. After World War II, he was assigned by the Department of the Army to be one of the prosecutors for the International Military Tribunal for the Far East, otherwise known as the Tokyo War Crimes Trials, which concluded in 1948. From 1949 to 1955, Tavenner was HUAC’s Chief Counsel. Frank Tavenner passed away in 1964.
- 35 Horace Chandler Davis, testimony, HUAC, May 10, 1954, 83rd Cong., 2d Sess. 5349.
- 36 *Id.* at 5350.
- 37 *Id.* at 5351.
- 38 *Id.* at 5352.
- 39 *Id.* at 5359.
- 40 *Id.* at 5360.
- 41 *Id.* at 5363.
- 42 *Id.* at 5371.
- 43 *Id.* at 5361.
- 44 For an excellent and thorough analysis of the University of Michigan’s handling of this affair, see Ellen W. Schrecker, *No Ivory Tower: McCarthyism and the Universities* at pp. 219-34.
- 45 *Id.* at 231.
- 46 *Id.* at 232.
- 47 President Richard M. Nixon elevated Judge Kent to the Sixth Circuit Court of Appeals on December 18, 1970; he was sworn in on January 6, 1971. On May 28, 1973, Judge Kent suffered a heart attack and died in Kalamazoo at age 57.
- 48 Wendell A. Miles was the unsuccessful Republican candidate for Michigan Attorney General in 1960. From 1961 to 1970,

- he was a name partner in the Grand Rapids law firm of Miles, Mika, Meyers & Beckett, leaving the partnership after being appointed by Governor William Milliken as Circuit Court Judge for Ottawa and Allegan Counties in June 1970. On March 29, 1974, President Nixon nominated Judge Miles to the United States District Court for the Western District of Michigan and, on April 17, 1974, after being confirmed by the U.S. Senate, he was appointed to that position. From January 1, 1980 to April 17, 1986, Judge Miles served as Chief Judge for the United States District Court for the Western District of Michigan. On May 6, 1986, he assumed Senior Status. From 1989 to 1996, Judge Miles served as a judge on the U.S. Foreign Intelligence Surveillance Court. Judge Miles currently serves as the official Court Historian for the United States District Court for the Western District of Michigan.
- 49 Philip Wittenberg passed away at his home in Manhattan on April 11, 1987 at age 92. For a blow-by-blow account of the Corliss Lamont Congressional investigation and subsequent criminal prosecution, see Philip Wittenberg, ed., *The Lamont Case: History of a Congressional Investigation*, Horizon Books (New York 1957).
- 50 349 U.S. 155 (1955).
- 51 *Id.* at 160.
- 52 Excerpt of Proceedings, *United States of America v. Horace Chandler Davis*, Criminal Action No. 5978 (November 19-20, 1956) at pp. 19-20.
- 53 *Id.* at pp. 23-24.
- 54 *Id.* at pp. 28-29.
- 55 *Id.* at p. 30.
- 56 Opinion of Federal District Judge W. Wallace Kent in *United States of America v. Horace Chandler Davis*, Criminal Action No. 5978 (June 25, 1957) at p. 4.
- 57 *Id.* at p. 5.
- 58 *Id.* at p. 6
- 59 *Id.*
- 60 354 U.S. 178 (1957). The *Watkins* decision contains a very thorough discussion of the investigative power of Congress and its historical antecedents. *Watkins* is also notable for its explicit recognition that Congress has no power "to expose for the sake of exposure." 354 U.S. at 200.
- 61 Opinion, *United States of America v. Horace Chandler Davis*, at p. 7.
- 62 Order Sentencing Defendant in *United States of America v. Horace Chandler Davis*, Criminal Action No. 5978 (August 5, 1957).
- 63 Transcript of Proceedings in *United States of America v. Horace Chandler Davis*, Criminal Action No. 5978 (August 5, 1957) at pp. 3-4.
- 64 *Id.* at p. 4.
- 65 *Id.* at pp. 6-7.
- 66 *Barenblatt v. United States*, 240 F.2d 875 (D.C. Cir. 1957), *aff'd*, 360 U.S. 109 (1959).
- 67 *Barenblatt v. United States*, 360 U.S. at 126.
- 68 *Id.* at 127.
- 69 *Id.* at 128.
- 70 *Id.* at 129.
- 71 *Id.* at 130.
- 72 *Id.*
- 73 *Id.* at 134.
- 74 *Id.*
- 75 *Id.* Justice Black's dissent, however, came closer to the mark. The dissenting opinion has been summarized by Professor Geoffrey Stone as follows:
- "Justice Black, in dissent, chastised the majority for ignoring 'the real interest in Barenblatt's silence' – 'the interest of the people as a whole in being able to join organizations, advocate causes and make political mistakes without later being subjected to governmental penalties for having dared to think for themselves.'"
- Geoffrey R. Stone, *Perilous Times: Free Speech in Wartime* at p. 418.
- 76 *Davis v. United States*, 269 F.2d 357 (6th Cir. 1959). Potter Stewart, who had participated in this case prior to the issuance of the Sixth Circuit's decision, was elevated to the Supreme Court before it was issued. *Id.* at 362.
- 77 *Davis v. United States*, 361 U.S. 919 (1959).
- 78 Ellen W. Schrecker, *No Ivory Tower: McCarthyism and the Universities* at pp. 269-70.
- 79 *Id.* at 288.
- 80 Chandler Davis, "The Purge" at p. 423.
- 81 Quoted in *No Ivory Tower* at page 304. The Davis children were not stigmatized when their father was sent to prison. One of their teachers "told the class that going to jail for one's principles was quite all right." *Id.* at 301. Mark Nickerson's seven-year old son, however, was not so lucky. He was abused mentally and physically by children his own age. David Caute, *The Great Fear* at p. 554.
- 82 372 U.S. 539 (1963).
- 83 Geoffrey R. Stone, *Perilous Times* at pp. 418; 656.
- 84 Quoted in Frank J. Donner, *The Un-Americans* at pp. 100-01.

Judge Douglas W. Hillman to Receive the Frank J. Kelly Award at the State Bar of Michigan Annual Meeting

On Wednesday, September 15, 2006, Federal District Judge Douglas W. Hillman will receive the Frank J. Kelly Public Service Award at the Michigan State Bar Awards Banquet, which will be held in Ypsilanti, Michigan, in conjunction with the State Bar's Annual Meeting. The banquet will commence at 6:30 p.m. that day. This award recognizes extraordinary governmental service by a member of the State Bar of Michigan. Criteria for the award are:

- A present or former member of the State Bar of Michigan;
- Service in public office (elected or appointed official) in a way that strengthens the American system of justice under the law;
- Demonstration of the highest standards of integrity, fairness, leadership, excellence, dedication to principle, and dedication to the ideals of democracy; and
- Has made a significant lasting contribution to the nation, the state, or the community in which the public servant lives or serves.

Past recipients of this award include former President of the United States Gerald R. Ford and former United States Senator Robert P. Griffin.

The Passing of Howard T. Ziel, Former Clerk of the Federal District Court

On May 29, 2006, former Clerk of the United States District Court for the Western District of Michigan, Howard T. Ziel, passed away at age 95 at his residence in Grand Rapids. He acted as Deputy Clerk of the Federal District Court for 22 years until 1957, when he was sworn in as the Clerk of the Court. Howard Ziel served in that position until 1972, when he retired. Howard Ziel is the subject of the oral history project of the Federal District Court. In 2003, he was interviewed for four hours on videotape. Howard Ziel is survived by his wife of 68 years, Lois M. (VanderPloeg) Ziel, two sons, and five grandchildren.




In This Issue

Of Congressional Witch-Hunts in Academia: The Case of
United States of America v Horace Chandler Davis1

Judge Douglas W. Hillman to Receive the Frank J. Kelly Award at the State Bar of
Michigan Annual Meeting 23

The Passing of Howard T. Ziel, Former Clerk of the Federal District Court23



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