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Three Brave Men: An Examination of Three Attorneys Who Represented the Hollywood Nineteen in the House Un-American Activities Committee Hearings in 1947 and the Consequences They Faced

Erica Bose*

I. INTRODUCTION

On September 30, 1952 an attorney appeared before the House Subcommittee on Un-American Activities in Los Angeles as an extremely hostile witness. Ben Margolis, prominent labor lawyer and well-known radical, vehemently refused to answer nearly every question Chairman John S. Wood put forth to him. When asked if he knew Edward Dmytryk, one of the first “unfriendly witnesses” to appear before the House Un-American Activities Committee (H.U.A.C.) in Washington in 1947 who later recanted and named names, Margolis responded by stating, “Unfortunately he has become a member of your stable. I refuse to answer on the ground that it would tend to degrade me by association with any such person.”¹ When

*J.D. candidate, UCLA School of Law, 2001. I would like to express my sincere thanks to Ben Margolis, Patricia Bosworth, Ellenore Bogigian Hittelman, Ring Lardner, Jr., Ann Fagan Ginger, and Michael O’Malley. Without their help, I would never have been able to write this comment.

Frank S. Tavenner, committee counsel, proceeded to question him about his political affiliations Margolis' response was no less venomous. He recited a series of constitutional amendments as reasons why he refused to answer such questions. According to a Los Angeles Times reporter Margolis "spared no hatred in his condemnation of the panel, its members, and its counsel."² From the late 1940s to the early 1960s very few attorneys had the courage and conviction to oppose H.U.A.C. and all it represented, but some did and such courage merits acknowledgement. Ben Margolis, as well as two other liberal attorneys, Robert Kenny and Bartley Crum, chose to represent the individuals who would come to be called the "Hollywood Ten" in the first H.U.A.C. hearings in 1947, and thus became the first attorneys to oppose the highly oppressive spirit which would dominate the 1950s and early 1960s.

From 1935 to 1945 the Communist Party of the United States (C.P.U.S.A.) was an active participant in the Popular Front campaign against fascism and almost an accepted element of American society. It had achieved this by ceasing to push socialism as a public issue and by immersing itself in building up the Congress of Industrial Organizations (C.I.O). Later, the Party attained higher favor in the eyes of the American public by supporting the U.S. alliance with the Soviet Union during World War II. However, by 1945 the C.I.O. was solidly established, the war was over, and the United States was rapidly becoming the post-war "defender of the world capitalist system." The Soviets now represented the greatest threat to a democratic way of life, and anyone associated with or even sympathetic towards the Communist Party could be deemed disloyal.³

Consequently, in 1946 the U.S. government started purging itself of "potential subversives" and determined to perform similar acts within the private sector to preserve the American way of life. And, according to Democratic Congressman John Rankin of Mississippi,

¹ Citizen's Committee to Preserve American Freedoms, *Voices of Resistance: Ben Margolis, Richard L. Rykoff, Fred M. Snider*, side 1, n.p., n.d..

² *Lawyer's Defiant Outburst Stirs Storm at House Red Inquiry Here*, in L.A. TIMES, October 1, 1952, at 1.

³ JAMES WEINSTEIN, *AMBIGUOUS LEGACY: THE LEFT IN AMERICAN POLITICS* 96-104 (1975).

Hollywood symbolized “the greatest hotbed of subversive activities in the United States.”⁴ Consequently, as an influential member of the House Un-American Activities Committee from 1945 to 1948, Rankin led the first of several investigations into the Hollywood motion picture industry.

H.U.A.C. first appeared as a special committee in 1938 to curb the left wing influence in the United States. Under the leadership of Democratic Congressman Martin Dies of Texas, it spent much of its first six years trying to prove that Communists dominated such New Deal organizations as the Federal Theatre Project, the C.I.O., and the Tennessee Valley Authority. In 1945 Rankin turned it into a standing committee and his search for subversives in Hollywood commenced.⁵ However, when Congressman John S. Wood of Georgia became chairman he refused to attack Hollywood with the same zest as Rankin had planned, although he did conduct a one day hearing in Los Angeles at the end of 1945 in which he found clear evidence of what he considered communistic ideas. After Republican Congressman of New Jersey J. Parnell Thomas’ appointment to Chairman of the Committee in 1947, the second attack on Hollywood was launched. He, along with Wood, Republican Congressman John McDowell of Pennsylvania, and Committee investigators Robert Stripling and Louis Russell, went to Hollywood in May of 1947. At the Biltmore Hotel they held closed session hearings for witnesses who were more than willing to cooperate, commonly referred to as friendly witnesses. The Committee has never even released the testimony recorded during these sessions, but they returned to Washington proclaiming the menacing preponderance of communist infiltration in Hollywood. According to H.U.A.C. many of the writers, directors, and producers had insidiously utilized “subtle techniques in pictures [to glorify] the Communist system and [degrade] our own system. . .”⁶ H.U.A.C.

⁴ ROBERT K. CARR, *THE HOUSE COMMITTEE ON UN-AMERICAN ACTIVITIES, 1945-1960*, at 56 (1952).

⁵ *The Legal Struggle to Abolish the House Committee on Un-American Activities, 1-2 in the Papers of Jeremiah Gutman* (Richard N. Katz, ed.) (on file at the Meiklejohn Civil Liberties Institute).

⁶ Carr, *supra* note 4, at 56-57.

determined to “save” the United States by purging Hollywood of these subversives.

On September 21, 1947 the Committee began its attack by subpoenaing 41 individuals of “varying political colorations” to testify.⁷ The subpoenas took some by surprise, though not those who had helped draw up the list. But at least nineteen of those subpoenaed, long term left-wing and progressive activists and members of the C.P.U.S.A., guilds, or other Popular Front organizations, had seen signs of trouble brewing for some time. These nineteen men made it clear from the start they would not cooperate with H.U.A.C., thereby earning the name “the Unfriendly Nineteen.”⁸

The hearings began on October 13, 1947, with the friendly witnesses. During these first five days such individuals as producers Jack L. Warner and Louis B. Mayer, and novelist Ayn Rand testified against the evils of communism and those individuals in Hollywood trying to insert subversive communist ideas into motion pictures. By October 17, twenty two friendly witnesses had denounced over one hundred men and women.⁹

On October 20, Chairman Thomas called John Howard Lawson, a prominent screenwriter, founder and president of the Screen Writers Guild, and head of the Hollywood branch of the Communist Party, to the stand.¹⁰ After hearing Lawson’s request to read a prepared statement into the record the Committee promptly denied it. Then Thomas proceeded to ask him the two questions which would be nicknamed, after the popular quiz show, the “\$32” and “\$64” questions: “Are you a member of the Screen Writers Guild?” and “Are you now, or have you ever been a member of the Communist Party of the United States?”

Lawson’s response, based on the advice given to him along with the other eighteen unfriendly witnesses by their attorneys, asserted that the Committee did not have the legal power to ask about a person’s

⁷ STEFAN KANFER, *A JOURNAL OF THE PLAGUE YEARS* 40 (1973).

⁸ LARRY CEPLAIR AND STEVEN ENGLUND, *THE INQUISITION IN HOLLYWOOD: POLITICS IN THE FILM COMMUNITY: 1930-1960*, at 255-65 (1980).

⁹ GORDON KAHN, *HOLLYWOOD ON TRIAL: THE STORY OF THE 10 WHO WERE INDICTED* 30-35, 62 (1948).

¹⁰ VICTOR S. NAVASKY, *NAMING NAMES* 81 (1982).

political beliefs or their membership in organizations, and that he would not answer their questions the way the Committee expected. After repeating the §64 question several times with no success, Thomas told Lawson to leave the stand. Chief investigator Stripling then dutifully submitted evidence ascertaining Lawson's membership in the C.P.U.S.A. and subversive ideas in his scripts. The Committee concluded that Lawson had not in fact answered their questions. Thus he became the first of ten men, later known as the "Hollywood Ten," cited for contempt of Congress.¹¹ With slight variations in testimony and behavior, all ten screenwriters and directors—John Howard Lawson, Dalton Trumbo, Albert Maltz, Alvah Bessie, Samuel Ornitz, Herbert Biberman, Edward Dmytryk, Adrian Scott, Ring Lardner, Jr., and Lester Cole—felt the wrath of the Committee and received contempt citations as well.

On November 25, 1947 the producers released what came to be called the Waldorf Statement. This official statement of an unofficial blacklist essentially asserted that the "ten Hollywood men" cited for contempt performed a grave disservice to their profession and rendered themselves useless to their employers. Therefore, until obtaining acquittal of the contempt charges or purging themselves of contempt and promising to denounce Communism they would find themselves painfully jobless in Hollywood. Furthermore, the producers promised not to knowingly employ any other members of the Communist Party or any other group which "advocate[d] the overthrow of the Government of the United States by force, or by any illegal or unconstitutional method."¹²

On December 5, 1947 the Hollywood Ten received formal indictments for contempt. Tried and convicted in the Spring of 1948, Lawson and Trumbo, the first two of the Ten to appear before the Committee, were the first to witness the sealing of their fate for the next fifteen years. By August of 1950 eight had received sentences of one year while Biberman and Dmytryk received 6 month sentences, probably due to sympathy on the part of their sentencing judge. The story did not end, however, when they completed their prison terms.

¹¹ *Id.* at 68-76.

¹² KANFER, *supra* note 7, at 75-76.

These individuals, along with hundreds of others, endured the effects of a merciless blacklist for nearly fifteen years.¹³

Journalists and historians have already recounted, in compelling detail, the experiences of Hollywood leftists in the 1940s, 50s, and 60s. But the crusade against Hollywood communists involved many others, and demanded courage from those working outside the studio gates as well. Other individuals resisted this outrageous attack on civil liberties. The six attorneys who represented the Unfriendly 19 and later the Hollywood Ten fall into this category. All merit recognition, but given the scope of this comment, time constraints, and available information only three of these men will be examined here. Ben Margolis, Robert Kenny, and Bartley Crum risked a great deal in deciding to represent these unfriendly witnesses, but this should not have been necessary. They were simply doing their jobs. Theoretically, lawyers are doubly protected from persecution because of their status as legal professionals as well as United States citizens. In practice, however, for these three attorneys this twofold insulation disappeared as each faced consequences for their actions. One must then ask if the rights to free speech and opinion are securely protected in times of perceived national emergency.

This incident in American history is especially interesting when one looks closely at the lives of these three men as each arose from extremely different backgrounds. One was born into a blue collar middle class, Jewish, liberal family. One rose from an upper class, Protestant, moderate background. One came from an upper middle class, Catholic, relatively conservative family. Based on such varying backgrounds, each valued such things as material wealth, political popularity, and social status differently. Yet these three men came together for a brief moment in history to defend the rights of a group of "uncooperative" witnesses before the House Committee on Un-American Activities in 1947. And when the hearings ended their paths diverged, to a certain extent, once again. Consequently, each man had his own reasons for defending the Nineteen, different attitudes towards the proper legal tactics, and faced different consequences for their involvement with these unfriendly witnesses.

¹³ CEPLAIR & ENGLUND, *supra* note 8, at 340-359.

II. BIOGRAPHICAL INFORMATION AND THE EVENTS PRECEDING THE HEARINGS OF 1957

Ben Margolis was born on April 23, 1910 in New York City to parents who were both born in Russia. Margolis' father was a self-employed house painter who earned enough money from his profession to provide his wife and son with the essentials, but had little left over for luxuries. His step-mother lacked any interest in politics and his father was oriented towards the socialist perspective although he did not actually belong to the Socialist Party.¹⁴ This liberal bias probably affected Margolis' own political leanings, thus it is not surprising that Margolis grew up to become a radical.

Prior to 1936 the Communist Party of the United States of America (C.P.U.S.A.) made little attempt to attract Jews. According to Arthur Liebman the Party held a "negative attitude towards things Jewish" during this period of time. However, starting in 1936 the Party began to take a more moderate line as it allied itself with the Popular Front campaign, especially after the German invasion of Russia in 1941. By the 1940s there was nearly a complete turn around, and as a result the Communist Party started to attract a significant number of individuals with Jewish backgrounds. They even took a pro-independent Jewish state stance after the end of World War II in 1945. Public opinion polls from the mid-1940s to the early 1950s indicated a significant amount of support for the C.P.U.S.A. or at least their constitutional right to exist. In the 1948 presidential election more Jews supported the Communist Party than ever before or ever after.¹⁵ According to Arthur Liebman, "for a brief but important period, Communist Jews found their identities as Jews and as Communists to be compatible, if not mutually supportive, and that these identities were acceptable to many of their ideological and ethnic kinsmen."¹⁶

¹⁴ Telephone Interview with Ben Margolis (Jan. 1, 1994).

¹⁵ ARTHUR LIEBMAN, *JEWS AND THE LEFT* 501-13 (1979).

¹⁶ *Id.* at 514.

However, by 1949 with the onset of the Cold War, it became increasingly difficult for Communist Jews to remain committed to both their political and cultural affiliations. Like most other facets of American society, a large portion of the Jewish community, primarily from the middle class, found itself swept up in anti-Communist hysteria. The American Jewish Congress and Jewish Community Councils across the country expelled the communist Jewish People's Fraternal Order (J.P.F.O.) from its ranks. Many feared double discrimination on the basis of religion *and* political affiliations. Consequently, "few within the Jewish community publicly complained of the violations of individual civil liberties by the various governmental committees seeking out 'subversives.'"¹⁷

Although Ben Margolis was Jewish by heritage his family did not consider themselves practicing Jews. And although Jewish subcultures were not uncommon Margolis' parents did not reside in such a community. Consequently, though aware of the friendly and then later conflictual relationship between Judaism and Communism, Margolis says it had no direct effect on his position as a Communist, and he cared very little about public opinion regarding whether to ally or dissociate oneself with the Communist Party in the United States.¹⁸ Margolis' community was leftist rather than Jewish.

At the age of seven he moved to Los Angeles and lived there for several years before attending high school in Santa Barbara. He graduated at the age of 16 and shortly thereafter his mother passed away. His father moved to San Francisco while Margolis, content where he was, found full-time employment at Western Union Telegraph Company while also attending state college full-time for two years. At the age of 18 he spent one year at the University of Southern California and worked in the accounting office of the local Western Union. He hoped to attend law school at U.S.C., but with the onset of the Depression in 1929 he found himself unemployed and unable to remain in L.A. due to his financial situation. He moved in with his father and step-mother in San Francisco. Given his history as a Western Union employee he found work at the local office and worked full-time until his admission into the Hastings School of Law in San

¹⁷ *Id.* at 514-16.

¹⁸ Telephone Interview with Ben Margolis (Nov. 1, 1993).

Francisco. The devastating effects of the Depression on so many people further spurred Margolis towards the field of law as he felt labor needed more power and respect. He hoped to raise the status of labor unions by specializing in labor law.

By 1930 he was a first year law student at one of the foremost law schools in the country and he did not even have a bachelor's degree. During the 1930s a bachelor's degree was not a prerequisite to attending law school. He continued to work for Western Union part-time until his graduation in 1933 when he resumed his full-time position. Admitted to the Bar in December of 1933, in the heart of the Depression, Margolis found himself with very few employment opportunities, but he did what he could to financially survive working in the legal field. Unfortunately, this sometimes meant acting as little more than a gopher for a private practice attorney. Around 1936 he started to share office space with another attorney practicing any type of law that presented itself. One year later he entered into a partnership with two young labor attorneys and from that point on he "never had a free moment."¹⁹ In 1943 he returned to Los Angeles, assisted in creating the firm of Katz, Gallagher, and Margolis which represented every southern California chapter of the C.I.O. (comprised of approximately 125,000 workers), and immersed himself in the world of labor law as well as civil liberties and civil rights law which he remained devoted to until January, 1980 when he officially retired. Margolis' deep commitment to practicing labor law was a full time job until around 1950 when his involvement with the *Yates v. U.S.*²⁰ trial started to consume nearly all his time.²¹

Margolis knew from the very beginning of his legal career that this passion for justice was part of his soul. As opposed to Kenny and Crum who could be considered liberals, he was a radical, a position further left than liberal. His early involvement with labor law and C.I.O. unions in Los Angeles and later, with the Hollywood Independent Committee of the Arts, Sciences, and Professions (H.I.C.A.S.P.) provided him considerable contact with the Hollywood

¹⁹ *Id.*

²⁰ 354 U.S. 298 (1957).

²¹ Telephone Interview with Ben Margolis (June 21, 1993).

film community during the 1940s. Margolis was also a member of the Communist Party from 1940 until 1968, and he “subscribed to its tenets” as he understood them.²² According to Margolis, the Communist Party in the United States was drastically different from the Party in the Soviet Union. American communists were interested in fighting against racial discrimination and anti-Semitism and advocating labor rights. It was a left-wing organization, yes, but completely within the boundaries of the Constitution. It never advocated the violent overthrow of the Constitution or the American government. Given Margolis’ politics and his legal experience in Hollywood, it is not surprising that after H.U.A.C. issued subpoenas in September of 1947 that various members of what would become the “Unfriendly Nineteen” requested his services. Bertolt Brecht, for example, approached Margolis because he was an attorney with a strong background in civil liberties and labor cases, and he was well-known as a defender of leftists and leftist causes.²³ Consequently, the uncooperative witnesses retained Margolis and one of his law partners, Charles Katz, before any of the other four attorneys.

Each of these lawyers had his own admirable reasons for associating themselves with the plight of these witnesses soon to be in ill-repute. Margolis’ radical politics signified one element of his decision. He was a Communist, but he did not advocate the overthrow of any aspect of the American government by force or violence. He asserted that the C.P.U.S.A. wanted America to become a working democracy where all were equal regardless of race, class, religion, or political affiliation. What was so wrong with working towards creating this type of society? Why should he or any other individual living in this country face punitive measures *in any form* for advocating a working democracy? For this reason Margolis had always vehemently opposed everything about H.U.A.C.; its purpose as a committee was to bully people into conformity. It was nothing more than an anomaly which only wanted names. According to Margolis, the “whole procedure was unbearable.”²⁴ Thus it is unsurprising that Margolis

²² *Id.*

²³ JAMES K. LYON, BERTOLT BRECHT IN AMERICA 318 (1980).

²⁴ Margolis, *supra* note 7.

found himself in the midst of the first battle against what would one day in the not too distant future be termed McCarthyism.

The steps leading up to Kenny's involvement with the Unfriendly Nineteen and the Hollywood Ten in 1947 differed considerably from Margolis'. According to Ellenore Bogigian Hittelman, a close friend of Kenny's, he was born on August 21, 1901 to a well-to-do man and a "strong" woman who was the "divorcé of a Jew," which was two times over socially unforgivable. His father was a "gentleman from Tucson" who moved to Los Angeles, became a bank teller and later vice-president of the Broadway Banks and Trust Company, and had the strength of character to marry a woman who had once been married to a Jew. He provided an extremely comfortable lifestyle for his wife and Kenny until his death in 1914.²⁵ He had a complete gymnasium built in their home and was a charter member of one of California's elite societies, the California Club. His father died when Kenny was thirteen and left a considerable amount of debt, but even after paying off his father's debts there was still a sufficient amount of money left over to allow Kenny to pursue an education and provide his mother and himself with comfort.

Kenny entered Stanford University in 1917 at the young age of 16. There he discovered a great passion for journalism. This ambition indirectly had a profound impact on the rest of his life as it led him to the legal field. Upon graduation he held various jobs within the field of journalism, one of which sent him to London as an employee of the United Press. Upon his return to the United States Kenny took a job with *L.A. Express* covering courthouse stories and developed a considerable knowledge of courts, lawyers, and policemen. At *L.A. Express* Kenny encountered Harold "Buddy" Davis, a reporter embarking on a journey through law school. He encouraged Kenny to do the same and in September of 1924 Kenny accepted his advice and entered law school at the University of Southern California and later at Loyola College so that he could attend night courses. On September 13, 1926 he was admitted to the California Bar.²⁶

²⁵ Telephone Interview with Ellenore Bogigian Hittelman (Jan. 5, 1994).

²⁶ ROBERT KENNY, MY FIRST FORTY YEARS IN CALIFORNIA POLITICS: 1922-1962, (Los Angeles: U.C.L.A. oral history project, 1964), pp. 8-33.

According to Hittelman, Kenny lived his life according to essentially one very strict code: "I don't like people who push other people around." It is unsurprising that this would be his philosophy given the strong characters of both his parents and it helps explain his lifetime devotion to defending individuals such as the Hollywood Ten. However, Hittelman asserts that Kenny also wanted to be well-liked and accepted in elite social crowds. Kenny also craved political popularity. Unfortunately, all this frequently conflicted with his life code.²⁷

Kenny's long and distinguished involvement in California politics was relatively uncontroversial until 1938 when he resigned from his position as a Superior Court Judge and ran for the State Senate from Los Angeles County as a Democrat. Prior to this Kenny had always considered himself a liberal Republican, but Kenny, like many other Americans, switched parties during Roosevelt's presidency. For the first time since the Civil War the Democrats became the majority party as many of Roosevelt's alphabet soup programs attracted a wide variety of people ranging from lower class to upper class, Jewish to Catholic, black to white. Roosevelt called for more governmental action but with flexibility to create change in American society, and he promoted integration of segments of society which had been previously located on the margin. He called for great change at a time when the country was ready to accept this change.²⁸ Kenny's victory in the State Senate election was the first of many which would immerse him in political events as a Democrat and as a champion of liberal issues.²⁹

However, Hittelman asserts that appreciation for Rooseveltian policies was not the only reason Kenny joined the Democratic team. Many of his actions were decided based on whether or not they would further his goals. Belonging to the Democratic Party during the Roosevelt era was a wise decision for those who sought political advancement.³⁰

²⁷ Hittelman, *supra* note 25.

²⁸ EVERETT CARLL LADD AND CHARLES D. HADLEY, TRANSFORMATIONS OF THE AMERICAN PARTY SYSTEM: POLITICAL COALITIONS FROM THE NEW DEAL TO THE 1970S 33-40, 55-75 (1975).

²⁹ KENNY, *supra* note 26, at 56-62.

³⁰ Hittelman, *supra* note 25.

After his election to the State Senate Kenny's political views and life code gained renown. He had begun to try and protect those individuals who were being "pushed around." At this time his goals did not conflict with his philosophy. In 1940 he appeared before the State Athletic Commission to oppose the Hollywood American Legion's renewal license because it had refused to schedule any black boxers on Friday night cards even though two black men were currently holding title to four World championships. During this period, William Schneiderman, head of the Communist Party in California, also retained Kenny when the U.S. Department of Justice filed a suit against him to revoke his citizenship papers.³¹

Aside from wholeheartedly immersing himself in legal battles, Kenny found other ways to follow his moral philosophy of helping others. He was elected president of the radical National Lawyers Guild in 1940. Many felt he was a man ahead of his time who would undoubtedly do great things for the Guild.³² Kenny also became a lawyer for the Screen Writers Guild (S.W.G.) in the same year. In 1940 the S.W.G. finally received certification to serve as a bargaining agent for Hollywood writers. Kenny's involvement with S.W.G. ultimately led directly to his association with members of the "Unfriendly Nineteen".³³ Finally, Kenny served as a popular Attorney General of California from 1943 to 1947 and demonstrated his devotion to liberal concerns. Therefore, it came of little surprise to anyone that the unfriendly witnesses wanted this brilliant mind to represent them. He clearly supported their actions and his vast legal expertise would be highly valuable. Further, he was well-liked by nearly everyone and could create a more appealing image of the unfriendly witnesses, thus he would be useful for public relations as well.

Kenny, too, detested the Committee as its members thrived on "pushing" people around. He strongly believed that it was unconstitutional primarily on the basis of the First and Fourth Amendments. He thought that "the purposes and the methods of the

³¹ KENNY, *supra* note 26, at 133-38.

³² Telephone Interview with Ben Margolis (Aug. 23, 1993).

³³ KENNY, *supra* note 26, at 144-46.

Committee are all of a piece—but not of a piece with the Constitution.”³⁴ According to the First Amendment, Congress can pass no law which in any way abridges free speech, press, or religion. This committee was doing nothing short of trespassing “on the sacred province of free speech” which, Kenny noted, was especially ironic given that H.U.A.C. violated such civil liberties in the name of Americanism and loyalty to its institutions.³⁵ Further, individuals also have the right to secure themselves against unreasonable searches on the basis of the Fourth Amendment. Although this amendment is generally utilized in criminal trials, courts have determined that it can also be used as a defense against *any* arm of the federal government;³⁶ therefore, H.U.A.C. had no right whatsoever to subpoena, question, threaten, and ultimately attempt to destroy these nineteen men. The founders of the American system of democracy shaped the Bill of Rights to preserve individual rights, but these rights are meaningless if they are powerless to restrain governmental power.

Further, Kenny asserted, like Margolis, that the Committee’s sole function was to intimidate independent minded individuals who held radical or even liberal opinions into conformity. If its purpose was to organize *facts* in order to propose legislation perhaps its procedures would have been more acceptable, but this was not even distantly related to their function. Kenny knew that he might not receive much money from these men for his services, but he believed in what they were doing and wanted to help them in any way he could. Further, he knew that there were very few attorneys willing to do the job.³⁷ Although his background differed significantly from Margolis’, Kenny found himself working beside Margolis to pursue some common goals: destroying H.U.A.C., protecting the “uncooperative witnesses,” and upholding the principles of the Constitution as they saw it.

Bartley Crum, though taking a route markedly different from either Margolis’ or Kenny’s, would also make his way to this event in 1947.

³⁴ Robert Kenny, *Congress Shall Make No Law*, NATION, Nov. 8, 1947, at 494..

³⁵ Robert Kenny, *Civil Rights in a Cold War Era*, LAWYERS GUILD REVIEW, Jan-Feb. 1948, at 283.

³⁶ Kenny, *supra* note 34, at 495.

³⁷ JANET STEVENSON, THE UNDIMINISHED MAN: A POLITICAL BIOGRAPHY OF ROBERT WALKER KENNY, at 119-22 (1980).

A very “troubled man” according to Margolis, Crum was also an extremely bright and successful attorney.³⁸ Born on November 27, 1900 in Sacramento, California, son of a middle class fruit rancher, Crum remained in northern California for the majority of his life. His maternal grandparents came to America during the potato famine, and his father’s family came from Scotland. As an undergraduate at the University of California at Berkeley, Crum taught English in the extension division and later taught both English and International Law at Berkeley.³⁹ He found time to attend the Boalt School of Law during this period of time as well, and in 1924 he entered into a private practice with John Francis Neylan representing the legal interests of William Randolph Hearst.⁴⁰

Raised as a Catholic, religion held great importance for him throughout his life. Historically speaking Catholics tend to create subcultures when they find themselves minorities as a way to maintain their ethnic identity while also assimilating into their new way of life. For many, Catholicism did not simply mean belonging to a religion, but rather it required participation in a certain way of life.⁴¹ Although Crum considered himself a devout Catholic he was never involved in any type of Catholic community such as described above; thus general Catholic sentiment regarding various issues never had a significant impact on his decisions. His religion came from within. Catholicism was the “core of his being,” as his daughter, Patricia Bosworth, stated. Religious faith constantly pushed him to search for a deeper purpose in his life. He felt it was his duty as a good Catholic to help people as much as possible. Through law he hoped to achieve this objective.⁴²

Crum, unlike Kenny or Margolis, began his legal career representing big business and conservatism. He served as one of Hearst’s primary attorneys from 1924 to 1936. During this time he, too, experienced a conversion to liberal ideology. During a dock strike in 1934 Crum met Harry Bridges, a well-known labor organizer and

³⁸ Margolis, *supra* note 32.

³⁹ Interview with Patricia Bosworth, in New York, N.Y. (September 25, 1993).

⁴⁰ *Bartley Crum. . . Dies at the Age of 58*, in N.Y. TIMES, Dec. 11, 1959, at 34.

⁴¹ DAVID O’BRIEN, PUBLIC CATHOLICISM 126-27, 161-62 (1989).

⁴² Interview with Patricia Bosworth in New York, N.Y. (November 7, 1993).

Communist, who was determined to achieve better working conditions for the employees of unscrupulous shipowners. Hearst considered Bridge's stance communistic, as labor unions had still been unable to achieve respect thus far, and therefore it was contemptible. Hearst used his massive influence through the press he controlled in California to distort reporting on the strike. Hearst wanted to turn public opinion against Bridges and the strikers. When the strike first erupted in May of 1934 the San Francisco Chronicle, one of Hearst's papers, published two front page articles two days in a row about the strike entitled, "Police Quell San Francisco Riots as Strikebreakers are Attacked by Dock Men," and, "Striking Longshoremen Slug Bystander as Riots Flare on Embarcadero."⁴³ The titles alone suggest that reporting of this event was distinctly biased. Extremely impressed with Bridges and appalled at Hearst's behavior, Crum's social consciousness awoke. He wanted to start acting on his ideological impulses. The experience with Bridges radicalized Crum. Two years later Crum resigned as Hearst's attorney and entered a partnership with Philip Erlich to find a more ethical outlet for his legal expertise.⁴⁴

During this transitional period Crum became close friends with Bridges, joined the National Lawyer's Guild (N.L.G.), and began practicing labor law. According to Bosworth, "labor law was the thing to do for liberal lawyers in the 1930s."⁴⁵ He and Erlich directed a large portion of their energy towards labor law disputes on behalf of northern California unions such as the milkdrivers union. Further, as a result of his involvement with Hearst, Crum was also well-connected in the journal world. In 1940 he, along with other up and coming young liberal lawyers such as Henry Cabot Lodge, became a speechwriter for Wendell Wilkie's 1940 presidential campaign. Many felt Wilkie was going to do great things for America and holding a position in his campaign was a great honor for a liberal. His decision to become a speech writer was a political turning point in Crum's life. It was Crum's introduction into the world of politics, and his first

⁴³ "Police Quell San Francisco Riots as Strikebreakers are Attacked by Dock Men, S.F. CHRON., May 10, 1934, at 1-2; *Striking Longshoremen Slug Bystander as Riots Flare on Embarcadero*, in S.F. CHRON., May 11, 1934, at 1-2,5.

⁴⁴ Bosworth, *supra* note 39.

⁴⁵ Phone Interview with Patricia Bosworth (Jan. 10, 1994).

visible and concrete decision as a liberal. By 1945 Crum had become president of the San Francisco chapter of the N.L.G. and vice-president of the national organization. Crum's conversion was complete by 1947.⁴⁶ In response to a proposal to outlaw Communists, Crum wrote that to do so was not only unconstitutional but "utterly stupid." Crum believed the best way to deal with Communists was to build a working democracy based on the foundations of the American system.⁴⁷

Crum met many members of the Hollywood film community through his participation in the Wilkie campaigns of 1940 and 1944 as Wilkie's liberalism held strong appeal to the liberal Republicans in Hollywood. Adrian Scott and Edward Dmytryk knew of Crum and were impressed with his newly acquired reputation as a liberal. Consequently, upon receiving their subpoenas, they asked him to be their counsel for the hearings; however, at this point neither man had entirely decided to link himself with the other seventeen "uncooperative witnesses."⁴⁸ Crum agreed and boarded a plane to Los Angeles in order to meet with the other attorneys for the unfriendlies. They knew he would provide them with a solid defense and hoped his appeal to more moderate and conservative members of American society would paint them in a more sympathetic light. Like Kenny, Crum would serve as a respectable public relations figure for the unfriendlies.

Like Margolis and Kenny, Crum despised H.U.A.C. and all it represented. He felt that "a free man has duties as well as rights. The primary duty of a free man is to prevent the abridgement of freedom, not only his own, but that of others."⁴⁹ He saw the Thomas Committee as little more than a "kangaroo court in which men are being libeled, slandered, abused, and vilified with no opportunity to cross examine," and consequently was a severe threat to the Bill of Rights.⁵⁰ Further, he thought that H.U.A.C.'s attack on the C.P.U.S.A. raised important

⁴⁶ *id.*

⁴⁷ CURRENT BIOGRAPHY, 1947, at 142.

⁴⁸ Bosworth, *supra* note 39.

⁴⁹ Bartley Crum, *The Case for the Defense of "The Nineteen,"* NEW REPUBLIC, Nov. 10, 1947, at 9.

⁵⁰ Bosworth, *supra* note 39.

questions of civil liberties. Measures such as those instituted by the Committee were depriving American citizens of rights to assemble with whomever they wish, equal opportunity employment, and other social, political, and economic rights guaranteed by the Constitution. Because these measures conflicted with basic principles of the Constitution they represented a threat not only to one group but to nearly every American citizen. Crum was concerned that this attack on the Communist Party was not simply an attack on a small minority of Americans but also that this anti-Communist drive had a broader applicability which would inevitably hold profound significance to the American way of life and to the future of the United States.⁵¹ Previous sedition drives, such as the Alien and Sedition Acts of the Eighteenth century and the Palmer raids of the early twentieth century, provided evidence of this assertion. Consequently, in October of 1947 Ben Margolis, Robert Kenny, and Bartley Crum, three very different men with very different backgrounds, came together to defend a group of "unfriendly witnesses".

III. STRATEGY, PREPARATION, AND THE EVENTS OF THE HEARINGS

The issue of legal tactics was especially delicate for these witnesses because of the complicated nature of congressional committee hearings in comparison to courts of law. Briefly stated, courts of law are "impartial forums for the resolution of controversies between parties who seek redress from a violation of a legal right."⁵² Judicial powers are clearly defined and there is less room for question than in congressional committee hearings. Congressional committees lack such specific definition thereby creating much more ambiguity. The Senate or the House of Representatives can authorize investigations to obtain information related to the utilization of their constitutional powers.⁵³ In theory, the methods these committees use must not

⁵¹ National Committee on Constitutional Liberties, *The Constitutional Right to Advocate Political, Social and Economic Change—An Essential of American Democracy*, LAWYERS GUILD REVIEW Mar.-Apr. 1947, at 57.

⁵² 3 THE GUIDE TO AMERICAN LAW, 350 (1983).

⁵³ *Id.* at 151.

violate the rights of those under investigation, but determination of this is left up to the committees themselves. They have wide discretion in determining the subject matter they study and the questions they can ask their witnesses. And although a witness cannot be forced to answer questions he or she feels is beyond the scope of the committee's investigation, if the members of the committee determine that a witness deliberately failed to "provide evidence, to appear, or to give testimony" the witness can be cited for contempt of congress and face a fine or jail sentence.⁵⁴ Thus, there is a great deal of room for abuse of these investigations by those conducting them. Consequently, Margolis, Kenny, and Crum knew they needed to find a legal tactic which could address the ideological goals of the Nineteen, protect them from job loss and contempt, and provide a solid legal argument in a court of law.

The choice of legal strategy was a crucial issue in the eyes of the Unfriendly Nineteen as well as the attorneys. Each man, including the attorneys, had to ask himself where his priorities lay: with job security, avoiding prison, or standing up for what each man believed was right regardless of the consequences. Each witness wanted to attain all of these objectives, but they knew from the start they would have to make some extremely difficult, possibly life-altering choices. Ultimately, all of these men, witness and counsel alike, determined their legal strategy on the basis of their political visions. They saw individuals such as Thomas, Rankin, and Nixon not as representatives of the U.S. government, but as "political adversaries, camouflaged in congressional robes, in the ongoing war between reaction and radicalism." H.U.A.C. was a despicable institution, and as political activists, more than anything else, these men craved the destruction of this committee and all it stood for.⁵⁵

Yet they also wanted to keep their jobs and careers in order to maintain the stability of their lives and their families' lives. They knew that a blatant refusal to cooperate with H.U.A.C would destroy this stability. Consequently, the attorneys tried to devise a legal strategy which would allow each witness the opportunity to articulate

⁵⁴ *Id.* at 152-53.

⁵⁵ CEPLAIR AND ENGLUND, *supra* note 8, at 263.

his beliefs in front of the Committee before the sound of pounding gavels could drown out their voices and leave them with nothing more than a contempt citation. Thus their legal strategy was determined primarily by political realities and personal consequences.

Based on these factors the attorneys knew they needed to achieve three goals: 1) oppose H.U.A.C., 2) maintain credibility in the eyes of the Hollywood film community, and 3) establish grounds for questioning the constitutional right of the Committee in order to create a pathway to the Supreme Court where they felt they would have a good chance at victory. They knew defeat was near certain in the congressional hearing, in the House, at the basic trial level, and in all of the lower appeals courts. But in spite of the highly contagious spread of conservatism after World War II the U.S. Supreme Court was still a "solid preserve of Rooseveltian liberals" in 1947.⁵⁶ Based on this criteria the attorneys came up with three strategic options.

First, they could denounce H.U.A.C. as unconstitutional from the outset and blatantly refuse to answer any of their questions. However, this would unavoidably lead to contempt citations, career destruction, and no opportunity to read any sort of statement. Further, there was virtually no chance that any court in the country would support such a challenge to a congressional committee because Congress is legally permitted to create a basic investigative committee. Their second option was for the witnesses to deny Communist Party membership, but this appealed to no one. For one, the F.B.I. and H.U.A.C. had both done their homework on each of these men and already knew that the majority of them were, in fact, Communists. Even if neither had found evidence of this, the unfriendly witnesses knew there were plenty of informers who would cheerfully denounce them as liars if they denied party membership. The legal and social consequences of a perjury conviction were much worse than a contempt of Congress conviction.⁵⁷

Their third option was an open and proud admission of Communist party membership and their political past. This tactic of complete honesty appealed to Crum, Scott, Dmytryk, and Bessie for its "moral immaculacy and the promise of raising the 'real' political issues underlying the hearings." However, all agreed that this tactic would

⁵⁶ *Id.* at 263.

⁵⁷ *Id.* at 264-67.

only be effective in a court of law because during a congressional committee hearing a witness could be silenced at a moment's notice. It also automatically assumed that H.U.A.C. had a right to ask these questions in the first place. Further, complying with one question meant complying with all questions, including those which would require one to name names, in order to avoid a contempt citation with no constitutional basis with which to fight against. Finally, such an open and proud admission would alienate them from public sympathy and would certainly lead to immediate job dismissal.⁵⁸

With these options in mind, the attorneys again turned to the question of what their position should be. Ultimately they decided to find a way to elect option one without causing too much destruction to the witnesses' livelihood while also providing a solid legal argument on which to base their noncompliance. They narrowed it to a question of whether to base their refusal to explicitly answer the Committee's questions on the First Amendment or the Fifth Amendment. They knew that with either of these amendments they would lose in every court up to the Supreme Court, but there they hoped the tables would turn. Within this context, they needed to address another consideration as to which amendment would most effectively fight the Committee and save careers.⁵⁹

Although the Fifth Amendment held some advantages, the disadvantages ultimately outweighed them. Pleading the Fifth Amendment in all likelihood would prevent H.U.A.C. from slapping anyone with a contempt citation for refusing to answer any questions concerning themselves or others, but there were no guarantees. No one was sure that invoking the Fifth Amendment in a legislative investigation would legally prevent the Committee from handing down contempt citations. Further, most of America would be less than pleased with this tactic as it would not exactly arouse public sympathy because many perceived pleading the Fifth as an admission of guilt. No one wanted the public to interpret silence as any sort of admission that holding membership in the C.P.U.S.A. was un-American or

⁵⁸ *Id.* at 265.

⁵⁹ Interview by Michael Balter with Ben Margolis in *LAW AND SOCIAL CONSCIENCE*, 182-82 (U.C.L.A. Oral History Project, 1987).

criminal. For this reason it was H.U.A.C.'s amendment of choice for unfriendly witnesses because it produced a "guilty verdict without the nuisance of a trial."⁶⁰ Finally, although invocation of the Fifth Amendment was likely to prevent imprisonment, it would not destroy H.U.A.C. by any stretch of the imagination, nor would it preserve these men's jobs in the motion picture industry. And they would still be expected to answer questions pertaining to other individuals—they could still coerce witnesses into naming names.⁶¹ Ultimately, the Fifth Amendment was not the best answer to the \$32, \$64, or any other question. Attorney Charles Katz aptly summarized their position on the Fifth Amendment in stating that "For the group to intimate [as they would be by invoking the Fifth] that their political beliefs could conceivably be criminal under our country's institutions and principles would in fact be tacitly to concede in the public eye what Dies and Rankin had long been trying to prove."⁶² Thus they discarded the Fifth Amendment.

The other option was for the Nineteen to rely on the First Amendment, and it held strong appeal for many reasons. Historically, use of this amendment as a defense had a good track record. This amendment was alluring to many members of the Nineteen because it "gave [them] the moral, historical, and legal basis they needed to challenge the Committee's jurisdiction without appearing to be captious, self-seeking wreckers of congressional procedures." Further, it corresponded with their fervent beliefs that as American citizens they had a responsibility to uphold the Constitution. These radicals, like many others, strongly believed in and adhered to the American political tradition, and they saw H.U.A.C. as a vile traitor to this tradition. It was their duty as Americans to put a stop to this reign of terror.⁶³

Common sense also told these men to plead the First. If sympathy from the American public was one of their objectives, this was a more effective way of soliciting that sympathy. Americans are usually willing to support a person who is invoking his or her right to freedom

⁶⁰ KANFER, *supra* note 7, at 195.

⁶¹ Margolis, *supra* note 21.

⁶² CEPLAIR AND ENGLUND, *supra* note 8, at 267-68.

⁶³ *Id.* at 268.

of expression, or in this case, freedom from expression. They were also more likely to receive support from the motion picture industry. Further, by using the First Amendment, they had a chance a victory in front of the Supreme Court. The attorneys needed something they could persuasively argue before a jury, and they decided that the best way to create this situation was for the members of the Nineteen to answer the Committee's questions by stating why they would not answer their questions the way the Committee expected.⁶⁴ According to Kenny, "We didn't really think we were going to win till we got to the top. But we wanted to get the issue before a good old American jury, and the only way you can do that is to have a question of fact for them to decide."⁶⁵ Kenny firmly believed that a witness who answers in his own way even if it means not directly answering the Committee's questions looks better morally and legally to the public and judicial forums than if he were to flat out refuse to answer the questions. The attorneys wanted to enable a future jury to argue over whether or not these witnesses had answered the Committee's questions. Perhaps they might even avoid losing their jobs.⁶⁶

All three attorneys realized that free speech symbolized the right to advocate social changes in order to broaden the range of progress. Further they felt it was necessary "in terms of [understanding] life itself."⁶⁷ It was a standard as well as an absolute. Consequently, using it as a defense before H.U.A.C. held significance for two important reasons. Firstly, because Congress cannot conduct a trial or any other judicial function why should a witness before the Committee feel compelled to answer any questions he did not wish to answer? This refusal might justify refusal to answer any question concerning political affiliations, especially in a hearing where they cannot call their own witnesses or have their attorneys cross-examine other witnesses. Secondly, Congress could not use information obtained from questions pertaining to a witness' political affiliation to draft a statute (which is its only constitutional power) because any type of

⁶⁴ Balter, *supra* note 59, at 218

⁶⁵ Stevenson, *supra* note 37, at 96.

⁶⁶ CEPLAIR AND ENGLUND, *supra* note 8, at 268-71

⁶⁷ National Committee on Constitutional Liberties, March/April 1947, pp. 1-2.

statute would limit the terms of the First Amendment. Therefore, since Congress had no way to use the information it could not demand the information either.⁶⁸

The First Amendment could also provide room for a great deal of judicial interpretation which might benefit the Nineteen. The right to free speech could suggest freedom of association as well as freedom to remain silent. Free speech is relative to the conditions under which it is exercised. If it involves at least one listener then there are two relevant individuals and thus suggests freedom of association. As stated in an *amicus curiae* brief filed by the National Lawyers Guild on behalf of John Howard Lawson, "Without the right of association and assembly, freedom of speech could result only in useless and chaotic verbalism and the desirable democratic objectives sought to be gained by freedom of speech and assembly would be lost."⁶⁹ Ballot secrecy is an example of this right to remain silent in regards to political affiliations. Therefore, these men had done nothing wrong in joining the Communist Party and could not be forced to answer questions pertaining to their affiliations with other individuals or groups. Secondly, the right to silence could be seen as a "correlative of freedom of speech." The Constitution does not directly address an individual's right to silence, but recognition of this right has been the basis of other court decisions. In *West Virginia State Board of Education v. Barnette*⁷⁰ the right to free speech was interpreted to mean that individuals have a right to speak freely and a right to refrain from any speaking at all.⁷¹ Further, the right to refrain from speaking is closely related to the emerging notion of the right to privacy which was later articulated in various decisions such as *Mapp v. Ohio*⁷², handed down by the Warren Court in the 1960s. Supreme Court Justice Brandeis stated in *Olmstead v. U.S.*⁷³ that the "right to be left

⁶⁸ Ann Fagan Ginger, *The Aftermath of the Persian Gulf War: Strengthening the Laws of Warfare—Human Rights and Peace Law in the U.S.*, IN TEMPLE INTERNATIONAL AND COMPARATIVE LAW JOURNAL 27 (1992).

⁶⁹ Lawson v. U.S., *amicus curiae* brief no. 334 filed in the Supreme Court of the United States by the National Lawyers Guild during the October term of 1948, 5-6.

⁷⁰ 319 U.S. 645 (1943).

⁷¹ Lawson, *supra* note 69, at 3.

⁷² 367 U.S. 643 (1961).

⁷³ 277 U.S. 438 (1928).

alone. . .[is] the most comprehensive right and the right most valued by civilized man.” Thus the right to refrain from speech is a “logical and natural step in defining free speech.”⁷⁴ Interpretations of the First Amendment, such as these, provided the attorneys with several possible ways to successfully defend their clients in a court of law

The attorneys’ advice to the men who comprised the Unfriendly Nineteen to invoke the First Amendment as the basis for refusing to answer the Committee’s questions rested on the decisions of two court cases. The first was the 1943 *West Virginia Board of Education* decision mentioned above. And the 1880 *Kilbourn v. Thompson*⁷⁵ decision determined that the government cannot force an individual to discuss his political beliefs if he feels it will place his liberty in jeopardy. Thus, the Committee should not have any power to require any witness to answer questions regarding his political affiliations if he does not choose to do so.⁷⁶ Based on their attorney’s advice these men ultimately agreed to use the First Amendment approach, although not without some reservations as they still feared job loss and possible contempt citations. Yet in spite of these reservations each man painfully understood the importance of unity in the eyes of the public, and committed himself to the group.

Given the importance of public opinion to the nineteen witnesses in determining the appropriate legal tactic it is not surprising that the attorneys as well as the witnesses utilized the media in trying to build support for their cause. Each witness and attorney made statements to the press articulating the basic premise of their fight against the Committee. Further, many wrote articles which were published in periodicals and newspapers of the time such as *Nation* and *PM*. Crum and Kenny also published such articles. Further, after the hearings ended Herbert Biberman and other individuals opposed to H.U.A.C. traveled the country speaking out against the Committee at meetings. Margolis traveled with this group for several weeks as well.⁷⁷ This

⁷⁴ Lawson, *supra* note 69, at 7.

⁷⁵ 103 U.S. 168 (1880).

⁷⁶ CEPLAIR AND ENGLUND, *supra* note 8, at 269.

⁷⁷ Telephone Interview with Ben Margolis (Jan. 7, 1994).

type of public relations was another crucial element of the witnesses' strategy.

After deciding to rely solely on the First Amendment in their defense, the attorneys next began rigorously preparing their clients for the actual hearings themselves. They attempted to contact the Committee shortly after the Nineteen received their subpoenas hoping Thomas would shed some light on the actual procedure of the hearings, but H.U.A.C. spurned all such attempts. H.U.A.C. never even permitted the witnesses themselves to know the order of their appearances until a day or two before the Committee demanded their presence. The attorneys knew from this point on that surprise would be a prominent element of the entire event and so prepared their clients for the worst.

The witnesses, each with his own methods, wanted to use his moments before the microphone to oppose the Committee. Some felt so enraged with the atrocious behavior of the Committee they were boiling over with hostile phrases by the time of the hearings. H.U.A.C. threatened their livelihood, and they would do whatever was necessary to prepare for their time on the witness stand. It was their attorneys' duty as legal counsel to defend their clients as well as possible against the Committee; thus one week before the first day of the hearings all nineteen men boarded a train bound for Washington D.C. along with their attorneys to begin preparing for their defense and counterattack on Thomas and his cohorts.⁷⁸ Because the Nineteen hired Kenny and Crum for public appearance purposes as well as their legal expertise, their role in preparation procedures was more slight than Margolis'. They were acceptable public figures who would make a wonderful "voice for the press" because, though liberals, they were not Communists and had charming personalities, two highly beneficial characteristics when addressing the media.⁷⁹

Margolis conducted much of this five day train ride preparation.⁸⁰ He wanted to avoid as many surprises as possible. Since he really did

⁷⁸ Balter, *supra* note 59, at 195-96, 201.

⁷⁹ Margolis, *supra* note 32.

⁸⁰ There were four attorneys on the train: Margolis, Kenny, Crum, and Charles Katz who was Margolis's law partner. Katz also played a significant role in the train

not know what the hearings would be like he prepared for the worst possible scenarios. Consequently, Margolis, with the help of Crum and Kenny, conducted mock examinations and cross-examinations over and over, and after each session the attorneys would coach each man on what needed alteration and which elements were certain to have an effect on the Committee, although no one knew what that effect would be. The attorneys vigorously drilled all nineteen ten to twelve hours every day in different orders to numb the surprise factor. And each witness prepared a written statement which he hoped to read aloud during their time of questioning before the Committee. Margolis, with some help from the other two attorneys, assisted them in working out the legal aspects of their statements, but they offered as little input as possible without jeopardizing an effective defense so that each statement was unique to each man. They spent several hours rehearsing on the train and in their hotel rooms in the days preceding their turn on their witness stand. Chances of the Committee allowing them to read their statements were slim so they also devised different ways of presenting the statements. Meanwhile, Kenny and Crum held public relations meetings.⁸¹ These three men spent hour after hour trying to prepare an effective defense for their clients.

During the week of October 20 the Committee called approximately twenty friendly witnesses to the stand beginning with Jack L. Warner who assured the Committee that he would never allow any subversive ideas to insidiously find their way into any of Warner Brothers' films and that he would happily and patriotically dismiss all Communists from his employment. He then, of course, named names. The Committee thanked him for his cooperation, and called the next witness. They called nineteen more friendly witnesses comprised of producers, directors, actors, actors' relatives, and writers including Ronald Reagan, Lela Rogers (Ginger Rogers' mother), and Walt Disney.⁸² At the end of the week Thomas announced that the

ride preparation, but, given the limited scope of this thesis, it was not possible to include his role in the preparation.

⁸¹ Balter, *supra* note 59, at 197-209.

⁸² CEPLAIR AND ENGLUND, *supra* note 8, at 278-81.

following week's hearings would commence with Johnston, Roy Brewer, and then Lawson, Trumbo, Bessie, and Lavery.⁸³

On the following Monday Crum, as legal counsel to the Nineteen, requested permission to cross examine the twenty witnesses who had appeared before the Committee the preceding week. All twenty had named various members of the Unfriendly Nineteen as Communists; thus, he considered it a reasonable request that the Nineteen's attorneys be given the opportunity to conduct cross-examinations. Thomas promptly denied the motion and called the first witness of the week to the stand: John Howard Lawson. Once again the Committee surprised everyone by switching the order one more time.⁸⁴ Lawson approached the stand, requesting permission to read his statement, and the Committee promptly refused. After a few basic questions regarding his background Stripling proceeded to ask him the two infamous questions: Are you a member of the Screen Writers Guild, and are you now, or have you ever been, a member of the Communist Party of the United States? Lawson followed his attorneys' advice and answered those questions by arguing that "it is outside the purview of the rights of this committee to inquire into any form of association." He said he would answer all the Committee's questions, but because "it is an invasion of the right of association under the Bill of Rights of this country," Lawson refused to answer the questions in the exact ways the Committee demanded. Lardner summed up his attitude towards the Committee by stating, "I am not on trial here, Mr. Chairman. This Committee is on trial here before the American people. Let us get that straight."⁸⁵ Thomas ordered Lawson's removal from the stand and Stripling entered evidence into the record attesting to his involvement in the Communist Party. The Committee then concluded that Lawson had not in fact answered their questions and was thus in contempt of Congress.⁸⁶ With slight variations this procedure occurred with eleven unfriendly witnesses—Lawson, Trumbo, Maltz, Bessie, Ornitz, Biberman, Dmytryk, Scott, Lardner, Cole, and Brecht—whom the Committee called to the stand. Then, on December 5, 1947 the

⁸³ KENNY, *supra* note 26, at 302.

⁸⁴ KAHN, *supra* note 9, at 68-73.

⁸⁵ *Hearings before the Committee on Un-American Activities*, 80th Cong., (1947).

⁸⁶ KAHN, *supra* note 9, at 73-76.

Hollywood Ten (Brecht returned to Germany) were formally indicted for contempt. Kenny and Margolis continued to represent the Ten from the trial level all the way up to the Supreme Court which delayed its decision whether or not to hear their case for one year before finally deciding against it. Their hopes of success in the Supreme Court were shattered by the unexpected deaths of Justice Frank Murphy on July 19, 1949 and Justice Wiley Rutledge on September 10, 1949. By August of 1950 all ten found themselves in prison serving 1 year terms with the exception of Biberman and Dmytryk who served 6 month sentences.⁸⁷ Because of their commitment to the United States and their profession Kenny, Crum, and Margolis did their best to help these men, but in the end the Ten did not avoid jail sentences or losing their jobs in Hollywood, and the Committee continued on in its pursuit of victims.

IV. CONSEQUENCES

After the hearings ended, Kenny and Margolis remained extremely involved in waging the battle against H.U.A.C. and what it represented, first by continuing to represent the Ten in the judicial forum up through the higher courts.⁸⁸ Aside from their indictments the Ten filed a single suit action against all the major studios charging them with a general conspiracy to blacklist and those of the Ten who had contracts with producers filed breach of contract suits.⁸⁹ After victory at the trial level and then defeat in the Ninth Circuit Court of Appeals the attorneys finally convinced the studios to settle for \$200,000.⁹⁰

Financially, all three attorneys were paid well by the Nineteen/Ten prior to their contempt citations because nearly all were earning a high salary at the time they received their subpoenas. However, after the producers implemented the blacklist their income dissipated since few had much saved or invested. For Margolis, Kenny, and the other

⁸⁷ CEPLAIR AND ENGLUND, *supra* note 8, at 348-50.

⁸⁸ Balter, *supra* note 59, at 190-91.

⁸⁹ KENNY, *supra* note 26, at 359.

⁹⁰ Balter, *supra* note 59, at 256-58.

attorneys who represented these men at different points throughout the judicial process this financial instability was trying. Extremely disturbed by his disreputable position in his social world and the loss of a great deal of business, Crum ceased representing eight members of the Ten after the hearings and retreated to a less political position by relocating to Manhattan and joining an apolitical law firm. By 1951 Margolis and Kenny were essentially defending the Ten *pro bono*. As a partner in a large and highly respected firm where many of the other attorneys were earning fees, Margolis did not feel as financially pressed as attorneys who were members of smaller, less successful firms or worse, attorneys whose firms threatened them with dismissal if they continued to pursue such disreputable cases. Some attorneys, such as Crum, lost clients as a result of their involvement with blacklisted individuals. Many of the attorneys from Katz, Gallagher, and Margolis represented less political clients; consequently Margolis was able to continue to represent political untouchables for four to five years without earning much of a fee and still survive financially.⁹¹

Because defending the Ten was not a full-time task Kenny also maintained a clientele, which did significantly diminished in size after his involvement with such disreputable individuals became public knowledge. However, a few of his well-to-do clients did not run scared and continued to solicit his services. Bill Copley, of the Copley newspaper family, was one such individual. Although the rest of his family was very conservative Bill Copley was a "free-thinking artist" with a great deal of money who was constantly enmeshed in family disputes caused by his differing ideology.⁹² Clients such as Copley provided Kenny with enough financial stability to continue defending individuals such as the Hollywood Ten. Further, Kenny still had a considerable amount of money left over from his inheritance from his father.

Additionally, defense of the Ten did not take up eight hours a day five days a week. After the hearings in Washington there were months of delay before Lawson and Trumbo's trials; then came appeals which were intermittent. According to Margolis, the attorneys worked approximately four to five weeks over an eight to ten month period,

⁹¹ Margolis, *supra* note 32.

⁹² Telephone Interview with Eleanor Bogigian Hittelman, (Nov. 7, 1993).

thereby permitting these men to represent other clients simultaneously. Of course these lawyers then had to decide to take on more non-paying clients or represent clients with financial situations conducive to paying bills.⁹³

From October, 1947 through July, 1950 when the Hollywood Ten went to jail, there had been something of a truce in Hollywood. Many “questionably loyal” individuals retained their jobs throughout this period, but when the prison doors slammed on the Ten the truce in Hollywood ended. The blacklist went into full effect and various H.U.A.C. committees started to subpoena virtually everyone in Hollywood ever associated with progressive organizations.⁹⁴ Margolis and Kenny represented several of these individuals.

Throughout the next two decades Margolis continued to do what his ideology dictated by representing possibly several hundred blacklisted individuals, in and out of Hollywood, in hearings and in the judicial forum. Every American citizen has a constitutional right to a legal defense and Margolis intended to provide such a defense to as many individuals as possible. While representing the Hollywood Ten, Margolis also defended a Communist musician from Germany by the name of Hanns Eisler who arrived in America with hopes of finding employment in the motion picture industry. Initially he succeeded in his endeavor, but once red-baiting engulfed Hollywood he ran into employment problems. The federal government instituted deportation proceedings against him on the ground that he had not disclosed his political affiliation upon arriving in America. The only thing he had ever done in the U.S. was write music, yet the government saw him as a threat to democracy. Margolis loyally defended Eisler’s right to live in this country until Eisler gave up the fight and returned to Germany because he realized that even if he won his case he would not find a job in Hollywood for quite some time.⁹⁵

Throughout 1949 Margolis also represented such prominent leaders of the Communist Party in Los Angeles as Henry Steinberg, Ben Dobbs, Samuel Kasinowitz, and several others in the Los Angeles

⁹³ Margolis, *supra* note 32.

⁹⁴ KENNY, *supra* note 26, at 380-81.

⁹⁵ Balter, *supra* note 59, at 248-51.

H.U.A.C. hearings. These individuals were willing to testify about themselves and their political affiliation but vehemently refused to name names. In contrast to his advice to the Hollywood Ten, Margolis urged these individuals to invoke the Fifth Amendment in response to all questions save for the request to their names. As counsel he felt it his duty to protect his clients from reprisal. Margolis and these uncooperative witnesses realized that the Ten were in danger of prison sentences because they relied on the First, therefore, they opted for another route.⁹⁶

In 1951 Margolis, along with Kenny and six other attorneys, began working on the Smith Act case which would ultimately go all the way up to the Supreme Court in 1956 as *Yates v. U.S.*. Fourteen members of the C.P.U.S.A. were indicted in 1951 in a Federal District Court under section three of the Smith Act for 1) conspiring to advocate the overthrow of the national government by force or violence, and 2) for organizing a group of people, in the form of the C.P.U.S.A., who advocate that overthrow.⁹⁷ Ultimately the Supreme Court reversed five of the convictions and granted a new trial to the remaining nine, but a great deal of time and effort went into the defense of these individuals. According to Margolis, this case required a full-time commitment and very little financial reward. In between trials and appeals Margolis and some of the other attorneys traveled around the country visiting towns where other Smith Act trials were taking place. In each location the attorneys discussed various ways to effectively defend the respondents. Over a two year period of time Margolis thinks he earned somewhere close to the extremely low amount (for an attorney) of \$10,000. However, as a partner in a successful firm Margolis could make that financial sacrifice even though he recalls his family had to “scratch to make ends meet” for a while.⁹⁸

After the *Yates* trial ended in June of 1957 Margolis continued to follow the dictations of his ideology and involved himself in other cases revolving around such issues. He defended teachers’ rights to refrain from signing loyalty oaths. He also defended individuals who

⁹⁶ *Id.* at 278-80.

⁹⁷ MILTON R. KNOVITZ, *EXPANDING LIBERTIES: FREEDOM’S GAINS IN POST WAR AMERICA* 109-34 (1966)

⁹⁸ Margolis, *supra* note 32.

opposed ordinances to register Communists and C.I.O. unions such as the seamen, fishermen, and farmworker unions which oftentimes paid little, but occasionally led to profitable personal injury cases. He also spent some time involved in a few other personal injury and family law cases.⁹⁹ Although most of the cases Margolis' involved himself with ended in defeat a few successes appeared along the way. Margolis recalls one such case in the mid-1950s in which he helped defeat a Los Angeles ordinance requiring individuals associated with certain organizations to register their membership with local officials. They won at the trial level, and it was never appealed.¹⁰⁰ Margolis' fierce courage and his firm belief in the right to adhere to communist principles, to freedom of speech and political affiliation, as well as the right to a good legal defense spurred him to defend such marginalized individuals.

Kenny shared these convictions and risked a great deal in an attempt to protect the rights of others as well. In December, 1949 Luisa Moreno Bemis, a one time prominent organizer of the C.I.O. from Guatemala, retained Kenny to defend her. Although she had been inactive in the C.I.O. for several years the Tenney Committee in Los Angeles subpoenaed her to appear before it and soon after the immigration authorities instituted deportation proceedings against her as well on the ground of her past Communist affiliations. Despite Kenny's defense she was deported. During this period of time Kenny also assisted in the preparation for a trial of an anti-trust action brought by Herbert Sorrell and the Conference of Studio Unions against the major producers and the International Alliance of Theatrical Stage Employees (I.A.T.S.E.).¹⁰¹

Although Kenny had his hands full with the Yates case he somehow found the time for involvement in yet more political cases. In January, 1952 the Los Angeles H.U.A.C. subcommittee issued subpoenas to approximately 100 lawyers (including Margolis), doctors, and other media people for an "omnium gatherum inquisition"

⁹⁹ *Id.*

¹⁰⁰ Margolis, *supra* note 77.

¹⁰¹ KENNY, *supra* note 26, at 370-74.

scheduled for the following October.¹⁰² During those hearings Kenny represented attorneys, such as Margolis, who the Los Angeles House Subcommittee subpoenaed. According to Hittelman the L.A. Committee never subpoenaed Kenny because they never found anyone who would or could name him as a communist. He had never even attended one Communist Party meeting. His name was never found on any membership or attendance lists.¹⁰³

In April of 1953 he also helped a group of writers and actors file a suit against the major producers in Hollywood (*Wilson v. Loews*¹⁰⁴) for conspiracy to blacklist those members of the industry who had been uncooperative witnesses before H.U.A.C in 1951 and 1952. And a few short months before they argued *Yates* before the Supreme Court, Kenny represented many musicians before a local chapter of H.U.A.C. in Los Angeles as well.

In contrast to Margolis and Kenny, Crum's involvement with Hollywood waned significantly after the hearings ended, though he handled a few loyalty cases immediately following the hearings and continued to represent Scott and Dmytryk throughout their indictments, trials, and sentences; however, aside from this he started to pull away from the political scene. His daughter, Patricia Bosworth, feels it was partly a response to his increasing awareness of F.B.I. surveillance of his activities. In November of 1947 Crum returned to San Francisco hoping to quietly resume his practice with Erlich and move on with his life, but because the Hollywood Ten hearings had received a great deal of publicity many of his clients knew of his involvement with the Ten and started to question his "loyalty" to America. Many refused his services and those who remained, such as Palmolive Pete and Zellerbach Paper, chose to do so primarily out of loyalty to his partner. According to Ms. Bosworth, Philip Erlich held much more conservative views than Crum, and could hardly be considered a political person. Consequently, their firm retained some clients and each maintained a moderate income.

Nonetheless, Crum saw both his reservoir of clients drying up and the inevitability of difficult times for him in California; thus he decided

¹⁰² CEDRIC BELFRAGE, *THE AMERICAN INQUISITION, 1945-1960* 177-78 (1973).

¹⁰³ Hittelman, *supra* note 25.

¹⁰⁴ 355 U.S. 597 (1958).

to relocate to New York City in 1948. In April of that year he and Joseph Barnes, a New York newspaperman, purchased the liberal periodical *PM*. Both hoped to earn some money from this endeavor while also providing themselves and others with a forum for expressing radical or liberal views. In the final issue of *PM Daily* on April 29, 1948 former owner Marshall Field referred to Crum as a "liberal San Francisco attorney" and expressed his confidence in Crum and Barnes.¹⁰⁵ Crum and Barnes addressed their readers on the front page of *PM* on May 2, 1948, the first day it appeared under their supervision. They stated that their aim was to "publish an honest newspaper which prints the truth, and which has no interests to serve except those of people who want to live intelligently in a more peaceful and decent world."¹⁰⁶ A few months later they changed its name again to *The New York Star*. However, in the midst of the Cold War and an increasing hostility towards liberalism, their decision was an impractical one. *The New York Star* folded in 1949. Soon after Crum attempted suicide. Upon his recovery, with great difficulty and determination, Crum threw off this defeat and joined the glamorous and completely apolitical firm of Roosevelt, Poletti, Milton, and Diamond which dealt primarily in estates. Not content with this firm and offered a partnership in another, Crum joined Hays, Podell, Algase, Crum, and Feuer in 1950. Also entirely apolitical this firm did not really specialize in anything more than wealthy clients such as Rita Hayworth. Crum won a one million dollar divorce settlement, the highest to date, for her against Prince Ali-Kahn. Her consistent need of Crum's services secured his financial situation for several years.

During this period of time Dmytryk decided to reappear before the Committee in order fully cooperate. He and Scott had expressed reservations about allying themselves with the other seventeen from the start, and Dmytryk decided to altar his position in regard to the Committee after completing his prison term. Crum continued to represent him through these proceedings, and he also helped Dmytryk reestablish a career in Hollywood. But aside from this Crum spent the

¹⁰⁵ *Change of Ownership Announcement*, *PM DAILY*, Apr. 29, 1948, at 1.

¹⁰⁶ *Letter to PM Readers*, *PM DAILY*, May 2, 1948, at 1.

rest of his life as an attorney at Hays, Podell, Algase, Crum and Feuer primarily representing non-political clients.¹⁰⁷

Although none of these three attorneys lacked for employment following the 1947 hearings in Washington, other consequences befell them which merit attention, but for each attorney these consequences differed. Regardless of their status as American citizens and legal professionals with certain obligations each attorney endured harassment. Ben Margolis experienced a great deal of harassment in various ways, overall his experiences seem less severe than the other two. By this point in Margolis' political legal career he had developed a highly visible reputation as subversives' attorney, and had never tried to hide his own political convictions; thus it is hardly surprising that the F.B.I. started following his activities closely. Blatant at first, Margolis realized he was under surveillance and prepared the necessary papers demanding that the F.B.I. discontinue such surveillance as it hindered his preparation for the Yates trials. The F.B.I. verbally acquiesced and resumed a more subtle surveillance of Margolis' activities. Years later Margolis learned they had tapped his phone lines over a period of several years.¹⁰⁸

This, among many other frightening things, was part of standard procedure for the F.B.I. under J. Edgar Hoover. From the time of his appointment as leader of the Bureau in 1924 until the 1950s Hoover maintained "special" files on individuals suspected of questionably disloyal activities. He was very willing to permit the use of illegal investigative techniques to attain such information, and although government officials, including the president, were at least partially aware of the F.B.I.'s actions they did not stand in their way. Hoover frequently authorized agents of his Bureau to break into offices and homes to install bugging devices or copy documents such as membership lists and correspondence. Throughout the 1940s and 1950s the F.B.I. covertly provided national and local H.U.A.C.s with information on individuals suspected of being subversives.¹⁰⁹ Margolis

¹⁰⁷ Bosworth, *supra* note 39.

¹⁰⁸ Balter, *supra* note 59, at 365-71.

¹⁰⁹ ATHAN THEOHARRIS, ED., FROM THE SECRET FILES OF J. EDGAR HOOVER 86-87, 127-31 (1991).

was one such victim of Hoover's highly suspect investigative techniques.

Further, by 1949 the American Bar Association and the Los Angeles County Bar Association had etched his name onto their own personal blacklists. Margolis thinks that in all probability this barely affected his practice because his firm's respected reputation and acceptance of his activities mitigated any attempts to destroy him professionally, though this did not stop many from trying nonetheless.¹¹⁰ In September of 1952 Margolis received a subpoena to appear before the Los Angeles Subcommittee on Un-American Activities along with several other professional people as he walked out of court on the final day of the *Yates* trial. The Committee called Margolis as their first attorney witness. They asked him whether or not he was a member of the Communist Party as well as other more indirect questions which all searched for the same response; however, Margolis saw through their manipulative measures and refused to cooperate in any shape or form. A front page article in the *Los Angeles Times* on October 1, 1952 vividly described Margolis' behavior during his appearance: "He [Margolis] refused to cooperate in sneering, snarling tone and with studied sarcasm."¹¹¹ By 1952 the Ten were in prison for invoking the First Amendment; thus, he along with all the other uncooperative witnesses relied primarily on the Fifth Amendment as the basis for their refusal to answer the Committee's questions. They knew invoking the Fifth would allow them to avoid contempt citations. Margolis, however, did not rely solely on the Fifth; he also relied on the First, Ninth, and Tenth Amendments.¹¹² Filled with absolute rage Margolis blasted the Committee for its despicable behavior. As counsel for witnesses before H.U.A.C. Margolis had never been permitted to effectively express his opinions so when the time arrived for him to be a witness "all the anger that had been building came forth and I couldn't stop until I had said everything I

¹¹⁰ Margolis, *supra* note 21.

¹¹¹ *Lawyer's Defiant Outburst Stirs Storm at House Red Inquiry Here*, L.A. TIMES, Oct. 1, 1952, at 1.

¹¹² Balter, *supra* note 59, at 428-30.

had always wanted to say.”¹¹³ Because of Margolis’ professional situation and his reliance on the Fifth Amendment (as well as several others) the Committee could do little to prevent him from resuming his role as bold defender of “subversives.”

When the hearings ended Frank Belcher, a “very prestigious lawyer” who once held the position of president of the California State Bar Association, wrote a letter to the board of governors of the state bar urging them to punish all the attorneys who refused to answer the Committee’s questions during the hearings. Further, he specifically called for Margolis’ disbarment because he “had been so impolite to the Committee.”¹¹⁴ Margolis responded with a letter to the state bar stating that he had stood before the Committee not only as a lawyer, but as a U.S. citizen as well. And as a citizen he had the right to inform H.U.A.C. of his thoughts and feelings. The board of governors voted unanimously not to penalize anyone. The courage of attorneys such as Margolis and the integrity of state organizations such as the board of governors thwarted H.U.A.C.’s attempt to gain some leverage among those attorneys who refused to cooperate.¹¹⁵ But in 1952 the federal government denied Margolis’ request for a passport. Feeling that a business trip abroad was not worth the aggravation, Margolis did not appeal his request. In 1959 when he needed a passport the government readily granted him one.¹¹⁶ Margolis’ courageous actions did not go unnoticed, but he escaped from the era with fewer scars than many of his colleagues. His fortunate situation in a powerful, sympathetic and respected firm and his strong belief in what he was doing protected him in many ways. Further, his relative lack of interest in material luxuries, social status, and political popularity left him with less to lose by his actions. Neither his status as a U.S. citizen or as a legal professional served to prevent further repercussions.

Kenny faced such harassment as well. Many of his clients veered away from his firm because his “independence” was a “handicap.” Some clients such as Copley, however, deeply respected this “independence,” but these individuals were uncommon. According to

¹¹³ Margolis, *supra* note 32.

¹¹⁴ *Id.*

¹¹⁵ Balter, *supra* note 59, at 431.

¹¹⁶ *Id.* at 453.

Hittelman there is no doubt that Kenny, like Margolis, was under F.B.I. surveillance. His phones were almost certainly tapped and he was probably followed frequently.

Kenny also found himself shunned by those who had once comprised much of his social world. Due to his father's status as a charter member, the California Club also bequeathed charter member status to Kenny, and he spent a great deal of time there prior to his involvement with individuals such as the Hollywood Ten. Once the Cold War campaign mounted in strength and Kenny's position became evident, most of the other members of the California Club renounced their friendship with him. According to Hittelman, although Kenny had other friends outside of this elite social circle who remained loyal throughout, this disapprobation by the California Club greatly distressed him. His life philosophy of helping those who were being "pushed" around conflicted with his strong desire to be well-liked by all.

In addition, prior to 1948 various individuals from around the world—politicians, celebrities, and the like—would come to California and look Kenny up for advice or simply to meet the man they had heard such wonderful things about. According to Hittelman, "everyone simply adored this man; he had an irresistible charm." But after his political reputation took a turn for the worse few were willing to brave harsh criticism in order to meet this suddenly not so irresistible man.¹¹⁷

According to Hittelman, Kenny's physical appearance deteriorated in the 1950s as a result of this type of social and emotional strain. "All in all," she states, "he did not look good. He looked almost seedy looking at times. His clothes were frequently dirty and wrinkled." He was even arrested for drunk driving once.¹¹⁸

Further, Kenny's political aspirations placed him in a more vulnerable position than Margolis. Sometimes holding powerful convictions regarding the rights of individuals and a desire to hold political office correspond, but sometimes they conflict. During the Cold War and McCarthy era these two objectives fit into the second

¹¹⁷ Hittelman, *supra* note 92.

¹¹⁸ Hittelman, *supra* note 25.

category. It is hard to win votes when one defends political untouchables. Up to 1947 Kenny advanced politically with great ease. He knew California well and possessed a "great personal charm."¹¹⁹ When Truman took office in 1948 progressive Democrats had to make a decision, and all the right decisions involved rebuking communism. Because Kenny was not a Communist and he was one of the most popular Democrats in California many thought he could have blended into the machinery of the new administration with the slightest effort. He refused to even try, and this decision compounded by his involvement with political untouchables such as the Ten buried him politically.¹²⁰ Nonetheless, in June of 1949 Kenny announced his candidacy for the 1950 California State Senate elections in hope that he might oust the incumbent, Jack Tenney. Though once a favorite of most Democrats, many saw his presence as an embarrassment and even suggested he withdraw from the race.¹²¹ Kenny grew accustomed to this type of response and realized his days in politics were rapidly becoming part of the past. In his oral history he stated, "my involvement in the protracted Cold War had made me a political untouchable."¹²²

He sacrificed an almost certain illustrious career in Democratic politics for his strong and admirable convictions. He hoped for and needed reappointment to the judicial bench, but failed to receive one until 1966. Kenny was underemployed and needed six more months of state service in order to become eligible for a full pension. California Governor Edmund G. Brown wanted to reappoint Kenny to the bench several times; each time a vacancy arose he gave it serious consideration, but someone from the Hearst press, the John Birch Society or some other similar organization would intimidate Brown into appointing someone else. Finally in 1966, after Brown lost to Reagan in the gubernatorial election he renamed Kenny to the Los Angeles Superior Court. And although he needed to retire at the age of 70 in order to receive his full pension Kenny continued to serve on the

¹¹⁹ Margolis, *supra* note 21.

¹²⁰ STEVENSON, *supra* note 37, at 75.

¹²¹ *Id.* at 369-71.

¹²² KENNY, *supra* note 26, at 392.

bench until Reagan was ousted by Edmund Brown, Jr. and his health began to seriously fail.¹²³

According to Margolis, Kenny never made an opportunistic decision. Kenny was once asked what he had done in the course of his lifetime which made him the most proud. He said it was the eight years in the late 1940s and early 1950s when he spent most of his time defending so-called subversives who had been denied their constitutional rights.¹²⁴ Kenny ultimately sacrificed his political and social popularity as well as much of his financial stability to defend individuals who were being “pushed” around. Because of his inherited social and financial standing in society Kenny faced more severe consequences than Margolis.

Unlike Kenny, Bartley Crum lacked political aspirations, but his life after 1947 was far from inconsequential. Shortly after the conclusion of the hearings Jack Tenney attacked him in the press as a communist. From that point on the F.B.I. also placed him on their Security Index and kept him under 24 hour surveillance. Many of his friends discontinued their relationship with him. Some even literally turned their backs on him and his wife when they would enter a room. He hoped that by relocating to Manhattan he might escape some of this persecution, but unfortunately this move only prolonged his agony.

In 1953, similar to Margolis, Crum tried to renew his passport. The Justice Department first required he defend himself for hours in order to prove his loyalty to the United States. They insisted he discuss nearly every case he had participated in over the past several years before they approved his request. Further, the F.B.I. had been investigating the “subversive” nature of the National Lawyers Guild since 1950 and used Crum’s vulnerability in this situation to further their investigation. The Justice Department officials demanded that Crum provide them with information on communists in the Guild. Crum relented and provided them with cursory information on members of the Guild who were already publicly known as Communists. The Justice Department granted his renewal request, but

¹²³ STEVENSON, *supra* note 37, at 152-53.

¹²⁴ *Id.* at p. xi.

the harassment did not cease. He remained under close F.B.I. surveillance until his death.¹²⁵

In the public arena Crum's life over the next five years was relatively uneventful, but according to Bosworth, in July of 1959 his involvement in the Kefauver Crime Commission changed everything. Run by Robert Kennedy, the Kefauver Crime Commission held an investigative hearing on James Hoffa to ascertain evidence of corruption within his unions. One of Hoffa's teamsters' former attorneys, Godfrey Schmidt, retained Crum to retrieve fees he earned as a member of the three person monitors board appointed by a Federal Court to help clean up the Teamsters Union, which were owed to him by Hoffa. Crum testified during these hearings that three Teamster attorneys, one of whom was Harry Bridges, and later Hoffa himself, approached Crum with a proposition. They told Crum that if Schmidt resigned from the monitors board and Crum replaced him to presumably act as a stooge they would pay Schmidt the \$105,000 owed to him plus an additional \$45,000. A week later Edward Bennett Williams, one of Hoffa's chief attorneys, suggested to Crum at a luncheon that if Crum did not testify before the Kefauver Committee that Schmidt would receive his fees.¹²⁶ Williams testified the following day that Crum's testimony was nothing but a "false, vicious and contrived smear."¹²⁷ Bennett called in Harold Unger, another attorney, to testify to Crum's perjury. He attended the lunch with Crum and Bennett in which Crum alleged the bribe had been proposed, and said he could not recall any mention of Crum's testifying before the Commission.¹²⁸ Further doubts of Crum's credibility arose in a *New York Times* article run ten days later on July 24 which mentioned that Crum revised his testimony regarding another incident with a New York public relations man named Sydney S. Baron.¹²⁹ The actual incident was unrelated to the bribery incident, but it depicted Crum in a

¹²⁵ Bosworth, *supra* note 39; Phone Interview with Patricia Bosworth, (Dec. 6, 1993).

¹²⁶ *Rackets: Mad and Muddy*, NEWSWEEK, July 27, 1959, at 23-24.

¹²⁷ Joseph A. Loftus, *Crum Charges Hoffa Tried to Pack Monitors' Board*, in N.Y. TIMES, July 14, 1959, at 1.

¹²⁸ *Id.* at 46.

¹²⁹ *Crum Repudiates Bribe Inference*, N.Y. TIMES, July 24, 1959, at 10.

testimonial error. Crum was extremely embarrassed by these two incidents and his firm was furious. Bosworth said his firm probably even threatened to fire him. Years later, Bosworth interviewed an individual who was present during Crum's testimony and cross-examination. According to this individual, who remains nameless, Crum only testified incorrectly as to when and where Bennett propositioned him; thus Crum had been telling the truth.¹³⁰

Margolis was also present during Crum's testimony because a member of the furniture workers' union, Gus Brown, had retained him for the purposes of the hearings. However, Margolis vividly remembers another moment in Crum's testimony. During Bennett's cross-examination of Crum, Margolis said Crum testified to Harry Bridges' membership in the C.P.U.S.A.. According to Margolis, it was obvious how much it pained Crum to do this. "You could *see* it was killing him—doing something he did not believe in." Margolis was deeply disappointed by Crum, but was not completely surprised. He had always seen Crum as a man torn between his noble ideological beliefs and his more base need for material comforts. "He couldn't take the contradictory position in which he found himself. He had to have the money. He had to have the big firms yet he wanted to do what was right."¹³¹ Margolis' thinks that this incident was instrumental in Crum's decision to end his life a few months later.¹³² Bosworth, though acknowledging Crum's admission of Bridge's membership in the Communist Party, stated that it was an insignificant element of his cross-examination which lasted no more than one minute.¹³³ It is likely that both these incidents also contributed to Crum's destruction.

According to his daughter, by the end of the Kefauver Commission's hearings Crum was in a state of total despair, although she attributes much of this despair to the public embarrassment over the perjury incident. He had become completely disillusioned with America and he had not accomplished everything he had wanted. He

¹³⁰ Bosworth, *supra* note 39.

¹³¹ Margolis, *supra* note 32.

¹³² *Id.*

¹³³ Bosworth, *supra* note 39.

was an alcoholic and a heavy pill taker. In 1959 Bosworth stated, "he was a far cry from the man he once was."¹³⁴ On December 10, 1959 he committed suicide.

V. CONCLUSION:

Why did Ben Margolis fare as well as he did while Robert Kenny experienced a great deal more social, emotional, political, and financial strain, and Bartley Crum endured so much strain he chose death? Each of these men arose from very different backgrounds. Margolis grew up in a liberal, middle class home with a Russian-Jewish heritage; Robert Kenny came from a more moderate, upper class Protestant environment; and Crum rose from a more conservative, upper-middle class Irish-Scotch Catholic home. These differing backgrounds produced different beliefs, goals, and expectations within these men. Margolis was familiar with hard times and the plight of the mainstream blue and white collar workers. He saw the inequalities inherent in American society, and hoped to create some change through the legal profession. He did not place social or political popularity in high regard. He lacked most of the grand illusions Kenny and Crum possessed. Financial security as well as social and political popularity were essential to Kenny even though his great strength of character urged him to defend the rights of those being taken advantage of. He wanted it all, but ultimately found many of his beliefs to be conflictual. Thus for him, the consequences of his involvement with political untouchables such as the Hollywood Ten proved more substantial.

Similarly, Crum was also familiar with a life filled with comforts and hoped to duplicate such a life for himself as an adult. However, his strong ideological beliefs which he became conscious of as an adult proved contradictory to his aspirations for material luxuries throughout the majority of his adult life. He wanted to fight injustice, yet he *needed* wealth and social acceptance. Consequently, he could not endure the lack of these two needs which went along with being a liberal. But when he had the money and social crowds he could not

¹³⁴ *Id.*

live with himself. This contradiction was irreconcilable for him and he chose not to live with it by not living at all.

Yet this is no justification for what each man endured. All three of these men should have been doubly protected from harassment and persecution solely on the basis of their status as American citizens and legal professionals who were simply doing what the Constitution instructs—to provide each individual with an adequate defense. Yet none escaped attack.

