IN THE

Court of Appeals of Maryland

OCTOBER TERM, 1955

No. 108

MAURICE BRAVERMAN,
Appellant,

VS.

BAR ASSOCIATION OF BALTIMORE CITY,
Appellee.

APPEAL FROM THE SUPREME BENCH OF BALTIMORE CITY

APPELLANT'S BRIEF AND APPENDIX

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The Daily Record Co., Baltimore 3, Md.

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APPELLANT'S BRIEF

THE NATURE OF THE CASE

This appeal poses the propriety of appellant's disbarment by the Supreme Bench of Baltimore City because of his prior conviction for conspiracy to violate the Smith Act. Questions of the legal sufficiency of appellee's petition below, the innocence of appellant of the crime of which he had been convicted, the failure of the Court below to make requisite findings, the absence of moral turpitude, the deprivation of basic constitutional rights by the disbarment order and its undue severity are involved in this appeal.

STATEMENT OF THE FACTS

On October 8, 1953, the Bar Association of Baltimore City filed a petition before the Supreme Bench of Baltimore City against the appellant in this case. The petition recited that appellant had been admitted to practice as a member of the Bar of the Supreme Bench on November 1, 1941, and had remained thereafter a member of the bar of the Court. It further recited the oath taken by the appellant at the time of his admission.

It was also alleged that the appellant on April 1, 1952, was convicted in the United States District Court for the District of Maryland, of conspiracy to violate the provisions of Section 2 of the Smith Act of June 28, 1940, and on April 4, 1952, was sentenced to a fine of $1,000 and a period of imprisonment of three years.

The section of the Smith Act under which the appellant was indicted is set forth in toto in the petition (App. p. 2).

The petition finally referred to the recommendation of the Executive Committee of the Bar Association that a proceeding be filed for disciplinary action. It concluded with a prayer for "appropriate disciplinary action."

After some pleadings, irrelevant to the issues at hand, the appellant filed a combined demurrer and answer in which it was claimed that the allegations in the petition did not contain adequate grounds for disciplinary action and that the record in the proceedings in which appellant was convicted revealed no grounds for disciplinary action (App. pp. 3, 4).

At the hearing held on June 20, 1955, there was received in evidence as the appellee's case a certified copy of the indictment and the docket entries of the conviction of ap-

pellant in the District Court (App. pp. 4-18). The appellant offered in evidence a complete transcript of the trial of the Smith Act case in the District Court. The ruling on the proffer was reserved by the Bench and the transcript has been included in the record on appeal. Its relevant contents will be discussed in the argument.

By order of the Supreme Bench on June 28, 1955, the appellant was ordered disbarred from the further practice of law in accordance with Section 16, Article 10, Annotated Code of Maryland (App. p. 46).

ISSUES PRESENTED

I. *Was the Petition on its face demurrable because it did not allege any specific statutory ground for disciplinary action?*

II. *Was the Appellant guilty of a crime involving moral turpitude and does the disbarment rest on a proper finding of such guilt?*

III. *Did the Appellant, even if guilty of the Smith Act violation, commit a crime involving moral turpitude?*

IV. *Did the disbarment order deprive Appellant of his constitutional rights under the First and Fourteenth Amendment to the Constitution of the United States and the Declaration of Rights of Maryland, Articles 1, 17 and 23.*

V. *In view of the severe punishment already suffered by Appellant, do the ends of justice require his disbarment?*

ARGUMENT

I. THE PETITION ON ITS FACE WAS DEMURRABLE BECAUSE IT DID NOT ALLEGE ANY SPECIFIC STATUTORY GROUND FOR DISCIPLINARY ACTION.

The petition was brought by authority of Article 10, section 13, Annotated Code of Maryland (1955 Supplement), which permits the Bar Association to file "Charges of pro-

fessional misconduct, malpractice, fraud, deceit, crime involving moral turpitude, or conduct prejudicial to the administration of justice against any attorney at law." The charge of being a subversive person has now been added by that section.

The petition did not allege which of these several categories applied. It recited conviction of a crime, but it did not allege that this was a crime of moral turpitude. And it is possible, for all the appellant and his counsel knew, that the petition intended to put into issue one or more of the statutory categories other than crime involving moral turpitude. (Nor did the order of the Supreme Bench, without opinion, clarify the ground of disbarment.)

The petition was therefore defective because it did not specify any of the statutory causes of disbarment. It is true that the petition referred to the commission of a crime, but the statutory cause involving commission of a crime is a "crime involving moral turpitude." Mere allegation of the commission of crime without reference to the element of turpitude does not bring the petition within the statute. *State v. Bannon,* .... Ore. ..., 42 P. 869; *U. S. v. Clark,* 76 F. Supp. 560 (U. S. D. C. Ala.); *State v. Prendergast,* 84 Ore. 307, 164 P. 1178. The fact is that the appellant and his counsel were not informed by the petition which of the several statutory causes for disbarment was alleged and put in issue. Appellant and his counsel did not have fair notice of what to meet.

Since, under the circumstances, we are no more enlightened after, than we were before, the action of the Supreme Bench as to the specific statutory ground of disbarment, we do not feel we should be required to brief the inapplicability of every statutory category. We shall pro-

ceed, therefore, on the assumption that if the petition states a disbarrable ground at all, it is limited to the ground of "crime involving moral turpitude."

II. THE APPELLANT WAS NOT GUILTY OF A CRIME INVOLVING MORAL TURPITUDE NOR DOES THE DISBARMENT REST ON A PROPER FINDING OF SUCH GUILT.

A. This Court Must Make an Independent Determination of Whether Appellant Was Guilty of Crime of Moral Turpitude. The Court Below Was Under the Same Obligation but Failed to Do So.

Article 10, section 16, of the Maryland Code, provides: "Every attorney who shall, after having an opportunity to be heard, as provided in the preceding section, be found guilty of professional misconduct, malpractice, fraud, deceit, crime involving moral turpitude, conduct prejudicial to the administration of justice or of being a subversive person, shall, by order of the judges finding him guilty, be suspended or disbarred from the practice of his profession in this State."

Under the clear wording of this statute, the pre-requisite to disciplinary action is that the Bench below and this Court find that the appellant was guilty of a crime involving moral turpitude, and not merely that he has been convicted. This does not mean that the criminal charge against the appellant had to be re-litigated nor did we ever propose such re-litigation. But it does mean that it was necessary for the court below and also necessary for this Court now to examine the record of the criminal proceedings in order to determine independently whether the evidence proved that appellant (a) was guilty of any crime and (b) if so, whether he was guilty of committing a crime involving moral turpitude. The rule to this effect has been established by numerous decisions.

As Chief Judge Cardozo stated:

> "Upon an application for disbarment, a judgment of conviction is not conclusive against the attorney by force of any general doctrine of res adjudicata. This is so though the judgment has been rendered by a court of the same sovereignty * * * A *fortiori*, it is so when the judgment has been rendered by a court of another sovereignty. The proceedings are between different parties, for the vindication of different rights * * * So far as common law principles presents the consequences of conviction, the court to whose discipline an attorney is amenable may retry the issues of his guilt and punish or acquit according to the promptings of its conscience." *In re Kaufman*, 157 N. E. 730, 245 N. Y. 423 (Cardozo, C. J.).

Accord: *People ex rel Attorney General v. Edison*, 69 P. 2d 246, 100 Col. 574; *People ex rel Attorney General v. Laska*, 72 P. 2d 693, 101 Col. 221; *Louisiana State Bar Association v. Connolly*, 20 So. 2d 168, 206 La. 883; *In re Stiers*, 167 S. E. 382, 204 N. C. 38; *In re Green*, 16 P. 2d 582, 161 Okl. 1; *State v. O'Leary*, 241 N. W. 621, 207 Wis. 297. This is the rule applied in practice in Maryland. *Rheb v. Bar Association*, 46 A. 2d 298, 186 Md. 174.

Moreover, in all jurisdictions the courts will look behind the conviction to ascertain if the attorney committed a crime involving moral turpitude, *In re Pearce*, 136 P. 2d 969, 103 Utah 522; *In re Smith*, 5 N. E. 2d 227, 365 Ill. 11; *In re Burch*, 54 N. E. 2d 803, 73 Ohio App. 97; *In re Dampier*, 267 P. 452, 46 Idaho 95; *Branch v. State*, 99 Fla. 444, 128 So. 487, 488 and to determine the extent of the disciplinary measures. *Ex parte Mason*, 29 Or. 18, 43 P. 651.

For that reason an official copy of the transcript in the Smith Act trial was offered in evidence below and included in the record on appeal.

The court below entered a disbarment order which made no finding or determination of any kind nor did it indicate any ground on which its order rested. For all that appears, therefore, it did not examine the evidence to determine if the appellant had been guilty of a crime and, if so, whether he had committed a crime involving moral turpitude. If it did examine the evidence, it certainly did not make a determination of these two questions. Accordingly, the court below did not fulfill the function required by the statute and the disbarment order is invalid.

B. The Record Shows That Appellant Was Not Guilty of Conspiring to Advocate Overthrow of Government By Force and Violence.

The claim that the appellant was a conspirator rests entirely on his connections with the Maryland District of the Communist Party. The evidence against him, to quote from the jury charge of Judge Chesnut in the case, boils down to this:

> "For several years and during the three year period he was a member of the District Committee of the Communist Party for this District. There is evidence that he attended numerous meetings of the Party in Baltimore or Washington. He was a candidate for chairman of one of the larger meetings of the Party but was not elected. There is some evidence that he taught some classes in Communist principles, particularly a group of Communists or prospective Communists referred to as the 'white collar class'. There is evidence that he has acted frequently as counsel for the Communist Party or for various of its active members" (App. p. 39).

There is absolutely no evidence in the record that the appellant ever (a) engaged in acts looking toward the violent overthrow of the government, or in any other vio-

lent conduct; (b) advocated violence; or (c) knew or had reason to know that the Communist Party advocated violence.

The trial judge stated to the appellant, after all the government's evidence had been introduced, that there was no evidence "that you had been given to force and violence in connection with the case" (Transcript of District Court trial, p. 2137).

We submit that the Court below should not have found, nor should this Court find, the appellant guilty of the Smith Act charge. We believe that appellant's conviction was a miscarriage of justice, to which the following circumstances contributed.

(1) In the first place, the jury was undoubtedly inflamed by highly sensational testimony which had nothing to do with appellant. Thus, for example, the jury was allowed to hear inflammatory testimony about experiences of one Paul Crouch in Moscow in 1929 and the 1930's; yet in 1929, the appellant was only thirteen years old (App. p. 31).

(2) In the second place, the case went to the jury and was affirmed on appeal, on the impermissible basis that all that had to be proved to convict was membership in the party. The trial judge instructed the jury that the defendants were charged with conspiring to violate all the provisions of the Smith Act, including the provision making criminal mere membership in an organization known to advocate violent overthrow of the government (App. p. 22). The Court of Appeals held that the indictment charged conspiracy to violate the membership section of the statute *Frankfeld v. U. S.*, 198 F. 2d 679. Yet in its opposition to appellant's petition for certiorari to the Supreme Court, the Department of Justice admitted that the indictment did not charge conspiracy to violate the "membership" provision,

but, shifting its position and arguing contrary to the Court of Appeals, claimed that the instructions to the jury had not put the membership provision in issue (Government Brief, Sup. Ct., No. 240 Misc. p. 21, October Term, 1952).

Beyond this, the trial court permitted guilty knowledge to be inferred merely from the fact of membership, and guilty intent to be inferred merely from the existence of the knowledge so inferred (App. pp. 40, 42). And the Court of Appeals held that the "Agreement" essential to a conspiracy was satisfied merely by organizational membership (App. p. 36).

In short, respondent was convicted, with the aid of atmospheric pressures, solely on a showing of Communist Party membership, and nothing more. Yet Congress itself has enacted, in section 4(f) of the McCarran Act, that "Neither the holding of office nor membership in any Communist organization by any person shall constitute per se a violation of subsection (a) or subsection (c) of this section or of any other criminal statute." 64 Stat. 992, 50 U. S. S. sec. 783(8).

Furthermore, the constitutionality of conviction merely for party membership is certainly not without doubt. Cf. *Schneiderman v. United States*, 320 U. S. 118, 136 (1943); *DeJonge v. Oregon*, 299 U. S. 353; *Herndon v. Lowry*, 301 U. S. 242.

(3) The key witnesses used by the government in the trial were unreliable and not worthy of belief.

(a) The one witness whose testimony was singled out by the opinion of the Court of Appeals was Ralph Long (*Frankfeld v. U. S.*, 198 F. 2d 679, 686). Long was a surprise witness, strategically sprung by the prosecution in

such a way that there could be no effective cross-examination of him. The government did not reveal that Long is a habitual drunkard, a fact discovered by the defense only after the end of the case. See appendix page 47 for a photostat of docket entries showing that up till December 4, 1954, Long had been convicted 23 times (and arrested four more times) for drunkenness, his longest sentence being 18 months to two years.

(b) Government witness Mary Markward appealed to the jury by representing herself as one who had spied for the FBI for patriotic motives, receiving no remuneration other than minor expense money with perhaps some additional surplus. After the trial, it was discovered that she had clearly committed perjury on the stand, since official government figures showed that she had, during her ten year period as a spy, been paid $23,879 for services, plus $174 for expenses. See appendix p. 17, Appellant's brief, Meyers v. U. S. A., No. 6613, CCA 4, 1952.

(c) Government witness Paul Crouch, who inflamed the jury and public opinion with sensational diatribes and testimony, has been recently exposed as a completely unreliable perjurer; he has been discharged by the government, which no longer uses him as a witness because of his publicly demonstrated perjuries. See Alsop columns, *New York Herald Tribune,* April 16, 1954, May 19, 1954, June 29, 1954, July 4, 1954; *Democratic Digest,* official publication of the Democratic National Committee, November 1954, *Brownell's Hired Witnesses Tell Strange Stories for Pay; The Kept Witnesses,* Harper's Magazine, May, 1955; *The Informer, The Nation,* Frank Donner, April 10, 1954.

III. THE APPELLANT, EVEN IF GUILTY OF THE SMITH ACT VIOLATION, DID NOT COMMIT A CRIME INVOLVING MORAL TURPITUDE.

In *Brun v. Lazzell*, 191 A. 240, the Court of Appeals of Maryland inquired:

> "What is moral turpitude? Lexicographers and courts agree on the definition, but the courts do not agree on its application in characterizing offenses involving moral turpitude.
>
> "Bouvier's Law Dictionary, Rawle's 3rd Rev. 2247, defines it as 'an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow man or to society in general, contrary to the accepted and customary rule of right and duty between man and man * * *.' Turpitude is defined in the Oxford Dictionary as 'base or shameful character; baseness, vileness; depravity, wickedness'; Webster as 'inherent baseness or vileness of principle, words or actions; shameful, wickedness, depravity'."

Although the courts have disagreed from time to time on whether particular crimes do involve "moral turpitude" there are certain propositions of general acceptance which flow from the aforegoing definition. In the first place, the gravity of the offense, although a factor to be considered, is not determinative of the issue. Thus, even though petty offenses would normally not bear the indicia of turpitude as defined above, there are misdemeanors which will be so branded, e.g., indecent exposure, *Brun v. Lazzell*, supra, or failure to file income tax reports, *Rheb v. Bar Association of Baltimore City*, 186 Md. 174, 46 A. 2d 290. As a corollary, the mere fact that a crime is a felony and serious enough to merit grave punishment does not in itself render it one involving moral turpitude; many statutes specifically distinguish between felonies which do and those which do not involve that element. Accordingly, the fact that a viola-

tion of the Smith Act or a conspiracy to violate may carry a considerable sentence by no means warrants in and of itself the conclusion that it is a crime involving moral turpitude.

The nature of the definition imports a crime inherently evil. It is for this reason that crimes which offend against long existing standards of morality have been held to involve moral turpitude. One who is morally "depraved" and "wicked" is one who flouts recognized moral standards, one who would take advantage of and injure another for his personal gain. Crimes in the category crimen falsi are thus generally recognized as involving moral turpitude, regardless of whether they are misdemeanors or felonies, or the gravity or mildness of punishment prescribed. In this class fall the Maryland cases dealing with disciplinary action against attorneys. *Rheb v. Bar Association,* supra.

In determining whether or not a particular crime falls within or outside the moral turpitude category, one of the important considerations is whether it is "malum in se" or "malum prohibitum", i.e., whether or not the crime was recognized and denominated as such under the common law or was newly created by statute. The rationale behind this inquiry is that an offense newly created is less likely to involve a violation of deep-seated moral standards of such a character as to connote depravity.

With these guide lines in mind, it is at once apparent that the crime of which respondent was convicted defies classification in conventional terms. For the fact of the matter is that he was convicted of a political crime — a new crime in America. Some attempt has been made to evolve such a concept in America by drawing on European analogy (See Ferrari, *Political Crimes,* 20 Col. L. R. (1920) 308; Ferrari, *Political Crime and Criminal Evidence,* 3 Minn.

L. R. (1919) 365; Harper and Haber, *Lawyer Troubles in Political Trials,* 60 Yale L. J. 1 (1951)), and a few judicial decisions make such a distinction. (Opinion of Hand, D. J., in the case of *Liam Mellows,* discussed in Ferrari, *Political Crimes,* supra.)

In *In re Burch,* 54 N. W. 2d 803, 73 Ohio App. 97 (1943), at page 808, Judge Doyle, concurring said:

> "The offense to which Mr. Burch pleaded guilty is generally known as a political crime. It is malum prohibitum and not malum in se. It cannot under any fair legal construction come within the term 'moral turpitude' as that term is used under disbarment statute."

Not only is the crime of which appellant has been convicted purely a political crime. Its position in the catalogue of American crimes has rested always on an uncertain footing, from a moral as well as a constitutional standpoint. Moreover, it was not until June 4, 1951 (*Dennis v. United States,* 341 U. S. 494), that conspiracy to violate the Smith Act could be authoritatively regarded as a crime. Cf. *Schneiderman v. U. S.,* supra.

The division in the Supreme Court reflected the same uneasiness in the nation regarding the wisdom and constitutionality of this modern version of the common law crime of seditious libel.

In the dissenting words of Mr. Justice Black:

> "* * * I want to emphasize what the crime involved in this case is, and what it is not. These petitioners were not charged with an attempt to overthrow the Government. They were not charged with non-verbal acts of any kind designed to overthrow the Government. They were not charged even with saying anything or writing anything designed to overthrow the Government. The charge was that they agreed to as-

semble and to talk and publish certain ideas at a later date: The indictment is that they conspired to organize the Communist Party and to use speech or newspapers and other publications in the future to teach and advocate the forcible overthrow of the government. No matter how it is worded, this is a virulent form of prior censorship of speech and press, which I believe the First Amendment forbids. I would hold Section 3 of the Smith Act authorizing this prior restraint unconstitutional on its face and as applied."

Dennis v. United States, 341 U. S. 494, 579.

Former Attorney General Francis Biddle himself led a campaign to repeal the Smith Act because it:

"prosecutes people for what they think and say rather than what they do * * *. Recognizing the need 'for drastic protection against acts of sabotage or espionage * * *. But the Smith Act is aimed at the advocacy of ideas, rather than commission of overt acts."

The Daily Record, December 15, 1951.

The American Civil Liberties Union expressed sharp opposition to the Smith Act and to the *Dennis* decision.

"The ACLU disagrees fundamentally with the Supreme Court's decision, 6-2. The Union, as always, opposes this law because it infringes upon the rights of free speech guaranteed by the First Amendment and because it is dangerously unwise legislation * * *. The ACLU will urge the repeal of sections 2 and 3 of the Smith Act, and any similar state or local legislation; and will oppose any new laws of like nature. It will stress that, not only Black and Douglas, but Frankfurter and Jackson expressed strong doubts as to the wisdom of such legislation."

ACLU Bulletin, July 1951.

"Eventually the Supreme Court may restore the Civil liberties which it has momentarily suspended, the popular revulsion against the excesses implicit in the Court's decision may some day force Congress to re-

peal the Smith Act * * *. Actually the current situation is far more dangerous than the Palmer Raids, whose unconcealed violence and uncomplicated brutality notified every citizen that his liberties were in danger. There will now be, of course, not one but a series of Foley Square mass prosecutions, which will advertise to the world that we lack the courage of our traditional political convictions."

The Nation, June 30, 1951.

And the *New York Post,* July 27, 1951:

"For the benefit of anyone who came in late, we repeat: *The Post* warmly supports any prosecution for acts of espionage or sabotage. No such allegations are involved in these cases. The prosecutions are aimed at men's words and thoughts, not at their deeds. We say that the men responsible for these prosecutions — the Congressmen who drafted the Smith Act, the judges who have upheld it and the Justice Department sages who are applying it so overzealously — will one day be remembered with contempt by a calmer America."

St. Louis Post-Dispatch, June 21, 1951:

"Like the 11 top leaders already arrested, 21 of the party substitute command are not charged with sabotage, espionage or direct attempts at rebellion. The overt acts they are accused of are overt acts of speech and writing — such acts as issuing reports, holding meetings, sending out directives and teaching party doctrine.

"When you punish the speech of a group you detest, what is the effect on the freedom of other groups and individuals? Our Bill of Rights rests on the doctrine that punishing the expression of any ideas inhibits the expression of ideas generally. The prosecutions which flow from the Supreme Court's decision on the Smith Act impair this doctrine not because of what these prosecutions may do to a few Communists, but because of what they may do in poisoning the atmosphere of freedom."

The New York Times, June 8, 1951:

> "First, the deep split in the Supreme Court which this decision caused portends a second, and possibly less hostile look at the whole question. Second, this undoing of the Communist Party has been achieved only by a violent upheaval in our judicial concepts. This disenfranchisement of a political party is not any easy price for American to pay for any sort of internal security * * *.
>
> "It is for us, the American people, to keep alive the habit of free and full discussion, to tolerate differences of opinion no matter how distasteful to the great majority * * *."

These reflections are not offered here for the purpose of renewing in this Court constitutional issues with respect to the Smith Act. But they are certainly material to a consideration of whether the crime for which appellant was convicted bears the stamp of moral turpitude.

The following statements also have a peculiar historical relevance. They fall clearly within the ambit of the Smith Act, but no one would characterize their authors as lacking in moral rectitude.

> Thomas Jefferson, who said: "I hold it, that a little rebellion, now and then, is a good thing, and is necessary in the political world as storms in the physical * * *. It is a medicine necessary for the sound health of government." Padover, *The Complete Jefferson* (1943) 270.
>
> Alexander Hamilton, who said in The Federalist: "If the representatives of the people betray their constituents, there is then no resource left but in the exertion of that original right of self-defense which is paramount to all positive forms of government * * *." *The Federalist,* No. 28.
>
> Abraham Lincoln, who said in his First Inaugural: "This country belongs to the people who inhabit it. Whenever they shall grow weary of the existing Gov-

> ernment, they can exercise their constitutional right of amending it or their revolutionary right to dismember or overthrow it."

The crime itself, viewed in perspective, cannot be thus unequivocally classed as one of moral turpitude because it lacks that universal condemnation as a crime that contains elements of vileness, baseness or depravity.

When the record, furthermore, of the Smith Act trial itself is examined, as we contend it must if the Court is properly to determine the issues before it, no support can be found for ascribing to appellant guilt of moral turpitude.

There is no evidence that his intent, with respect to the issue of force and violence, differed in any way from the interpretation offered by Mr. Justice Murphy in *Schneiderman v. United States, supra,* p. 157:

> "A tenable conclusion from the foregoing is that the Party in 1927 desired to achieve its purpose by peaceful and democratic means, and as a theoretical matter justified the use of force and violence only as a method of preventing an attempted forcible counter-overthrow once the Party had obtained control in a peaceful manner, or as a method of last resort to enforce the majority will if at some indefinite future time because of peculiar circumstances constitutional or peaceful channels were no longer open."

The comment of Judge Chesnut, supra, p. 8, only reinforces that conclusion. Such was the defense position in the trial (Jury Charge, App. p. 33). The only evidence of what appellant ever did or said or thought as a member of the Communist Party was of a purely pacific, democratic nature (App. p. 44).

Without introducing preconceptions extraneous to the record, it is not possible to support in the record a finding that appellant had committed a crime involving moral turpitude. Conduct that was certainly not base, vile or depraved during the period from *Schneiderman* to *Dennis* may have become criminal after the latter decision, but a quiet conscience cannot name it moral turpitude. Can shifting winds in the political forum be the foundation for stripping a member of the bar of fourteen years standing, whose reputation is otherwise unimpeachable, of his professional status on the ground of a lack of moral probity?

In conclusion on this point, there was no showing with respect to appellant of evil intent, depravity, vileness, or baseness, fraud, or other attributes commonly associated with moral turpitude. He was convicted primarily of guilt by association with an unpopular cause.

IV. THE DISBARMENT ORDER DEPRIVED APPELLANT OF HIS CONSTITUTIONAL RIGHTS UNDER THE FIRST AND FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND THE DECLARATION OF RIGHTS OF MARYLAND, ARTICLES 1, 17 AND 23.

Disbarment for causes not reasonably related to the regulation of the practice of law is arbitrary action and the deprivation of property without due process of law. *Dent v. West Virginia,* 129 U. S. 114; *Cummings v. Missouri,* 4 Wallace 277; *Ex Parte Garland,* 4 Wall. 333.

In *Dent v. West Virginia,* supra, the Supreme Court discussed its earlier holdings in *Ex Parte Garland, supra,* and *Cummings v. Missouri, supra,* which invalidated the oaths prescribed in certain Civil War statutes as prerequisites to the practice of law. These oaths set forth a denial that the taker of the oath had engaged in activity inimical to the United States. In the *Dent* case, the Supreme Court said (129 U. S. at 126):

> "As many of the acts from which the parties were obligated to purge themselves by the oath had no relation to their fitness for the pursuits and professions designated, the court held that the oath was not required as a means of ascertaining whether the parties were qualified for those pursuits and professions, but was exacted because it was thought that the acts deserved punishment * * *".

In *Garland* and *Cummings* the Supreme Court held that persons could not be excluded from, in the one case, the legal profession, and, in the other, from the clergy on account of having actually borne arms against the government of the United States and having attempted to overthrow it by force and violence. The theory of the Court was that these factors had no bearing on qualifications for the legal profession. That the Court was right is demonstrated by the fact that Garland went on to become Attorney General of the United States.

In the present case, the appellant was not accused of having borne arms or of having attempted to overthrow the government by force and violence. He was not even accused of advocating violent overthrow. He was merely accused of "conspiring" so to advocate. Whatever he did was far less than what Garland and Cummings did. He can no more be constitutionally disbarred, therefore, than could Garland.

Political radicalism or radical organizational affiliation that has no bearing upon professional or moral qualifications to practice law or the public interest in the profession cannot be used arbitrarily to disbar without infringing the Fourteenth Amendment and the Declaration of Rights of Maryland, Article 1, and 23. Could one be disbarred if he believed in a Communist society and worked toward the achievement of that end within the framework of the Con-

stitution? *The Illinois Bar and Individual Freedom*, 50 Northwestern University Law Review 94, 104. Such a result would appear to be not only forbidden by the due process clause of the Fourteenth Amendment, but an invasion of the equal protection clause, In *Re Summers*, 325 U. S. 561, and First Amendment rights. *DeJonge v. Oregon*, 299 U. S. 353, 364; *Herndon v. Lowry*, 301 U. S. 242; *Wieman v. Updegraff*, 344 U. S. 183; *Schneiderman v. United States*, 320 U. S. 118.

As in the *Schneiderman* case, the record here is barren of any showing of conduct or statement by appellant which in any way indicates that he personally believed in or advocated the use of force and violence. As in the *Wieman* case, the record here is barren of evidence of awareness on appellant's part of any purpose of the Communist Party to use force and violence, or of evidence of any conduct or utterance on his part indicating sympathy with or participation in any such purpose. Accordingly, he cannot be deprived of his precious privilege to practice law.

There are other respects in which the disbarment order contravenes due process. It is in the nature of an ex post facto action or a "retrospective * * * restriction", Article 17, Declaration of Rights. During the period to which the evidence in the Smith Act case against appellant appertained, reliance upon *Schneiderman* induced belief that membership in the Communist Party carried neither criminal sanction nor hardly disbarment penalties. Ex post facto punishment of the harsh character visited upon appellant has been rejected by the Supreme Court with respect to lawyers in a far more turbulent period. *Cummings v. Missouri*, supra; *Ex parte Garland*, supra.

V. IN VIEW OF THE SEVERE PUNISHMENT ALREADY SUFFERED BY APPELLANT, THE ENDS OF JUSTICE REQUIRE THAT HE NOT BE DISBARRED.

Appellant was fined and sentenced to three years imprisonment for nothing more than membership in the Communist Party, which, for all that appears was of an entirely innocent quality. We submit that he has been punished sufficiently and that no useful purpose would be served by his disbarment.

The Supreme Court has recognized that conduct which might otherwise warrant disbarment should not disbar if it has already been severely punished. In *Sacher v. Bar Association*, 347 U. S. 388, 389, the Court reversed a disbarment for misconduct where the attorney had already served a sentence for contempt based on the same conduct. The Court stated:

> "At the time the District Court made its decision in this case, the contempt judgment was under review on appeal, and it did not know and could not know that petitioner would be obligated to serve, as he did, a six months' sentence for the same conduct for which it disbarred him.
>
> "In view of this entire record and of the findings of the Courts below, we are of the opinion that permanent disbarment in this case is unnecessarily severe."

Though not intended as punishment, disbarment almost invariably operates as "punishment of the severest character" (Mr. Justice Field in *Ex parte Wall*, 107 U.S. 265, 318). As the *Supreme* Court said in *Bradley v. Fisher*, 13 Wall. (U. S.) 335, 355:

> "Admission as an attorney is not obtained without years of labor and study. The office which the party thus acquires is one of value, and often becomes the source of great honor and emolument to its possessor.

> To most persons who enter the profession, it is the means of support to themselves and their families. To deprive one of an office of this character would often be to decree poverty to himself and destitution to his family."

Hence, as Mr. Justice Field said in *Ex parte Wall*, supra, 318:

> "Surely, the tremendous power of inflicting such a punishment should never be permitted to be exercised, unless absolutely necessary to protect the court and the public from one shown by the clearest legal proof to be unfit to be a member of an honorable profession".

The foregoing is a quotation from a dissenting opinion. But it expresses the law as previously enunciated by Mr. Justice Field on behalf of the Court in *Bradley v. Fisher*, supra, where he wrote at page 355:

> "A removal from the bar should, therefore, never be decreed where any punishment less severe — such as reprimand, temporary suspension or fine — would accomplish the end desired."

There is no evidence that appellant has ever been faithless to his oath as a lawyer, that he has ever brought harm to anyone or that anyone has been injured or suffered by what he has said or done. His professional life has been blameless. We submit that it is not desirable, necessary, or appropriate to disbar appellant. Whatever sins he may have committed have been more than fully expiated, and there is no basis for believing that he will in any way abuse the privileges of the profession.

CONCLUSION

In reviewing the action of the Supreme Bench, this Court has "the right to review the entire proceedings and affirm, modify, alter or reverse the order * * * as the substantial merits of the cause and the ends of justice may require." Article 10, section 17, Annotated Code of Maryland.

We submit that the substantial merits of this cause and the ends of justice require a reversal of the disbarment order or, at the very least, its modification by the imposition of a lesser penalty.

Respectfully submitted,

HAROLD BUCHMAN,
Attorney for Appellant.

APPENDIX

APPENDIX TO APPELLANT'S BRIEF NO. 108

In the Supreme Bench of Baltimore City

The Bar Association of Baltimore City

vs.

Maurice Braverman

TO THE HONORABLE, THE JUDGE OF THE SUPREME BENCH OF BALTIMORE CITY:

The petition of The Bar Association of Baltimore City respectfully shows:

1. Maurice Braverman is a member of the Bar of this Honorable Court, having been admitted to the practice of law before it on November 1, 1941, and he has since remained a member of the Bar of this Court. At the time of his admission to the Bar of this Court, and as a condition thereto, he was required and did take the following prescribed oath:

> "You do swear that you will support the Constitution of the United States and that you will be faithful and bear true allegiance to the State of Maryland and support the Constitution and Laws thereof; and that you will to the best of your skill and judgment, diligently and faithfully, without partiality or prejudice, execute the office of attorney of the Supreme Bench of Baltimore City according to the Constitution and Laws of this State. And you further swear that you will demean yourself fairly and honorably as an attorney of the Supreme Bench of Baltimore City".

2. On April 1, 1952, Maurice Braverman was convicted in the United States District Court for the District of Maryland of conspiracy to violate the provisions of Section 2 of the Smith Act of June 28, 1940, 54 Stat. 670, 671, 18 USCA 2385, and on April 4, 1952, was sentenced to a fine of $1,-

000.00 with costs and with further commitment in default of payment of said fine, and in addition, was sentenced to imprisonment for a period of three (3) years, as will appear from a certified copy of excerpt from the docket entries in the case of United States of America v. Maurice Braverman, et al., attached hereto as Petitioner's Exhibit No. 1.

3. Section 2 of the Smith Act of June 28, 1940, 54 Stat. 670, 671, USCA 2385, as brought forward in the United States Code, is as follows:

> "Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or
>
> "Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes or publicly displays any written or printed matter advocating, advising or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or
>
> "Whoever organizes or helps or attempts or organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof —
>
> "Shall be fined not more that $10,000 or imprisoned not more than ten years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction."

4. The Executive Committee of your Petitioner has adopted the following Resolution:

"Upon the recommendation of The Grievance Committee of The Bar Association of Baltimore City, it is hereby

RESOLVED, that appropriate proceedings be filed with The Supreme Bench of Baltimore City for such disciplinary action against Maurice Braverman as The Supreme Bench of Baltimore City may see fit to take in the premises".

WHEREFORE, your Petitioner prays that The Supreme Bench of Baltimore City take such disciplinary action against Maurice Braverman, the Respondent, as seems appropriate in the premises.

AND AS IN DUTY BOUND, ETC.

THE BAR ASSOCIATION OF BALTIMORE

By: /signed/ REUBEN OPPENHEIMER,
President,
Petitioner.

MORTON P. FISHER,
CHARLES E. ORTH, JR.,
Attorneys for Petitioner.

DEMURRER AND ANSWER

TO THE HONORABLE, THE JUDGES OF THE SUPREME BENCH OF BALTIMORE CITY:

Maurice Braverman, Respondent, by Harold Buchman, his attorney, respectfully moves to dismiss the Petition filed herein and the show cause order thereon on the following grounds:

1. That the allegations in the Petition do not contain good and sufficient grounds for disciplinary action against the Respondent under any causes provided therefor by statute.

2. That neither the record before the Grievance Committee of the Bar Association nor the record of proceedings in the United States District Court for the District of Mary-

land in the case of the United States of America v. Maurice Braverman, et al., Case No. 22322, disclose any grounds for disciplinary action.

And for such other and further reasons as may be assigned at the time of hearing.

HAROLD BUCHMAN,
Attorney for Respondent.

PETITIONER'S EXHIBIT NO. 1

In the United States District Court
for the District of Maryland

Criminal No. 22322

U. S. C., Title 18, Sec. 10 (1946 Ed.); U. S. C., Title 18, Sec. 2385 (1948 Ed.); U. S. C., Title 18, Sec. 11 (1946 Ed.); U. S. C., Title 18, Sec. 371 (1948 Ed.) — Conspiracy to advocate the overthrow of the Government by force and violence.

United States of America,

vs.

Philip Frankfeld, also known as Phil Frankfeld, George Aloysius Meyers, Leroy Hand Wood, also known as Roy H. Wood, Regina Frankfeld, Dorothy Rose Blumberg, also known as Dorothy Oppenheim Blumberg, and Maurice Louis Braverman.

The Grand Jury for the District of Maryland charges:

(1) From and on or about April 1, 1945, and continuously thereafter up to and including the date of the filing of this indictment, in the District of Maryland, and elsewhere,

PHILIP FRANKFELD, also known as Phil Frankfeld, GEORGE ALOYSIUS MEYERS, LEROY HAND WOOD, also known as Roy H. Wood, REGINA FRANKFELD, DOROTHY ROSE BLUMBERG, also known as Dorothy Oppenheim Blumberg, and MAURICE LOUIS BRAVERMAN, the defendants herein, unlawfully, wilfully, and knowingly did conspire with each other and with Albert Lannon, also known as Al Lannon, William Z. Foster, Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter, and Gus Hall, co-conspirators but not defendants herein, and with divers other persons to the Grand Jury unknown, to commit offenses against the United States prohibited by Section 2 of the Smith Act (54 Stat. 671), U. S. C., Title 18, Sec. 10 (1946 Ed.), and U. S. C., Title 18, Sec. 2385 (1948 Ed.), in violation of U. S. C., Title 18, Sec. 11 (1946 Ed.), being Section 3 of the said Smith Act while said section of said act remained effective, and thereafter in violation of U. S. C., Title 18, Sec. 371 (1948 Ed.), by (1) unlawfully, wilfully, and knowingly advocating and teaching the duty and necessity of overthrowing the Government of the United States by force and violence, with the intent of causing the aforesaid overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit; and by (2) unlawfully, wilfully, and knowingly organizing, and helping to organize, as the Communist Party of the United States of America a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence, with the intent of causing the aforesaid overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit;

(2) It was a part of said conspiracy that the said defendants and their co-conspirators would become members, officers, and functionaries of said Communist Party, knowing the purposes of said Communist Party, and in such capacities would assume leadership in said Communist Party and responsibility for carrying out its policies and activities to and including the date of the filing of this indictment;

(3) It was further a part of said conspiracy that said defendants and co-conspirators would cause to be organized groups, clubs, sections, and district, state, city, and national units of said Communist Party in the State of Maryland, in the District of Columbia, in the State of New York, and elsewhere, and would recruit, and encourage recruitment of, members to said Communist Party, concentrating on recruiting persons employed in key basic industries and plants;

(4) It was further a part of said conspiracy that said defendants and co-conspirators would publish and circulate, and cause to be published and circulated, books, articles, magazines, and newspapers teaching and advocating the duty and necessity of overthrowing and destroying the Government of the United States by force and violence as speedily as circumstances would permit;

(5) It was further a part of said conspiracy that said defendants and co-conspirators would write and cause to be written articles and directives in publications of the Communist Party of the United States of America, including, but not limited to, "Political Affairs", "Daily Worker", and "The Worker", teaching and advocating the necessity of overthrowing and destroying the Government of the United States of America by force and violence as speedily as circumstances would permit;

(6) It was further a part of said conspiracy that said defendants and co-conspirators would conduct, and cause to be conducted, schools and classes in which recruits and members of said Communist Party would be indoctrinated in the principles of Marxism-Lenninism and in which would be taught and advocated the duty and necessity of overthrowing and destroying the Government of the United States by force and violence as speedily as circumstances would permit;

(7) It was further a part of said conspiracy that said defendants and co-conspirators would agree upon, and carry into effect, detailed plans for the vital parts of the Com-

munist Party of the United States of America to go underground, in the event of emergency, and from said underground position to continue in all respects the conspiracy described in paragraph (1) of this indictment;

(8) It was further a part of said conspiracy that said defendants and co-conspirators would use false names and false documents in order to conceal their identities and activities as members and functionaries of said Communist Party;

(9) It was further a part of said conspiracy that said defendants and co-conspirators would do other and further things to conceal the existence and operations of said conspiracy.

In pursuance and furtherance of said conspiracy and to effect the objects thereof, the defendants and co-conspirators did commit, in the District of Maryland and elsewhere, the following overt acts, among others:

OVERT ACTS

1. On or about August 14, 1948, PHILIP FRANKFELD, also known as Phil Frankfeld, DOROTHY ROSE BLUMBERG, also known as Dorothy Oppenheim Blumberg, GEORGE ALOYSIUS MEYERS, LEROY HAND WOOD, also known as Roy H. Wood, and MAURICE LOUIS BRAVERMAN, defendants herein, did attend and participate in a convention of the Communist Party of the State of Maryland and the District of Columbia, held at Baltimore, Maryland.

2. On or about August 16, 1948, MAURICE LOUIS BRAVERMAN, a defendant herein, did attend and participate in a meeting held at 1834 Pennsylvania Avenue, Baltimore, Maryland.

3. On or about December 5, 1948, REGINA FRANKFELD, a defendant herein, did attend and participate in a meeting held at 1029 East Baltimore Street, Baltimore, Maryland.

4. On or about January 21, 1949, PHILIP FRANKFELD, also known as Phil Frankfeld, REGINA FRANKFELD, and DOROTHY

ROSE BLUMBERG, also known as Dorothy Oppenheim Blumberg, defendants herein, did attend and participate in a class of the Communist Party, held at 1023 East Fayette Street, Baltimore, Maryland.

5. On or about January 22, 1949, PHILIP FRANKFELD, a defendant herein, also known as Phil Frankfeld, did attend and participate in a meeting held at 1023 East Fayette Street, Baltimore, Maryland.

6. On or about January 28, 1949, PHILIP FRANKFELD, also known as Phil Frankfeld, REGINA FRANKFELD, and DOROTHY ROSE BLUMBERG, also known as Dorothy Oppenheim Blumberg, defendants herein, did attend and participate in a class on the "History of the Communist Party of the Soviet Union (Bolsheviks)", held at 1023 East Fayette Street, Baltimore, Maryland.

7. On or about February 4, 1949, PHILIP FRANKFELD, also known as Phil Frankfeld, DOROTHY ROSE BLUMBERG, also known as Dorothy Oppenheim Blumberg, GEORGE ALOYSIUS MEYERS, LEROY HAND WOOD, also known as Roy H. Wood, and MAURICE LOUIS BRAVERMAN, defendants herein, did attend and participate in a meeting held at 1023 East Fayette Street, Baltimore, Maryland.

8. On or about February 11, 1949, PHILIP FRANKFELD, also known as Phil Frankfeld, REGINA FRANKFELD, and DOROTHY ROSE BLUMBERG, also known as Dorothy Oppenheim Blumberg, defendants herein, did attend and participate in a class on the "History of the Communist Party of the Soviet Union (Bolsheviks)", held at 1023 East Fayette Street, Baltimore, Maryland.

9. On or about February 13, 1949, DOROTHY ROSE BLUMBERG, also known as Dorothy Oppenheim Blumberg, a defendant herein, did attend and participate in a meeting held at 1029 East Baltimore Street, Baltimore, Maryland.

10. On or about March 19, 1949, PHILIP FRANKFELD, also known as Phil Frankfeld, GEORGE ALOYSIUS MEYERS, LEROY HAND WOOD, also known as Roy H. Wood, DOROTHY ROSE

BLUMBERG, also known as Dorothy Oppenheim Blumberg, and MAURICE LOUIS BRAVERMAN, defendants herein, did attend and participate in a meeting held at 2101 Callow Avenue, Baltimore, Maryland.

11. On or about August 19, 1949, GEORGE ALOYSIUS MEYERS, a defendant herein, did attend and participate in a meeting held at 1029 East Baltimore Street, Baltimore, Maryland.

12. On or about September 10, 1949, PHILIP FRANKFELD, also known as Phil Frankfeld, GEORGE ALOYSIUS MEYERS, LEROY HAND WOOD, also known as Roy H. Wood, and REGINA FRANKFELD, defendants herein, did attend and participate in a meeting held in Baltimore, Maryland.

13. On or about January 27, 1950, PHILIP FRANKFELD, also known as Phil Frankfeld, a defendant herein, did attend and participate in a Communist Party class on revolution at the Master Beautician Center, 1522 Madison Avenue, Baltimore, Maryland.

14. On or about April 22 and April 23, 1950, PHILIP FRANKFELD, also known as Phil Frankfeld, REGINA FRANKFELD, GEORGE ALOYSIUS MEYERS, and LEROY HAND WOOD, also known as Roy H. Wood, defendants herein, did attend and participate in a Plenum of the Communist Party, held in Washington, D. C.

15. In or about December, 1950, GEORGE ALOYSIUS MEYERS, a defendant herein, did write and cause to be published and circulated an article entitled "Concentration and Trade Union Work."

16. On or about February 17, 1951, PHILIP FRANKFELD, also known as Phil Frankfeld, REGINA FRANKFELD, GEORGE ALOYSIUS MEYERS, and LEROY HAND WOOD, also known as Roy H. Wood, defendants herein, did attend and participate in a meeting held in Washington, D. C.

U. S. C., Title 18, Secs. 10 and 11 (1946 Ed.).

U. S. C., Title 18, Secs. 2385 and 371 (1948 Ed.).

PETITIONER'S EXHIBIT NO. 2

In the United States District Court for the District of Maryland

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No. 22322 Criminal Docket

The United States

vs.

Philip Frankfeld, also known as Phil Frankfeld, George Aloysius Meyers, Le Roy Hand Wood, also known as Roy H. Wood, Regina Frankfeld, Dorothy Rose Blumberg, also known as Dorothy Oppenheim Blumberg, and Maurice Louis Braverman.

DOCKET ENTRIES

1952

Jan. 15—Indictment for Vio. U.S.C. Title 18, Sec. 10 (1946 Ed.); U.S.C. Title 18, Sec. 2385 (1948 Ed.); U.S.C. Title 18, Sec. 11 (1946 Ed.); U.S.C. Title 18, Sec. 371 (1948 Ed.) (Conspiracy to advocate the overthrow of the Government by force and violence), filed.

Jan. 18—App. of Harold Buchman, Esq., for George A. Meyers, Regina Frankfeld and Le Roy H. Wood, Order filed.

Jan. 18—App. of R. Palmer Ingram, Esq. (Appointed by Court) for Dorothy Rose Blumberg, Order filed.

Jan. 18—Defendants arraigned and each plead "Not Guilty".

Jan. 18—Order of Court (Chesnut, J.) that all motions preliminary to trial on behalf of the Defendants in this cause be filed on or before February 1, 1952, filed.

Jan. 18—Stipulation between parties extending bail posted in No. 22209 Criminal to also cover each Defendant in this case No. 22322 Criminal, filed.

Jan. 23—App. of James T. Wright, Esq. for Le Roy Wood, Order filed.

Jan. 30—Motion of R. Palmer Ingram to strike out appearance as attorney for Dorothy Rose Blumberg and Order of Court (Chesnut, J.) granting leave, filed. (See case No. 22209 Crim.)

Feb. 1—Appearance of Carl Bassett, Esq., for Defendant Dorothy Rose Blumberg, Order filed. (See file in case No. 22209 Crim.)

Feb. 1—Motion of George A. Meyers, Leroy H. Wood, Maurice L. Braverman, Regina Frankfeld and Philip Frankfeld for bill of particulars, filed. (Service admitted.)

Feb. 1—Motion of George A. Meyers, Regina Frankfeld, Maurice L. Braverman, Leroy H. Wood and Philip Frankfeld to dismiss Indictment, filed. (Service admitted.)

Feb. 1—Motion of Maurice L. Braverman for severence, filed. (Service admitted.)

Feb. 6—Affidavit of Maurice L. Braverman in support of motion for severance, and Exhibit, filed. (Service admitted.)

Feb. 7—Motion of Defendants Philip Frankfeld, George A. Meyers, Le Roy H. Wood, Regina Frankfeld and Dorothy Rose Blumberg for reduction of bail, filed.

Feb. 8—Exceptions of United States of America to Demand for Bill of Particulars, filed.

Feb. 8—Motion of United States of America to dismiss motion of the Defendants to dismiss, filed.

Feb. 8—Exception of United States of America to motion for severance, filed.

Feb. 8—Brief Amicus Curiae in support of application of Maurice L. Braverman for severance, filed.

Feb. 28—Order of Court (Chesnut, J.) overruling motions for bill of particulars and to dismiss the indictment on various grounds, and the motion by Maurice Braverman for a severance, filed.

Feb. 29—Opinion of Court (Chesnut, J.), re: motions for bill of particulars &c. and motion by Maurice Braverman for a severance, filed.

Mar. 4—Motion of Regina Frankfeld, George A. Meyers, Le Roy H. Wood, Dorothy R. Blumberg, and Maurice L. Braverman for continuance and Affidavit in support thereof, filed. (Service admitted.)

Mar. 4—Motion of Regina Frankfeld, George A. Meyers, Le Roy H. Wood, Dorothy R. Blumberg and Maurice L. Braverman to compel compliance with Order of Court dated December 3, 1951, filed. (Service admitted.)

Mar. 5—Stipulation between parties that all motions, &c. filed in case No. 22209 Criminal shall be regarded as having been filed in the present case, No. 22322, filed.

Mar. 6—Answer of United States of America to Defendant's Motion to compel compliance with Order of Court dated December 3, 1951, filed.

Mar. 6—Answer of United States of America to Defendant's Motion for Continuance, filed.

Mar. 8—Questions proposed by Defendants to be put to prospective Jurors on Voir Dire, filed. (Service admitted.)

Mar. 10—Motion of Defendants to reconsider Defendants' motion seeking compliance with Order of Court dated December 3, 1951, filed. (Service admitted.)

Mar. 10—Motion of George A. Meyers, Regina Frankfeld, Leroy Wood, Dorothy Rose Blumberg and Maurice Braverman, for continuance, filed.

Mar. 10—Motion of Defendants to challenge the array and to quash and dismiss the entire panel, etc. filed. (Service admitted.)

Mar. 10—Government's proposed questions on Voir Dire, filed.

Mar. 10—Request of Harold Buchman, Esq., to strike out appearance as Attorney for George A. Meyers and Order of Court (Chesnut, J.) granting leave, filed.

Mar. 10—Appearance of Harold Buchman, Esq. for Philip Frankfeld, Order filed.

Mar. 10—Jury empanelled and sworn.

Mar. 10—Not concluded, to be resumed tomorrow morning at 10 o'clock.

Mar. 11—Not concluded, to be resumed tomorrow morning at 10 o'clock.

Mar. 12—Not concluded, to be resumed tomorrow morning at 10 o'clock.

Mar. 13—Not concluded, to be resumed tomorrow morning at 10 o'clock.

Mar. 14—Not concluded, to be resumed tomorrow morning at 10 o'clock.

Mar. 17—Not concluded, to be resumed tomorrow morning at 10 o'clock.

Mar. 18—Not concluded, to be resumed tomorrow morning at 10 o'clock.

Mar. 19—Not concluded, to be resumed tomorrow morning at 10 o'clock.

Mar. 19—Defendants' Motion to strike testimony of Witness Paul Crouch, fd. (Service admitted.)

Mar. 19—Defendants' Motion to strike testimony of Witness John Lautner, fd. (Service admitted.)

Mar. 19—Defendants' Motion to strike testimony of Witness William Nowell, fd. (Service admitted.)

Mar. 20—Not concluded, to be resumed tomorrow morning at 10 o'clock.

Mar. 21—Defendants' Motion to strike testimony of Witness Charles Nicodemus, filed. (Service admitted.)

Mar. 21—Defendants' Motion to strike testimony of Witness Ralph Long, filed. (Service admitted.)

Mar. 21—Defendants' Motion to strike testimony of Witness Mary Stalcup Markward, filed. (Service admitted.)

Mar. 21—Defendants' Motion to strike testimony of Witness Robert Benner, filed. (Service admitted.)

Mar. 21—Defendants' Motion to Acquit at close of the Government's case, filed. (Service admitted.)

Mar. 27—Defendants' Motion to Acquit at close of all the evidence, filed. (Service admitted.)

Mar. 27—Defendants' Motion to withdraw a Juror and to declare a mistrial, filed. (Service admitted.)

Mar. 27—Oral Motion on behalf of Defendant Maurice Louis Braverman to withdraw a Juror and declare a mistrial made in open Court.

Mar. 27—All Motions of Defendants filed herein on March 19, 21 and 27, and also Oral Motion of Defendant Maurice Louis Braverman "Overruled", Orders signed. (See original Motions.)

Mar. 28—Defendant's Requests for proposed Instructions to the Jury, filed.

April 1—Court's charge delivered to the Jury.

April 1—Bailiff sworn.

April 1—Verdict: "Guilty" as to each of the Defendants.

April 1—Imposition of Sentence suspended until Friday morning at 10 o'clock.

April 2—Certificate re: Contempt of Court by George Aloysius Meyers, filed.

April 2—Defendant George Aloysius Meyers adjudged in Contempt of Court and committed to the custody of the Attorney General of the United States for imprisonment

in such place of confinement as he may designate for the period of thirty days, said term of imprisonment to begin on the 4th day of April, 1952, Order of Court (Chesnut, J.), filed. (Executed — April 4, 1952.)

April 4—Judgment as to Philip Frankfeld: That the Defendant pay a fine of One thousand ($1,000.00) dollars, with costs, and with further Commitment in default of payment of said fine, and committed to the custody of the Attorney General of the United States for imprisonment in such place of confinement as he may designate, for the period of Five years, Order (Chesnut, J.), filed.

April 4—Judgment as to George Aloysius Meyers: That the Defendant pay a fine of One thousand ($1,000.00) dollars with costs, and with further Commitment in default of payment of said fine, and committed to the custody of the Attorney General of the United States for imprisonment in such place of confinement as he may designate, for the period of Four years, said term of imprisonment to run consecutive to sentence of Thirty days heretofore imposed on said Defendant for Contempt of Court, Order (Chesnut, J.), filed. (Executed.)

April 4—Judgment as to Defendants Leroy Hand Wood, Dorothy Rose Blumberg, and Maurice Louis Braverman: That the Defendants each pay a fine of One thousand ($1,000.00) dollars with costs, and with further commitment in default of payment of said fine, and be committed to the custody of the Attorney General of the United States for imprisonment in such place of confinement as he may designate for the period of Three years each, Order (Chesnut, J.), filed. (Executed by delivery of defendant, Leroy H. Wood to Federal Correctional Institution at Ashland, Kentucky.)

April 4—Judgment as to Regina Frankfeld: That the Defendant pay a fine of One thousand ($1,000.00) dollars, with costs, and with further commitment in default of payment of said fine, and committed to the custody of the Attorney General of the United States for imprisonment in such place of confinement as he may designate for the period of Two years, Order (Chesnut, J.), filed.

April 4—Counsel stated in open Court that appeal was entered on behalf of each Defendant.

April 4—Hearing on application for release on bail for each Defendant pending appeal.

April 4—Argued and held sub-curia.

April 5—Defendants' Notice of Appeal, filed. (Service admitted.)

April 7—Order of Court (Chesnut, J.) allowing and fixing bail on appeal for Defendants as follows, viz: Philip Frankfeld and George Aloysius Meyers, $20,000.00 each; Leroy H. Wood, Dorothy Rose Blumberg and Maurice Louis Braverman, $15,000.00 each; and Regina Frankfeld $10,000.00, filed.

April 7—Recognizance of Maurice Louis Braverman on appeal, filed.

April 7—Recognizance of Dorothy Rose Blumberg on appeal, filed.

April 7—Recognizance of Leroy Hand Wood on appeal, filed.

April 8—Recognizance of Philip Frankfeld on appeal, filed.

April 8—Notice of Appeal of Defendant George Aloysius Meyers from Judgment of Contempt, filed. (Service admitted.)

April 9—Recognizance of Regina Frankfeld on appeal, filed.

April 10—Attested copy of Order of Honorable John J. Parker, Chief Judge, Fourth Circuit, denying application of George A. Meyers for release on bail, filed.

April 30—Defendants' Designation of Record on Appeal, filed. (Service admitted.)

May 5—Recognizance of George Aloysius Meyers on appeal, filed.

May 7—Transcript of Proceedings before the Court on March 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 29, and 31, April 1, 2 and 4 (in 19 Volumes), filed.

May 9—Excerpt from Transcript of Proceedings before the Court on October 4, 1951, filed.

May 9—Transcript of Proceedings before the Court on November 5, 1951, filed.

May 13—Record on Appeal transmitted to U. S. Court of Appeals for the Fourth Circuit.

June 9—Certified copy of Order of Counsel dismissing the Appeal filed by Defendant George A. Meyers, from judgment of contempt in the U. S. Court of Appeals for the Fourth Circuit, filed.

1953

Jan. 24—Mandate, and copies of Opinions of U. S. Court of Appeals for the Fourth Circuit on hearing on Appeal, and on Petition for re-hearing, affirming the Judgments of the District Court appealed from, filed.

Jan. 24—True copy of Order of Honorable John J. Parker, Chief Judge, Fourth Circuit, denying Motion of Appellants to continue the stay of the Mandate herein, filed.

Jan. 26—Defendants' Motion for reduction of sentences, filed. (Service admitted.)

Jan. 26—Answer of United States of America to Defendants' Motion for reduction of sentences filed. (Copy mailed.)

Jan. 27—Defendants each surrendered in open Court to U. S. Marshal to begin sentence heretofore imposed upon them.

Feb. 13—Hearing on Defendants' Motion for reduction of sentence before Chesnut, J.

Feb. 13—Order of Court (Chesnut, J.) "overruling" Defendants Motion for reduction of sentence, filed.

Mar. 30—Defendants' motion for a new trial, and Appendices A. B. & C. filed. (Service admitted.)

Apr. 8—Memorandum in opposition to Defendants' Motion for a new trial, filed. (Copy mailed.)

Apr. 13—Affidavit of Harold Buchman in support of motion for new trial, and Exhibits, filed. (Service admitted.)

Apr. 24.—Opinion and Order of Court (Chesnut, J.) overruling Defendants' Motion for new trial, filed.

May 1—Defendants' Notice of Appeal, filed. (Service admitted.)

May 14—Defendants' Designation of Record on Appeal, filed. (Service admitted.)

June 8—Record on Appeal transmitted to U. S. Court of Appeals.

Oct. 20—Mandate and Copy of Opinion of U. S. Court of Appeals affirming the Order of the District Court dated April 24, 1953, filed.

In the United States District Court
for the District of Maryland

Criminal Docket No. 22322

United States of America

vs.

Philip Frankfeld, et al.

COURT'S CHARGE TO THE JURY

MEMBERS OF THE JURY:

During the last three weeks you have heard the evidence in this case and the arguments of counsel. The time has

now come for the court to instruct the jury as to the law of the case. As I think you already know, the functions of the court and the jury are quite different. It is the duty of the court to instruct you as to the law of the case. As to this, you accept the statements of the applicable law without question for the purposes of the case. But as to the determination of the facts on the evidence, it is solely the province of the jury to determine them. In instructing you as to the law of the case it may become necessary for me to refer at times to some of the evidence for purposes of illustration and for possibly advisory help to the jury in the logical application of the law to the facts as the jury finds the facts. But I again emphasize that it is the sole power, duty and function of the jury to appraise the evidence and to determine therefrom the facts of the case, and any reference by the judge to the evidence is advisory only to the jury.

This is an important case both to the Government of the United States and to the six defendants respectively. Because it is an important case I have thought it desirable to prepare the charge in writing rather than to deliver it merely orally and extemporaneously.

Before coming to the instructions to you with regard to the particular charge made in the indictment, I wish at the outset to call your attention to and instruct you about some well established principles of law applicable to all criminal cases, of which this is one. In the first place the charge made in the indictment by the Grand Jury is of itself not evidence of the truth of the charge as made. Under the Constitution of the United States defendants may not be prosecuted for serious crime, as in this case, except upon the indictment by a Grand Jury. The indictment is merely the formal required way of presenting the charge and the defendant cannot be convicted except upon the determination of the truth of the charge by the unanimous verdict of a petit jury of 12 members. You are that petit jury.

Another will established principle is that the defendant is entitled to the presumption of innocence. That is, of course, an important right throughout with the defendants

respectively unless and until the jury, as a result of all the evidence in the case, concludes that the charge has been established affirmatively by evidence which satisfies them of the truth of the charge beyond a reasonable doubt. I will later on, however, state to you what is the meaning of the words "reasonable doubt" in a criminal case.

I come now to the explanation to you of just what is the charge made by the Grand Jury against these six defendants. It is, of course, what is contained in the written indictment before you and which has heretofore at the outset of the case been generally stated by counsel for the respective parties. However, it is my duty to be more particular in the matter of stating what is the charge so that you will clearly understand precisely what you have to consider.

The charge is that these six defendants conspired among themselves and with a large number of other persons specifically named in the indictment who, however, are not themselves now on trial, to violate a statute of the United States, in this case known as the Smith Act, which is to be found in the United States Code of Criminal Laws, title 18, sec. 2385. It was first passed by Congress in 1940 and somewhat amended, in phraseology rather than in substance, by Congress in 1948.

Let me now explain to you the law with regard to conspiracy to commit a crime. Conspiracy means an agreement of two or more persons to commit an unlawful act. Conspiracy to commit such an act is itself a crime even though the act itself is not actually committed, provided that some one or more of the persons who agree to commit the crime have done some so-called "overt" act toward the carrying out of the unlawful crime. This crime of conspiracy to commit a crime has long been forbidden and made punishable by a statute of the United States which in this case is section 371 of title 18 of the United States Code. It reads:

> "If two or more persons conspire * * * to commit any offense against the United States, * * * and one or

more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than 5 years, or both."

As I have said, the conspiracy charged in the indictment in this case is to violate the Smith Act. That Act is now found in section 2385 of title 18 of the United States Code which reads:

"s. 2385: Advocating overthrow of Government:

"Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or

"Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so, or

"Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof"

shall be punished as stated in the Act.

This Act has recently been held valid and constitutional by the Supreme Court of the United States. Its obvious purpose is to protect existing government, not from change by peaceable, lawful and constitutional means but from change by violence, revolution, and terrorism. It seeks to

preserve and insure in the United States that domestic tranquility which is mentioned in the preamble to our Constitution as one of the reasons for its adoption.

You will note that the Smith Act is not violated unless the persons charged with its violation have acted wilfully and knowingly and with the specific intent to do one or more of the things prohibited by the statute, that is —

1. Knowingly or wilfully advocating or teaching the duty or necessity of overthrowing the government by force and violence;

2. Publishing or circulating printed matter which so advocates or attempts to do so with intent to cause the overthrow or destruction of the government;

3. Organizing or attempting to organize groups who do so intentionally advocate or teach or encourage such overthrow, or

4. Become a member of or affiliate with any such group knowing the purposes thereof.

The defendants are not indicted for a violation of the Smith Act but for a conspiracy to violate the Act. That is to say, it is not alleged in the indictment that the defendants have actually committed violations of the Act but only that they agreed or conspired to do so, and, as I have said, a conspiracy to violate a statute of the United States is itself a definite and certain crime even though the actual violation is not consummated. If you find a reasonable doubt that two or more of the defendants did conspire to violate the statute in any one of the four ways just above mentioned, and a requisite overt act was committed as above stated, that is sufficient to justify your finding of a verdict of guilty against those of the defendants whom you find did so agree and conspire. But unless you do find affirmatively beyond a reasonable doubt with respect to each of the defendants separately and respectively considered that they did conspire either among themselves or with others named in the indictment who are not defendants, to commit one or more of the prohibited acts, you

should find a verdict of not guilty for such defendant who did not so conspire. And in the case of any one of the defendants I charge you that you should find that defendant not guilty unless you find that in so conspiring with another or others that he did so wilfully, knowingly and with the intent mentioned.

The indictment charges that the defendants conspired to violate the Smith Act in several particulars: (1) by advocating and teaching the duty and necessity of overthrowing the government by force and violence with intent to do so as speedily as circumstances would permit; (2) by organizing and helping to organize the Communist Party of the United States of America as a society, group or assembly of persons who so taught and advocated; (3) by becoming members, officers and functionaries of said Communist Party knowing the purposes of said Party, and in such capacity to assume leadership in the Party and responsibility for carrying out its policies and activities; (4) by organizing clubs, groups and sections of said Party in the State of Maryland and in the District of Columbia and elsewhere and recruiting members to said Party concentrating on recruiting persons in key basic industries and plants; (5) by publishing and circulating books, magazines and newspapers teaching and advocating the duty and necessity of so overthrowing the government; (6) by conducting schools and classes in which prospective recruits and members of said Party would be indoctrinated in the principles of Marxism-Leninism and in which would be taught and advocated the duty and necessity of so overthrowing the government as speedily as circumstances would permit. Still other purposes of the conspiracy are mentioned in the indictment which I think it unnecessary to more particularly mention in this charge.

With further reference to the crime of conspiracy, you are instructed that no defendant must be convicted of the conspiracy charge unless some one of the conspirators has committed some overt act toward the purpose of the conspiracy. An overt act means simply the doing of some physical act. It does not mean, however, that the act must

be one which would of itself constitute a wrongful act. To illustrate this, if two men agree to burglarize a bank and pursuant thereto one buys tools to force entrance into the bank, the purchase of such tools would be an overt act sufficient to constitute the conspiracy, although there was no actual breaking into the bank. In the indictment in the present case there are alleged to have been committed by one or more of the defendants 16 separate overt acts. They consist of alleged meetings of one or more of the alleged conspirators at a certain time and place. These meetings are sufficient to constitute overt acts in this case. It is not necessary for the government to prove each and all of the 16 overt acts mentioned. It is sufficient if any one has been performed of the character described. It is, however, necessary that the government establish by evidence that some one of the overt acts was committed within the period of three years prior to the filing of the indictment which in this case was on January 15, 1952. Therefore the government must prove that some one of the overt acts listed in the indictment occurred after January 15, 1949. Most of the overt acts set out in the indictment are alleged to have occurred within three years before the finding of the indictment in this case. There is evidence in this case that several of the overt acts specified in the indictment did occur within the three year period and I do not recall any evidence to the contrary.

The significance of the three-year period is that there is a period of limitations back of which a person may not be prosecuted for the commission of an alleged crime. Therefore none of the defendants can be convicted unless he or she respectively was a party to the conspiracy within this three-year period before the finding of the indictment on January 15, 1952. For instance, if you find out that any of the defendants became a party to the conspiracy charged at a time more than three years before January 15, 1952, he cannot be convicted unless the conspiracy continued and he continued to be a conspirator thereof and within three years prior to January 15, 1952. If, however, you find that the conspiracy beginning on or about April 1, 1945, as charged in the indictment, continued thereafter until the

finding of the indictment, or at any period within three years prior thereto, you can properly convict such of the defendants who were parties to the conspiracy within the three-year period.

I now come to some consideration of the contentions of the government and of the defendants respectively with regard to what the evidence in this case shows. In this connection I again remind you, as I have frequently done throughout the trial of the case, that your verdict should be based upon the evidence that you have heard from the witnesses in the case and the documentary exhibits or papers which have been filed. Statements made by counsel in the case in arguing the admissibility of or objections to proposed evidence and colloquies between the court and counsel with respect to the admission or rejection of evidence are themselves not evidence. Neither are the arguments of counsel either for the governmnt or for the defendants to be considered evidence but only as persuasive arguments to you as to what you should find from the evidence. In reaching your conclusion as to the facts established by the evidence you should approach consideration of the evidence calmly and dispassionately without emotion, bias or prejudice either in favor of or against the contentions of the government or of the defendants. You should not be affected in reaching your decision by any consideration whatever other than your own appraisal of the evidence in the case.

The first thing to be determined in any conspiracy case is, was there a conspiracy between two or more persons to violate a federal statute. It is this agreement of two or more persons to commit a crime, even though not carried out, that constitutes a potential danger and is against the public interest, while a mere intention of one person to do so would not be a crime. What was the conspiracy alleged in the indictment?

The contention of the government is that on or about April 1, 1945, the Communist Party of the United States was organized by some or all of the above 13 persons named in the indictment as William Z. Foster, Eugene Dennis,

John B. Williamson, Jacob Stachel, Robert B. Thompson, Benjamin J. Davis, and others with the objective of overthrowing the government of the United States by force and violence as speedily as circumstances would permit, and that this was done knowingly and intentionally and with the specific intent so to do, and that the defendants named in this case participated in and approved the plan and agreement and then or thereafter became active members and officers of the Party in furtherance of the objects of the Party within the State of Maryland and the District of Columbia; and that they so continued in active furtherance of the plans and conspiracy up to the time of the filing of the indictment. To sustain this contention it is not necessary for the government to prove that all of the defendants did so actively participate in the conspiracy as early as April 1, 1945, provided you find beyond a reasonable doubt that such a conspiracy was in fact organized about that time by others named in the indictment and that thereafter the defendants respectively joined in said conspiracy and continued as such conspirators within the three-year period prior to the finding of the indictment.

It is a part of the government's contention in this case that long prior to 1945 and as early as 1929 there was in existence in the United States a Communist Party which did have the objective of overthrowing the government of the United States by force and violence; that about that time the Communist Party as then constituted sent a group of about 30 young Communists from the United States to Moscow in Russia to be indoctrinated in the principles of Marxism-Leninism which included the objective of creating what has been so fully described in the evidence in this case as a dictatorship of the proletariat by force and violence if necessary; and that after the Communists had been so indoctrinated in Moscow they were sent back to the United States to put into effect when and where opportune the practical instructions that they had received for the purpose of overthrowing the then existing government of the United States by force and violence. In this connection the government has introduced into evidence numerous books, pamphlets or writings which, it is contended, were

expressive of the purpose mentioned. Among such papers are one or more books referred to as stating the objectives of the so-called Communist Internationale and that the lesson to be learned from these publications is that it was the objective of the Communist Internationale to accomplish in the future and as speedily as circumstances would permit nothing short of a world revolution on the pattern of the Russian Revolution of 1917 which, the government contends, was in fact accomplished by widespread force and violence. According to other evidence in this case the meaning of the objective described as dictatorship of the proletariat is that the so-called working classes of the nation should unite and, by force of arms if necessary, seize power from the then existing governments of a particular nation and exclude other classes of the nation from participation in the exercise of power, or, in other words, to overthrow the then existing government of a particular nation by force and violence, and substitute one particular class of the nation as the rulers for the nation as a whole to the prejudice of all other classes and incidentally the seizure of property belonging to other classes for the benefit of the one substituted governing class. In this connection the term "proletariat" is said to mean the working class which presumptively holds no property, while all other classes are referred to as "bourgeoisie" or property owners. The stated objective therefore was the seizure both of power and of property of others by and for the proletariat only.

There is much evidence in this case in support of this contention of the government but I specially charge you that it is for the jury to weigh the evidence and determine for itself whether the government has established the truth of this contention on the facts beyond a reasonable doubt.

The government has also put in evidence tending to show that during the year 1944 the aims and objectives of the therefore existing Communist Party of the United States were importantly revised or changed under the persuasive arguments of one Earl Browder who at that time was the Chairman of the National Governing Board of the Com-

munist Party. The important stated change in 1944 was to the effect that the Communist Party should then abandon its prior program of overthrowing the government by force and violence and substitute therefor a program which had no such objective but which would within and in accordance with the framework of the American Constitution and by peaceful lawful means only, endeavor to accomplish desired liberalization in the laws and government of the United States with special reference to more favorable legal and economic conditions affecting the working classes particularly. In other words, a program of peaceful change was substituted for a contemplated ultimate change by force and violence. In consequence and in accord with this change of plan there is evidence that the Communist Party was then dissolved and a new Party was organized to be known as the Communist Political Association. However the government contends on the evidence that this revision of the important objectives of the Party was of short duration and that about June 1945 the new Communist Political Association was dissolved and reconstituted under the name of the Communist Party and along the lines and with the same objectives with respect to overthrowing the government by force and violence that had existed in the Communist Party prior to 1944. There is evidence that this change came about in the following way. William Z. Foster had been strongly opposed to the revision of the Communist objectives advanced by Earl Browder and it was under Foster's leadership that the revision of the Party principles advocated by Browder was abandoned and the Party re-constituted with its former principles, and by the deposition of Browder as the leader of the Party. There is also evidence that a very influential factor in the re-constitution of the Communist Party in 1945 was a long letter written by one Jacques Duclos, an active and prominent French Communist, to the Communist Party leaders in the United States, in which the controversy in the Communist Party in this country was reviewed at great length and it was strongly urged that the Party should abandon the changed principles advanced by Browder and the Communist Political Association and should be re-constituted

as the Communist Party of the United States. William Z. Foster strongly advocated the position taken by Duclos. This Duclos letter was printed at great length in the Daily Worker, the official publication of the Communist Party published in New York City, in its issue of May 24, 1945. You have heard it read at length.

The organization of the Communist Party in the United States is that the whole of the United States is divided into districts or particular territories of which the State of Maryland and the District of Columbia are one. The policies of the Party are determined by delegates elected in the several districts to attend a Convention of the Party in some particular city and there adopt resolutions which determine the policies of the Party, and elect a governing national board which from time to time makes decisions which, when made, are binding upon all officers and members of the Party in different districts. This is a policy which, according to the government's contention on the evidence in this case, is called "Democratic centralism" whereby the whole membership of the Party is strictly disciplined and obliged to conform to the rulings of the governing body or of its subcommittee, of which, in 1945, William Z. Foster became the active chairman and leader in place of Earl Browder. There is much evidence in this case that at the Convention of the Party in 1945 the Communist Party was re-constituted and adopted the principles theretofore held and advocated by the Communist Party in America as it had existed prior to 1944 and consistent with the principles of the Communist Internationale which in effect advocated world revolution of the kind heretofore described, and that those revived principles have continued as the ultimate aims and objectives of the Communist Party to the present time. In this connection, however, I again repeat that the jury must determine from its own recollection of the evidence as a whole whether the contention of the government has been established beyond a reasonable doubt.

In connection with this alleged reconstitution of the Communist Party in 1945, there is evidence that in 1943

there occurred the well-known meeting at Teheran between President Roosevelt, Winston Churchill, then Prime Minister of Great Britain, and Joseph Stalin of Russia with respect to the successful conclusion of the war then existing between Russia and Germany on the one hand, and between the United States, Great Britain, France and China against Germany, Italy and Japan on the other hand. It is contended by the government that as a consequence of the agreements or understanding resulting from this Teheran Conference that Earl Browder was actuated in persuading the Communist Party in the United States in 1944 to importantly change its objectives with respect to the government of the United States. And it will be remembered as a matter of history that Germany unconditionally surrendered to Russia, the United States, Great Britain and France on or about May 8, 1945. The Duclos letter was published in the Daily Worker on May 24, 1945, and the Convention of the Communist Political Association at which the former Communist Party was re-constituted, was in June or July 1945, thus within a few weeks only after the unconditional surrender of Germany with whom Russia had been at war since June 21, 1941.

As I have heretofore indicated, the issues of fact in this case to be determined by the jury naturally divide themselves into two main questions. One is whether the jury finds beyond a reasonable doubt that the re-constitution of the Communist Party in 1945 constituted in effect a conspiracy to teach and advocate the overthrow of the government of the United States by force and violence when the time therefor became opportune, or to otherwise violate the Smith Act. The second important main question in the case is, if the jury finds that the government has established the first, did the six defendants in this case respectively join in said conspiracy wilfully and with knowledge of the purposes thereof and with the intent herein described, and continue therein within three years prior to the finding of the indictment. In this connection I particularly call your attention to two classes of evidence so that you may properly appraise them with respect to the two main questions of fact that you have to determine. The two classes of

evidence to which I now refer are (1) evidence of witnesses and particularly the witnesses Crouch and Nowell, with respect to their trips to Moscow in 1929 or '30, and 1931 or '32, and the relation by them of their experiences there with reference to indoctrination into Communist principles, and also any other evidence in the case relating to matters occurring before the alleged re-constitution of the Communist Party in 1945. This class of evidence has proper relation only to the first main question in the case, that is, what were the principles and objectives of the Communist Party after 1945, and were they, as contended by the government, the same as before 1944. With respect to the second main question in the case, that is, the alleged participation of the six defendants in the conspiracy within three years prior to the indictment, this class of evidence as to happenings before 1945 has no relation, except as to the defendant Philip Frankfeld who, you will remember, was mentioned in the evidence of Nowell as one of the group of thirty young Communists who were sent to Moscow about 1931 for indoctrination in the principles of the Communist Party. The other class of evidence to which I have above referred is that of the statements and opinions of about ten witnesses for the government with respect to their knowledge of the objectives and principles of the Communist Party. Some of these witnesses were former active members or officials or functionaries of the Communist Party and some were persons who for some time became and were connected with the Party for the purpose of reporting its activities to the Government. The evidence of them or some of them was to the effect that from the intimate knowledge that they have acquired of the Party as active participating members it was the principle and objective of the Party to teach the duty and necessity of overthrowing the government by force and violence when the time was opportune. In weighing their evidence to that effect you should consider the whole of their evidence, some of which as to some of the witnesses was supported by specific references to authorized literature of the Party with which they became familiar. Many extracts from such literature have been read to you by the witnesses or by counsel. It is for

you to determine whether such literature did fairly represent the aims and objectives of the Party and whether the language used, with frequent references to the use of force and violence, constitutes a reasonable basis for the statements and opinions of the witnesses. In other words, you should consider the facts and circumstances on which the witnesses based their statements as well as the mere statement of the witness with respect thereto.

In this connection I have not found it necessary to instruct you in much detail with regard to the matter of the law of evidence affecting conspiracy cases with relation particularly to the admissibility and weight of evidence of mere declarations or statements of alleged members of the conspiracy, not made in court and subject to cross-examination, because in this case the statements relied upon by the government are not mere declarations out of court of alleged co-conspirators, but are the direct evidence given from the witness stand by witnesses subject to cross-examination based on their own stated knowledge of the objectives of the Party to which they formerly belonged.

The jury are instructed that in determining from the evidence whether the principles and objectives of the Communist Party are to advocate or teach the duty and necessity of overthrowing the government of the United States by force and violence, it is not necessary for the government to show that any open armed conflict has heretofore actually occurred or been attempted to accomplish the ultimate objective but only that the objective in fact exists and is intended to be accomplished as speedily as circumstances would permit. In this connection the affirmative of the principles was expressed by one of the witnesses, Lautner, who said he had been an official instructor for the Party authorized to teach its doctrines to members or prospective members, who testified that in his teachings he taught that it was the aim of the Communist Party to advocate the overthrow of the United States Government by force and violence, that it was the purpose of the Party to cause a revolution and that the time and circumstances for such a revolution to be brought about were in the case of a national

emergency, crisis or war and when the Party had sufficient influence to carry out the revolution with success. I refer to this particular part of the testimony not for the purpose of laying special emphasis on it but only as illustrative of the government's contention with respect to the time when revolution was to be accomplished.

In determining whether it was the principle of the Communist Party since 1945, and within three years before the finding of the indictment, to advocate force and violence in accomplishing a revolution in the United States you should also consider the evidence with respect thereto given by the witness Meyers, one of the defendants, and by Dr. Aptheker, a lecturer and writer on Marxist-Leninist history and doctrines who has for some years been an authorized speaker in public for the Communist Party, and an active member thereof. This evidence is extended, as you will recall, and has recently been given to you. It is to the effect that the Communist Party does not teach or advocate the use of violence to accomplish a revolution but contemplates causing it only by peaceful means and consistent with the provisions of the Constitution of the United States; that it never has and does not now advocate the use of force and violence nor contemplate the existence thereof in connection with a revolution except that if and when the revolution is accomplished by peaceful means through the will of the majority of all the people, it may be necessary for the majority to use violence to suppress violence which may occur from a minority of the people in resistance to the revolutionary change. You should also consider the evidence given by these witnesses in which they define the Communist concept of Democratic centralism differently from the definition attributed to that phrase by the government witnesses. The defendants contend that Democratic centralism does not require inflexibly rigid discipline of subordinates in the Party to the expressed will of the leaders but only that conformity to the determined policy of the governing authority of the Party reached after full consideration and expression of views by all elements in what they describe as the general Democratic principle

similar to that of other governing bodies or associations. These witnesses also disagree with the definition of Imperialism as stated by the government's witnesses, and Dr. Aptheker has explained at length his conception of the term "historical materialism". I will not undertake to summarize it here as you have recently heard it. They also disagree to some extent with the definition of the term dictatorship of the proletariat and of the use of the word bourgeoisie as stated by the government's witnesses. They contend that the avowed object of the Communist Party is to accomplish a revolution without force and violence whereby the sources of production in the United States will be transferred in ownership and operation from the so-called present capitalistic ownership thereof. They say that their object is to accomplish a revolutionary change which would abolish capitalistic ownership of the sources of production including the mines, the factories, railroads and other sources of production, and substitute therefor as owners the whole of the so-called working classes, by which they mean the people who work in and about production, as the new governing class in the nation when and only when by peaceful education of the public the majority of the people have become convinced that that revolutionary change is desirable. In this connection it is well to bear in mind several provisions of the present Constitution of the United States. One is that no person shall be deprived of life, liberty or property without due process of law; that private property cannot be taken for public use without just compensation; and that the Constitution of the United States cannot be amended in these respects except by legislation by Congress of a proposed constitutional amendment which would have to be ratified by three-fourths of the 48 States of the Union. They also contend that the Communist Party program is not inconsistent with the Constitution of the United States.

The jury should consider the whole evidence in the case both of the government and the defendants on this point, including any support to the defendant's contention to be found in the answers of the government witnesses on cross-

examination. The defendants also in support of their contention refer particularly to the wording of the Constitution of the Communist Party which in terms disavows and repudiates the use of force and violence by its members although also subscribing to the principles of Marxism-Leninism. As to this the government has offered evidence that there is a clear inconsistency between the two stated principles in that the government contends that the Marxist-Leninist principles so espoused by the Constitution of the Party is itself a doctrine of the use of force and violence to accomplish revolutionary change. In this connection some of the government witnesses say that the wording of the Constitution in this inconsistent way is illustrative of some Communist literature which, according to their evidence, is often expressed in language which has a double meaning, one of which meanings is clear enough to the indoctrinated members of the Communist Party but also is expressed in English words which of themselves could not be used in court adverse to the interests of the Communist Party. Some of these government witnesses have referred to such alleged double meaning of Communist literature as being expressed in "Aesopian" language, a phrase used and explained by Lenin himself in the preface to a book that he wrote in 1916 while in Switzerland and with respect to the then Czarist government of Russia. The defendants' two witnesses above named deny that any Communist literature, including the Constitution of the Party, does contain any so-called Aesopian language.

If you find that the government's contention with respect to the advocated use of force and violence by the Communist Party to accomplish a revolutionary change from capitalism to socialism is established to your satisfaction beyond a reasonable doubt, and that it was the intention of the Party to accomplish such a revolution as speedily as circumstances will permit, that situation constitutes a clear and present danger which justifies the application of the charge of conspiracy to violate the Smith Act. The existence of such a highly organized conspiracy with rigidly disciplined members subject to call when the leaders feel that the time has

become opportune for action, accompanied with the nature of world conditions, similar uprisings in other countries and the touch-and-go nature of our relations with countries with whom such ideological doctrines were attuned constitutes a clear and present danger. This latter finding is a matter of law with which you need not concern yourselves. I refer to it here, as did the Supreme Court of the United States in a recent case, to indicate to you that the provisions of the first amendment to the Constitution with regard to the right of free speech does not of itself authorize the teaching of overthrow of the Government by force and violence.

And in this connection I further instruct you that the Smith Act is not aimed against the teaching of the mere abstract doctrine of overthrowing the government or the mere teaching of the historical doctrine of Marxism or Leninism. The Communist Party and its members are entitled to do this so long as their teaching does not go to the extent of advocating action for the accomplishment of a violent revolution by language reasonably and ordinarily calculated to incite persons to such action.

If you do not find that this contention of the government with respect to the objectives of the Communist Party is established beyond a reasonable doubt, you must find all the defendants not guilty in this case. But if you do so find that the government's contention in this respect is so established then you must pass to the second main question in this case, that is, whether any or all of the six defendants were members of the conspiracy and whether, pursuant to that conspiracy one at least of the overt acts has been committed as alleged in the indictment. In passing on this second main question you must consider the evidence with respect to the several defendants separately. The government is not entitled to obtain a conviction against any one of the six defendants unless it establishes beyond a reasonable doubt (1) that such defendant joined the conspiracy by becoming an active member of the Communist Party knowing its aims and objectives as contended by the government and personally intending in accordance with said

objectives and as an active member or officer or official of said Party to knowingly and wilfully advance or advocate its principles of teaching the duty or necessity of overthrowing the government as speedily as circumstances would permit, or with such intent to circulate and distribute literature which so teaches, or to organize or help to organize groups or assemblies of persons who so teach or advocate or encourage the overthrow or destruction of the government. You should not convict any of the defendants unless you find that they had this specific intent and were wilful and knowing in what they were doing. The government must also prove in this connection that with such knowledge, purpose and intent a defendant became and was or continued to be a member of such a conspiracy within the period of three years before the finding of the indictments.

The six defendants in this case are respectively Philip Frankfeld, George Aloysius Meyers, LeRoy Hand Wood, Regina Frankfeld, Dorothy Rose Blumberg and Maurice Louis Braverman. I shall not undertake to enumerate all of the evidence with respect to each and all of these six defendants. You should take your own recollection of the evidence as to each one of them. I will mention only those points of the evidence which I now recall to have been given by one or more of the witnesses for the government. You, of course, are the judges of the credibility of the witnesses.

Philip Frankfeld was a member of the young Communist group sent to Russia in 1930 or 1931 and indoctrinated in schools at Moscow as stated by the witness Nowell. There is evidence that he has been a Communist for many years and for several years prior to 1951 was the Chairman of the Communist Party for the District including Maryland and the District of Columbia. About a year ago he was transferred by the Party to Cleveland, Ohio. He is the husband of Regina Frankfeld, one of the other defendants in this case. There is evidence that from time to time Philip Frankfeld taught Communist doctrines to various members or prospective members. One witness stated in substance

that Frankfeld himself said that he would always continue to be a professional revolutionist.

George Aloysius Meyers has been a Communist since 1942. He was born in Lonaconing, Maryland, in the coal mining region of the State; was for some years employed in various industries including particularly the Celanese Corporation in Cumberland. A few years ago he was elected labor secretary of the Maryland District and was active in organizing Communist membership in the Bethlehem Steel Company at Baltimore. When Philip Frankfeld as chairman of the Maryland District was assigned to Cleveland, Meyers was elected chairman to succeed him in this District. Meyers has himself testified at length with regard to his various activities and the jury will call his evidence upon the subject.

As to LeRoy Hand Wood, there is evidence that he has been an active member of the Communist Party for some years past and recently, about a year ago, was elected as secretary or acting chairman of the branch of the Communist Party in the District of Columbia. There is evidence that he was a member of the Steel Club in Baltimore. For a time he was organizational secretary of the Party in this District.

Regina Frankfeld is the wife of Philip Frankfeld. There is evidence that she has been an active Communist for some years past. On February 4, 1949 she was made organizational secretary of the Communist Party in this District. There is evidence that within three years prior to the indictment she had been employed for a time as a school teacher in the public schools of Baltimore City but was dismissed from that position because of her Communist membership. There was some evidence that before her election or appointment as organizational secretary of the Party in this District she was sent to a Party school for indoctrination in Communist principles.

There is evidence that Dorothy Rose Blumberg has been an active Communist for several years past and has held the office of secretary-treasurer in the Party in this District

prior to and until some time in 1949, and within three years before the filing of the indictment. There is also evidence that she has taught Communist principles to various classes of actual or prospective Communist members. The Communist Party in this District has a banking account with the Equitable Trust Company. Dorothy Rose Blumberg with Philip Frankfeld was authorized to sign checks on the account.

Maurice Louis Braverman has been an attorney at law and a member of the Bar of Baltimore City and a member of the Bar as a practicing attorney in this court for some years past. He resides in Baltimore. For several years and during the three year period he was a member of the District Committee of the Communist Party for this District. There is evidence that he attended numerous meetings of the Party in Baltimore or Washington. He was a candidate for chairman of one of the larger meetings of the Party but was not elected. There is some evidence that he taught some classes in Communist principles, particularly a group of Communists or prospective Communists referred to as the "white collar class". There is evidence that he has acted frequently as counsel for the Communist Party or for various of its active members. With respect to this latter professional activity as a lawyer, however, I specially charge you that you are not to consider it as in any way derogatory or prejudicial to the defendant or of itself as constituting any basis for the charge that he joined in the conspiracy charged.

Each and all of the six defendants were members of the District Committee of the Communist Party for this District which is governing authority for the Party within this District charged with the carrying out of the policies of the Communist Party as nationally determined.

With respect to each defendant the government has the burden of proving that he or she joined in and participated in such conspiracy knowingly and wilfully and that such defendant entertained the specific intention to teach or advocate the duty or necessity of overthrowing or destroying

the government of the United States by force and violence and that he or she intended to teach or advocate such doctrine or to organize groups for such purpose with the specific intent or purpose of bringing about such overthrow as speedily as circumstances would permit. The government must establish this beyond a reasonable doubt.

With respect to the element of the required specific intent of the several defendants, you can infer this, if you do so infer beyond a reasonable doubt, from all the evidence in the case. More particularly in this connection, if you find that they had knowledge of the aims and objectives of the Communist Party, and if, as there was also evidence as to some of the defendants, they were engaged in recruiting members for the Party and indoctrinating them in the principles of the Party, and those principles included the purpose of advocating the overthrow of the government by force and violence, you can infer that they had the specific intent required as an element of the crime. Each of the elements of the crime must be established to your satisfaction beyond a reasonable doubt.

With regard to the element of the defendants' intent that, of course, is a state of mind. You cannot look into a person's mind and see what his intentions are or were but a careful intelligent consideration of the facts and circumstances shown by the evidence in any given case enables us to infer with a reasonable degree of accuracy what another's intentions were in doing or not doing certain things. You can look at all the facts and circumstances of the case. Evidence is either direct or circumstantial. Circumstantial evidence may be received and is entitled to such consideration as you may find it deserves depending upon the inferences you think it necessary and reasonable to draw from such evidence. No greater degree of certainty is required when the evidence is circumstantial than when it is direct, for in either case the jury must be convinced beyond a reasonable doubt of the guilt of the defendants. Circumstantial evidence is evidence of facts from which the jury may infer by process of reasoning other facts sought to be established as true. To the extent that

circumstantial evidence is relied on it must all be consistent with the hypothesis of guilt or should be disregarded.

With respect to the jury's consideration of so-called declarations of co-conspirators, meaning thereby verbal statements made by co-conspirators out of court and not as witnesses in a case subject to cross-examination, the rule of law is that such statements are not to be considered by the jury as evidence against the defendants on trial unless and until the government has established that there was a conspiracy between the defendants respectively and the co-conspirators who made the declarations and that such declarations or statements of co-conspirators related to the general subject matter of the conspiracy. In this case very much of the government's evidence has been that of witnesses in court subject to cross-examination based on their alleged knowledge, rather than on statements made by alleged co-conspirators. With regard to the evidence of actions or statements of Philip Frankfeld before 1945, you can consider them as affecting his case but should disregard them before 1945 with respect to the other defendants in this case.

There has been some reference in the evidence to a prior conviction of conspiracy against some of the members of the Communist Party named in the indictment, not defendants here, in the New York trial. In this connection you are instructed again that your verdict here must be based only on the evidence that you have heard in this case. You have not heard the evidence in the New York case and you should not speculate about it. The result of that trial is not binding on these particular defendants and, as I have said, the defendants here are not charged merely with being members of the Communist Party but with being such members with the knowledge and intent that I have above described. Therefore you should diregard anything but the evidence in this case and, of course, in basing your verdict on the evidence here you must put aside and disregard any general statements about Communists or Communism which you may have previously heard or read which have not been called to your attention in this case.

A defendant's reputation is presumed to be good until it is otherwise attacked. There is no evidence in this case as to the particular reputation of any defendant except defendant Braverman who has offered some evidence of good reputation, which you may consider in his favor and as to whether it creates in your minds a reasonable doubt as to his guilt.

With respect to the question whether the defendants, if they joined in the conspiracy, knew the principles and objectives of the Party, you can infer, if you do so infer, such knowledge from the length of their membership therein and their activities for the Party, and their duties as officers or functionaries to teach or promote the doctrines of the Party as nationally determined if you so find from the evidence.

Practically all of the government's evidence with respect to the membership, holding of office or activities of the six defendants is uncontradicted testimony, if you otherwise believe it. Of the six defendants only one, Meyers, has testified in his own behalf. None of the remaining five defendants elected to testify. In this respect they had the option but not the obligation to so testify. On this point I call your attention to a statute of the United States, title 18, s. 3481, which reads:

> "In trial of all persons charged with the commission of offenses against the United States and in all proceedings in courts martial and courts of inquiry in any State, District, Possession or Territory, the person charged shall, at his own request, be a competent witness. His failure to make such request shall not create any presumption against him."

You must, therefore, determine the guilt or innocence of the respective five defendants who have not testified on the basis of the evidence you have heard and not by what has not been given in evidence. The failure of a witness in a criminal case to testify, by the statute, creates no presumption against him.

The defendant Meyers as a witness refused to answer certain questions. When a defendant by his election becomes a witness, he is required to answer questions which the court directs him to answer, unless the court rules that he is privileged to refuse on constitutional grounds. You can consider the refusal of the witness Meyers to answer certain questions in connection with the weight and credibility of his own testimony, but you should disregard that refusal with respect to the cases of the other defendants.

I also call to your attention that the opening statements made by counsel for the parties who have not testified cannot be considered as evidence in their favor. And I again remind you that your verdict must be based on the evidence that you have heard in the case orally by witnesses on the stand subject to cross-examination and from the many documents which have been offered in evidence, and that statements other than those in evidence either by counsel or by the court in colloquies with counsel as to the admission of evidence should not be considered by you as in any way touching or bearing upon the guilt or innocence of these several defendants. As to the law of the case, you take it from this charge as superseding any prior comments by the court in the trial of the case. Furthermore I again remind you that any reference in this charge for purposes of illustration as to the evidence is advisory only to you and only the matters of law upon which I have instructed you are binding upon you. I have not expressed and have not intended to express any personal opinion on the guilt or innocence of these defendants and anything there has been said from the Bench other than instructions to the jury and as to the law should not be regarded by you as any indication of any opinion on the facts.

I now instruct you more particularly as to what constitutes a reasonable doubt. A reasonable doubt means a doubt founded upon reason. It does not mean a fanciful doubt, or a whimsical or capricious doubt, for anything relating to human affairs and depending upon human testimony is open to some possible or imaginary doubt. When all of the evidence in the case, carefully analyzed, com-

pared and weighed by you, produces in your mind a settled conviction or belief of a defendant's guilt, such a conviction as you would be willing to act upon in matters of the highest importance relating to your own affairs, when it leaves your minds in the condition that you feel an abiding conviction amounting to a moral certainty of the truth of the charge then, and in that event you would be free from a reasonable doubt. Absolute or mathematical certainty is not required but there must be such certainty as satisfies your reason and judgment, and such that you feel conscientiously bound to act upon it.

There is another matter about which I must instruct you. The defendants have offered evidence as to certain of the activities of the Communist Party. Thus it is said that they have earnestly endeavored to promote better conditions for the so-called working class, and for the advancement of trade unionism and for the abolition of discrimination against Negroes and so-called Jim Crow legislation and lynching. The government does not contend that any of such activities are either unlawful or in themselves constitute any unlawful objects of the Communist Party. Such activities on the part of the Communist Party may be considered very laudable in themselves. You can, of course, consider all the evidence you have heard in the case as bearing on the question of guilt or innocence in accordance with the instructions which I have given you; but I do instruct you that these beneficial activities of the Communist Party are not the issue in this case and in reaching your verdict you should be careful to put aside any possible feeling of emotion, bias, sympathy or any consideration with respect to matters of race, creed or belief and should base your verdict solely and entirely upon the evidence you have heard and apply the instructions of the court on the law to the evidence that you have heard.

You are the judges of the credibility of each and all of the witnesses in the case. In so judging their credibility it is always permissible for juries to consider what interest, if any, a particular witness has in the outcome of the case. It is a matter of common experience in courts that such

interests may possibly affect the value of the evidence by a particular witness unless otherwise corroborated. Of course the parties to a case on both sides are interested witnesses. An expert witness who testifies for compensation may also in a sense be regarded as interested. But despite this interest any witness may be entirely credible. The jury should judge of the value of the evidence given by a witness by exercising their common experience in judging of the credibility of persons generally. You can consider the relation of the witness to the whole case, his manner in testifying, his apparent frankness and candor or otherwise. You may be entirely satisfied from all that you have seen and heard that despite some particular interest in the case the witness is nevertheless entirely credible. Some criticism has been made of some of the government witnesses because they were so-called "informers". You can, of course, consider that in connection with other factors relating to the witnesses but it is not unusual for witnesses for the government in conspiracy cases to have been so-called "informers". Conspirators are often secret in their activities and meetings and it not infrequently happens that only persons who have been in contact with the conspirators as apparent members of the conspiracy have evidence which is relevant to and important in the case. You are the judges of the credibility of each and all of the witnesses whether for the government or for the defendants.

And finally, let me remind you again that this is an important case both for the government of the United States and for the respective defendants. If you find that the government has not proven against the defendants respectively the charge which has been made in the indictment beyond a reasonable doubt and as to all the essential elements of the alleged crime as I have explained them to you, then you should unhesitatingly acquit all of them or those of them against whom the charge has not been proven. If, on the other hand, you find some or all of them respectively guilty of the charge made, beyond a reasonable doubt, it is equally your duty to find those of them against whom the charge has been fully established, guilty.

The verdict that you reach in this case must, of course, be a unanimous verdict. You must render your verdict separately as to each of the six defendants. The verdict as to each of them will be simply "guilty" or "not guilty", as you find the verdict.

When you have reached a unanimous verdict you will so inform the bailiff who will bring you into court. The clerk will then call your names to identify you as the jury. He will then ask you if you have reached your verdict. If so, you reply "Yes". The clerk will then ask you who shall speak for you and your reply may be "Our Foreman". The clerk will then ask your foreman what is the verdict as to each of the defendants separately named and the foreman will reply giving the verdict as to each of the defendants as their names are separately called.

ORDER

The above entitled cause having come on for hearing before the Supreme Bench of Baltimore City upon the petition of the Bar Association of Baltimore City and the answer of Maurice Braverman, testimony having been taken, arguments of counsel having been heard, and the cause having been submitted, the proceedings were read and considered.

WHEREFORE, IT IS ORDERED by the Supreme Bench of Baltimore City this 28th day of June, 1955, that the said Maurice Braverman be and he is hereby disbarred from the further practice of the law in accordance with Section 16 of Article 10 of the Annotated Code of Maryland.

COPY

Last Name	First Name	Initial	Aliases	Fingerprint No.
Long	Ralph	Vernon	COPY	22424

Residence	Sex	Color	Age	Occupation
220 Laurel St., Chapel Hill, N.C.	M	W	24	Student Laborer

Place of Birth	Date of Birth	Complexion	Hair	Eyes
Robeson County Cumberland Co.	1 March 1924	Ruddy	Brn.	Blue

Place of Employment

Date	Arrest No.	Offense	Disposition
1-2-49	5089	Public Drunk	$5.00 and cost
9-11-49	2237	Public Drunk	$10.00 and cost
12-2-50	3780	Public Drunk	$20.00 and cost
11-18-51	3473	Disorderly Conduct	J.S.P.C.
7-10-52	269	Public Drunk	30 days S.H. 7-14-52 Sent. susp $40.00 and costs.
10-3-52	2535	A & B	Nol Pros with Leave
10-3-52	2536	Disorderly Conduct	Nol Pros with Leave
11-10-52	3684	Public Drunk	30 days W.H. 11-12-52 Sent susp $50.00 and costs.

Continued on other side

CRIMINAL HISTORY

Date	Arrest No.	Offense	Disposition
1-16-53	5641	A & B	$10.00 and costs
2-5-53	6230	Public Drunk	30 days W.H. to run concur with #6791 (SC)
2-14-53	6483	Public Drunk	30 days W.H. to run concur with #6791 (SC)
2-25-53	6772	Public Drunk	30 days S.H. app- 30 days S.H. (SC)
2-26-53	6791	A & B resulting in serious injury	6 mos S.H. (SC) 18 mos. to 2 yrs. S. Prison app-
8-1-53	1124	Public Drunk	30 days S.H. susp on pmt $50.00 & costs
9-4-53	2158	Public Drunk	$50.00 and costs.
10-2-53	3048	Public Drunk	30 days to run concur with #6791 (SC)
10-6-53	3196	Public Drunk	30 days W.H. to run concur with #6791 (SC)
11-21-53	4635	Public Drunk	30 days to run concur with #6791 (SC)
11-25-53	4748	Public Drunk	30 days to run concur with #6791 (SC)
3-30-54	8280	Public Drunk	and costs (SC) 30 days S.H. susp 12 mos & pay $25.00
6-12-54	10341	Public Drunk	30 days S.H. susp p.c. (SC)
7-19-54	589	Public Drunk	Nol Pros with Leave (SC)

COPY

COPY

COPY

Last Name	First Name	Initial	Aliases	Fingerprint No.
Long #2	Ralph	Vernon		22424

Residence	Sex	Color	Age	Occupation
220 Laural St.	M	W	30	Lab.

Place of Birth	Date of Birth	Complexion	Hair	Eyes
Cumberland Co.	1 March 1924	Ruddy	Blk.	Blue

Place of Employment

C O P Y

Date	Arrest No.	Offense	Disposition
10-12-54	2893	Public Drunk	30 S.H. app-
10-26-54	3426	Public Drunk	30 S.H. app-
10-28-54	3464	Public Drunk	30 S.H. app-
11-3-54	3613	Public Drunk	30 W.H.
12-4-54	4465	Public Drunk	30 days W.H. app-

Continued on other side

CRIMINAL HISTORY

App 48

IN THE

Court of Appeals of Maryland

OCTOBER TERM, 1955

No. 108

MAURICE BRAVERMAN,
Appellant,

VS.

BAR ASSOCIATION OF BALTIMORE CITY,
Appellee.

APPEAL FROM THE SUPREME BENCH OF BALTIMORE CITY

APPELLEE'S BRIEF

HOWARD H. CONAWAY,
CHARLES E. ORTH, JR.,
Attorneys for Appellee.

The Daily Record Co., Baltimore 3, Md.

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APPELLEE'S BRIEF

THE NATURE OF THE CASE

By its Order, the Supreme Bench of Baltimore City, following a full hearing, at which the Appellant was ably represented by counsel of his choice, disbarred the Appellant from further practice of the law. From that Order Appellant has appealed.

The matter was presented to the Court upon the Petition of the Bar Association of Baltimore City and the Demurrer and Answer of the Appellant.

The matter was heard by the Supreme Bench of Baltimore on June 20, 1955, and evidence was offered by both

the Appellant and the Appellee. All of the evidence which the Appellant chose to offer was offered by him.

While no formal opinion was filed, the Court below, on June 28, 1955, entered its unanimous Order of Disbarment.

ISSUES PRESENTED

The issues presented by this appeal, as set forth in the Appellant's Brief, will be discussed *seriatim* herein and are as follows:

I. Was the Petition on its face demurrable because it did not allege any specific statutory ground for disciplinary action?

II. Was the Appellant guilty of a crime involving moral turpitude and does the disbarment rest on a proper finding of such guilt?

III. Did the Appellant, even if guilty of the Smith Act violation, commit a crime involving moral turpitude?

IV. Did the disbarment order deprive Appellant of his constitutional rights under the First and Fourteenth Amendment to the Constitution of the United States and the Declaration of Rights of Maryland, Articles 1, 17 and 23?

V. In view of the severe punishment already suffered by Appellant, do the ends of justice require his disbarment?

STATEMENT OF THE FACTS

The Statement of Facts appearing on pages 2 and 3 of the Appellant's Brief was agreed to by counsel for the Appellee and will not be repeated here.

PERTINENT STATUTES

18 U. S. C. A., Section 1, provides:

"Notwithstanding any Act of Congress to the contrary:

"(1) Any offense punishable by death or imprisonment for a term exceeding one year is a felony.

"(2) Any other offense is a misdemeanor.

"(3) Any misdemeanor, the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than $500, or both, is a petty offense."

18 U. S. C. A., Section 371, provides:

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

"If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor."

Section 2 of the Smith Act (18 U. S. C. A., Section 2385) provides:

"Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or

"Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes,

edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or

"Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof —

"Shall be fined not more than $10,000 or imprisoned not more than ten years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction."

Section 16 of Article 10 of the Annotated Code of Maryland provides:

"Every attorney who shall, after having an opportunity to be heard, as provided in the preceding section, be found guilty of professional misconduct, malpractice, fraud, deceit, crime involving moral turpitude, conduct prejudicial to the administration of justice, (or of being a subversive person, as defined by the Subversive Activities Act of 1949) shall, by order of the judges finding him guilty, be suspended or disbarred from the practice of his profession in this State."

That portion of the Statute enclosed in parentheses above was added by Chapter 27 of the Laws of 1952.

Section 22 of Article 10 of the Annotated Code of Maryland provides:

"Any attorney heretofore or hereafter suspended or disbarred from the practice of his profession in this State *because of the conviction of any misdemeanor,*

who may have been or may hereafter be pardoned for such misdemeanor by the Governor of this State, shall, upon application to the Court which issued the order of suspension or disbarment, be entitled to be reinstated as a member of the Bar in good standing; provided the Court, to which said application may be addressed, shall be satisfied that during the period of his suspension or disbarment he has not violated the provisions of Section 20 of this Article, and that he is otherwise worthy of reinstatement. The provisions of this Article relating to hearing and appeal in proceedings for suspension and disbarment shall be applicable to proceedings for reinstatement under this section." (Emphasis supplied.)

ARGUMENT

I.

WAS THE PETITION ON ITS FACE DEMURRABLE BECAUSE IT DID NOT ALLEGE ANY SPECIFIC STATUTORY GROUND FOR DISCIPLINARY ACTION?

We submit that the Petition was not demurrable. The Petition complies fully with Section 14 of Article 10 of the Annotated Code of Maryland. It is in writing and of such particularity as to give the Appellant sufficient notice of the evidence to be offered in support of it; namely, the conviction of the crime as alleged. The legal conclusions to be drawn from the evidence are not matters to be set forth in the Petition and are for the Court.

The Petition alleges that on April 1, 1952, the Appellant was convicted in the United States District Court for the District of Maryland of conspiracy to violate the provisions of Section 2 of the Smith Act. The only evidence offered and, it seems to us, the only evidence that could have been offered under that allegation, was evidence concerning the Appellant's conviction as alleged. There are only two grounds for disciplinary action under Section 16 of Article

10 of the Code to which the Appellant's conviction would have been applicable; namely, that he was guilty of a crime involving moral turpitude and of conduct prejudicial to the administration of justice. The Appellant's conviction, in our opinion, gratifies those two provisions of Section 16 of Article 10 as we hereinafter show.

Judging from the able defense furnished to the Appellant in the Court below, we think it unlikely that he did not know what he had to meet and exactly what the evidence against him would be. While we think that the Petition herein would be a good pleading in any court, the fact is that in disciplinary proceedings the Court does not put any great emphasis on forms of pleading. In *In re Williams,* 23 Atl. 2nd 7, (1941) this Court said:

> "In such an inquiry, mere forms not affecting its merits should not stand in the way of protecting the court and the public by appropriate action after a full hearing."

The three cases cited by the Appellant on this point were all decided under an Oregon statute which provided for summary disbarment of an attorney convicted of any felony or of a misdemeanor involving moral turpitude. The decisions in those cases are not pertinent to the issues before this Court.

II.

WAS THE APPELLANT GUILTY OF A CRIME INVOLVING MORAL TURPITUDE AND DOES THE DISBARMENT REST ON A PROPER FINDING OF SUCH GUILT?

The Appellant contends, as we understand it, that his conviction in the United States District Court was not conclusive upon the Supreme Bench of Baltimore City and upon this Court but that, on the contrary, to comply with Section 16 of Article 10 of the Code it was necessary that

the Court below and that this Court examine the record of the criminal proceedings in the United States District Court in order to determine independently whether the evidence proved that the Appellant was guilty of any crime and, if so, whether such crime involved moral turpitude.

We cannot agree with that construction of the Statute. The correct interpretation of Section 16 of Article 10 is, we submit, that an attorney may be disbarred if found guilty of a crime involving moral turpitude without being convicted of the crime but that if he is so convicted then his conviction is conclusive upon the Court in a disciplinary proceeding. This is so in this case because the Supreme Bench of Baltimore City and this Court are required to give full faith and credit to the judicial proceedings of the United States Courts.

The Courts of this State will take judicial notice of the laws of the United States:

Hettleman v. Frank, 136 Md. 351 (1920);
Atkinson v. Philadelphia B. and W. R. Company, 137 Md. 632 (1921).

In the *Atkinson case*, this Court said at 137 Md. 633:

> "It is conceded that courts will take judicial notice of acts of Congress."

The Courts in this State are required to give full faith and credit to the judicial proceedings of the United States Courts. 28 U. S. C. A., Section 1738 (formerly 28 U. S. C. A., Section 687) provides in part as follows:

> "The records and judicial proceedings of any Court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certifi-

cate of a judge of the court that the said attestation is in proper form.

"Such acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every count within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken. June 25, 1948, c. 646, 62 Stat. 947."

Based upon this Statute, this Court held in *Hughes v. Davis*, 8 Md. 272, (1855) that the courts of this State are required to give full faith and credit to a judgment of the Circuit Court for the District of Columbia. Suit on the judgment was instituted in a Maryland State Court and a plea of *nil debit* was filed to which the Plaintiff demurred. This Court held that the plea was not proper and, in substance, that the judgment could not be collaterally attacked in the Maryland State Court. To the same effect see *Duvall v. Fearson*, 18 Md. 502 (1862).

In *Embry v. Palmer*, 107 U. S. 3, 27 Law Ed. 346 (1883) the plaintiff had sued and obtained a judgment in a civil action in the District Court of the District of Columbia. Suit was brought upon the judgment in the State Court of Connecticut. The defendant filed a Bill in Equity in the Connecticut State Court seeking to enjoin the enforcement of the judgment of the District of Columbia Court on the ground that the defendant really had a valid defense to the action which was not presented to the District of Columbia Court. The Supreme Court of the United States held that the State Court in Connecticut was required to give full faith and credit to the judgment of the District of Columbia Court. The Court said at 27 Law Ed. 348:

"The power to prescribe what effect shall be given to the judicial proceedings of the courts of the United States is conferred by other provisions of the Constitu-

tion, such as those which declare the extent of the judicial power of the United States, which authorize all legislation necessary and proper for executing the powers vested by the Constitution in the Government of the United States, or in any department or officer thereof, and which declare the supremacy of the authority of the National Government within the limits of the Constitution. As part of its general authority, the power to give effect to the judgments of its courts is co-extensive with its territorial jurisdiction. That the Supreme Court of the District of Columbia is a court of the United States, results from the right which the Constitution has given to Congress of exclusive legislation over the District. Accordingly, the judgments of the courts of the United States have invaribly been recognized as upon the same footing, so far as concerns the obligation created by them, with domestic judgments of the States, wherever rendered and wherever sought to be enforced. *Barney v. Patterson,* 6 Har. & J. 182; *Niblett v. Scott,* 4 La. Ann. 246; *Adams v. Way,* 33 Conn. 419; *Womack v. Dearman,* 7 Porter 513; *Pepoon v. Jenkins,* 2 Johns. Cas. 119; *Williams v. Wilkes,* 14 Pa. 228; *Turnbull v. Payson,* 95 U. S. 418 (XXIV., 437); *Cage v. Cassidy,* 23 How. 109 (64 U. S., XVI., 430); *Galpin v. Page,* 3 Sawy. 93-109."

In *Knights of Pythias v. Meyer,* 265 U. S. 30, 68 Law Ed. 885, (1924) the Court held that judicial proceedings of U. S. Courts, while not within the provisions of Article IV, Section 1, of the Constitution of the United States, must be accorded the same full faith and credit by state courts. The Court said at 68 Law Ed. 888:

"While the judicial proceedings of the Federal courts are not within the terms of the constitutional provision, such proceedings, nevertheless, must be accorded the same full faith and credit by state courts as would be required in respect of the judicial proceedings of another state. *Hancock Nat. Bank v. Farnum,*

176 U. S. 640, 644, 44 L. ed. 619, 621, 20 Sup. Ct. Rep. 506; *Embry v. Palmer,* 107 U. S. 3, 9, 27 L. ed. 346, 348, 2 Sup. Ct. Rep. 25."

Counsel for the Appellee therefore contended in the Court below and now contend that the Appellant's guilt of the crime of which he was convicted is conclusively established by his conviction and that the Appellant may not now collaterally attack the validity of the proceedings in the United States Courts.

The Supreme Bench of Baltimore City held in an earlier case that the conviction of an attorney is conclusive of his guilt in disbarment proceedings and is, in and of itself, sufficient to gratify the provisions of Section 10 of Article 16 of the Code. In 1942, Bernard Meyerson was convicted in the Criminal Court of Baltimore City of abortion and conspiracy to cause abortion. Disbarment proceedings were instituted in the Supreme Bench of Baltimore City against him to which were attached, as exhibits, the opinion of this Court and a certified copy of the docket entries in the criminal case. The opinions of the Judges of the Supreme Bench of Baltimore City were published in *The Daily Record* of February 16, 1943.

Judge Dennis wrote an opinion in the course of which he said that the Court must test Meyerson's criminal acts, *of which there is not the least doubt of guilt,* by the yardstick either of "turpitude" or "of a conduct prejudicial to the administration of justice" or both. In brief, Judge Dennis considered the conviction as conclusive on the question of guilt and devoted the rest of his opinion to a discussion of the degree of disciplinary action to be taken by the Bench.

Judge Niles wrote an opinion in the *Meyerson case* in which he referred to the conviction and posed the question

whether Meyerson should be disbarred or otherwise disciplined. He said:

> "There is no case decided by the Court of Appeals which controls the decision. The purpose of disbarring an attorney is not to punish him, but to remove from the profession a person whose conduct has proved him unworthy of the confidence of the public. *In particular, he may be disbarred by reason of his conviction of a crime involving moral turpitude.*" (Emphasis supplied.)

Judge Solter wrote an opinion in the *Meyerson case* which discussed the exact question here presented. He said:

> "Without attempting to decide this somewhat difficult and complicated question, it seems to me that, as the respondent would not be permitted in this proceeding to deny his guilt, because, for the time being at least, it is implacably established by the conviction and sentence, no member of the court may further inquire into it. In disbarment proceedings the conviction is 'in the mature of *res adjudicata*'. *State v. Stringfellow*, 128 La. 458, but the presence of what constitutes mitigating circumstances still remains to be dealt with."

Mr. Meyerson subsequently filed an application for reinstatement in the Supreme Bench of Baltimore City which was denied. He appealed to this Court and this Court's opinion is reported at 190 Md. 671. This Court, in its opinion, referred to Judge Solter's opinion as above quoted and said at 190 Md. 683:

> "He (Judge Solter) accepted appellant's (Meyerson's) conviction as conclusive of guilt, * * *."

This Court did not indicate in any way any disapproval of Judge Solter's statement of the law.

The Appellant cites the case of *Rheb v. Bar Association of Baltimore City,* 186 Md. 200 (1946), but there is certainly nothing in the opinion of this Court in that case which in any way indicates that the *fact* of Rheb's conviction was not, in and of itself, sufficient to gratify the provisions of Section 16 of Article 10 of the Code.

Many States, perhaps a majority, have statutes making "conviction of a crime involving moral turpitude" a ground of disbarment. An examination of the case law in States having no such statute discloses that by the great weight of authority an attorney's conviction is held to be conclusive on the question of guilt in a disciplinary proceeding.

In *In re Needham,* 364 Ill. 65, 4 N. E. (2d) 19 (1936), an attorney had been convicted of conspiracy to use the U. S. Mails to defraud. At 4 N. E. (2d) 21, the Court said:

> "It is contended that the judgment of the Federal Court is not binding here, and that the respondent should have been permitted to show his innocence of the crime charged in the indictment in that court. In many states statutes provide for the disbarment of attorneys upon conviction of crimes involving moral turpitude (cases cited). In Illinois, even without a statute on the subject, a judgment of conviction of an attorney of a crime involving moral turpitude is conclusive evidence of his guilt and is ground for disbarment."

In *In re Welanskey,* 319 Mass. 205, 65 N. E. (2d) 202 (1946), an attorney had been convicted of 19 counts of manslaughter for his part in the tragic Coconut Grove fire. Subsequent to his conviction, he was disbarred. The attorney claimed that the court had only judicial notice of his conviction, not of his guilt, and that a disbarment was analogous to a civil case arising from the same circumstances as a criminal case, and should, in effect, be retried.

Massachusetts, like Illinois, had no statute on this point. The court held that the attorney's conviction was conclusive on the question and that the issue of guilt or innocence could not be retried. At 65 N. E. (2d) 204, the Court said:

> "We think that the doctrine of *Silva v. Silva,* 297 Mass. 217, 7 N. E. (2d) 601, ought not to enable a respondent attorney, after a conviction of crime that remains unpardoned, to retry in disbarment proceedings the question whether he was in truth guilty. Something different is involved than the logical consequences of guilt upon property rights or the like. A member of the bar whose name remains on the roll is in a sense held out by the commonwealth, through the judicial department, as still entitled to confidence. A conviction of crime, especially of serious crime, undermines public confidence in him. The average citizen would find it incongruous for the commonwealth on the one hand to adjudicate him guilty and deserving of punishment, and then, on the other hand, while his conviction and liability to punishment still stand, to adjudicate him innocent and entitled to retain his membership in the bar.
>
> "In many states there are statutes making the record of conviction of certain offences conclusive of guilt in disbarment proceedings. In other jurisdictions a similar result is reached without any statute. In one state where there is no statute the question of guilt or innocence is open in disbarment proceedings against one already convicted of a crime, but the conviction creates prima facie evidence against him. It is our opinion that the judge rightly ruled that the respondent was concluded by the conviction, and could not retry the issue of guilt or innocence."

In *In re Gottesfeld,* 245 Pa. 314, 91 Atl. 494 (1914), an attorney had been convicted by a federal court of conspiracy to conceal assets from a trustee in bankruptcy. He was then disbarred, and on appeal argued, as Appellant

does in the instant case, that he was not guilty of the crime of which he had been convicted. Pennsylvania had no statute making disbarment automatic upon conviction of a crime involving infamous conduct. In dismissing the appeal, the court said at 91 Atl. 494, 495:

> "The burden of appellant's complaint is that he was denied an opportunity to impeach, not the record of his conviction, for that was admitted, but the verdict that condemned him. In other words, he asserts that he was not guilty of the offense for which he was tried and convicted, and insists that because the court gave him no opportunity to establish his freedom from guilt he was condemned unheard. The case calls for but little comment. It is fundamental that a particular sentence imposed, or judgment rendered, by a court having jurisdiction cannot be reviewed collaterally in any other court in any kind of a proceeding. The nature of the judgment has no effect on the operation of the rule * * *.
>
> "The doctrine of res judicata applies whether the judgment be in civil or criminal proceeding, and, once rendered, the party convicted may not thereafter dispute the truth thereby established. The appellant had no right to a further hearing on the question of his guilt. His guilt was a fact established by an unchallenged record of a court of competent jurisdiction, and was no longer open to dispute. A decree of disbarment followed necessarily."

In *Ex Parte Wall,* 107 U. S. 265, 27 L. Ed. 552 (1883), an attorney was disbarred for participating in a lynching, before he was convicted of the crime. The majority of the Supreme Court of the United States held that disbarment could precede conviction. Mr. Justice Field dissented on the ground that the disbarment proceedings should have awaited the result of the criminal trial. However, Mr. Justice Field recognized that the conviction of the attorney

would have been conclusive in the disbarment proceedings and said at 27 L. Ed. 568:

> "A conviction of a felony or a misdemeanor involving moral turpitude implies the absence of qualities which fit one for an office of trust, where the rights and property of others are concerned. The record of conviction is conclusive evidence on this point."

See also:

In re Pontarelli, 393 Ill. 310, 66 N. E. (2d) 83 (1946);

State ex rel Wright v. Sowards, 134 Neb. 159, 278 N. W. 148 (1938);

Bar Association v. Gudmundsen, 145 Neb. 324, 16 N. W. (2d) 474 (1944).

In construing Section 16 of Article 10 of the Code, the Court may find it helpful to examine Section 22 of Article 10, which is hereinabove quoted in full. Section 22 provides that any attorney suspended or disbarred from practice in this State *"because of the conviction of any misdemeanor"* may, after being pardoned, be reinstated as provided in Section 22. The language of Section 22 indicates the legislative intent that the fact of conviction even of a misdemeanor, is, in itself, ground for disciplinary action under Article 10 of the Code.

We contend that it is clear, from the authorities above cited, that the Supreme Bench of Baltimore City and this Court are required to give full faith and credit to the judicial proceedings of the United States Court in which the Appellant was convicted; that such conviction is conclusive upon the Appellant and upon this Court and cannot be questioned or collaterally attacked in this proceeding; and that the *fact* of the Appellant's conviction is, in and of itself, valid and sufficient basis for the lower Court's action under Section 16 of Article 10 of the Code. Even if this

Court should determine that it is required to make an independent finding of guilt, the result would be the same; this Court is required to give full faith and credit to the proceedings in the United States Court; the *fact* of conviction itself, therefore, is conclusive under either and both constructions.

The Appellant contends, in his brief, that an examination of the record in the criminal case will show that his conviction was a miscarriage of justice and that he was not really guilty. There are at least two convincing answers to this contention.

The first is that neither the Supreme Bench of Baltimore City nor this Court sits as an appellate court from the federal courts. Practically the same contentions made here by the Appellant were made in the federal courts and were found to be without merit. The Appellant's conviction was appealed to the Court of Appeals for the Fourth Circuit and was affirmed (198 Fed. (2d) 679). Thereafter a petition was filed in the Supreme Court of the United States for the issuance of a writ of certiorari and was denied (344 U. S. 922, 97 L. Ed. 710). A petition for rehearing was denied (345 U. S. 913, 97 L. Ed. 1348). Paraphrasing what the Massachusetts Court said in *In re Welansky, supra,* the average citizen would find it incongruous for the United States Court in Maryland to adjudicate the Appellant guilty and deserving of punishment and at the same time, for the State Courts in Maryland to adjudicate him innocent and entitled to retain his membership at the bar.

The second answer to the Appellant's contention is that there is nothing to show that the Court below did not, in fact, read the record of the case in the United States Court or at least that portion of it which the Appellant wanted read.

At the trial below, the Appellant offered in evidence the complete transcript of his trial in the United States District Court. Counsel for the Appellant stated that the Court below would find the matters which he wished to bring to the attention of the Court in Judge Chesnut's charge to the jury and in the decision of the Court of Appeals for the Fourth Circuit. The following colloquy between Chief Judge Niles and counsel for the Appellant will be found on pages 80 and 81 of the transcript of the proceedings in the lower Court:

> "(Chief Judge Niles) All right, I take it that closes these proceedings this morning, and the Court will consider its action.
>
> "I think, Mr. Buchman, you should leave the large transcript.
>
> "I would like to be certain about this again. As I understand it, the Court can find from Judge Chesnut's charge and the U. S. Court of Appeals' decision herein the facts that you really want us to learn.
>
> "(Mr. Buchman) That's right, those facts are contained in the facts summarization."

There is nothing in the record to indicate that the Court below did not read Judge Chesnut's charge to the jury and the opinion of the Court of Appeals for the Fourth Circuit or, indeed, that the Court did not read the entire transcript of the proceedings in the United States District Court. Eight days after the proceedings in the Court below, the Supreme Bench of Baltimore City entered its Order (App. 46) in which it stated that testimony had been taken, arguments of counsel had been heard, and the cause had been submitted.

There is no reason to assume that the Court below did not comply with the Appellant's request in so far as reading a

part or all of the proceedings in the United States District Court is concerned, and there is certainly nothing in the record to indicate that it did not.

III.

DID THE APPELLANT, EVEN IF GUILTY OF THE SMITH ACT VIOLATION, COMMIT A CRIME INVOLVING MORAL TURPITUDE?

In the aforegoing, we have attempted to establish that the Appellant's conviction is conclusive on the question of his guilt of the crime of which he was convicted. We now apply that crime to the various grounds for disciplinary action as set forth in Section 16 of Article 10 of the Code.

We submit that the Appellant's crime is a "crime involving moral turpitude" and constitutes "conduct prejudicial to the administration of justice", both of which are grounds for disciplinary action under Section 16 of Article 10.

While the Appellant does not discuss the question in his brief, Counsel for the Appellee contended below and now contend that the crime of which the Appellant was convicted constituted "conduct prejudicial to the administration of justice". In the *Rheb case, supra,* this Court said at 186 Md. 205:

> "The Maryland statute relating to the disbarment of lawyers, which contains not only the phrase 'crime involving moral turpitude' but also the phrase 'conduct prejudicial to the administration of justice', delegates or confirms to the courts the power and duty to consider particular conduct of one who is an officer of the court, in relation to the privileges and duties of a public calling that specially invites complete trust and confidence. We decline to give to the phrase last quoted a restricted meaning. In the last analysis the duty rests upon the courts, and the profession as a whole,

to uphold the highest standards of professional conduct and to protect the public from imposition by the unfit or unscrupulous practitioner."

And in *In re Meyerson, supra,* this Court said at 190 Md. 676:

> " 'Conduct prejudicial to the administration of justice' may include a criminal offense which impairs the basic objects of a lawyer's profession, though not committed in his professional capacity, and though he has not been convicted or indicted, *e.g.*, lynching. *Ex parte Wall,* 107 U. S. 265, 2 S. Ct. 569, 27 L. Ed. 552."

We likewise contended in the Court below and now contend that the crime of which the Appellant was convicted is a "crime involving moral turpitude". We have found only three decisions of this Court in which "moral turpitude" is discussed or defined. In *Dental Examiners v. Lazzell,* 172 Md. 314 (1937), a dentist's license to practice had been revoked because of his conviction in the criminal courts for indecent exposure. In that case this Court discussed the meaning of "moral turpitude" and said at 172 Md. 320:

> "What is moral turpitude? Lexicographers and courts agree on the definition, but the courts do not agree in its application in characterizing offenses as involving moral turpitude.
>
> "*Bouvier's Law Dictionary* (Rawle's Third Rev.) 2247, defines it as, 'An Act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man.' *Drazen v. New Haven Taxicab Co.,* 95 Conn. 500, 111 A. 861; *Newell on Defamation,* sec. 12; *In re Henry,* 15 Idaho 755, 99 P. 1054. Turpitude is defined in the *Oxford Dictionary* as, 'Base or shameful character; baseness, vileness; depravity, wickedness', *Webster* as, 'Inherent baseness or vileness of

principle, words or actions; shameful wicknedness; depravity.' 'Moral', in combination with turpitude, is a tautological expression which does nothing more than add emphasis to the word turpitude. *Holloway v. Holloway,* 126 Ga. 459, 55 S. E. 191.

"In the following cases it was held there was no moral turpitude: Violation by a physician of the Harrison Anti-Narcotic Act (38 Stat. 785), though the court said it was conceivable that one might be guilty of an offense under that act involving moral turpitude. *State Board of Medical Examiners v. Friedman,* 150 Tenn. 152, 263 S. W. 75; *United States ex rel. Andreacchi v. Curran* (D. C.), 38 Fed. (2nd) 498, 499; publication of defamatory libel of George V., *United States v. Uhl* (C. C. A.), 210 Fed. 860; sending obscene and nonmailable matter through the mails, *In re Dampier,* 46 Idaho 195, 267 P. 452; seduction under promise of marriage, *In re Wallace,* 323 Mo. 203, 19 S. W. (2nd) 625. In many jurisdictions it was held that violation of the National Prohibition Act (27 U. S. C. A. Sec. 1 *et seq.*) did not denote moral turpitude; in some it was held that it did. *In re Bartos* (D. C.), 13 Fed. (2nd) 138.

"Offenses in which it was held there was moral turpitude were: Extortion resulting in disbarment of a lawyer, *In re Coffey,* 123 Cal. 522, 56 P. 448; disbarment on charge of embezzlement, *In re Kirby,* 10 S. D. 322, 414, 73 N. W. 92, 907; charging woman with attempt to procure abortion, *Filber v. Dautermann,* 26 Wis. 518; lawyer disbarred for conspiracy to smuggle opium, *In re Shepard,* 35 Cal. App. 492, 170 P. 442; physician's license to practice medicine revoked for using mails to advertise procuring abortions, *Kemp v. Board of Supervisors,* 46 App. D. C. 173, 181; use of mails to prevent conception, *Halstead v. Nelson,* 36 Hun. 149; lawyer suspended for publication of defamatory matter; *Ex parte Mason,* 29 Ore. 18, 21, 43 P. 651; lawyer disbarred after conviction on charge of adultery, *Grievance Committee v. Broder,* 112 Conn. 263, 152 A. 292. In Idaho a statute provided that an attor-

> ney might be disbarred on conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction is conclusive evidence. The conviction was for petty larceny before a justice of the peace, and the lawyer was disbarred. *In re Henry,* 15 Idaho 755, 99 P. 1054. We have found no case passing on the charge of indecent exposure as involving moral turpitude, but it requires no discussion to argue or prove that the offense is so base, vile, and shameful as to leave the offender not wanting in depravity, which the words 'moral turpitude' imply."

In *Rheb v. Bar Association of Baltimore City,* 186 Md. 200 (1946), an attorney had been convicted in the District Court of the United States for the District of Maryland of federal income tax violations. Disbarment proceedings were instituted against the attorney who claimed that the crime was not one involving "moral turpitude" and, consequently, not grounds for disbarment under the Statute. This Court cited the *Lazzell case* and said at 186 Md. 204:

> "However, the authorities support the proposition that a crime of this character, even though not a felony, involves moral turpitude. It is generally recognized that crimes in the category *crimen falsi* involve moral turpitude. See *Bradway, 'Moral Turpitude as the Criterion of Offenses that Justify Disbarment'.* 24 Cal. L. R. 9. In *Re Diesen,* 173 Minn. 297, 215 N. W. 427, 217 N. W. 356, an attorney was disbarred on the strength of a conviction of the misdemeanor of making a false income tax return. See also *In re Wiltsie,* 109 Wash. 261, 186 P. 848, and *In re Peters,* 73 Mont. 284, 235 P. 772, involving false reports."

In *In re Meyerson,* 190 Md. 671 (1948), a case involving an attorney's application for reinstatement after disbarment because of his conviction of abortion and conspiracy to cause abortion, this Court discussed certain character testimony and an opinion written by Judge O'Dunne in

which he said that the attorney's crimes did not "so far affect him in his professional capacity as to warrant his disbarment". This Court said at 190 Md. 686:

> "Mr. Wolman's opinion as to 'moral character qualification for Bar membership' is substantially the same as Judge O'Dunne's. This opinion we could not adopt without doing violence to the letter and spirit of the disbarment statute and ignoring the apprisals of the crimes of abortion and conspiracy by the Legislature (in imposing severe criminal penalties) and by this court. As we have said, professional misconduct (malpractice) constitutes two — not six — tautological grounds of disbarment. It does not include or limit 'crime involving moral turpitude'. The crimes of abortion and conspiracy cannot be classified among 'the minor vices'."

We have quoted at some length from the opinion of this Court in the *Lazzell case* in order to show that courts generally have not attempted to lay down any hard and fast definition of "moral turpitude". It is, and it is intended to be, a broad and flexible term, the meaning of which does unquestionably change with the times. The courts have zealously kept it broad and flexible, applying it to the facts of each case as the problem arises. There is an excellent discussion of the matter in *Bradway, Moral Turpitude as the Criterion of Offenses that Justify Disbarment,* 24 Calif. L. R. 9, which was cited by this Court in the *Rheb case*. Mr. Bradway reviews the decisions of various courts and points out that courts have not tied down to any specific definition the meaning or characterization of conduct involving moral turpitude.

The Appellant contends that the test of whether an offense involves moral turpitude is whether the offense is *malum in se* or *malum prohibita.* Mr. Bradway, in his law review article above referred to, analyzes the decided cases

and shows that such is not the test. There is an excellent discussion of the matter in *State v. Malusky*, 59 N. Dak. 501, 230 N. W. 735 (1930) in which the Court points out that practically everything is *malum prohibita* if you go back far enough and that as civilization has developed, things have become *malum in se.*

If definition is necessary, probably the most comprehensive is found in *Grievance Committee v. Broder*, 112 Conn. 263, 152 Atl. 292 (1930), cited by this Court in the *Lazzell case*, in which the Court said that moral turpitude involves "an act of inherent baseness in the private, social, or public duties which one owes to his fellow man or to society, or to his country, her institutions, and her government".

There are multitudinous cases in which "moral turpitude" is discussed by the courts. In the following cases the crime of conspiracy to violate laws has been held to involve moral turpitude:

United States ex rel Berlandi v. Reimer, 30 Fed. Supp. 767 (D.C. N.Y. 1939), conspiracy to violate the Internal Revenue Laws;

In re Shepard, 35 Cal. App. 492, 170 P. 442 (1917), conspiracy to smuggle narcotics;

In re O'Connell, 184 Cal. 584, 194 P. 1010 (1920), conspiracy to obstruct the draft;

In re Craig, 12 Cal. 2nd 93, 82 P. 2d 442 (1938), conspiracy to obstruct and impede the administration of justice;

In re Pearce, 103 Utah 522, 136 P. 2d 969 (1943), conspiracy to operate a house of ill fame;

In re McAllister, 14 Cal. 2nd 602, 95 P. 2d 932 (1939), conspiracy to violate law controlling sale of cemetery lots;

In re Wright, 69 Nev. 259, 248 P. 2d 1080 (1952), conspiracy to procure divorce by perjured testimony.

The cases hold that the crime of conspiracy to commit a crime involving moral turpitude is itself a crime involving moral turpitude to the same degree as though the crime had actually been committed. In *In re Wright, supra,* an attorney was disbarred upon evidence that he was preparing to obtain a divorce through the use of perjured testimony. The Court said at 248 P. 2nd 1083:

> "It is to be noted that the contemplated crime or unlawful practice was not actually consummated. It is recognized, however, that an attempt or conspiracy to commit a crime demonstrates moral turpitude to a like degree as the commission of the crime itself."

In *In re McAllister,* supra, the Court said at 95 P. 2d 933:

> "If the actual commission of an offense involves moral turpitude, then a conspiracy to commit such offense would involve moral turpitude."

The Appellant was convicted of conspiracy to violate Section 2 of the Smith Act. In *Membership in or Affiliation with the Communist Party as Grounds for Disbarment,* 26 Notre Dame Lawyer 498 (1951), the authors say at page 502:

> "In 1918, the Supreme Court of Idaho held that an attorney could be disbarred for violating the federal statute imposing punishment for making false reports with the intent to interfere with enlistments. In 1920, this court once again came to the same conclusion on a similar set of facts. In both instances, the Court held that a violation of the Selective Service Act was the commission of a crime involving moral turpitude. Today, one who advocates the overthrow of the government by force violates the Smith Act, an analogous situation. A violation of this act would certainly be a crime involving moral turpitude and would, consequently, be grounds for disbarment."

There is authority for the proposition that conspiracy to violate any law of the United States is a crime involving moral turpitude. In *United States ex rel Berlandi v. Reimer,* supra, an alien deportation case, the Court discussed the defendant's conviction of conspiracy to evade the Internal Revenue Law taxing liquor and said at 30 Fed. Supp. 768:

> "The second conviction (May 28, 1938) had to do with a conspiracy to violate the laws of the United States. When two or more get together and agree that they deliberately will, and do enter into a scheme, which has for its purpose the violation of the laws of the land, no one can gainsay but that this involves moral turpitude."

The Appellant contends that he was convicted of a new and novel crime, but we wish to point out that he was, in fact, convicted of conspiracy which was a common law crime. The Appellant contends that he was convicted of a political crime. We submit that there is, in American law, no such thing as a political crime. That is a Continental concept that has not as yet invaded our law and for that reason we do not believe that the Appellant's argument that his crime is a purely political one has any validity or weight. Nor do the authorities which he cites bear him out. In the *Liam Mellows case,* decided by Judge Hand in 1918, Mellows, an Irishman, wanted to go back to Ireland, but was unable to do so. He, therefore, forged an application for a passport. Judge Hand said in that case that forgery is ordinarily a serious crime but that since Mellows' motives were "political" he would only impose a fine upon him. In *In re Burch,* 73 Ohio App. 97, 54 N. E. 2nd 803, an attorney was acting as public relations agent and attorney for the Government of Germany in distributing pamphlets designed to attempt to persuade this Country

not to enter World War II. The attorney failed to register as an agent of a foreign country under the Federal statute. It was shown that he had no knowledge of the Statute. In any event, he was charged and pleaded guilty to the offense. In the disbarment proceedings, the Court said that the Statute was a purely regulatory one and that its violation did not involve moral turpitude.

We do not believe that it can seriously be argued from the *Liam Mellows* and *Burch cases* that a new category of crime — political crime — has evolved in this Country or that conspiracy to violate Section 2 of the Smith Act is a political crime. Nor do we believe that the quotations from various newspapers, persons and organizations commenting on the decision of the Supreme Court of the United States in *Dennis v. United States,* 341 U. S. 494, which are set forth in the Appellant's brief, establish either that there is such a thing in this Country as a "political crime" or that the Appellant was convicted of one.

The Appellant further argues that it was not until June 4, 1951, when the Supreme Court of the United States upheld the constitutionality of the Smith Act in *Dennis v. United States,* supra, that conspiracy to violate the Smith Act could authoritatively be regarded as a crime. It is a strange argument indeed that an attorney may with impunity and without consequence to his professional status violate the laws of the United States or conspire to violate the laws of the United States until such time as the Supreme Court of the United States has finally ruled upon the constitutionality of such laws.

IV.

DID THE DISBARMENT ORDER DEPRIVE APPELLANT OF HIS CONSTITUTIONAL RIGHTS UNDER THE FIRST AND FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND THE DECLARATION OF RIGHTS OF MARYLAND, ARTICLES 1, 17 AND 23?

The Appellant contends that the disbarment order deprives him of his constitutional rights under the First and Fourteenth Amendments to the Constitution of the United States and Articles 1, 17 and 23 of the Maryland Declaration of Rights in that he was disbarred for causes not reasonably related to the regulation of the practice of law and that his disbarment is in the nature of an *ex post facto* action or a "retrospective * * * restriction". But it is clear, we submit, that the order of the Supreme Bench of Baltimore City disbarring the Appellant from the further practice of the law does not deprive him of any constitutional right.

The First Amendment, of course, prohibits the enactment by Congress of laws abridging the freedom of speech, etc., and could not possibly have any relevancy to the issue before this Court. Article 1 of the Maryland Declaration of Rights preserves to the People the right to alter, reform or abolish their form of Government in such manner as they may deem expedient and has no relevancy to the issue before this Court. Article 17 of the Maryland Declaration of Rights prohibits the exactment of *ex post facto* laws or the imposition of retrospective restrictions. But these provisions apply only to retroactive laws imposing a criminal penalty (*Match Co. v. State Tax Commission*, 175 Md. 234 (1938)) and do not prohibit retrospective acts affecting civil rights or liabilities. (*Maryland, use of Maines v. Kristianborg*, 84 Fed. Supp. 775 (1949)). Disbarment proceedings are not criminal proceedings; disbarment is not

punishment; and neither disbarment nor reinstatement may be made a mere adjunct to reform schools and the parole system. (*In re Meyerson,* 190 Md. 671 (1948)). The phrase "law of the Land" in Article 23 of the Maryland Declaration of Rights has the same meaning as "due process of law" in the Fourteenth Amendment. *Solvuca v. Ryan & Reilly Co.,* 131 Md. 265, 270 (1917).

There is no inherent right in any individual to practice law. *In re Taylor,* 48 Md. 28 (1877); *In re Maddox,* 93 Md. 727 (1901). The regulation by a State of admission to its bar and, conversely, of disbarment is peculiarly within the province of the Courts and the Legislature of that State. *In re Taylor, supra*; *In re Maddox, supra*; 66 *A. L. R.* 1512; 81 *A. L. R.* 1064. And as this Court said in the *Meyerson case, supra,* Section 16 of Article 10 of the Code does but little, if anything, more than enact the general rules upon which the courts of common law have always acted. And yet as this Court pointed out in the *Meyerson case, supra,* of the various grounds for disbarment as set forth in Section 16 of Article 10 "only the first two (tautological) grounds are limited to professional, as distinguished from personal offenses * * *".

In the *Rheb case, supra,* the attorney contended that his conviction of income tax violations involved private, personal misconduct and not misconduct as an attorney — the same contention which, as we understand it, the Appellant makes here. However, in the *Rheb case* this Court held that the attorney's conviction showed him to be unfit for the further practice of law.

It is true, as this Court recognized in the *Rheb* and *Meyerson cases,* that indulgence in minor vices, of a purely personal character, are not grounds for disbarment of an at-

torney. But we wish emphatically to point out that the offense of which the Appellant was convicted is not a "minor vice of a purely personal nature"; it is a felony.

The Appellant contends that disbarment for causes not reasonably related to the regulation of the practice of law is arbitrary action and the deprivation of property without due process of law. That question is not at issue here because the offense of which the Appellant was convicted and for which he was disbarred is obviously related to the regulation of the practice of law. At the time of his admission to the bar, the Appellant swore to support the Constitution of the United States and to bear true allegiance to the Constitution and Laws of the State of Maryland (App. 1). As stated above, the Smith Act was held valid and constitutional in *Dennis v. United States,* 341 U. S. 494, 95 L. Ed. 1137 (1951). In delivering the opinion of the majority, Mr. Chief Justice Vinson discussed the purpose of the Statute and said at 95 L. Ed. 1148:

> "The obvious purpose of the statute is to protect existing Government, not from change by peaceable, lawful and constitutional means, but from change by violence, revolution and terrorism. That it is within the *power* of the Congress to protect the Government of the United States from armed rebellion is a proposition which requires little discussion. Whatever theoretical merit there may be to the argument that there is a 'right' to rebellion against dictatorial governments is without force where the existing structure of the government provides for peaceful and orderly change. We reject any principle of governmental helplessness in the face of preparation for revolution, which principle, carried to its logical conclusion, must lead to anarchy. No one could conceive that it is not within the power of Congress to prohibit acts intended to overthrow the Government by force and violence."

The Appellant was convicted of conspiracy to violate Section 2 of the Smith Act by, among other things, "unlawfully, wilfully and knowingly advocating and teaching the duty and necessity of overthrowing the Government of the United States by force and violence, with the intent of causing the aforesaid overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit" (App. 5).

We submit that it cannot seriously be argued that the Appellant's guilt of the crime of which he was convicted, as hereinabove explained, bears no reasonable relation to the regulation of the practice of law. The language of the Supreme Court of the United States in *Ex parte Wall, supra,* when applied to the crime of which the Appellant was convicted is particularly appropriate. In that case an attorney was disbarred for participating in a lynching, prior to his conviction of the crime, and the Court said at 27 L. Ed. 556:

> "Now what is the offense with which the petitioner stands charged? It is not a mere crime against the law; it is much more than that. It is the prostration of all law and government; a defiance of the laws; a resort to the methods of vengeance of those who recognize no law, no society, no government. Of all classes and professions, the lawyer is most sacredly bound to uphold the laws. He is their sworn servant; and for him, of all men in the world, to repudiate and override the laws, to trample them under foot and to ignore the very bands of society, argues recreancy to his position and office and sets a pernicious example to the insubordinate and dangerous elements of the body politic. It manifests a want of fidelity to the system of lawful government which he has sworn to uphold and preserve."

V.

IN VIEW OF THE SEVERE PUNISHMENT ALREADY SUFFERED BY APPELLANT, DO THE ENDS OF JUSTICE REQUIRE HIS DISBARMENT?

In the Court below we took the position that the transcript of the proceedings in the United States Court in which the Appellant was convicted were admissible in evidence for the limited purpose only of determining whether there are any mitigating or extenuating circumstances, if the Court felt that there could be any mitigating or extenuating circumstances, in order to assist the Court in arriving at a decision upon the degree of disciplinary action to be imposed upon the Appellant. As stated above, there is no reason to believe that the Court below did not, in fact, read the transcript of testimony or that portion of it which the Appellant wanted read in arriving at its decision to disbar the Appellant.

In the *Rheb case,* supra, and in *In re Meyerson,* supra, this Court quoted Lord Mansfield in *Ex parte Brounsall,* 1178, 2 Cowp. 829, as follows:

> " 'The question is, whether, after the conduct of this man, it is proper that he should continue a member of a profession which should stand free from all suspicion. * * * It is not by way of punishment; but the court, on such cases, exercise their discretion whether a man whom they have formerly admitted is a proper person to be continued on the roll or not'."

CONCLUSION

Based upon the record and the authorities hereinabove cited and quoted, we submit that the Order of the Supreme Bench of Baltimore City disbarring the Appellant from the further practice of the law should be affirmed.

Respectfully submitted,

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Attorneys for Appellee.

IN THE

Court of Appeals of Maryland

OCTOBER TERM, 1955

No. 108

MAURICE BRAVERMAN,
Appellant,

VS.

BAR ASSOCIATION OF BALTIMORE CITY,
Appellee.

APPEAL FROM THE SUPREME BENCH OF BALTIMORE CITY

APPELLANT'S REPLY BRIEF

HAROLD BUCHMAN,
Attorney for Appellant.

The Daily Record Co., Baltimore 3, Md.

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I. THE SMITH ACT CONVICTION DOES NOT CONCLUDE APPELLANT'S GUILT FOR THE PURPOSE OF THE DISBARMENT PROCEEDING.

Assuming that the Maryland courts must give full faith and credit to appellant's federal conviction under the Smith Act, it does not follow, as the appellee contends, that the conviction conclusively establishes appellant's guilt for the purposes of disbarment.

In the first place, under the full faith and credit clause a foreign judgment has the effect of res judicata only as between the parties to the proceeding in which the judgment was rendered. *Magnolia Petroleum Co. v. Hunt,* 320 U. S. 430. The United States is not a party to the disbar-

ment proceeding, and it has no interest in the question of what persons may practice law before the Maryland courts. Secondly, full faith and credit does not require Maryland to give the criminal judgment effect for a completely different purpose than that for which it was entered. Cf. *Hood v. McGehee*, 237 U. S. 611. Thirdly, the determination of qualifications for practice before the Maryland bar is exclusively and peculiarly a matter of Maryland concern, and Maryland need not subordinate its policy on the subject to acts of another jurisdiction. See *Milwaukee County v. White Co.*, 296 U. S. 268, 273. So in a converse situation, Maryland may reject an applicant to its bar on the grounds that he is not a suitable person to practice law, even though a determination that he is suitable has been made by other states and the federal courts in admitting him to their bars.

Even if appellant had been convicted in a Maryland court, that conviction would not conclude him in this proceeding. This appears from the terms of article 10, sec. 16 of the Maryland Code, requiring an independent finding of guilt in the disbarment proceeding, and from the authorities cited on page 16 of our principal brief.

Authorities relied on by appellee under statutes of other jurisdictions which in terms make conviction ipso facto a cause of disbarment are obviously not relevant, except to confirm the fact that the Maryland legislature chose a different path — that followed by Judge Cardozo in *In re Kaufman*, 245 N. Y. 423, 157 N. E. 730 (see Appellant's Brief, p. 6).

Of course, this does not mean that the disbarment court must retry the federal criminal case so as to hear the evidence anew. In some cases the attorney may not dispute the fact of his guilt. But here, since guilt was disputed, the court below was obliged to examine the record in the

criminal case in order to make its own independent determination as to appellant's guilt or innocence. While it is possible that the court below examined the record in the criminal case, it is impossible to determine whether it made an independent determination of guilt or simply accepted the fact of conviction as conclusive, in line with the erroneous contention urged on it by appellee. If anything, the latter course was undoubtedly followed in view of the court's failure to make findings. At a minimum, therefore, the judgment below should be reversed and the case remanded for the court to make findings in accordance with the statute.

Parenthetically, it should be noted that the court below would not have fulfilled its obligation to examine the proceedings in the Smith Act case merely by reading the charge to the jury and the opinion of the Court of Appeals. The charge and opinion do satisfactorily indicate the evidence produced against appellant, which, we submit, was palpably inadequate. But in addition there should be taken into account the circumstances that the jury was inflamed by sensational testimony which had nothing to do with appellant; that appellant's conviction was based on an erroneous theory, which was repudiated by the Solicitor General in the Supreme Court; and that events discovered after the conviction have demonstrated the unreliability of the government's key witnesses (See Appellant's Brief, pp. 9-10).

It is particularly important that in this case the conviction not be taken to preclude appellant. For the Supreme Court has now granted certiorari in several Smith Act cases which present some of the same points involved in appellant's case — including the constitutional limits on application of the Smith Act, the legality of admitting inflammatory testimony of events not known to the defen-

dant, and the applicability of section 4(f) of the Internal Security Act of 1950, 50 U. S. C. sec. 783(f). *Yates v. United States; Schneiderman v. United States; Richmond v. United States,* Nos. 308-310, Oct. Term, 1955, cert. granted Oct. 11, 1955; *Mesarosh v. United States,* No. 295 Misc., Oct. Term, 1955, cert. granted Dec. 12, 1955, renumbered No. 566, Oct. Term, 1955. It is entirely possible that the Supreme Court's decision of those cases, accepted for review under more favorable environmental conditions than existed when certiorari was denied in appellant's case, will demonstrate that appellant was wrongfully convicted. Such a demonstration will not automatically vacate appellant's conviction, nor will it compensate him for the imprisonment and fine that he has suffered. But it will establish that we are right in our contention that appellant is a victim of miscarriage of justice.

We respectfully suggest that under the circumstances the Court should withhold deciding this case until the Supreme Court has acted in the Smith Act cases now before it. This course is indicated even under appellee's view that the evidence and record in the criminal case are relevant for purposes of mitigation.

II. THE SMITH ACT CONVICTION DID NOT IN ANY EVENT INVOLVE A CRIME OF MORAL TURPITUDE.

Appellee urges that political crimes are unknown to American law. Whatever may have been the case before the Smith Act, that statute has created what has historically, in all civilizations and culture, constituted a political offense. We submit that those who express rebellious opposition to an existing and governmental system by advocacy and words — and that is all appellant was convicted of — are not guilty of moral turpitude, even if they thereby subject themselves to severe criminal punishment. Indeed,

the stigma of moral turpitude has not been applied even to those who went beyond advocacy so as to engage in actual insurrection — as the American colonists did against the crown, and as the Confederacy did against the Union. As we pointed out in our principal brief (pp. 18-20), the Supreme Court held that August H. Garland could not be excluded from the legal profession because he attempted by arms to overthrow the government of the United States.

The instances of crimes of moral turpitude referred to by appellant involved either sex offenses or false swearing. The former category pertains to the most elementary and commonly understood concept of immorality. The immorality of the latter category derives from the fact that, as the Ninth Commandment illustrates, since primitive times special abhorrence has been felt for false swearing and the taking of an oath has consistently had religious and moral significance. If a Smith Act conviction is lumped with such crimes, the concept of moral turpitude is set entirely at large, and history must be ignored.

Respectfully submitted,

HAROLD BUCHMAN,
Attorney for Appellant.

moral. On the contrary, many of the leaders of such movements are immortalized in history, in song and in literature. This is true of our history, as well as that of other peoples. Indeed, even actual participation in the attempted violent overthrow of our government during the Civil War as such, was not regarded as immoral in the South or the North. The United States Supreme Court did not regard such participation as warranting the disbarment of an attorney practicing before it, even though Congress had enacted a law requiring such disbarment. *Ex Parte Garland,* 71 U. S. 333.

Ordinarily, an act of "moral turpitude" is universally so regarded and condemned throughout that part of the world which shares a common civilization. The crux of the crime charged against appellant is that he associated with others to organize the Communist Party. Yet it is common knowledge that in Italy, France and England there are Communist Parties, whose members, known to be such, are elected to and otherwise hold public office and are esteemed by large sections of the populations of these countries. Clearly, in none of these countries nor in the Scandinavian countries nor in many others, is active membership in their Communist Parties considered immoral, nor carrying on the activities of those parties considered acts of "moral turpitude."

The enactment in 1940 of that part of the Smith Act of which appellant was indicted, does not have its basis in morals. It was not dictated by prior moral prohibitions nor change in moral outlook. It stems solely from certain political or economic differences, which the legislation aims to interdict. The fact that the proscription against advocacy of violent overthrow of government now has criminal sanctions, does not cloak such advocacy with immorality. Political expediency and even necessity is by no means synonymous with morality; contrariwise, it sometimes has had very close ties with immorality.

In any event, not only is the meaning of "moral turpitude" entirely unclear and uncertain, but its application to the crime charged to the appellant even under the tests heretofore employed is fraught with much doubt. Under such circumstances, where the issue is of such importance to the appellant, socially and professionally, the doubt should be resolved in his favor.

II

Another serious question arises as to whether the disbarment of appellant does not violate constitutionally protected rights. Art. 10, section 16 of the Maryland Code which prescribes the sole grounds for disciplinary action against lawyers in the state, does *not* make the conviction of a crime, even of felony, one of these grounds. It makes the commission by an attorney of an *act* of "moral turpitude" which has been statutorily designated a "crime" the subject of discipline. So that appellant herein is not subject to discipline because he was convicted of a crime. If he is subject at all, it is only because he is charged with having committed an act involving moral turpitude, which act has also been made a crime. If he is disciplined, it is only because after a hearing by the Baltimore Court it has found him guilty of an act of moral turpitude which has been made a crime by statute. This is the plain meaning of the words:

> "Every attorney who shall, after having an opportunity to be heard, as provided in the preceding section, be found guilty of * * * crime involving moral turpitude * * * shall * * * be suspended or disbarred * * *."

In the instant case, what petitioner was charged with was conspiracy with others to advocate the overthrow of the government by force and violence. Such conspiracy and such advocacy has been made criminal by the Smith Act. It is now sought to make it also a ground for disbarment. In attempting to apply the disbarment statute to this charge,

it is tantamount to rewriting the statute so that it would read:

> "Every attorney who shall, after having an opportunity to be heard, as provided in the preceding section, be found guilty of * * * conspiracy to advocate the overthrow of the government by force and violence * * * shall * * * be suspended or disbarred * * *."

Clearly, the substantive act here proscribed, which is wholly within the area of speech and press, is one protected by the First Amendment to the United States Constitution against federal action and by its inclusion in the Fourteenth Amendment, against state action. It is true that the United States Supreme Court in *Dennis* v. *United States*, 341 U. S. 494, held the application of the Smith Act in that case not unconstitutional. It nevertheless recognized and dealt at length with its impact on the protection of the First Amendment. The court there said, p. 493:

> "But although the statute is not directed at the hypothetical cases which petitioners have conjured, its application in this case has resulted in convictions for the teaching and advocacy of the overthrow of the Government by force and violence, which even though coupled with the intent to accomplish that overthrow, contains an element of speech. For this reason, we must pay special heed to the demands of the First Amendment marking out the boundaries of speech."

The rationale of the court's decision was "that the societal value of speech must, on occasion, be subordinated to other values and considerations," and that Congress by this legislation was aiming to protect the government from violent overthrow. Moreover, since a federal law was involved the court could make its own construction thereof to avoid constitutional infirmity and did so construe it as to require "proof of intent of those who are charged with its violation to overthrow the Government by force and violence" (p. 499). Moreover, it should be noted that the Supreme Court has granted certiorari to review convictions in two

other cases under the same provision of the Smith Act that was before it in the *Dennis* case and that application of the statute may be further limited by it shortly.

In the instant case, it is not a federal law that is being applied, and it is not being applied in a context involving the security of the national government. So whatever justification the federal court found in the facts before it, to permit an invasion of First Amendment rights in the interests of national security, it does not follow that the state court may permit such invasion for less cogent and compelling reasons.

> "We first note that many of the cases in which this Court has reversed convictions by use of this or similar tests have been based on the fact that the interest which the State was attempting to protect was itself too insubstantial to warrant restriction of speech. In this category we may put such cases as *Schneider* v. *State*, 308 U. S. 147 (1939); *Cantwell* v. *Connecticut*, 310 U. S. 296 (1940); *Martin* v. *Struthers*, 319 U. S. 141 (1943); *West Virginia Board of Education* v. *Barnette*, 319 U. S. 624 (1943); *Thomas* v. *Collins*, 323 U. S. 516 (1945); *Marsh* v. *Alabama*, 326 U. S. 501 (1946); but cf. *Prince* v. *Massachusetts*, 321 U. S. 158 (1944); *Cox* v. *New Hampshire*, 312 U. S. 569 (1941)."
>
> *Dennis* v. *United States*, supra, p. 508.

It is submitted that the interest of the bar does not require nor justify "restriction of speech" of its members. Yet the order of the court below deprives appellant of his right to be a member of the bar solely because of an exercise of the right of speech. There is nothing in the record that charges or associates appellant with anything beyond or other than "advocacy." Prohibiting him from exercising that right upon pain of forfeiting membership in the bar violates constitutional guarantees.

The application of the disciplinary statute to the appellant under the circumstances disclosed by the record and the order of disbarment thereon was in violation of his constitutional rights.

CONCLUSION

It is respectfully submitted that the order of disbarment of the court below should be reversed.

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