

O. Brown Dockett

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

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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

Criminal No. 22322

TRANSCRIPT OF PROCEEDINGS

Before
HON. W. CALVIN CHESNUT
Judge

Thursday, March 27, 1952

Volume XIV

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537 Post Office Building
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MAURICE LOUIS BRAVERMAN	:

Baltimore, Maryland
Thursday, March 27, 1952

The above entitled matter was resumed before His
Honor, W. CALVIN CHESNUT and a jury at 10 o'clock a. m.

A P P E A R A N C E S

For the Government:

MR. BERNARD J. FLYNN, United States Attorney
MR. JAMES B. MURPHY, Assistant United States Attorney
MR. FREDERICK J. GREEN, JR., Assistant United States
Attorney.

A P P E A R A N C E S (continued)

For the Defendants Philip Frankfeld, Regina Frankfeld and
Leroy Hand Wood:

MR. HAROLD BUCHMAN

For the Defendant Dorothy Rose Blumberg:

MR. CARL BASSETT

For the Defendant Maurice Louis Braverman:

MR. MAURICE LOUIS BRAVERMAN

For the Defendant Leroy Hand Wood:

MR. JAMES T. WRIGHT

For the Defendant George Aloysius Meyers:

MR. GEORGE ALOYSIUS MEYERS

P R O C E E D I N G S

Ow - 10 am

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(Thereupon, the Clerk called the names of the jury, after which the following occurred:)

THE COURT: Are you ready to proceed?

MR. GREEN: Yes, sir.

Thereupon,

DR. HERBERT APTHEKEN,

the witness on the stand at the time of taking the adjournment resumed the witness stand and testified further as follows:

CROSS-EXAMINATION (continued)

By Mr. Green:

Q Now, Doctor, I think that in your direct testimony you covered to some extent the principle of democratic centralism, and I would like to read to you now a statement which appears on page 79 in the "Struggle Against Revisionism" which is Government Exhibit 21.

This particular statement is taken from an article or report by John Williamson to the special convention of the Communist Political Association held in New York July 26 -- 28, 1945 which reconstituted the Communist Party of the United States.

Now, after making some comments about democratic centralism, this sentence appears:

"But once decisions are made in the higher

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committees, these decisions become the line of activity for the members as a whole."

I would like to ask you whether or not that is a correct statement of a portion of the principle of democratic centralism?

A Would you mind if I looked at it?

Q I point out the particular sentence which I read to you, Doctor.

A Yes, I would say that is an accurate assertion of a portion of this concept, yes.

Q Now, in other words, Doctor, is it correct to say that on the basis of that statement that whatever the appropriate body of the Communist Party decides --

MR. BUCHMAN: Objection.

Q (BY MR. GREEN) -- is --

MR. BUCHMAN: I am sorry. Finish your question.

Q (BY MR. GREEN) -- is binding upon the persons involved in that particular decision?

MR. BUCHMAN: I object to that question, Your Honor, on this ground because in his direct testimony when he attempted to read from that particular same article, I think there was an objection and it was sustained, and it seems to me that if the Government is going to be permitted to question him on that article, a certain sentence of it, he should be permitted, or the Doctor should be permitted

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to read that section or article which he was not permitted to do so on direct examination.

THE COURT: Yes, he can do that later on, but this particular question seems all right as far as it goes.

THE WITNESS: The question itself is answered in the article, and I can answer it particularly, but when you use the term "binding" and do nothing else you may mislead rather than illuminate because the concept as asserted there and as universally understood is a flexible one not only in terms of the fact that you have an expression of opinion from the body but also in terms of the fact that in the application of this expression by the leadership account is taken of local condition and local requirements and objective circumstances, and therefore I feel that your usage of the term "binding" in this way is rather inaccurate.

Q (BY MR. GREEN) Well, Doctor, you said that this policy is flexible. Who has authority to determine the extent of the flexibility?

A People who are charged with the responsibility locally of the organization.

Q Now, let us take a concrete example. It is true, is it not, that after 1945 the Communist Party began a program of re-education in the principles of Marxism-Leninism?

A I don't, I don't find myself able to answer your question either simply yes or no for this reason. The

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question in my opinion, requires that I say yes, this assumes that there was no education in Marxism-Leninism prior to 1945.

Q I said re-education.

A That is why I am saying it that way, as though it had not been in process, and this is inaccurate.

There is an effort of education before and after 1945 with certain efforts after 1945 to correct errors, and so on, which it was felt or the membership appeared prior to that date, and in that form I would answer your question.

Q Once the Communist Party determined and decided upon a program, as you have outlined it, is it not true that it was binding on all members of the Party were required to implement that policy in accordance with local conditions as they knew them?

A What policy?

Q The re-education policy.

A I have already indicated the objection to that type of formulation. In terms of what I said, the members were expected, as they had been expected to constantly refresh themselves to study, to study Marxism-Leninism, and to read all sorts of writings including the classics in Marxism-Leninism.

Q And every member was required to do this, were

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they not, Doctor?

A Every member was expected to do it, and it was assumed he would do it as a member.

Q It was not up to the member to determine that for himself whether or not he would execute the policy laid down by the National Committee, was it?

A In terms of this education?

Q In terms of any program or any decision of the National Body?

A It is not as ironclad as your question would indicate including in terms of this education. I am afraid that I speak accurately when I assert that there is not sufficient education in literature, and I don't say this boastingly either, but on the contrary, people are very busy, and you give the impression of some sort of autonomous, and it is directly opposite to the facts.

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Q (By Mr. Green) Would you say, then, that the extent to the change, or -- I will withdraw that.

Would you say, then, that the membership carries out the policy of the national convention, the national committee, or the national board, exclusively within its own realm of determination and decision?

A There are two things that trouble me in your question. One is, you begin by asking me about the education. Now you are making this question very general. And, in other words, you drop the question, or have you? Have you?

Q Yes.

A You have dropped that. Well, if you have, would you be good enough to reformulate your question so that I can follow you now.

Q You mean, Doctor, you do not understand my question?

A That's right.

Q My question, Doctor, to you was, would you say, in view of your prior testimony and your concept of "democratic centralism" that it is up to each individual party member to comply with or not comply with decisions reached by any national governing body of the Communist Party?

A No. If a person maintains membership in an organization, it is assumed that he is in agreement with the principles of that organization. But when you put it in terms of specific activities or specific things or suggestions or

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advisements, then it is not this inflexible nature at all. I will be more specific, if you want me to be.

Q I think that is sufficiently specific, Doctor. Can any member of the Communist Party at the present time question the advisability or the correctness of the dissolution of the Communist Political Association and the reconstitution of the Communist Party in 1945?

A Can they question it?

Q Yes.

A Yes, they can question it.

Q And remain a member of the organization?

A In questioning it? Why, of course they can raise the question any time they want to.

Q Are they, prior to or while raising the question, are they at liberty to disregard the fact that such change was made?

A Not and remain in the organization, obviously not.

Q Now, Doctor, have you testified at any other trials beside this one?

A Yes.

Q What trial, and when?

MR. BASSETT: I object.

THE COURT: Objection? Well, I think that some specification would have to be made of some other trial of this same nature. In other words, if he testified on the

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question of "Egyptian Antiquities," I would not think that would be relevant.

MR. GREEN: I will add: "Of this nature."

MR. BASSETT: I object to that.

THE COURT: Object to what?

MR. BASSETT: I already objected to the question, Your Honor, even with the addition.

THE COURT: Well, I haven't heard it yet, Mr. Bassett. What is your question now?

Q (By Mr. Green) Have you testified at any other trials of this type?

THE COURT: If there is an objection to that, I will overrule it.

A Yes, I have.

Q (By Mr. Green) Now, what trials were they, Doctor, and where?

MR. BASSETT: Objection.

THE COURT: I will overrule it. Go ahead, answer.

A Since I am not a lawyer, I am not certain of the accuracy of this answer, but if it is inaccurate, I will be told, I suppose. I testified at the -- I tried to testify, I think that puts it a little more accurately, at the first trial of the national leadership of my party at Foley Square, New York.

I also appeared as a defense witness in a state

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case. Do you want me to develop that, or is that not of this nature?

Q (By Mr. Green) Who was the defendant in the state case?

MR. BUCHMAN: I object to that question, as to its relevancy.

THE COURT: I am inclined to sustain that objection. I think perhaps you might more definitely specify what particular trial you have in mind, Mr. Green.

Q (By Mr. Green) All right. Doctor, did you testify on behalf of Steve Nelson when he was tried in Pittsburgh?

MR. BUCHMAN: Object, sir.

THE COURT: What kind of a case?

MR. GREEN: If Your Honor please, it was a charge in the state courts. Accurately, I believe, the charge was "sedition," under the State Law of Pennsylvania.

THE COURT: Well, the purpose in asking questions you now are asking, that type question is one that frequently arises in patent cases and other cases where witnesses testify as experts. And I assume for the sake of any questions of this kind, from the evidence, that you are now asking him this preliminary question for the purpose of asking some ultimate or further question which bears on the question of his expert knowledge of the subject. The mere fact he testified in other cases is, of itself, not important

in the case.

MR. BRAVERMAN: Do you sustain the objection?

THE COURT: Well, as a preliminary matter, I will allow it to be asked, but it is only because it is preliminary, at least, I assume it is preliminary. I can't know, of course. I overrule the objection to the question on that ground.

A I am afraid I will have to have the question again. It has been a long time.

Q (By Mr. Green) I think the question was, did you testify for the defense at the trial of Steve Nelson at Pittsburgh?

A I did.

Q Was Steve Nelson a member of the Communist Party?

MR. BUCHMAN: I object to the question, Your Honor.

THE COURT: Well, I sustain it, unless your purpose Mr. Green, is in some way to explore the accomplishments or experience of the witness.

Q (By Mr. Green) All right. Doctor, in the course of your readings and examination into the history and nature and meaning of Marxism-Leninism, did you consider a volume entitled, "From Bryan to Stalin," by William Z. Foster?

A Did I consider it?

Q Yes.

A I won't say that I considered it in that light,

because it is, as I recall it, autobiographical. I must say I don't remember the book very well, but I believe I did read the book.

Am I right, it is autobiographical?

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THE COURT: What is your next question, Mr. Green?

Q (BY MR. GREEN) I was just thinking. Do you consider Foster a current and past modern authority on Marxism-Leninism?

A A modern, did you say?

Q Modern in the sense of --

A I just didn't hear your word, modern authority?

Q Yes.

A Yes, he is a modern authority.

Q Doctor, I would like to read this paragraph from page 152 of that volume.

MR. BASSETT: We object.

THE COURT: You will have to let him finish the question.

MR. BUCHMAN: If the Court please, we object to the reading of anything not in evidence. He is reading from a book not admitted into evidence and we, therefore, object to any questions based on that.

THE COURT: Well, now, on cross-examination of a witness who is called as an expert along certain lines, it is quite the usual thing for the cross-examiner to ask the witness whether he considers a particular book authoritative on the subject that is being discussed and to read a portion of it to him and ask him, as an expert, whether he agrees with that or not. We do that so frequently in medical

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cases that it is the ordinary usual question on cross-examination.

MR. BRAVERMAN: He has not been asked the question, does he consider this book authoritative.

THE COURT: I thought he said in reply to a question that he considers Foster a modern authority on the question of Communism.

THE WITNESS: If I may, sir, ask that the record be read so it can be seen in that specific book, I said it was not a statement, an authoritative statement of Marxism-Leninism, and I ask that it be read.

THE COURT: Start all over again, Mr. Green. Perhaps I misunderstood something along the line.

Q (BY MR. GREEN) I will read to you, Doctor, from page 152 of the book by William Z. Foster entitled "From Bryan to Stalin" and after reading it, will ask you whether or not it is consistent or inconsistent with your testimony of yesterday on the nature of Communism. The particular passage is this --

MR. BASSETT: Objected to.

THE COURT: Overruled.

Q (BY MR. GREEN) "Lenin also shattered the reformist contention that the modern bourgeois state is a people's state which the workers can peacefully capture by votes and then utilize for the building of Socialism. He

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demonstrated with crushing logic what Marx and Engels had long before proved, that the capitalist state is the but slightly disguised organized dictatorship of the capitalist class; that no ruling class in history has ever given up its control without a violent struggle, and that, consequently, the revolutionary workers, in alliance with the peasantry and other exploited masses, must destroy the capitalist state in open struggle and set up their own state, a Soviet government, which is the dictatorship of the proletariat. Lenin also carefully analyzed the composition and role of the new proletarian state. We need look only to the fascist terror in Germany, Italy and Spain to realize the correctness of this whole analysis of Lenin's and also the futility of the social reformists' plan of bringing Socialism through purely legal parliamentary action."

Now, will you state whether or not that is consistent or inconsistent with your testimony as to the method whereby --

THE COURT: Won't you read me the concluding phrase there? I did not get it.

MR. GREEN: The concluding phrase is -- I will read the whole sentence so Your Honor can place it in context:

"We need look only to the fascist terror in

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Germany, Italy and Spain to realize the correctness of this whole analysis of Lenin's and also the futility of the social reformists' plan of bringing Socialism through purely legal parliamentary action."

THE COURT: Do you understand it?

THE WITNESS: Yes, I am asked to comment on that or to discuss that.

THE COURT: No, I think that was not precisely the question. The question is whether that statement of Stalin on Leninism, isn't it?

MR. GREEN: No, of Foster.

THE COURT: Whether that statement of Foster is inconsistent with some of which you have previously told us. That is the question.

THE WITNESS: It is impossible to answer that question truthfully by a simple yes or no. I would like to answer the question and if I have the book in front of me, I would be very happy to do so. Where is it, please?

MR. GREEN: From there to there.

MR. BUCHMAN: By the way, Dr. Aptheker, is that a library book from the Enoch Pratt Library?

MR. GREEN: It is. We have never contended otherwise.

THE WITNESS: This book by Mr. Foster is an autobiography which he wrote in 1937. As I declared here,

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it is not and it does not pertain to be an authoritative statement by him on Marxism-Leninism. It is an autobiography. Moreover, Mr. Foster has written extensively since then and has since the 1930's had occasion to amend things which he wrote. However, even so, turning to this passage which was read here, the main points made in this passage are three and are on the whole consistent with my previous expert testimony.

Foster says first that in a revolutionary situation, the state apparatus which existed prior to the success of the revolution is inappropriate for the new conditions and this state apparatus, therefore, must be changed. For example, the state apparatus of the Thirteen Colonies in 1774, after the revolution was fundamentally altered after the revolution.

MR. GREEN: I don't mind the witness giving his answer but I think he is going a little far afield in describing the consistency or inconsistency of the quotation.

THE COURT: I sustain the objection to the part of the answer which the witness is presently giving.

MR. BUCHMAN: The witness was giving an answer and if not satisfactory to the Government, he wants to explain his views on the paragraph.

THE COURT: I do not think it is within the

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reasonable compass of an answer to that question to go into historical background of one hundred and fifty years ago, which the witness started by referring to the American revolution.

Somebody has to decide these questions. I understand the witness says he cannot -- first, he says in his view the passage that was read was on the whole consistent with what he has previously said. Now, I think that is the answer to the question. Have you got another question?

MR. BUCHMAN: If the Court please, I want to suggest the witness has a right to explain, as was permitted the Government experts, Crouch, Lautner, and Nowell. They went in to irrelevant explanations and the witness here is trying to make an explanation dealing directly with the question asked. If he is not permitted to answer, then I move that the entire line of question be stricken because the witness is, I submit, being improperly restricted.

THE COURT: Very well, I will strike out Mr. Green's question and the witness' answer if that is more satisfactory to you.

MR. BUCHMAN: That also means the preceding question in which the passage was read.

THE COURT: Very well, also strike out the preceding question. Mr. Green, if you wish to pursue this

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line, try to put it in a simpler form to the witness and one in which he can answer the questions very definitely.

Q (BY MR. GREEN) Doctor, when Mr. Foster wrote this book, is it not correct that he was the National Chairman of the Communist Party?

MR. BUCHMAN: Objected to in view of your previous ruling striking out the line of testimony referring to the book.

THE COURT: Apparently, you will have to question him without the book.

Q (BY MR. GREEN) Are you familiar with a book entitled "From Bryan to Stalin" by William Z. Foster?

A That is an autobiography by that man.

Q Is Foster and has he been for the past twenty years a national leader and national spokesman for the Communist Party?

A Yes.

Q Is he one of the modern authorities and has he been for we will say the past twenty years on Marxism-Leninism in the United States?

A Yes, he is an authority on Marxism-Leninism in the United States but that book is not.

Q By whose decision, Doctor?

A The obvious decision that this is an autobiography. This is not an attempt, a sober analysis of this. The man

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is telling his life. That is why it is entitled "From Bryan to Stalin". He is talking about this sweep of the years. This is, therefore, my opinion of that.

Q What he says in this book about Communism and Socialism is therefore not authoritative, Doctor?

MR. BUCHMAN: Objected to until the book is put in evidence.

THE COURT: Overruled.

THE WITNESS: That is correct, it is not authoritative.

Q (BY MR. GREEN) Then is it correct, Doctor, that when Foster wrote this sentence that I quote to you from page 153:

"We need look only to the fascist terror in Germany, Italy and Spain -- "

MR. BRAVERMAN: Your Honor, this is the same objection we made before and unless Dr. Aptheker is going to be permitted to answer the question in his own words, then I do not think the question should be asked. Mr. Green is well aware of the type of question and that passage refers to the Russian revolution. Dr. Aptheker as a historian and authority on Leninism-Marxism should be permitted to answer the question, using historical backgrounds of all countries if he thinks that is a proper way to answer the question.

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THE COURT: I have not heard the question yet.
I am waiting for it.

Q (BY MR. GREEN) Now, Doctor, when Mr. Foster wrote this sentence at page 153:

"We need look only to the fascist terror in Germany, Italy and Spain to realize the correctness of this whole analysis of Lenin's and also the futility of the social reformists' plan of bringing Socialism through purely legal parliamentary action."

Now, in view of that sentence, Doctor, would you state whether or not or will you state whether or not that sentence and the thought expressed therein is or is not an authoritative statement of the Marxist-Leninist doctrine?

MR. BRAVERMAN: We object. We just objected a few minutes ago to this question.

THE COURT: The objection is overruled. The question is different now. It is a simple question, whether the witness as an expert regards the sentence just read as authoritative.

THE WITNESS: I request that his question be read, Mr. Green's question be read to me then by the Reporter.

THE COURT: Very well.

(The question was repeated by the Reporter.)

THE WITNESS: You have asked me whether the comments and the opinions expressed in that sentence represent

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today authoritative Marxist-Leninist concepts. In order for me to truthfully answer that question, I have to lay before the jury the opinions in that sentence and then I will answer the question in the fullest to the best of my ability. The question has, the sentence has to me two parts. One is the statement by Foster as to the fascist terror in Germany, Italy and Spain. Mr. Foster, in referring to that, is referring to that which I testified to and tried to emphasize, namely:

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When the small minority, the ruling class finds that it can no longer rule in the old way because of contradictions in its society and when they find that the mass of the people want change because of the ruling in the old way, parliamentary way, force and fascist terror, by abolishing the restrictions it has created legally, as I read the quotations to the jury by causing that, by force and fascist terror that it imparts to the working class, to the mass of the people, and Mr. Foster is pointing to that experience indicating the question of Marxist-Leninist concept of violence and terror which comes from the minority. That is the first part of that sentence which is in direct consonance, as I tried to testify here.

The second part would not be today, would not be by Mr. Foster for the past thirteen years asserted, and this is one point, fundamental to Marxism-Leninism, and as

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Mr. Foster himself has long ago reformulated and repudiated this type of concept because as I said to the jury before when the objective situations change, the tenets of Marxism-Leninism may change, as Marxism held world war inevitable in an imperialist situation, but it does not today.

So Marxism-Leninism was held to the concept that given the strength of imperialism and the relative weakness of the socialist forces and movements, there was no possibility of achieving fundamental, fundamental social change without the resistance en masse and the organized resistance of the minority, that they would attempt to crush the will of the people.

But our feeling today is, and this is the whole idea of our united front, the people's front program, our feeling is, as in war, so is our feeling today, the objective conditions having changed, it is conceivable possible to read the quotations that are there in a peaceful transformation, that the people have enough strength, have enough of that strength with the world situation being what it is, to vote in legally peaceful socialism, and that the minority ruling class would be so weak it would not dare to do what it normally has done, take up arms to overcome this legal peaceful transformation.

Q (BY MR. GREEN) In other words, the policy of the Communist Party has changed from this point about the

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futility of bringing about socialism through purely parliamentary action? In other words, the Communist Party on that particular point has changed its policy?

A I have given my answer, and I don't want "in other words", sir.

Q All right.

A If there is lack of clarity, maybe you better read it back.

Q I want to ask you this: Isn't it true that yesterday you said that the Communist Party had never stood for the overthrow of the government of the United States by force and violence?

A Yes, that is true.

MR. GREEN: That is all.

THE COURT: Any other questions?

MR. GREEN: No, sir.

THE COURT: Any redirect?

MR. BUCHMAN: Yes, sir.

REDIRECT EXAMINATION

By Mr. Buchman:

Q I think yesterday you wanted to read a quotation from that same article by John Williamson on democratic centralism. Will you be able to find it at this point? I think it is Government Exhibit 21.

A Yes, I would be very glad to read it. It is

page 79.

MR. GREEN: If Your Honor please, I don't care whether the Doctor reads the particular page, as far as that goes, but I think as a matter of fact that insofar as the quotation is concerned, anything coming up on cross-examination, I do not think this particular portion now sought to be read is applicable.

THE COURT: Well, if counsel for the defendants desire the witness to read something which it is said he wished to read yesterday from this same article, I will let him do it but without comment.

THE WITNESS: Shall I identify it sir?

THE COURT: Yes, if you will.

THE WITNESS: This is, as Mr. Green said, is from a speech by John Williamson, National leader of the Communist Party, made in 1945. Under the heading of "Democratic Centralism" I read, where he turned to the definition:

"Democratic centralism is the method of functioning of the Communist organization which combines the maximum democracy in the shaping of policy and the election of all leadership with sufficient centralization of committee authority to guarantee immediate reaction to problems and speedy mobilization of the entire membership and organization around the fulfillment of key tasks. Democratic centralism thus

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guarantees that all leading committees are elected by the membership and all basic problems are discussed and shaped by the membership. The elected leadership has the responsibility to report systematically to the membership on the actions and decisions taken by the higher committee. But once decisions are made in the higher committees, these decisions become the line of activity for the membership as a whole.

"Centralization with formal democracy can never be successful. The fusion of democracy and centralism can only be achieved on the basis of constant common activity and struggle of the entire membership of the Party, operating through clubs where general policies are discussed and elaborated to meet the specific conditions and problems of that area."

Q (BY MR. BUCHMAN) Now, the last question that Mr. Green asked you was, has the Communist Party of the United States ever advocated force and violence? And I believe your answer was no.

MR. GREEN: I object to that. That was not my last question.

MR. BRAVERMAN: Would the Reporter read the question?

(The Reporter read as follows:

"Question: Isn't it true that yesterday you said

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that the Communist Party had never stood for the overthrow of the government of the United States by force and violence?

"Answer: Yes, that is true.")

Q (BY MR. BUCHMAN) Now, is your answer to that question inconsistent with the statement that Mr. Green read from Mr. Foster's book?

A No, it is not.

Q Would you explain that answer, please?

MR. GREEN: I object to that. I think the answer is clear.

THE COURT: He may answer it.

THE WITNESS: I will answer it this way. The fundamental theory of the Communist Party of the United States from its founding to the present, and being a Marxist Party it could never have any other theory, the fundamental theory in terms of revolution and fundamental social change, that can come only when the majority of the people want it -- number one.

Number two, it can come when the ruling class, the minority are incapable of ruling in the old way --

MR. GREEN: If Your Honor please --

THE COURT: Let him finish.

THE WITNESS: And it will come when the majority of the people want it either through absolutely peaceful embodying a peaceful transgression to socialism.

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Q (BY MR. BUCHMAN) Transition?

A Transition to socialism or the majority of the people want it and legally express this desire, and the minority ruling class might illegally by force of arms, as has happened historically many times, take up weapons with which to drown in blood, attempting that legal peaceful majority as the aspirations and yearnings of the mass of the people, and in such case, as the Maryland Constitution says, non-resistance to this oppression is shameful.

In such case, resistance being offered to this illegal force by the minority, in such circumstances is successful the socialist transformation might in that way be accomplished.

That is the fundamental Marxist-Leninist theory and it never taught anything else.

THE COURT: Next question, please.

MR. BUCHMAN: No further questions.

THE COURT: Very well. Is everybody through with the witness?

He was asking yesterday when he could go home.

MR. GREEN: The Government is through with him.

THE COURT: You are at liberty to retire.

(Witness excused.)

THE COURT: Who is your next witness?

MR. BUCHMAN: We rest our case now, Your Honor,

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at this point.

THE COURT: If the witness has not gone something occurred to me which I wanted to say. Just a minute, Doctor.

It is not that I wish to ask you any other questions, but the thought occurred to me, Mr. Bassett, that yesterday you were asking a number of questions and there was a great deal of discussion pro and con and I was just wondering whether if this is the only witness that you have along this line there is anything which seemed important to you which you wish to ask which was not answered.

I wish the defendants to have the fullest opportunity to present their views in the matter by evidence, and I was just wondering whether you think there was any question of importance to which objection was made by the other side and sustained by the Court, and if so, you could call that to my attention.

MR. BASSETT: If Your Honor please, we find Your Honor very gracious, but breaking in with questions, I think it would be impractical at this time to take it up, but we certainly do appreciate Your Honor's recognition of that particular point.

THE COURT: I assume that if there was anything in mind you wanted to ask which you felt of importance to the case which was not fully covered by the witness in his subsequent testimony it might be you would have it in mind

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at the present time.

DR. APTHEKER: May I ask just a point there. I don't know whether I would be allowed to stay in the Court room.

THE COURT: Undoubtedly, yes.

DR. APTHEKER: Thank you, sir.

THE COURT: I will be very happy to have you but I thought you were anxious to get home.

DR. APTHEKER: After lunch.

MR. BUCHMAN: Just a minute.

THE COURT: Now, do I understand the defendants' case is closed?

MR. BUCHMAN: That is correct.

THE COURT: Now, is there any rebuttal evidence?

MR. FLYNN: No rebuttal evidence, sir.

I might suggest that the Government has a number of requested instructions with respect to the charge which are under preparation, which Your Honor suggested we might get together on and I was wondering if we could get to them I could have them prepared for you within an hour.

THE COURT: Well, of course, I am always glad to have requests for instructions from either side for consideration.

MR. FLYNN: Yes.

THE COURT: As the case has been terminated per-

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haps a little earlier than was anticipated, I understand how neither side may have prepared their requests and instructions.

How about your side, Mr. Buchman?

MR. BUCHMAN: If Your Honor please, they are in process of preparation, and by the end of the day we will have our instructions and possible motions ready.

THE COURT: Well, the question occurs to me with respect to what progress we can make in the trial this morning.

MR. BUCHMAN: I am not in a position to say so, Your Honor.

THE COURT: I was just wondering to save time so as not to inconvenience either side, I suppose counsel would feel it impractical to argue on the facts of the case at this time.

MR. FLYNN: Well, sir, I feel it would be impractical particularly in view of the fact that there was a suggestion from the other side that there would be some motions.

THE COURT: Motions? I have not heard that.

MR. BUCHMAN: Yes.

THE COURT: I thought we heard the motions last Friday.

MR. BUCHMAN: I have motions based upon the

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conclusion of the entire case, Your Honor, and we have been in preparation of proposed instructions which I could have ready tomorrow morning, the motions and the proposed instructions.

THE COURT: Well, I think that if you have any motions applicable to the case as a whole, Mr. Buchman, you could make them orally, and I would be glad to consider them at once.

You recall, of course, that I gave you all of Friday morning last week for argument on the motions that were appropriate at that time. Since then we have had three witnesses I think --

MR. BUCHMAN: That is correct.

THE COURT: Or four witnesses for the defense.

Are the motions any different from what we had last week?

MR. BUCHMAN: The difference is we have been working on the record trying to dispose of the motions on the basis of the record, and I could have them completed by late this afternoon, both the motions and the requested instructions, and I would like to request Your Honor to have an opportunity to present our proposed instructions tomorrow because we have been working all day in Court, and I feel this will take us past midnight, I can assure you, to complete them.

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THE COURT: Well, we have had here two weeks and then/^along series of motions and arguments, and I gave you all morning last week, all the time you wanted, and now you are asking me for further time after some evidence for the defendants to give you another whole day to prepare another series of motions.

MR. BUCHMAN: The problem is that we have been in Court every day.

THE COURT: I understand that, but in the ordinary trial of a law case, at the conclusion of the case, counsel would, if they have any motions which go to the heart of the case, they should be prepared to make them at once so that the time of the Court and the jury will not be unduly taken up.

I am not suggesting anything unusual as to our procedure. It is our usual procedure. Indeed, last week when I was very glad to give you a whole day, it seemed to me that was appropriate at that time, but I do not think it is appropriate at this time to ask for another whole day to prepare motions in the case which I assume are within the compass of the motions which you prepared last week which was almost uniform.

It is true I have not formally ruled on your motions to exclude the testimony, but I don't have in mind at the moment any reasons why there would be additional

reasons not previously presented on that phase of the case.

However, I do not want -- I am only thinking in terms of what is the best thing to do in expediting the case.

Now, apparently both sides want some postponement.

How much time do you want, Mr. Flynn?

MR. FLYNN: Your Honor, we are ready as soon as Your Honor disposes of the motions.

I want this to be clear, may it please the Court. The defense has rested. I want to be sure about that that we are not going to be presented with more testimony at some future time.

THE COURT: I understand so. Of course, there are four counsel to be heard from, and I don't know whether Mr. Buchman is speaking for all.

MR. BUCHMAN: That is right.

THE COURT: Are you speaking for Mr. Meyers in that connection?

MR. BUCHMAN: I am speaking for all counsel, and if they want to join in the expression they can, but I have been so authorized, and when I said we rested, I think that is clear.

THE COURT: Mr. Flynn, you have your answer categorically to that question.

MR. FLYNN: May it please the Court, we will have

our proposed suggestions for instructions in your hands within an hour, and I shall see to it that counsel on the other side has a copy of them.

When the motions are disposed of we will be prepared, at any time Your Honor suggests, to go on with the argument.

THE COURT: Then, Mr. Buchman, we will adjourn and take a recess until 2 o'clock, at which time I will be glad to hear the motions you wish to present. I will be glad to hear them at that time.

MR. BUCHMAN: We have been in process of preparing them, but I do not think we can have them all by 2 o'clock.

THE COURT: Well, it may be that if you need some further time for preparation of the instructions, that might be all right, but as far as the motions are concerned, I will expect to take them up at 2 o'clock, and if there are some that are not typewritten on paper, you could present them to me orally.

Now, is there anything for the jury to take up at 2 o'clock?

MR. FLYNN: No, sir, I would not ask the jury to be here at 2 o'clock because after disposing of the motions we would like to have a little time for preparing our argument.

THE COURT: Then I will excuse the jury until

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tomorrow morning at ten o'clock.

MR. BASSETT: If Your Honor please, I assume that the ruling as to the formality of filing written motions later and then having the argument would include the right to file a factual memorandum in support of one of these matters.

THE COURT: Well, all I will say is that I will expect all motions either to be presented orally or in writing at 2 o'clock, and I will expect to hear counsel on them at that time.

Now, the jury will be excused until tomorrow morning at ten o'clock.

We will take a recess until 2 o'clock and we will convene at that time in the Court room adjoining my chambers.

(Thereupon, at 11 o'clock a. m., a recess was taken until 2 o'clock p. m.)

AFTERNOON SESSION

Ow 2 pm.

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(Met, pursuant to the taking of the recess, at 2 o'clock p. m.)

THE COURT: Now, counsel for the defendants have some motions they desire to make.

ARGUMENT ON THE MOTIONS BY MR. BUCHMAN

MR. BUCHMAN: If Your Honor please, the first motion is a motion for judgment of acquittal. I want to renew our motion at the conclusion of the entire case.

Now, our position is this that as the Government charges two things, first that the defendants conspired to teach and advocate the overthrow of the United States Government by force and violence with intent of causing that overthrow, and secondly that they conspired to form the Communist Party, a group that teaches and advocates with the specific intent of causing the overthrow.

Now, that is our position in this case, right on the evidence, all the evidence in the case that the Government has not proven those charges in the indictment, that what the Government has attempted to prove on the basis of the testimony ranging back a quarter of a century is that the Communist Party taught and advocated, and secondly that the defendants were officers or members of the Communist Party, and there were some fragmentary references to some Marxist works, but the record, we say,

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is completely devoid of any factual evidence as to what the defendants taught or advocated or did within the six-year period of the indictment.

We submit, Your Honor, that this is the purest kind of case of guilt by association because what the Government is attempting in this case is merely to try to establish in a form which is least subject to refutation of events so remote, trying to connect it up with individual defendants that they can prove they were a member or lower officer, and their theory is that if they establish that they establish intent, and the second fact in accordance with Your Honor's formulation of the issues, that that might be inferred from that as a fact.

We say not only that does this violate all the decisions prior to the Dennis case, Your Honor, and not only does it violate every concept of Anglo-Saxon jurisprudence but that it runs directly counter to the limitations imposed by the Dennis case. Otherwise the reason for the language used by Chief Justice Vinson in that case is nonexistent, and I think in an attempt to limit the effect of the Dennis decision, the Chief Justice and three others who concurred in the opinion or who wrote concurring opinions, they laid down certain specific limitations in order that that decision would not completely nullify the first amendment.

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These limitations, Your Honor, I think are these, first, there was the fact that the Court expressly laid down the exact language, the specific intent, that that was the limitation, in other words, that the Government has a double burden, that they must not only prove that the individual intended to teach and advocate, but they must go further and prove that the individual intended to cause the overthrow.

I also make the point that during the course of the opinion the Chief Justice in his opinion states that where there is doubt as to the nature of their activities, their intent, and their power to bring about the evil, then these cases, as the Court referred to them, will be scrupulously reviewed.

Now, we say not only was there doubt but there is no evidence as to what the defendants taught or advocated or did. There is no evidence as to the nature of their activities. There is no evidence as to their intent. There is no evidence as to their power to bring about the evil unless it is inferred from the fact, attempted to be proven about the Communist Party as such.

Now, as to my client, Mrs. Frankfeld, Your Honor, the only evidence is that she was an Organizational Secretary, and there is no description of her activities, and there is no reference as to what she herself taught or

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advocated, and there is no evidence at all as to what she did during the period of this indictment.

As I said before earlier, I challenge the Government to show me anything in the record where there is evidence as to what she taught or advocated or as to what was the nature of her activities.

Now, not only is that a limitation specifically in the Dennis case, but we have the opinion of Judge Denman in the Ninth Circuit Case ^{in Stark v. Boyle} on the bail application and that was that mere membership in the Communist Party is not a crime in itself, and also the fact that it was stated that membership in the Communist Party is not a crime, and the Supreme Court in its decision on the bail applications again reiterated the position, speaking through Chief Justice Vinson, reiterated its position as in the Dennis case that they would scrupulously review the cases as they came before them.

Now, we say that the Government cannot merely point or attempt to establish membership of a local officer, a local officership without attempting in any way to prove that the person's individual activities or teachings, and if they do that then we are at a stage where we are going to witness mass trials where you would have such a situation with respect to individuals or political criticism made of the existing administration and the existing government

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and inherent in that sort of procedure is the danger, the danger of guilt by association and mass trials.

We referred Your Honor to the Union case before with respect to National Offices of the Union, Local Union and they were held not subject to it and we referred Your Honor to the Keegan case where even though the particular defendant in that case was a member of the Bund, was a local officer of the Bund, and they attempted to establish from his local officership being an officer of the National Organization, nevertheless that was not sufficient proof, and you could not impute to the individual defendant proof or allegation as to the organization itself.

Now, it seems to me, Your Honor, that this is a fundamental concept of the whole theory of our common law that a person's guilt must be individual, must be proved by the individual acts of the defendant, and we say that their proof is not sufficient, and not only that, but the Government's own witnesses disprove the charges, and we had the witness, Charles Craig, who was a Government Agent from 1943 to 1949 definitely stated he was not taught, and the furthest he would go was that he would infer from the writings, and Mrs. Markward also, and when we come to the other witness Bartlett he could not make such a statement himself, and he admitted that he was charged with being radical and was expelled, but that is as far as he would go.

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but there is no evidence in the Government's case that would establish the fact of these things, but the Government takes one point that they establish that the Communist Party did certain things or allegedly did certain things and then they have witnesses or they take the case of these defendants who were lower officers or lower offices, and Q.E.D., we have the proposition there.

I say, Your Honor, there is a most dangerous precedent there in an attempt to cull excerpts from books and attempt to convict people, and in that connection I would like to refer to you one statement made by Erskine in a similar case, a sedition case where he refers to this point, and that is in the case of Rex v. Stockdale, 22 How. St. Tr. 257, which was a sedition case in the 18th Century in which he says:

"Out of a work consisting of about 2,530 lines of manly spirited eloquence, only forty or fifty lines are culled from various parts of it, and artfully put together so as to rear up a libel out of a false context, by a supposed connection of sentences within one another which are not only entirely independent but which when compared with their antecedents bear a totally different construction. In this manner, the greatest works upon government, the most excellent books of science, the Sacred scriptures themselves,

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might be distorted into libels by forsaking the
general context and hanging a meaning upon selected
parts."

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Owens.

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THE COURT: You are reading from an argument by Erskine, aren't you?

MR. BUCKMAN: Yes, sir.

THE COURT: I thought you indicated you are reading from an opinion of the Court.

MR. BUCKMAN: I should have said "Thomas Erskine." No, this is not an opinion of the Court.

And I might say this, Your Honor, for the method of proving guilt as to these participants, and by the way, to Mrs. Frankfeld, there is not even evidence she used these books. If that is true, it seems to me an extension of that would be that anybody in Baltimore City would have "Capital," by Karl Marx, or any of Marx's works from their libraries. And going even beyond that, where do you stop?

I see the legal equivalent of book burning, if this method of proving a case is a valid method.

I submit to Your Honor, I don't want to extend my remarks any further. Other counsel wish to be heard. There has been no evidence indicating that these defendants taught or advocated the duty or necessity, or no intent to teach or advocate, and particularly no evidence, to cause the overthrow of the government by force and violence.

THE COURT: Do other counsel wish to be heard on the same point?

MR. BASSETT: If the Court please, I would like, very briefly, to be heard in connection with the defendant, Mrs. Blumberg.

THE COURT: Now, is it the same point, or another point? I only ask that because I want to hear the argument of both sides on each particular point, so that I can have it before me at the time.

MR. BASSETT: In that case, I think perhaps I should rise later, because this is a slightly different point.

THE COURT: Anybody else on the same point?

ARGUMENT ON BEHALF OF MR. LEROY HAND WOOD

MR. WRIGHT: May it please the Court, on the point raised by Mr. Buchman relative to the motion of a judgment of acquittal, I want to speak very briefly on the case of LeRoy Hand Wood.

THE COURT: Is it the same point?

MR. WRIGHT: The very same point.

THE COURT: The very same point. Go ahead.

MR. WRIGHT: First, I want to call Your Honor's attention to the fact that I generally subscribe to the legal argument as propounded to the court by Mr. Buchman, and the cases referred to, to support that point.

Then I want to say, very briefly, how it relates, and state to Your Honor how I think it relates to the actual matter relating to the defendant, Wood.

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Your Honor will recall testimony with regard to the activity of this particular defendant. As I recall it, the first witness who could testify to any knowledge about him was the witness Bartlett, to the effect he had seen him on only one occasion, I believe as early as 1939, where, in his language, "a young chap," he was down at party headquarters. The second instance he said he knew him, he said he met him later as an employee of one of the steel companies, but as far as any activity in the party, as such, it was unknown to him.

The next witness who referred to the defendant, Wood, as I recall, was Mrs. Markward, who testified she didn't know him, as the party chairman or as organization secretary. But in my cross examination of Mrs. Markward, at no time did she state categorically, and for that matter, even on direct examination, she didn't state, at no time, did the defendant Wood make any statement or engage in any act, as such, which could be construed as evidence of teaching or advocating the duty and necessity of the overthrow of the Government, which, of course, is the basis for the charge here.

As I recall it, only in one other instance was there testimony given on behalf of the Government relative to the defendant, Wood, and I believe that was the witness Craig, who, Your Honor will recall, in that instance

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specifically and very categorically was asked as to whether or not on any occasion could he say the defendant, or the defendants generally, for that matter, taught or advocated force and violence. He very specifically said that in the two classes he taught, although they were not attended by the defendant, Wood, the other two defendants who did teach them did on no occasion teach or advocate, to him, in his judgment, any duty or necessity to overthrow the Government by force and violence.

I recall in a general way that that is the only testimony related to any activity on the part of the defendant Wood. I submit, therefore, since there is no further or no direction connection in any way to intent of the defendant Wood. And certainly that is a very essential allegation of this indictment, where it clearly says these things were done with the intent to bring about the evil described in the indictment, as circumstances would permit. There is no evidence of that intent, as produced in any way on the part of the Government's witnesses.

And I say, as to that, the Government has failed in making that as an essential element in this case with respect to the defendant, Wood. Moreover, there is not an instance shown, which is as indicated in the indictment, as done by this defendant particularly in terms of overt acts which carries that out. So two fundamental ingredients have

not been made out by the Government. I raise the request with them a prima facie case has not been made, and therefore ask the Court for acquittal.

THE COURT: Do you have a reply, Mr. Flynn?

MR. BASSETT: May I make an inquiry before Mr. Flynn proceeds? I am not quite clear on this point. I wish on behalf of Mrs. Blumberg to add to argument of counsel. I think that equally applies. I don't want to take up time to repeat.

THE COURT: You are asking about the present discussion. If it will help you. My thought is that I would like to hear Mr. Flynn on the point made by Mr. Buchman on the general points as to all of the defendants. Then after we get through with that, when and as, I would be glad to hear counsel for the particular parties as to whether there is evidence against that particular defendant. I think that is the most logical way to proceed, and probably the most helpful way for me to understand just exactly what the respective conditions are.

So, first, we will take, therefore, from the Government's side of the table any discussion that you have to submit in answer to the counterpart that there is no evidence sufficient to go to the jury on any defendants.

ARGUMENT ON MOTIONS BY MR. FLYNN

MR. FLYNN: If Your Honor please, very briefly, I

would like to point out that this is an identical argument made at the end of the Government's case. There is nothing new being brought up. There has been no change whatever as far as the evidence is concerned, since that time. And I only want to point out this, Mr. Buchman makes the point that this is guilt by association, or we are attempting to prove guilt by association.

That is a phrase that has come up recently, and we are hearing a great deal about it. Far from that, may it please the Court. In this case, these defendants, each and every one of them have been proven to be officers of the local communist party in Maryland. Each of these defendants have been shown to have been on the highest governing board. Each of these defendants have been shown to have participated in the highest councils of the Communist Party in this district.

And each of these defendants have been shown to have had contact with the co-conspirators. There is no contention that we have not proven that the Communist Party at least stands for the overthrow of the Government by the use of force and violence, as I understand it.

MR. BUCHMAN: We do not admit that at all.

MR. FLYNN: You certainly said in your argument, Mr. Buchman, said that that may be so but that we have not shown that these people have gotten into it.

MR. BUCHMAN: We are assuming for the sake of argument that was so.

MR. FLYNN: Oh, you are assuming. Well, I will say for the sake of argument we have proven that beyond any doubt, in my judgment, and that these defendants, all of them, have been connected with the reorganization of the Communist Party in 1945, and since that time have been active participants, directors, teachers of schools, attendants of schools, sent away to be educated as officers of the party, and in every respect, may it please the Court, they are the directors and have been the directors of the party. And I say, there is nothing in the contention.

There is direct, positive evidence of intent upon the part of these people to carry out the tenets, everything that the Communist Party stands for. And the purpose, without doubt, to that degree certainly shows that they have been the officers and the persons responsible for the Communist Party in this jurisdiction.

THE COURT: Of course, intent is a mental element. You prove it in one or the other of two ways, rather circumstantially, from what the alleged intender has done, or by oral statement or written statements made by the particular person.

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THE COURT: Now, Mr. Buchman's emphasis of the point is that you have not shown here evidence of what has been said by the defendants showing their intent. Your contention is then, I suppose, that there being evidence as to what they have done, that is a matter for the jury to determine from the facts, what their intention was in the things that they did.

MR. FLYNN: Yes, sir. In addition to that, this is a conspiracy case and I think there is no doubt in the world that the evidence of the conspiracy is clear in this case for the purpose of the jury passing upon it.

THE COURT: Of course, we have certainly evidence tending to prove the Communist Party as now constituted does intend as speedily as circumstances will permit to overthrow the government and when the time is ripe and opportune.

Now, there is evidence, I understand, clearly to that intent of purpose. Now, whether the jury finds that as a fact is not for me to say. It is sufficient for me to say that there is evidence tending to show that.

Well, now, the next point is which of the defendants has participated in what you say is the conspiracy of the Communist Party as of the present time.

First, I understand you to say generally that all of them have participated by their various positions. Now,

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however, we come to the individual defendants and consider the circumstances with regard to them. You have not mentioned that yet and I have not heard from the other side yet. Is that all you have to say on the general point?

MR. FLYNN: On the general point, that is all I have to say, yes.

THE COURT: Do you understand there is anything, or what do you understand is in the Supreme Court opinion in the Dennis case which bears on this point of intent? I think Chief Justice Vinson said that the statute is to be construed to require proof of the intent.

MR. FLYNN: Yes, sir.

THE COURT: Now, did the Chief Justice say something specifically from what the intent could be inferred? My recollection is that at about the middle of the opinion he said if it was proved that the society was organized for the purpose of ultimately or when opportune of overthrowing the government, it would not be difficult to find the intent on the part of the organizer.

MR. FLYNN: I think that is substantially what the Chief Justice said and certainly in the Second Circuit they pointed out that the intent could be implied from the acts of the people and what they did and held in that case that they were the very things that showed the intent I have pointed out.

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THE COURT: Now, I am fairly familiar with the whole of the Supreme Court opinion and the opinion of the Second Circuit which was appealed from to the Supreme Court. It is a very, very long one and I do not know that I have read the particular passage you refer to bearing on the presumption of facts from which the jury might find an implied intent.

MR. FLYNN: Yes, sir, just very briefly, the Second Circuit passed on with approval the instruction of Judge Medina in which it said:

"The jury is instructed that if they believe from the evidence that the defendants had been members of the Communist Party for many years, then the jury may find as a fact that the defendants were aware of the teachings and doctrines of the Communist Party as contained in the Marxist-Leninist classics."

THE COURT: Is that one of the instructions you wish me to give in this case?

MR. FLYNN: Yes, sir, it is.

THE COURT: I see here quite a number of pages on the subject.

MR. FLYNN: We have given you a little note as to just what happened about that in the other case.

THE COURT: I am sure that will be helpful in further study of the matter.

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MR. FLYNN: Now, going on, if Your Honor please, in the same case the Court of Appeals said it is obviously not possible to prove directly what were the operations of the minds of the defendants .

"You cannot read into a persons mind and see what his intentions are or were but a careful consideration of the facts and circumstances should, shown by the evidence, enable us to infer with a reasonable degree of accuracy what intentions were or were not to do certain things. With the knowledge of definite facts, we may draw definite logical conclusions. Experience teaches that -- "

THE COURT: That is the memorandum of Judge Hand?

MR. FLYNN: Judge Hand, in the Second Circuit.

THE COURT: Is there reference to the page?

MR. FLYNN: Yes, it is page 4 of that memorandum.

THE COURT: Very well. Did all the defendants in the New York case testify?

MR. FLYNN: I don't think so, not all of them did, and then on the same page there is this quotation from the same opinion:

"In every agreement or conspiracy, there must be an intent on the part of the person who attempts to perform it to do that which is unlawful. The question of intent usually resolves itself into one

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of fact. We arrive at one's intentions by taking certain circumstances. Extreme that that may be, the purpose in one's doing an act, it is a mental process. What a man's intent is is a question of fact first for the trier of facts in the exercise of reasonable discretion, after considering all circumstances connected with the end charged. Whatever result flows from the act as committed is presumed to be the act intended by the person to do so."

That is in our memorandum also.

THE COURT: Well, now, we will have the individual defendants, as to arguments of their counsel. First, which one will talk first and who will do it?

MR. BRAVERMAN: I will speak first on behalf of myself.

THE COURT: Very well.

ARGUMENT ON THE MOTIONS BY MR. BRAVERMAN

MR. BRAVERMAN: First of all I want to say here, the contention of the defendants that the Communist Party is not -- and there is no evidence in this case that the Communist Party is a conspiracy to teach force and violence.

THE COURT: Well, now, Mr. Braverman, as a matter of law, I think it would be rather wasting your time at the present time to argue that to me because I think there is a great deal of evidence in this case that tends to show

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that. As I say, it is not for me to decide whether it does or does not, but as a legal matter, there is evidence tending to show that, so I do not think it would be worth your while to spend much time in arguing that there is no evidence on that point.

MR. BRAVERMAN: I make the point of what the defense is on the question of evidence in the case. I want to point out to Your Honor that there is evidence in this case which has not been contradicted that the Communist Party carries on political activities and these political activities are along the line of civil rights and the high cost of living and raise in streetcar fares and so on and so forth. There has not been one witness -- as a matter of fact, Government witnesses under cross-examination admitted this -- leaflets were presented and material was discussed over a long time and so forth and there is not one piece of contradiction from the Government.

The only evidence in this case against the defendants -- and with that broad statement as to all the defendants -- I will discuss the evidence against myself -- the only evidence in this case against the defendants is that they attended meetings or held office on a local level in the Communist Party.

There were ten witnesses that testified on behalf of the Government. Of the ten witnesses, three of them

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identified me and testified as to me. Those three are Craig, Markward and Benner. There is not one piece of evidence from any of those three people that I did anything other than attend meetings or to be elected to the District Committee of the Communist Party of Maryland.

Two of the witnesses, Craig and Markward, admitted that at the 1945 and 1948 conventions, that there was no discussion of force and violence.

The witness Craig admitted that he had never heard me discuss force and violence. He also admitted that at one of the meetings I attended, in 1949, that in that meeting I attended as a counsel for the Communist Party in a discussion of the Ober Law, as counsel for the Communist Party, and it is obvious from the testimony of Markward, who admitted on direct examination that after 1948 I was no longer an official of the Communist Party but I was elected or appointed as official attorney for the Communist Party of Maryland and that I held no office in the Communist Party after that date.

Now, there have been some decisions in the Dennis case, Chief Justice Vinson's decision is very clear on this point. He said early in the decision:

"We hold that the statute requires as an essential element of the crime proof of the intent of those who are charged with its violation to overthrow the govern-

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ment by force and violence."

And at the conclusion of the decision, just about the third paragraph from the end, I quote:

"Where there is doubt as to the intent of the defendants, the nature of their activities, or their power to bring about the evil, this Court will review the convictions with the scrupulous care demanded by our constitution."

Now, Your Honor, there is not one word of evidence in this case that I did anything other than attend meetings or alleged to have been elected to the District Committee of the Communist Party. There is a piece of evidence that in 1945 I used a book in teaching a class that the witness testified to but he did not recollect as to what was taught.

There is some evidence -- the Government witness Markward testified that she attended a meeting in 1946 to 1947, where it was discussed that some class would be held in my home. There was no evidence as to what was said at this class or that anything at these meetings or classes, that anybody manifested any intention to overthrow the government of the United States.

Now, I respectfully submit to Your Honor that Mr. Buchman's argument that this is a case purely and simply of guilt by association is absolutely true in my particular case. There has been no piece of evidence in this case as

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to the nature of my activities. There is evidence as to the activities of the Communist Party in behalf of peace and civil rights and what they think is a good program for the United States or the people of the United States.

The evidence does come in that I attended some of these meetings where some of these things were discussed. Instead of manifesting an intent to overthrow the government, it shows that we participated in legitimate activities of a legitimate political party.

Now, I submit that under the ruling in the Dennis case and on the evidence in this case by Government witnesses, that there is insufficient evidence to present to this jury and that there should be a judgment of acquittal as to myself. Thank you.

THE COURT: Do you wish to say anything on Mr. Braverman's motion, Mr. Flynn?

ARGUMENT ON MOTION BY MR. FLYNN

MR. FLYNN: Very briefly. May it please the Court, there is evidence as against Mr. Braverman in this case from the people who said -- first of all, we have Charles M. Craig, that he knew Mr. Braverman as a member of the Communist Party, that he attended meetings, social functions, at the Douglas Club in Baltimore where Mr. Braverman was present; that he was present at the District Convention in Baltimore and Mr. Braverman was there and he attended social

functions at the Frederick Douglas Club; that at this convention in the Finnish Hall in 1945 -- and that was the convention, may it please the Court, which reconstituted the Communist Party, that Mr. Braverman was there as a delegate, that Mr. Braverman represented the Ben Franklin Club as Librarian Director at meetings of the Party and in the 1944 convention, he was known then to Craig. He was present at the convention of the Communist Party in Maryland in July 1944, at the Finnish Club, that he was an officer and was a candidate for the chairmanship of that convention, and there is evidence that there was a ballot taken and someone else was elected but he was a candidate for the chairman of it.

Then, we have the evidence of Mrs. Markward. We also have the evidence, may it please the Court, of this witness Craig. You will recall that he was told that he was to meet some place in a mysterious mission, that when he was taken by the person who was conducting it, that he was then put in an automobile driven by Mr. Braverman and was driven to Washington and told Mr. Braverman that they were to break up and not go to the Willard Hotel; that he did as he was instructed by Mr. Braverman, that when they got to the hotel, there was a meeting being held over there, which was referred to by Mrs. Markward as being one of these trial meetings, where they used not their own

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names and were practicing as to how to get to meetings without being discovered.

Now, Mrs. Markward testified that she knew Mr. Braverman, that he attended conventions and she attended conventions with him; that he was on the Constitution and By-Laws Committee in the District Committee meeting in 1945, that he was elected to the District Committee in 1945; he was a member of the organization department; that he was at the 1946 meeting and there was a meeting in Mr. Frankfeld's home in 1947; at the District Board meeting in 1947; and he was head of the White Collar section and was also on the District Committee in July 1948 and was elected to the District Committee at that time.

THE COURT: For what period?

MR. FLYNN: Well, he was there from September -- he was at the September meeting in 1948. He was at the meeting in July.

THE COURT: For what term was he elected?

MR. FLYNN: 1948 term, I think, sir, which was for two years.

THE COURT: The reason I ask that question is, you have to show at least continuing membership in the Party within three years of the indictment.

MR. FLYNN: Well, sir, he also attended a meeting and was an officer attending the meeting in 1949 in Washington.

He was also a District Committee member at that time in 1949. That goes back to 1946, and so we have there a continuing running account of Mr. Braverman's activities over a long period of time and we have the testimony of Mr. Benner, who had been down at Sparrows Point, and he testified that Mr. Braverman was the head of the English Speaking Lodge and held office.

MR. BUCHMAN: English Speaking Lodge of what?

MR. FLYNN: Of the International Workers Order, which he said was a Communist Organization. There is testimony as to Mr. Braverman, there is evidence to go to the jury as to his activities and membership and holding office in the Communist Party of the State of Maryland.

I might say that the evidence shows that Mr. Braverman was on the District Committee when Mr. Meyers, a defendant, was sent to the National Training School. He was on the District Committee at that time which sent Meyers to the National Training School.

THE COURT: What is the name of this last witness you referred to?

MR. FLYNN: Benner.

THE COURT: Benner?

MR. FLYNN: Yes. R. A. Benner.

THE COURT: Do you have conveniently the reference to the pages of the transcript with respect to these

three witnesses and their account of acquaintance with Mr. Braverman?

MR. FLYNN: Yes, I think we furnished your office with that.

THE COURT: Is there anything else you want to say?

MR. BRAVERMAN: I just want to say that Mr. Flynn has proven the exact points I want to make, that the only evidence in this case is that I have attended meetings. He has not presented a case that meets the rule laid down by the Dennis decision. He has not presented any evidence as to the nature of my activities, any evidence as to my intent in attending these meetings. There is plenty evidence in this case as to the political purposes of the Communist Party. I do not want to mention that again, the increased cost of living and so forth.

Now, Your Honor, as to one other thing, there is not one word of proof as to the power to bring about the evil. These are the three things laid down by the rule in the Dennis case and certainly the fact that I have attended meetings is not evidence of the case going to the jury and I take it a verdict or judgment of acquittal is warranted.

THE COURT: Now, as to one of the other defendants, is there any other argument you wish to present, Mr. Bassett, on behalf of Mrs. Frankfeld or Mrs. Blumberg?

MR. BASSETT: If Your Honor please, the testimony

dealing with Mrs. Blumberg ranges from 1937 until 1949. I think it is important to note that during that period of time the Government or its agents had reports on her activities during the whole time.

Now, where they intended to prove that, we will show later, actually impeach their own witness on one occasion where they attempted to prove, taking it out of this book, that she was a member of the Communist Party from 1939 until 1949. They also proved that she was an officer in the Party. They proved, and a witness testified, that she held a job, directly proved by the witness Markward, that she was a treasurer of the Party around until April 1949. They also proved that she taught two classes. The most important of all perhaps that in connection with proof that she taught two classes; they proved that she did not teach force and violence and they exhibited a book but did not read a single word from it.

Now, they also proved that she attended some of these affairs at meetings, many of which were open to the public.

They proved that she, as secretary, with one of the members attempted to recruit some new members and if Mr. Flynn's qualification may be adopted, he stated that they were officers of the local C. P. In the case of Mrs. Blumberg, that is true, but the office she held was not an

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executive sort of office but was a clerical office. She was at one time a secretary and another time treasurer and at many of those meetings the testimony is that she was there as a secretary or sort of secretary and I think if Your Honor will read the memorandum which deals specifically with this testimony, Your Honor will observe what we have to say about those meetings. She was there and acted as a secretary but they say she was on the highest governing board of the local body, that is the District Committee. The District Committee has forty-five members on it. There were several witnesses that testified she was one of those forty-five. However, the same witness that testified she was one of these forty-five also testified that the District Board had no policy making authority at all because they were the ones that testified about democratic centralism and that sort of thing -- where they really could not do anything anyway. He also suggested that they participated in the highest councils -- that is another way of saying the same thing. He said she was present at the convention where the C.P. was started up again. There was testimony to the effect but there was no testimony that she was there as a delegate. There was testimony she was there and there was other testimony but it may be that she could have been there as a reporter or stenographer, if you want to put it that way.

He also suggested that these people were sent away to schools as functionaries. There is no evidence that Mrs. Blumberg was ever sent to any school. There is evidence that she taught two classes but there is no evidence that she taught or advocated the overthrow of the government in those classes and I might add finally that since so much of the case depends on the conception of Marxism-Leninism, as to whether you read it as advocating force and violence, there is nothing there. They never proved she read one book.

There is much more but I am inclined to believe it would be repetitious and I will refrain from going further.

THE COURT: Mr. Flynn, do you want to be heard on Mrs. Blumberg?

MR. FLYNN: No, I don't think I can say very much on that.

This defendant has been an active member from the time her husband was here as a District organizer back in 1941 on the 1946 and before that and right down to August of 1949. She has been quite active. We have had evidence from three or four witnesses, particularly Mrs. Markward, as to her activities. She was secretary of the Party. She signed cards for the transfer of the signature cards of the Party and she had control of the funds of the Party

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and attended conventions and it went into greater detail. I don't know of anything we have as much evidence of as that with the possible exception of Mr. Frankfeld than we have on Mrs. Blumberg.

THE COURT: I would like reference made to the specific point of the date that you just mentioned. You say there is evidence affecting the defendant Mrs. Blumberg up to August 1949. On the other hand, I know there was some reference to the fact or alleged fact that she moved away from Baltimore early in -- I think it was early in '49. Now, I would be glad to know more definitely from the evidence whether she was still on the District Committee or secretary or treasurer as of January 15, 1949.

MR.FLYNN: Yes, she was a member of the District Committee and attended the meeting on January 22, 1949. She also attended the meeting in February of '49 and she attended a meeting of that committee in March 1949.

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In April 1949 she attended this meeting which was held in Washington, that meeting where they all went over there and used their own names, not their own names but fictitious names or names which weren't their own.

Now, I think it was much later than April, wasn't it? I think it was in April 1949, sir, when she signed a card as Secretary-Treasurer and the resolution of the bank indicating that Meyers, and I think Mr. Wood or Frankfeld, wasn't it?

THE COURT: What month was that?

MR. FLYNN: April 1949, sir, April 20th, to be exact.

I don't think there is any question about that, is there?

MR. BASSETT: Not as to the question of limitations, if Your Honor please, but I would like to comment upon that particularly because of the prior hearing on the motions, I did advance the theory with respect to Mrs. Blumberg was protected by the statute of limitations which date from about the middle of January 1949.

I had reference to the Government's testimony that prior to April 20, 1949, this particular question, prior to April 20, 1949, she was replaced as Treasurer, though as Mr. Flynn refers to the February meeting and the January meeting although I think it was after the three-

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year period, that is correct, but there is no question about that, certainly.

However, I would, if I may, like to comment only upon one other point that Mr. Flynn said. I think it was their very first thing that he had to say after he said it was a few months after the date of Mrs. Blumberg that she was Dr. Blumberg's husband.

MR. FLYNN: No, wife.

MR. BASSETT: Wife, Dr. Blumberg's wife, and that is a question of guilt by association or guilt by marriage.

THE COURT: Well, I will ask this question just to see as a matter of law what is your position on the point.

Conspiracy cases, of course, have definite rules of law applicable to them which are sometimes different from that of other crimes.

In the first place, the Smith Act that we have talked about so much in this case was first passed in 1940 and amended in 1948 when the new judicial or criminal code was published and became effective.

Now, in the indictment there is a reference to the Smith Act as it was originally contained prior to 1948 and then also to the Smith Act as subsequent, and I think it is October 1, 1948.

MR. FLYNN: Yes.

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THE COURT: But for practical purposes does not the reference prior to October 1948 go out of this case by reason of the three-year period?

MR. FLYNN: I think so. The only difference in the Acts was in the revision they dropped out the conspiracy section.

THE COURT: I understand the reason the revisers so acted was that it is very clear because there was always a general conspiracy statute applicable to any agreement to violate an act of congress, and it is not necessary therefore to have a special conspiracy paragraph in the Smith Act.

Now, they didn't make a change with regard the necessity which exists under the general conspiracy statute and does not exist under the general criminal law of conspiracy in Maryland and elsewhere that there must be an overt act in the conspiracy, which is the change that is made in this case.

MR. FLYNN: Yes.

THE COURT: Which is immaterial here, but the other question which I would be glad to have the views of counsel on, which is material in the case so that you might express some things about it, and that is this that while it is clear there must be an existing conspiracy within three years prior to the indictment, what are the views of counsel that the overt act which is relied upon by the

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Government must have been within three years.

Now, there is no doubt, of course, that overt acts, so called, or acts of any kind relevant to the conspiracy prior to three years are admissible in evidence for the purpose of showing whether there was a conspiracy or participation in the conspiracy by a certain defendant; but is it necessary nowadays or at the present time under the law to have an overt act shown by the Government, proven by the Government, and so forth, within three years?

MR. FLYNN: I think not. I think they have to prove it in the conspiracy regardless of whether the overt act was committed after a period, and I think that was held in the Dennis case where they said that the declarations --

THE COURT: Declarations are different from overt acts.

MR. FLYNN: I think it does not have to be.

THE COURT: Well it is not so much material in this case by reason of the fact that all the overt acts which you have specified here or at least a number of which you claim to have proven, these meetings which took place, were within the three-year period.

MR. FLYNN: Yes, very much so.

THE COURT: So it is not^a practical question but with respect to a ruling with regard to overt acts, I just wanted to see what were the views of counsel whether it

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is necessary to show that the overt acts have been within three years.

MR. FLYNN: I think not.

THE COURT: If Mr. Murphy, who has been very diligent, I know, in reading the law in this case, has run across a case or a decision bearing upon that point, I would be very much helped, and it would be helpful to me generally and I would like to know of it, but I do not recall an opinion in which the point turned on the precise question that I am now asking, and that is, does the overt act itself have to be within three years?

MR. FLYNN: I am sure Mr. Murphy will have something on that point.

THE COURT: Do you want to say anything?

ARGUMENT ON THE MOTIONS BY MR. BASSETT

MR. BASSETT: If Your Honor please, the defendants have also in process a memorandum on that particular point.

THE COURT: What is that? What point is that you are making?

MR. BASSETT: Our position is that there are presently two rules in particular, a Supreme Court rule, although this Circuit has not definitely decided it, but the Hyde case would be to the effect that an overt act within the three-year period would be required, but then that doctrine has been much modified in recent decisions.

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THE COURT: Well, now, just for my own information give me the reference to the Hyde case which I have read but do not recall where it is reported.

MR. BASSETT: If Your Honor please, may I have a few minutes.

It is 15 Fed. 2d 816.

THE COURT: Of course, that is not a decision of the Supreme Court, the Hyde case.

MR. BASSETT: Your Honor, that is a Supreme Court case, and I will get my notes on it if I may have a few minutes, two or three minutes, but I don't remember the citation, but there is a Hyde case in the Supreme Court.

THE COURT: What later case do you have in mind that you think changes the rule in that regard?

MR. BASSETT: May I have a few minutes, Your Honor, two or three minutes, so that I may get my notes?

THE COURT: Well, as I am asking for information, naturally, I will give you time to do it.

MR. BASSETT: Yes, sir.

THE COURT: Now, is there any other discussion about any of the other defendants?

ARGUMENT ON THE MOTIONS BY MR. MEYERS

MR. MEYERS: I would like Your Honor to discuss briefly these motions, and I would like to have what the other attorneys said applied to myself on the motions.

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I think that what they said at the beginning of the trial that the Government was attempting in this case, taking six defendants and putting the Communist Party on trial, that it was correct that at the beginning of the case Your Honor also said membership in the Communist Party was not sufficient evidence, and the fact is that the Government has put the Communist Party on trial trying to find it guilty and then associating us with the Communist Party.

It is my opinion that the evidence overwhelmingly shows and proves that the Communist Party did not advocate force and violence although there has been these theoretical teachings.

As far as I myself am concerned and my activities in the Communist Party and the trade union movement they are a matter of public record and they could be gotten in the newspaper and the Government could have called me up on the phone, and it was not necessary to hold a three-week trial to establish what my activities were in the last few years.

ARGUMENT ON BEHALF OF THE MOTIONS BY
MR. BUCHMAN

MR. BUCHMAN: If Your Honor please, on the question of Mrs. Frankfeld and Mr. Frankfeld, whom I represent, I made an analysis of the references in the transcript to the two defendants. Now, there was a reference to the period of

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the indictment, and I want to call your attention to the peculiar character of the testimony.

The testimony refers to attendance at a meeting or holding an office but none of the witnesses described what happened at the meetings or what the nature of the duties were, Your Honor, which goes to the point --

THE COURT: Don't you think it is rather difficult to describe what goes on at a conspirators' meeting?

MR. BUCHMAN: No, it is not.

THE COURT: It is not?

MR. BUCHMAN: No, and I submit, Your Honor, that the presence of a defendant, and I would like to show that what the witnesses said, my point is precisely this, that these witnesses did not describe what went on at a meeting or did not describe the activities of the Communist Party because they would have negated the essential allegations of advocacy and teaching.

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And that is why these witnesses, the local witnesses, were unable to do more than make this very fact, in what deny is force and violence.

Let's refer to Mrs. Marekward's testimony. She makes very much of the defendants advocatint forcible overthrow, but she didn't remember times, places, or circumstances.

I enumerate them as to Mrs. Frankfeld. She knew them on -- This is Mr. Craig. I am sorry. Charles Craig.

That she was a member of the Tom Paine Club and was present at the 1948 convention, and Mrs. Frankfeld attended school, knew what dates.

And she says Mrs. Frankfeld was present at the district conference in Baltimore in 1946. Mrs. Frankfeld attended district board meetings with her husband. She attended the board meetings in January, 1948. And here the only occasion anything specific was mentioned, there was a discussion of the Teft Hartley Bill.

Mrs. Marekward, July, 1948, testified to attending this convention, Mrs. Frankfeld was sent to training school, Mrs. Frankfeld attended district meeting, December, 1948.

That is all you have. Now, certainly with six years as a Government informer, they could come in and testify on what did they do and what did they teach, and her activities. There was none.

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If they had described in detail -- if we had been permitted as he had been on witness Nowell to examine as to what was actually done. And it was important that no one admitted they practiced what they preached, or practiced or preached. If that had been done, and the Government witnesses said what they had done and advocated, it would have so completely destroyed the Government's idea and the absurdity of the charge would have been self-evident. That is why Mr. Craig was never taught force and violence, and why Mrs. Markward said, no, she didn't remember when or where.

That is why the witness said he was expelled because of force and violence. And it was in direct contradiction to the charges made in the case.

And I am referring to the nature of the conspiracy. A constitution was introduced in evidence. If this was an ordinary case, the constitution would be taken, I would assume, as the scope of the conspiracy. But the constitution is innocent on its face. And, therefore, the Government attempted to give special meaning to it, by the special meaning, alluding to the Marxism-Leninism works.

As Crouch admitted, and Lautner, too, you have got to study the works in the entirety to get the so-called "special meaning."

I submit, Your Honor, there is no evidence in the case

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that any of the defendants had any knowledge of what the constitution meant other than what was said in black and white in plain English.

The case is going to be sent to the Jury with no evidence at all as to what was actually done and advocated within the six years period. Therefore, how is a conspiracy of the Communist Party proven by evidence during the six year period, Your Honor?

And on the next motion, I want to urge you also, in this case, to go back a quarter of a century, those incidents which cannot be proven, which come through the word of professional witnesses. And they simply are fantastic tales. So that these defendants are going to be tried in this case, and the case sent to the Jury with a complete vacuum as to what they did, thought, and advocated during the past six year period.

And to give credence to my assertion of "guilt by association," I think Mr. Flynn inadvertently proved it, he referred to the International Workers Order, a group which was created, of 165,000 members, for fraternal insurance. He refers to that as additional evidence of Mr. Braverman's association in the Communist Party, and the chain reaction, which he asserted is an element of association, is creeping into this case.

So, Your Honor, if this case goes to the Jury with

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all of the opportunities available to informers, available over the six years period, we are abandoning the concepts of Law and using a dragnet in alleging the conspiracy, without any acts on the part of the defendants

THE COURT: Let me ask you a question of general proposition of insufficiency of proof by the Government in this case. How does the general nature of the Government's case in here differ from or be less persuasive as a matter of Law - I am not talking about fact - than the Dennis case in New York, where the eleven men, I believe, were convicted of this very charge?

Now, the Circuit Court of Appeals held that the evidence was sufficient on all aspects, including intent.

Now, in what respects have Mr. Flynn and Mr. Green failed in this case to produce evidence which tends to be of the same probative nature?

MR. BUCHMAN: I think there are several important distinctions.

THE COURT: What are they?

MR. BUCHMAN: Number one, as I recall reading the transcript, at least there were some specific speeches or statements attributed to each defendant. That is number one, some specific action.

Second, you had this element, and Judge Learned Hand pointed out in his opinion --

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THE COURT: Who was that?

MR. BUCHMAN: Judge Learned Hand pointed this out in his opinion, and it is made the element of the opinion of Chief Justice Vinson. Judge Learned Hand refers to the fact that that is where the national leaders were the policy makers.

And I also might point out that Justice Frankfurter in his dissenting opinion in the Carlson Case, two weeks ago, makes a distinction that the Dennis Case, that these were the leaders, policy makers, and then makes a statement that membership in the Communist Party is not a crime under the Smith Act. He makes that specific allusion.

THE COURT: Of course, membership in the Communist Party, knowing the purpose of the party, is a crime under the Smith Act.

MR. BUCHMAN: No, Your Honor. We submit that is not the law of the case.

THE COURT: I am sure you have read the Act.

MR. BUCHMAN: I have read the act, but that Act is limited and qualified by what Chief Justice Vinson said in the Dennis case.

THE COURT: I wish you would call my attention to that. I haven't been able to get that yet. If the Communist Party has one of its objects to teach and advocate the overthrow of the Government of the United States by

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force and violence, and if a person joins the Communist Party knowing that that is the intention, that is directly in the Smith Act.

MR. BUCHMAN: Well, I quoted on a fraction, that is, the statement, as Chief Justice Vinson said, that specific intent is important.

THE COURT: That is going back to the question which I feel has been already answered by Mr. Flynn on the particular principle of the Jury having the duty of finding whether or not there was intent.

MR. BUCHMAN: This is why it is important. The Communist Party is alleged by the Government in 1948 to have had a membership of sixty or seventy thousand persons, and it would be true of any political party that would have a large number of members, namely, how do you ascertain what is understood of the intent of the people who join political parties?

THE COURT: The Statute says, if they know, the persons of the party.

MR. BUCHMAN: At what period is that?

THE COURT: Then they are prohibited from joining the party, or affiliating with it or being members. And if they know the purposes of the party, and of those purposes of the party are those condemned by the Smith Act, I think that is something that has to be quite reckoned with by

citizens generally.

Now, let's go on in regard to Mrs. Frankfeld. You argue that particularly there is not sufficient evidence here to hold her or to let the case go to the jury as to her.

MR. BUCHMAN: My question would be, in her case, where is there evidence that she knew of the program of the Communist Party, as alleged by the Government? As far as the evidence is concerned, there is no evidence that she had any knowledge, other than the constitution of the Communist Party, admitted into evidence. And there is no evidence of any class she taught or of any book she used, and without referring to the exact books in evidence in this case, it seems to me there is no evidence she used any book or taught any class or had any knowledge, as stated in the indictment.

THE COURT: I want to hear Mr. Flynn on that point, which you have said, that the evidence is less accumulative against Mrs. Frankfeld and against, I think, some of the other defendants. But you reserved your opening statements as to Mrs. Frankfeld, and at the end of the Government's case you made an opening statement.

Now, of course, you don't intend that anything the Jury heard in your opening statement not followed up by evidence would be considered by them, do you?

MR. BUCHMAN: No, Your Honor. Just the evidence.

THE COURT: What we have in this case in regard to Mrs. Frankfeld is solely that which appears in the record, entirely unexplained in any way by any witness. I do not overlook the very important thing, I have told juries in most every criminal case I have ever tried from the Bench, where the defendant did not testify at his own option.

I say, I have not overlooked the fact that the Statute says there is no presumption of guilt to be drawn against the defendant if he does not testify. But as I have told the Jury, time and time again, where there is evidence by the Government, even though it is slight, and the defendant has offered no evidence whatever from the Court, the jury has to weigh the evidence that it has heard, and not speculate about what it might have heard if it had heard some evidence which it did not hear.

So, I say, the problem here as to Mrs. Frankfeld is perhaps a little more difficult than it might be under other circumstances. But I realize there is not a great deal of evidence on the Government's side, affirmatively, in regard to her in this case.

I will ask Mr. Flynn to call this to your attention, what he had in mind. I remember it in a general way, but not specifically.

MR. FLYNN: If Your Honor please, Regina Frankfeld, we have the first evidence of the witness, Craig, who said

he knew her as a member of the Communist Party, that when he was a member of the Tom Paine Club, of the Communist Party, which was in the northwest section of the City. And I believe there is evidence of the fact that she had some control over groups, was in some way connected with them and their operation.

He also testified she was present at a convention of the Communist Party of Maryland and the District of Columbia in July, 1948, at the Finnish Hall, Baltimore.

THE COURT: She was what?

MR. FLYNN: Present at the convention.

THE COURT: "Present."

MR. FLYNN: There is also testimony given that she was identified as a member by witness Bartlett, who was a man from Cumberland. But, particularly, evidence against Mrs. Frankfeld comes from Mrs. Marekward. She identified her as a member of the party. She points out that she met her at a meeting in 1946. She also saw her at a meeting held on Alsquith Street, January 9, 1947, that she was present at the district convention in July, 1948, and that after that convention she was sent to a training school, and that she did go to the training school and spent some time there, that she attended a meeting afterwards, one on December 5, 1948, and on January 22, 1949. And while she was not present at the February meeting of 1949, at that

meeting the testimony was Mrs. Frankfeld was elected the organizational secretary.

THE COURT: What year?

MR. FLYNN: February, 1949.

THE COURT: February?

MR. FLYNN: February, yes.

That was after her returning from the National Training School where she had been sent prior to that time.

Now, subsequent to that time, also, sir, she was elected to the district committee, and she was a member of the district committee, I think in 1949, or maybe it was early 1950. She was made organizational secretary February 4, 1949.

And now we have the witness Benner who testified that Mrs. Frankfeld conducted classes at the Seaman's Hall, that he attended.

And we also have testimony of the witness from the Equitable Trust Company who said that the resolution which was filed with them, I think it was in 1949, showed her as organizational secretary, and that there was a signature card to show she was organizational secretary.

So, you see, sir, the evidence was that Mrs. Frankfeld was an active member, teaching classes, going to school, after her education at the school, being elected to the committee, the governing committee of the Communist Party

here.

So, I respectfully submit there is certainly ample evidence to go to the jury in connection with this defendant.

THE COURT: Now, anything specific to say about any of the other defendants?

MR. BUCHMAN: I just want to say, first of all, with respect to Mrs. Frankfeld, other than to say the same thing, what you have is a chronology of the dates, offices held, meetings, but with no reference to Mr. Craig specifically being asked, "Did Mrs. Frankfeld teach force and violence in the classes you attended?" He said no, she didn't teach force and violence. That applies to Mrs. Frankfeld, Mr. Frankfeld, and all of the other defendants.

You have simply a chronology of the meetings attended and the vacuum of the six years.

THE COURT: I think I have heard from Mr. Wright on Mr. Wood.

MR. WRIGHT: Yes, sir.

THE COURT: That includes all of the defendants, does it not?

MR. FLYNN: Yes, sir.

THE COURT: Is there anything you want to say further?

MR. BUCHMAN: Yes, sir. The motion to withdraw a juror and declare a mistrial, on three grounds. I want to

enumerate them. I made a rather rapid survey of the record.

The first ground, admission of inflammatory and prejudicial evidence as a background. I refer particularly beginning with the testimony of Government's witness Crouch, which goes back to the years 1927, 1928, and 1929. I suppose Your Honor is just as familiar with it as I am. I don't know if it is necessary to enumerate what I have here, but I would like to point out briefly to Your Honor, in the transcript, Page 346. Crouch testified he was sent to Moscow, arriving about Christmas, 1927. The Communist International paid the expenses.

Then he represented the Communist International in 1927. The planned purpose was to formulate plans to overthrow capitalistic countries. And he speaks of a plan of infiltrating the armed forces, the National Guard, to undermine morale. This was all in 1927.

And he refers to the publication of allegedly anti-religious position of the Communist Party in 1927. Then he gives his reason for resigning from the Communist Party for espionage work, over objections, I might add. And he refers to publications that were of the sort to have been used in Maryland, back in 1927 and 1928.

And he refers to going to the Phillipines where he was to do work to overthrow the government, in the maritime industry. Then he talks about a meeting with, Your Honor

recalls, Tukhavevsky, and he was not able to stay on a horse and fell off a horse.

And he came back to America, and talked about infiltration of the armed forces.

I submit, Your Honor, this entire testimony is inflammatory and prejudicial, and has no more to do with the issues in this case in the time covered by this indictment, or has any relevancy to what the Communist Party taught and advocated than a common dissertation on some subject in science.

It had one function and one function only, of an inflammatory and prejudicial nature.

I am talking about Lautner, Page 848, when he described his experience with the New York underground. It is completely irrelevant to this case, to these defendants, referring to something in New York City. It is not connected up to the defense in Baltimore. And it was simply, again, inflammatory and prejudicial.

And as to Government witness Nowell, the same is true, Your Honor. He says that in 1930, twenty-two years from this period of trial, from 1945, some fifteen years, he went to Moscow and allegedly taught guerrilla warfare. And that has no place in a case of this nature, and is not relevant and is solely inflammatory and deprives the

defendants of a fair trial.

Then I also want to refer to what I consider a prejudicial error by the Court in the course of the trial, on Page 371 of the transcript, when Your Honor commented the last paragraph of the program of the Communist International is significant, in speaking of the violent overthrow of bourgeoisie countries.

On Page 406--

THE COURT: What page was that?

MR. BUCHMAN: 371, Your Honor.

THE COURT: What other page?

MR. BUCHMAN: 472, of the transcript.

THE COURT: What is wrong with that? I don't remember that at all.

MR. BUCHMAN: Well, I felt it was singling out and attaching a special emphasis to a piece of evidence in that sense, at the same time prejudicing the Jury.

THE COURT: I told the Jury in this case, as I have so many others that comments on the introduction of evidence is not evidence itself, and the jury is not to regard that.

It is almost impossible in the replies to counsel who are pressing objections or otherwise, to never say anything that may be regarded as adverse to one side or the other. The best a judge can do, if he is going to open his mouth at all in giving reasons for rulings, is to tell the

jury not to regard it. And that, I have done. And I was led to repeat that.

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THE COURT: I would not want to have either side affected by anything I have said in the matter, but when I have so many objections to evidence, which I have had in this case from so many counsel over a period of three weeks, it is rather difficult not to sometimes say something that somebody takes exception to. What is your other ground?

MR. BUCHMAN: There were several other comments but the basic ones are these:

1. The limitation of cross-examination as to the daily activity of government witnesses. I began it with Mr. Nowell and Your Honor curtailed me at that point and indicated that you thought it was not relevant to the case. I feel it is extremely relevant, as Judge Learned Hand said in his opinion, in referring to the claim that there had been a curtailment of an opportunity to defendants to present what their actual activities were. If the defendants could show that most of their practical activity obscured their testimony, that would be relevant and the curtailment of our right of cross-examination -

THE COURT: Do you personally feel that I was not fairly liberal with the kind of questions that you asked?

MR. BUCHMAN: I think Your Honor did curtail it and that the cross-examination of these activities -

THE COURT: My impression is quite to the contrary.

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I thought I gave you the widest opportunity but there does come a time when you have to put an end to cross-examination. It is a matter of discretion with the Judge and some Judges are not as wise as other Judges, but I do think that the Judge has to some time put an end to cross-examination which does not seem to be different from what has already been asked.

Have you any other ground?

MR. BUCHMAN: What I was referring to when I made the last point, that was the third point of the motion, Your Honor, and also I would say on the question of practical activities with respect to the examination of the defendant Meyers -

THE COURT: What do you mean by "practical activities"?

MR. BUCHMAN: We reached a point where it was mentioned that there was a four-point immediate program of the Communist Party, dealing with economic issues, civil liberties, issues of civil rights and peace, and we wanted to move on to showing what had actually been done in the way of presenting a program, pamphlets, leaflets distributed, what the actual activities had been, and at that point Your Honor said there had been sufficient introduced and we thought it was an important part of the case.

THE COURT: Of course, I expect to instruct

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the jury that those activities are not an issue in the case.

MR. BUCHMAN: That is all, Your Honor.

THE COURT: Very well. Have you anything to say, Mr. Flynn, on the point of miscarriage or mistakes made by the Court on matters of law and the motion to discharge the jury?

MR. FLYNN: No, sir, I have nothing to say in reply to any question as to miscarriage of justice or the question of any rulings that Your Honor has made.

I might inject a word or two on the first part of Mr. Buchman's statement about the witnesses Crouch, Lautner and Nowell.

The testimony of all three of these witnesses as far back as they started in their testimony connected and carried along with the defendant Philip Frankfeld, from the very beginning of their testimony until the end of it, and if for no other reason, sir, it is evidence that it is sufficient and proper to show at least the knowledge and intent of that one defendant in this case.

THE COURT: Well, if that is all it is admitted for, it ought to be limited definitely with regard to the other defendants..

MR. FLYNN: That certainly did show what the Communist Party was prior to 1944.

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THE COURT: That is a point which at the very outset would seem to me to make it relevant. That is to say, the Government's contention was that the program of the Party long before 1945 was just what it is today, according to the Government's contention, and, therefore, it would seem to me that trips to Moscow to be indoctrinated into the objectives of the Communist Party there in connection with the Marxist-Leninist program were relevant to show what was the objective of the Party in the United States and, of course, as the defendants suggest, that it is inflammatory, of course, any evidence that is as direct and specific, if believed, as that necessarily is, is very striking and, of course, you may have suspicions that such things were done elsewhere than in the United States, but here we had the direct testimony of an eye-witness who participated and told what he was taught and saw.

That may be remote as to time and it might be, as Doctor Aptheker contended yesterday in his testimony, that the aims of the Party have progressed since then and somewhat changed.

Of course, that is spectacular testimony. It is the eye-witness account of something which, if believed, is most significant with respect to the aims and objects of the Communist Party as of that time and merely because

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it is spectacular and at present, if believed, there is no reason for excluding it.

I understand, of course, counsel's point of view about it, to say you were surprised by the witness, Mr. Crouch. It was not surprise that would constitute any legal objection to his evidence unless the evidence was otherwise inadmissible. Of course, I have nothing to do with the question of the credibility of Mr. Crouch. That is all for the jury.

Mr. Crouch's testimony - or was it Nowell's - that he, Nowell, was a fellow passenger with Mr. Frankfeld at that time when Mr. Frankfeld spent a year, about 1930, '31 or '32, in Moscow being indoctrinated into the tactics which have been described by the witness. How could it be other than good evidence in this case, if believed, and relevant in the case, if the jury also believes that the tenets of the Party are the same now as they were in 1930.

Of course, we can not ignore what we know as a matter of history. I am trying very hard not to say anything about that, although I suppose every fairly well educated American citizen knows at least from his point of view what has been going on in the world for the last twenty years - for that matter, for the last thirty years - and we all remember or at least those of us who

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are old and gray-headed, remember very well the current events that happened in 1917, which happened to be the year when Lenin was successful with Trotsky in reorganizing the Russian Government on a peaceful basis.

jury

The/not being here - or I would not be free to talk about it - but/counsel who are arguing against the admissibility of evidence of this kind, I think I must point out that history is not entirely to be overlooked.

Very well. Go ahead.

MR. BUCHMAN: I think Doctor Aptheker would dispute your version of the history.

THE COURT: Would dispute it? I have no doubt in the world that he would, and I do not mean to be ironical or sarcastic. That witness was more than clear in the exposition of his view and it is evidence for the jury to consider. If the jury is swayed by his view stronger than by other witnesses, that is the province of the jury and one of the instances of jury trials in the United States.

It is more important to my mind in this case to have the administration of justice right in this case than a particular result to either the Government or a defendant on the other side.

MR. BRAVERMAN: I have a motion which I haven't been able to have written it and I would like very

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much to state it orally, a motion that relates to myself and when filed in my own behalf. That is a motion for the withdrawal of a juror and a mistrial. I have joined in the general motions of Mr. Buchman but I make an additional motion as to myself, as I stated, for the withdrawal of a juror and mistrial on the following grounds:

That the questions asked of Mr. Meyers prior and leading up to the time he was found in contempt by Your Honor were deliberately phrased by the Government leading up to the point where questions were asked by him, knowing full well that Mr. Meyers had stated on about fifteen or sixteen occasions - the record will show - prior to my name being mentioned that he would not answer this type of question, particularly in regards to myself or as to other people who were in or out of the Communist Party; that Mr. Meyers would not identify them, that this was a matter of principle with him.

As a matter of fact, Mr. Meyers had been on the stand no more than four or five minutes when he had stated his principles very clearly. I think that was Tuesday afternoon. During Wednesday - - no, that was Monday afternoon, but during Tuesday morning up until about ten minutes before recess, Mr. Meyers all during the morning had reiterated the matter of principle with him and stated his position clearly and finally, and on one occasion was

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directed by Your Honor to answer the question.

After all of this had been done, the Government deliberately questioned Mr. Meyers about myself, knowing full well what his attitude would be and intended thereby to give an impression to the jury and give them something to speculate about which was not in the record.

I think that is the ground for the motion I make.

THE COURT: Purely as a matter of logic and of law, how can you predicate error to your prejudice in the asking of a question to which there was no answer given? I have never heard of that principle in the law of evidence, Mr. Braverman. To ask the witness a question which he does not answer, there is no evidence on the point.

In this particular case, of course, we have to bear in mind, if there had been an answer, there might have been a different situation, but here you are asking me to discharge this jury because one of the defendants was asked to answer a question and refused to answer it. You suggest that the mere asking of the question raises prejudice against you.

Now, of course, the jury has no evidence as to what the answer would have been if it had been given. The Government perhaps may or may not be embarrassed by that, but how could you be embarrassed, I don't know, unless you are prepared to go to the length of saying to the

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Court that there was deliberate fraud on the part of the United States Attorney in asking a question which necessarily of itself was prejudicial and was done to you maliciously and for that express purpose. I do not know whether you really want to go to that extent. I have heard nothing in the case that seems to justify it.

MR. BRAVERMAN: I am not prepared to make a charge of fraud. I can only infer the intent from the various circumstances. The Government knew full well what Mr. Meyers' attitude was, they had about three hours observation of Mr. Meyers on the stand and about fifteen occasions when he had stated his feelings in regard to it, and knowing full well, they then deliberately asked Mr. Meyers this question and asked it for the express purpose, I repeat, of creating an impression on the jury and letting them speculate as to something not in evidence.

That is the basis of the ground for my motion.

THE COURT: Of course, there is another phase of what you are saying, but I think it is not sufficiently important to comment on at the present time.

Mr. Flynn, do you wish to say anything?

MR. FLYNN: I only want to say this: I asked Mr. Meyers the same question that was asked every one of the defendants. He answered as to each defendant except

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as to Mr. Braverman, and his explanation was that he would only answer questions about elected officers in the Communist Party.

How Mr. Braverman can take exception to the fact that while he is here as a defendant under indictment, why we should leave him out in questioning a witness as to the identity of witness, I do not understand.

THE COURT: Gentlemen, if there is nothing further to be said, I am prepared to rule upon these various motions.

MR. BASSETT: I have located the two references.

THE COURT: I will be glad to have them. The Hyde case is what?

MR. BASSETT: Hyde is in 32 U. S. Supreme Court, 793; 225 U. S. 347, 56 Lawyers Edition, 1114. There are two one-sentence excerpts that might be very helpful.

THE COURT: Don't bother. That is a case I have read a number of times. What is the other case you think later changes the law?

MR. BASSETT: Ware vs. U. S. 154 Fed.577, and Pinkerton vs. U. S. 145 F2, 252.

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THE COURT: Of course, you hardly take the position, do you, that the Circuit Court of Appeals can overrule the Supreme Court.

MR. BASSETT: I don't think it was overruling it, sir, but I think the statements of the Hyde case are not in connection with a case such as this case, that the two cases that I have taken the liberty of directing your attention to are much more analogous, and they have to do with states of mind, and that there are differences, and there is, of course, a difference between this case and the Hyde case.

THE COURT: Gentlemen, as to these motions I have been very much helped and to some extent illuminated by the discussions of counsel for the last, nearly two hours, and many of the points that are now made, not all of them, but many of them I have heretofore given prior attention and consideration to.

RULING ON THE MOTIONS

THE COURT: With respect to the motion of acquittal for the defendants, that is overruled.

With respect to the motion for a directed verdict as to each of these six defendants, that is overruled also.

With respect to the motion made by Mr. Buchman for the withdrawal of a juror and the declaring of a mis-trial, that is also overruled.

With respect to Mr. Braverman's separate motion

for the withdrawal of a jury and declaring a mis-trial as to himself, that is also overruled.

Now, I will ask counsel, when are you prepared to go on with the jury? Are you prepared to go on with your argument on the facts tomorrow, or do you want further delay?

MR.FLYNN: Your Honor, the Government will be prepared to go on tomorrow morning.

THE COURT: Now, the next question --

MR. BUCHMAN: May I be heard on that question?

THE COURT: Yes.

MR. BUCHMAN: We are working on our instructions Your Honor and I do not think we will be ready to submit them until late this evening, but we will be glad to submit them in the morning and possibly concur on them or be heard on them and begin the argument to the jury on Monday morning, if Your Honor please, because, as Your Honor knows, one of the things, one of the difficulties is time enough, and if we have to prepare a summation and prepare our instructions and be ready for argument tomorrow morning, it would be difficult or practically impossible, and in order to do justice to the interests of our clients we feel that if we can have today and this evening for the preparation of the instructions and be heard on them in the morning, sir.

THE COURT: How many do you want to submit to me?

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MR. BUCHMAN: The instructions.

THE COURT: How many instructions do you want to submit to me?

MR. BUCHMAN: We have a rough draft of about seventy-five at the moment, sir.

THE COURT: Well, don't you think that this is, as between lawyers and the Court, oppressive?

MR. BUCHMAN: Oppressive both to lawyers and to the Court.

THE COURT: Well, it is arduous for lawyers, and I think it is rather oppressive to the Court.

There can't be any seventy-five separate propositions in law for this case which is almost a replica of the case that has gone to the Supreme Court or the Court of Appeals, and by replica I do not mean necessarily --

MR. BUCHMAN: There were three hundred in that case.

THE COURT: I do not mean to talk about the facts or talk about the result.

MR. BUCHMAN: There were three hundred in that case.

THE COURT: That is so unduly oppressive, that I rather fail to see --

MR. BUCHMAN: May I say --

THE COURT: -- that that sort of numerical

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proliferation is not of help to counsel who do it.

You can't expect a judge to study seventy-five different propositions, not in the compass of a day. There can't be more than a half a dozen propositions of law that really apply to this case, and furthermore they have all been worked out in this Dennis case.

MR. BUCHMAN: No, there are differences.

THE COURT: There may be a different result in this case. I am not passing upon that one way or the other but the legal issues are practically the same that they were in the New York case.

Now, I think your suggestion of asking me to pass on seventy-five propositions of law is just unreasonable for this case, and as an attorney you should not do that. By that I do not mean to be unpleasant.

Now, I do not mean to interfere with the exercise of discretion by counsel for either side, and they sometimes see things differently from the way I see them, but when you submit a hundred or a hundred and seventy-five propositions, certainly you can't expect me to consider a hundred and seventy-five propositions of law. That is both unreasonable and unworkable.

MR. BUCHMAN: But Your Honor there are important differences between the Dennis case and this case, and we feel that if we are going to give very careful attention to

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the question of the instructions, and I think Your Honor can understand it that it is most important, but it is not an unreasonable request to make.

After all, there is a record here of 2200 pages, Your Honor, and if we have to prepare instructions and the summation in the course of a day, I submit that is impossible.

THE COURT: Well, this is not the first case that has lasted three weeks. I remember a case in this Court thirty years or more ago that lasted for five weeks, and I don't think anybody asked Judge Soper to give them two or three days to prepare for argument after the evidence was in. My recollection is that -- I am not too certain -- we began it immediately and continued for a few days, and Judge Soper acted on it the next morning.

You are asking something which is rather unusual to have a full day, but I want to be considerate to counsel, and I hope they will be for me.

Now, Mr. Flynn, what do you have to suggest about this further request for another day's delay?

We do not sit on Saturdays, ordinarily, and though the Court may be willing to do it, it is against the rule of the Clerks, and I sympathize with them, and also the elevator men in the building.

What do you have to say with respect to the suggestion made by counsel to begin the argument on Monday?

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MR. FLYNN: If Your Honor please, the Government does not want to be heard on the instructions of the jury as they were decided in the Dennis case, and they were practically taken out of that case, except to indicate what happened in that particular case.

As far as the argument to the jury is concerned, I must say that the Government is ready. However, I am thinking in terms of possibly how long the argument is going to take, and I assume it is going to take pretty much of all day, but whether or not it is a question of having the jury go out at the end of the week to consider the case, whether that would be the question.

THE COURT: Yes, I think that it is not reasonably likely that the case would go to the jury this week. I fear that ^{is} so because counsel do want time to argue the case to the jury where the persuasiveness of counsel is a matter of importance to the jury.

Now, is there any suggestion as to the agreement between counsel as to the division of time? How much time do you want?

The rule of Court ordinarily allows one hour a side, but I have often extended it in some cases, and here the case has been tried for three weeks, and if counsel want more than that I would consider it.

MR. BUCHMAN: If Your Honor please, by the concensus

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of counsel, each expresses his view that an hour would be required for each counsel to argue on the facts.

THE COURT: I think that is really not very reasonable in this case.

MR. BUCHMAN: But the evidence against my client goes back to 1927.

THE COURT: I understand that. Counsel can divide it as they may agree upon. Certainly there are, as you pointed out, differences in the extent of the evidence as to the different defendants. Now, I can readily see how there might reasonably be at least an hour on the main question in the case whether there is sufficient evidence on the first proposition of fact, that is as to the Communist Party, as to its aim that was talked about.

Then the next question is the evidence with respect to each of the six defendants. Now, there, as I understand the position of the defendants is that there is little or no evidence as to each of the defendants. Therefore I can't see how it is going to take or could properly take ^{very} a/long time.

However, as a practical matter why don't you agree among yourselves as to what is a reasonable time for each side or divide it for each side as you please.

MR. BUCHMAN: If Your Honor please, I don't know, the purpose of only taking one hour per counsel to argue the

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case, and I feel we should have that at least.

THE COURT: I cannot see any reason why you are asking me to allow you 12 hours to argue on the facts, six for the Government and six for the defendants.

MR. BUCHMAN: No.

MR. FLYNN: The Government does not want six hours, Your Honor.

MR. BUCHMAN: No.

THE COURT: What?

MR. BUCHMAN: I represent two defendants and whatever I take as reasonable would be for both, which I feel on my part would be a modest request.

THE COURT: Well, why can't you agree among yourselves as to how much time should be divided. I think that would be desirable. I am not clear because there are four or five counsel on one side why each one should have an hour. I feel because I don't want you to think I am stingy as to time or representing officially the Government, the administration of justice or at least the administration of justice of the judiciary department of the Government, but I just think that you would wear the jury out by taking any such time, and it is ineffective.

One of the greatest lawyers of the United States in recent years, John W. Davis, told me some years ago when he was Solicitor General that he never took more than thirty

minutes to argue a case before the Supreme Court on a most important constitutional question.

Of course, that is not always possible, and sometimes Appellate Courts are not very liberal in granting extensions of time, but the point I make is that when you ask for that many hours it wears out the jury.

MR. BUCHMAN: If Your Honor please Mr. Davis probably had a more simple question than this.

THE COURT: Well, I don't think so.

MR. BUCHMAN: Than we are representing in this case.

THE COURT: I remember one case I argued with him as counsel before the Circuit Court of Appeals back in 1915 or 1916, and he had to argue it within the compass of an hour, argue the law question, and I had an hour to defend the facts in which he had ten separate difficult propositions of law.

However, particular instances, of course, do not necessarily lead to general conclusions.

Can't you agree among yourselves as to the division of time?

MR. BUCHMAN: Can I have a few minutes?

THE COURT: Yes, especially as you asked me to put it over until Monday. I really think you should agree to conclude your argument on Monday.

MR. BUCHMAN: May I have a minute or so to confer?

THE COURT: Yes.

MR. BUCHMAN: I believe we gained some time by that. I think we can properly do it within three hours, sir.

THE COURT: Three hours on your side?

MR. BUCHMAN: Yes.

THE COURT: Very well. That is satisfactory. I think it is entirely reasonable. Three hours for the Government and three hours for the defendants. That means the jury may have a fairly long day's work.

Would it be all right to start it at half past nine instead of ten? I don't know whether the jury would like it or not?

MR. FLYNN: The Government is satisfied. I don't think the Government would take that much time.

THE COURT: Mr. Janne, is it possible to call up the jurors and tell them that the argument on the points of law extended beyond what was anticipated, and they need not report until Monday morning at ten o'clock. They must report, all of them, alternates as well as jurors, Monday morning at ten o'clock.

Does everybody understand that now?

MR. FLYNN: Ten o'clock.

THE COURT: The Court will adjourn.

(Thereupon, at 3:57 o'clock p. m., the trial of

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the above-entitled case was adjourned to Monday, March 31,
1952, at 10 o'clock a. m.)

I certify that the foregoing is a true and correct transcript of the proceedings in the above case.

James J. Owens,

Allen R. Hartough

Charles G. Cavity

Official Reporter