

O'Brien Dumbett

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

Saturday, March 29, 1952

Volume XV

(Page ²²⁹⁵ to page 2323)

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DOROTHY ROSE BLUMBERG, also known as :

DOROTHY Oppenheim Blumberg, and :

MAURICE LOUIS BRAVERMAN :

Baltimore, Maryland
Saturday, March 29, 1952

The above entitled matter was resumed before His
Honor, W. CALVIN CHESNUT 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

Ow - 10 am.

P R O C E E D I N G S

(The jury was not present.)

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THE COURT: Now, Mr. Buchman, you filed with me sometime after 4 o'clock yesterday afternoon requests for instructions consisting of twenty-eight large closely typewritten pages. I understand that you asked for an opportunity to discuss the matters. I will be glad to hear you this morning; but I fear, as it is Saturday morning, the matter has come on rather late, and I won't be able to hear you at great length, but I will be very glad indeed and will be helped by a condensation of what you especially wish to call ^{to} my attention.

I also bear in mind Rule 30 of the Rules of Criminal Procedure that after the evidence is in or before it is in counsel will have an opportunity to submit requested instructions, and the Court should indicate to counsel what would be the ruling by the Court with regard to the instructions.

Now, it is quite impossible, you realize, for me to undertake to answer each and everyone categorically, of this very long list.

However, as to the general nature of the charge, I assume you realize what that would be as the result of the many discussions that we have had on the subject and during the course of the motions in the trial.

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MR. BUCHMAN: Yes.

THE COURT: But I would say now, however, in general, that the case is going to the jury as to each of the defendants.

I will instruct the jury on many propositions of criminal law which are usually contained in the charge, such as the necessity of the Government proving its case beyond a reasonable doubt, what constitutes reasonable doubt, the presumption of innocence, the nature of the charge against the defendants, and the elements of the charge, and matters of that kind that are usually contained in such charges.

I note here you have a special matter with regard to intent, and I have looked at that carefully and I expect to charge the jury substantially along those lines.

Now, if you have in mind any special points which you wish me to consider which seem to be particularly practical with reference to this case I will be glad to have you point them out in your own way.

MR. BUCHMAN: If the Court please, I think the instructions represent an attempt on our part to outline carefully what have been our contentions that were raised on the argument and the motions during the course of the trial. I suppose there is really not so much that I can add to what we have already said. Our theory of the case and the law of the case has been at variance with certain

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of the prosecution's theory and Your Honor's theory especially on the question of intent, and I do not know what I could add which was not previously discussed in the discussions that we have had on the subject. They are fully set out in our requested instructions on the subject of intent.

I suggested to your secretary over the phone that these instructions represent our views fully and there was not much that we could add in oral argument on the subject.

THE COURT: Well, now, do you feel that you are pretty fully advised as to the substance of the charge that I will give to the jury with regard to such matters? In other words, you really are not asking me, are you, to take each one of these very numerous points that you have here and rule on them separately and categorically at this time?

MR. BUCHMAN: We would like that, Your Honor. We would like Your Honor to do so.

THE COURT: Well, don't you think, Mr. Buchman, that is not a practical thing for me to do?

MR. BUCHMAN: Well, they are broken down into various subject matters.

THE COURT: All right. Just go ahead and state them as concisely as you can, state the several points and

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indicate which you wish me to rule upon, and I will indicate as best I can how I can do it.

MR. BUCHMAN: Well, I don't know whether we can do it that way but it seems to me that the best thing, the most careful way to have it done is to put it in writing, and there is no doubt about it then.

THE COURT: Well, it is not practicable for me to just say yes or no to each one of these twenty-eight pages. I will, of course, instruct the jury and will deal with the matters that you have here but I do not always put the expression of it in the language that counsel precisely ask for, and therefore it does seem to me that if you want further information as to what the charge will be you should make your several points about it and in that way I can tell you what my views are on the several points.

MR. BUCHMAN: Well, as you see, we submitted instructions as we feel were required by the rule, but there are a number of basic points which we feel --

THE COURT: All right. That is a good word. Let us take the basic points.

MR. BUCHMAN: But they are embodied in the various requests for instructions. One basic point is, we feel, and this is one where there has been a great deal of variance of view on the question of specific intent. One, we feel in this particular case in line with the decision

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in the Dennis case, there has to be proven by the Government specific intent to overthrow and teach and specific intent to cause the overthrow on the part of the individual defendants.

It has been our position that that has not been proven, and we have submitted what we feel should be and have set out the standard of proof required to establish that specific intent.

Cvy fls 10:10

THE COURT: I think you have beginning on page 8 a subject matter with regard to intent in your requested instruction number 31. I expect to give that in substance.

Now, let's have another basic point you have in mind.

MR. BUCHMAN: For instance, there is the question of vicarious liability.

THE COURT: What do you mean by that?

MR. BUCHMAN: Based on the Coronado Coal Company and the ones I referred Your Honor to in the past, the question of imputing to local officers responsibility for the alleged acts or statements of national officers. I think those cases establish the proposition that that liability cannot be extended in that way, that there has to be, as in the Keegan case --

THE COURT: I will expect to instruct the jury that looking at the facts and circumstances in evidence,

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there is sufficient for them, if they do, to infer the intent of the defendants.

MR. BUCHMAN: As I stated on previous occasions, there is a difference of opinion and we have submitted instructions which formulate our opinion of the case, that it is not sufficient simply by the establishment of what Your Honor formulated as an issue, that intent must be inferred that if they advise the advocacy and teaching to overthrow -- and by that lower officership or lower membership, you can infer that intent.

THE COURT: Of course, it must have been known to the defendants what were the programs of the Communist Party and, of course, the jury must find that that program is what the Government contends for. It seems to me that from the very beginning of this case the issues were two, and I stated them.

One main question of fact is this: If the jury should first determine it was the program of the Communist Party since the year 1945, as contended by the Government, if the Government has not proved that, then all the defendants should be acquitted. If the Government has proved that beyond a reasonable doubt, then the next question is with respect to the defendants separately, whether they did become parties to the conspiracy with the knowledge of its purposes and so forth and so on and with the intent

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that is necessarily implied -- I would not say necessarily implied but which the Government contends is implied in the program.

MR. BUCHMAN: That was not the way we conceived the issues and it is not --

THE COURT: How do you conceive it to be? Maybe I materially misunderstood the case.

MR. BUCHMAN: Your Honor, I have stated on many occasions we conceive the issues to be one, that these defendants with thirteen other alleged co-conspirators conspired to teach and advocate the necessity of overthrowing.

THE COURT: I think that is true.

MR. BUCHMAN: But the way Your Honor formulated the issue, it may be conspiracy co-extensive with the Communist Party and, as I stated on previous occasions, put the Communist Party on trial.

We conceive the issue to be not did the Communist Party teach and advocate but did these defendants organize or teach and advocate with a specific intent to cause the overthrow, and the sharp difference is that it revolves upon the issue of specific intent, because under the issues that we formulated, the defendants may have assumed the constitution which they had before them was the constitution of the Communist Party, that the activities in which they were engaged were the activities of the Communist Party and

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that, it seems to me, is the burden of the charge, whereas the formulation which Your Honor made of the issues does not, in our opinion, correspond to the charges made in the indictment.

THE COURT: I think that is largely a matter of the way you express it. I might add, of course, if there is anybody here that is thinking of noting this discussion, that it is purely an informal discussion between the Court and counsel. The jury will have to wait for the charge itself and it is not desirable that there should be any advanced release of the information about what the charge will be.

MR. BUCHMAN: Section 5 deals with the question of evidence prior to enactment of the Smith act itself and also evidence of conspiracy prior to 1945, the main substance of which --

THE COURT: With regard to evidence prior to 1945, you will recall that in the prior argument, I suggested to counsel on both sides that they could submit suggested formulation of the legal effect, if any, of such evidence, and I have not received any -- I do not mean that as a criticism -- but I haven't received any very helpful suggestion from either side. Your position is that the whole thing must be excluded and that, I cannot do.

MR. BUCHMAN: Our theory is that there could

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not be a violation of the Smith Act prior to 1948 because the conspiracy to even teach and advocate prior to that time was legal.

THE COURT: I think that has been ruled heretofore to the contrary and I do not know that we have any legal facts on that point. It seems to me that evidence prior to 1945 is admissible for the purpose of showing what was the aims of the Communist Party as reconstituted in 1945.

MR. BUCHMAN: It seems to me, Your Honor, at that point the difference of viewpoints as expressed becomes even in sharper and clearer contrast.

THE COURT: When it comes to the particular defendants, I do not recall any evidence prior to 1945 which relates to the defendants severally except with regard to Philip Frankfeld. In other words, it seems logical to me to discuss this case before the jury, although I am not in any way suggesting how counsel should discuss it -- provided they are within the limitations of the law, but it seems a logical way to discuss this case is what is or what was the program of the Communist Party since 1945.

Now, if the Government does not prove that it was contrary to the statute, then the whole case fails. If the Government does prove that beyond reasonable doubt, then the jury has to move in to determine whether the

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defendants became part of the conspiracy wilfully, knowingly and with the intent that is inferred.

Now, that seems to me to be the logical way to approach the case.

Now, with regard to the real program of the Communist Party, it seems to me that the evidence prior to 1945 is admissible.

With regard to the defendants respectively, I do not think it has any bearing on the question other than insofar as it relates to Mr. Philip Frankfeld, who is named in the evidence.

Now, what is the next section?

MR. BUCHMAN: The next section deals with right of freedom of advocacy, that the jury be instructed on the question of freedom of ideas and the right to advocate a program, even as adduced in the evidence, of the Communist Party --

THE COURT: Of course, you know I could not rule that. It is a question of fact for the jury.

MR. BUCHMAN: The point is that all the things they advocated, if they are advocated in the way they allege, they are perfectly legal propositions if done within the framework of the Bill of Rights.

THE COURT: Of course, as I have indicated, I will have to tell the jury these questions of trade unionism,

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of Negro discrimination, the outlawing of Jim Crow laws and so on, those things are not an issue in this case at all.

MR. BUCHMAN: There, again, Your Honor, there is an area in which the point of difference extends itself. We think that evidence relates particularly in this case, as distinguished from the Dennis case, on the question of a specific intent of the defendants.

THE COURT: On what?

MR. BUCHMAN: On the question of the specific intent of the particular defendants. If the activities are so totally inconsistent with the intent to prove, then they have an important bearing.

THE COURT: From any standpoint, according to the Government, the Communist Party used those issues in matters to stir up struggle between the classes and caused discontent and help foment or advance the time when the revolution which you desired, or your clients desired, to accomplish would be consummated.

MR. BUCHMAN: Then that is a question of fact. The defendants' version is one of immediate demand of the ultimate evil. I think that is important as bearing on the question of specific intent, particularly where you are dealing with a local group, whose interpretation of the constitution of the scope of the conspiracy would be legally determined or part of that interpretation would be what

the activities actually were, but we have had that difference with you previously and I suppose there is no point restating it, but we request an instruction on that point for the reasons I have just stated, and that whole section deals with the question of program and the right of advocacy.

Then there is a section on the question of the credibility of witnesses, a formal instruction.

THE COURT: I would expect to instruct the jury that they can consider the credibility of each and all the witnesses, they are to consider what interest, if any, any witness has in the matter. I should also expect to tell them that the mere fact that a man is an informer is not necessarily any criticism of his possible credibility. Informers are so frequently used, especially in conspiracy cases by the Government that is endeavoring to preserve tranquility in the country that I should say to the jury that they should disregard a man's evidence because he was an informer.

In a great majority of criminal cases the evidence, where there are several defendants, often comes from one defendant who has been an accomplice or otherwise.

MR. BUCHMAN: We feel that the Fletcher case, which sets a standard of instruction on the question --

THE COURT: What is the instruction you want me to give about informers?

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MR. BUCHMAN: We have, sir, different ones.

THE COURT: What page are they on?

MR. BUCHMAN: Beginning on page 23.

THE COURT: What is the number?

MR. BUCHMAN: Numbers 76 to 81, and several relate specifically to the evidence in the case.

THE COURT: What is the number?

MR. BUCHMAN: 76 to 81 inclusive. Several are general instructions and several are based on the specific evidence in this case.

THE COURT: Have you any legal basis or any precedent for such as number 76, in which you ask me to say that because a man is an informer and paid a per diem or expenses, that the jury should bear in mind that he may have deemed it to his interest that one or more of the defendants be convicted, since otherwise he may have been considered as having failed in the task that he undertook?

I do not mean to say that you cannot argue that as a matter of fact before the jury, but as a proposition of law, is there, or do you know of any case in which a Judge told a jury that that was so as a matter of law?

MR. BUCHMAN: If Your Honor please, I think I had a case on it. I am trying to go through it rapidly.

THE COURT: You say in number 7 that the jury is instructed that the testimony of informers is subject to

a strong suspicion of bias because of the partisanship of such witnesses.

Do you think the credibility of an informer in this case was very much less than that possibly of one of the witnesses for the defendants by reason of interest?

MR. BUCHMAN: I would think so, Your Honor.

THE COURT: Well, I would not expect to give the instruction number 76 or 77 in the terms in which you have asked it here. I think the jury can consider the credibility of all witnesses and in that connection consider such interest as they had in the matter.

MR. BUCHMAN: Pardon me, Your Honor, 77 is based on the Fletcher v. U. S., 158 Fed. 2d, 321. Your Honor is probably familiar with that, a District of Columbia case, that they should consider such testimony with considerable circumspection and care.

THE COURT: That is true with regard to an accomplice but I do not understand that is true with regard to a so-called informer for the Government.

MR. BUCHMAN: That was the basis for it.

THE COURT: And you ask me to disregard the testimony of Mrs. Markward because of her own testimony that she was an instigator of organizational activities in the alleged conspiracy charged in the indictment, as for example, in the recruitment of members into the Communist Party, the

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obtaining of subscriptions to the publication -- I would not be able to give that instruction to the jury.

The rest is pretty faint typewriting, numbers 80 and 81.

MR. BUCHMAN: Shall I read it, Your Honor?

THE COURT: Number 80: "The Court instructs the jury that where informer witnesses for the prosecution made general accusations against any of the defendants without fixing time, place, or circumstance, as for example, in the testimony of the prosecution witness, Mrs. Markward --"

MR. BUCHMAN: In other words, our contention being that her statements are merely conclusions.

THE COURT: I would not be able to give instruction number 80.

MR. BUCHMAN: Number 81 is virtually the same, except that it says that if she did not fix the time, place or circumstance --

THE COURT: I would not be able to give that in that way, but I would instruct the jury that they can consider the credibility of any witness of any interest which the witness may have in the matter.

Now, what other basic point would you want to call to my attention?

MR. BUCHMAN: I suppose, Your Honor, they are the most basic ones, but I have one to submit to Your Honor,

that the instructions were not designed, there was a great deal of work in preparing them and they are not designed to be oppressive or in any way not carefully related to the facts of this case in order to present it fully and in detail and in great care.

THE COURT: Of course, my comment that it seemed oppressive to me was the submitting of over one hundred separate instructions in this case, and it was a rather subjective comment by myself and I said you had the right, as lawyers, to do what you think necessary for your clients.

I do think, however, as I have already said, that it is ineffective and unwise to present so much matter for the consideration of a Judge especially at this late stage in the case, and while I will do the very best I can to consider all of these matters, I think I have pretty broadly covered most of them with regard to your basic points from what I have said.

Now, do you wish to be heard, Mr. Flynn?

MR. FLYNN: No, sir, I have nothing to say.

THE COURT: I see that you have submitted some thirty or forty instructions and I read them over. Some of them, of course, are entirely proper and are generally in line with what juries are charged in criminal cases.

MR. FLYNN: For the most part, we were pointing out to Your Honor charges that had been used in the Dennis

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case and suggested to Your Honor the ones that had been modified and the ones that had been used.

THE COURT: I have not expected to use any of them very specifically in this case. If there is anything you specially have in mind on basic points --

MR. FLYNN: Your Honor, we haven't anything specially in mind to urge upon Your Honor on the question of the charge at all.

I feel, as Your Honor has indicated all through this case and as you have also indicated to Mr. Buchman, we think is a proper one on all of these questions and we are not urging anything specially now in the way of a charge at all. What we gave you was merely suggestions and we are not urging any particular thing at all.

THE COURT: Of course, I realize that the United States Attorney does not want the Judge to make a mistake any more than counsel for the defendants does and if I have indicated any view on the legal aspects of the case that do not seem entirely sound to either side of the table or to your side of the table, I would be very glad to have you so advise me.

For instance, as I have indicated, I think here there are two main questions for the jury to consider, one was the program of the Communist Party since 1945, ^{one} which was contrary to the statute?

Ows fls CVY
10:30

Secondly, if it was not, if you have not established that beyond a reasonable doubt, then the verdict as to all the defendants must be not guilty. That is sound, isn't it?

MR. FLYNN: Yes, absolutely, sir.

THE COURT: And then the second proposition, if the jury finds in favor of the Government's contention in that regard, then they must take up the question of what participation, and to the extent of what intent as to the defendants joining in the conspiracy if they joined in any conspiracy. That is a proper approach to the case?

MR. FLYNN: Yes, Your Honor. That is the Government's approach, and I would like to point this out, Your Honor, that it seems to me -- although I may be a bit sensitive on this point -- but it seems to me that with respect to this indictment, the second portion of our indictment has been more or less slurred over and that is, did they all conspire to organize a society, club, and what not, known as the Communist Party which had for its purpose the overthrow of the Government by force and violence.

Now, a great deal has been said here about teaching, advocating, and what not, but with respect to that second part, did they organize a society which had for its purpose those various things?

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That is what I want to argue to the jury as an important thing in this case particularly in connection with the reorganized Party in 1945, which was a Party designed to advocate and overthrow the Government of the United States by force and violence. Now that to me has not been emphasized, or at least it seems that it has been slurred over during the case.

THE COURT: Well, now, what particular part did these six defendants have in the reorganization of the Communist Party? In other words, your view is that they sent delegates, or the Maryland District sent delegates to the New York Convention of the Communist Party in 1945, and the program was later adopted and then ratified in Maryland.

However, I do not recall the specific activities of the six defendants in that connection. I do not mean that to say there is no evidence which could be argued, but dealing with these six defendants separately and their original participation in the reorganization in 1945, possibly may not be as clear on the evidence as their becoming members of the reorganized Party and continuing to be with knowledge of its purposes.

MR. FLYNN: There is evidence that some of them were in the Party certainly in Baltimore prior to 1945, certainly Wood, Mrs. Blumberg, and Mr. Braverman who participated in the convention which was prior to the convention

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in New York, this convention to which this draft resolution was submitted and discussed and passed.

My recollection is that some of them went to the convention and they came back. Of course, Frankfeld was not here at the time, but as to the others I think they all affirmed and passed on what was done there.

THE COURT: I think that is all within the scope of the discussion on the facts, but as in all conspiracy cases, I necessarily have to have my particular thought focused on the three-year period. That is to say, well, if you prove membership in the Communist Party with knowledge prior to the three years before the indictment there must be a presumption of fact that it continues until otherwise shown, but nevertheless, as a matter of law, just as it must be in all these cases you have to have the question of whether or not to warrant conviction that the conspiracy did continue within the three years that the particular defendant was a member thereof.

I doubt very much that that phase of the case will play much importance in the discussion before the jury because I have not heard any particular contention on the part of the defendants that the three-year period is important in this case.

In that connection I would like to say to counsel on both sides, is there any contradiction of the fact that

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there was a conspiracy alleged and that the overt act, sufficient overt act was committed within three years?

MR. BUCHMAN: I think that Mr. Bassett may have some special question as to his client in that regard. I don't suppose, as you said, that there would be a particular point, but the only thing which suggests itself to me, as I listened to Mr. Flynn, is that again we are at odds sharply with respect to the basic legal question, and I think --

THE COURT: What is that?

MR. BUCHMAN: On the basic legal question in this case and that is as to the construction of the act because as was pointed out with respect to point number one, membership, and then because there is membership for a period of years we are presumed to have knowledge, and there you are.

THE COURT: Well, on that point, Mr. Buchman, let me ask you this question: If Mr. X, let us say, knows that the aims of the Communist Party are to overthrow the Government of the United States by force and violence as soon as is practical and becomes a member of that Party, is that/a violation^{not} of the Smith Act?

MR. BUCHMAN: As construed by the Dennis case, no.

MR. FLYNN: I think it is.

THE COURT: The precise language of the Smith

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Act is that, "To become a member of or affiliate with."

MR. BUCHMAN: That is not charged in the indictment.

THE COURT: Yes, it is charged in the indictment. Yes, that is part of the conspiracy in this case to organize or help to organize any group or assembly of persons to teach, advocate, and so on, or to be or become a member of, or affiliate with, any such society, group, or assembly of persons, knowing the purposes thereof.

Now, what language could be plainer than that?

True, there is no particular contention made that it is a crime because he is a Communist. One could be a Communist, and when you say Communist you could be a Communist without belonging to the Communist Party. You can't be a member of the Communist Party without belonging to it, but you could be a Communist without belonging to the Communist Party.

Furthermore, it is possible for a man to be a member of the Communist Party without knowing their particular purposes, without knowing what are the purposes of the Communist Party. It seems to me possibly to be more difficult for a man to be an officer of the Communist Party without knowing the purposes of the Communist Party, but there is the expressed language, and I was therefore a little surprised as to whether you indicated some question

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was raised as to whether the Smith Act did prohibit membership in the Communist Party with knowledge of its aims and purposes because it expressly says not only becomes a member of but becomes affiliated with it.

I am not quite sure what would be the understanding of the word "affiliate with", whether it would be what we hear in general discussions as a "fellow traveler."

MR. BUCHMAN: Well, that is precisely the danger of the point I am making, and that is why the statute has to be viewed in the light of the decision in the Dennis case, otherwise --

THE COURT: In what case?

MR. BUCHMAN: In the Dennis case.

THE COURT: Oh.

MR. BUCHMAN: With regard to the requirement of a specific intent and review as to the nature of their activities, the intent and purpose, and the power to bring about the evil, which are essential elements because as we say, if they have members, sixty thousand or seventy thousand members, as was indicated, and you have a constitution, there is the limitation with respect to what was charged in the indictment, and you have to have the essential element of the defendant's specific intent as charged that they conspired to do this or that, and there that is a vital thing.

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THE COURT: Well, with respect to that, you say that the Government must prove that there was specific intent as to each one of them?

MR. BUCHMAN: Yes.

THE COURT: The specific intent referred to.

MR. BUCHMAN: Yes.

THE COURT: Now, isn't that something for the jury to pass upon from the evidence that they have heard in the case?

MR. BUCHMAN: Yes, except --

THE COURT: Well, isn't it a fact, isn't it a logical fact that if a man was an important officer of the Communist Party and has been a member for many years, isn't it a reasonable inference of fact that he had knowledge of its aims?

MR. BUCHMAN: Except for the fact that --

THE COURT: And if he had knowledge of its aim, isn't that specific intent to carry out its aims?

MR. BUCHMAN: No, Your Honor, no, sir, because there must be specific intent shown and because you have here no such evidence as to what these defendants taught or advocated, and there is just an attempt to infer from a first fact, the inference of specific intent, and you have eliminated the factual evidence as to what the defendants actually taught or did, and then assume or infer that officer-

ship or membership, and from that assume a continuing intent.

THE COURT: Well, as I see it, the evidence in this case from which intent can be inferred is uncontradicted except possibly as to one witness, the one defendant Meyers. Now, that is a question for the jury, or they can infer specific intent from the uncontradicted evidence in the case.

Of course, they do not have to believe the uncontradicted evidence, but I think that juries are expected to do so unless they throw out that evidence as lacking in credibility on the theory which you mentioned with regard to Mrs. Markward.

MR. BRAVERMAN: I would like to say a word on this question of intent, if Your Honor please. First the evidence is not ^{un-}contradicted, and as I understand the Government's position on this question, there was presented in the case a constitution of the Communist Party which is supposed to be a document upon which people join the Communist Party and upon which they understand the aims or purposes of an organization, and they join it.

Now, in addition to that the Government has presented a great deal of excerpts from books, resolutions, from platforms.

Now, when it comes to language which runs along

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this line which seems to give very strong indication or says in so many words without any contradiction that the Communist Party is opposed to force and violence and that the Communist Party fought for the Bill of Rights, for democracy, and so on, then the Government says that is window dressing or says that means something else.

Therefore, this whole question of intent becomes a very important thing, Your Honor, because the Government's theory of the Communist Party is that all the so-called legitimate aims which the Communist Party stood for, the Government says that is all window dressing for something else.

Now, I think the Government has the burden, and I do not wish to argue again the motion for acquittal, but I think our arguments on the motion for acquittal are relevant to this aspect of the instructions, the Government has the burden in this case to show that when people joined the Communist Party that they joined it for legal purposes, not that they just joined it knowing some vague purposes of the Party.

Now, the evidence is not uncontradicted, because it is contradicted directly by two defense witnesses, Mr. Meyers and Dr. Aptheker, and by the Government's own witnesses themselves who contradicted the Government's theory that the Communist Party advocates force and violence.

Therefore, I think that is the point that the intent is very important in this case, and that is what is stated in the Dennis case with respect to the nature of their activities, which is a key question.

THE COURT: Well, Mr. Braverman, I do not want to be unnecessarily critical but I think that you have confused the legal point which is under discussion. I think you have not followed the discussion on that point that Mr. Buchman and Mr. Flynn and I have had on the subject.

I do not mean to suggest that the question of intent of the Communist Party is not important, but I call to your attention that as I see it there are two main questions for the jury. One is, do they find affirmatively for the Government as to the Communist Party. Now, on that issue, you, of course, have the right to argue, as you have mentioned, and then we pass to the next point as to the several defendants in the case.

Now, there is very little evidence in the case certainly as to the particular activities of what the defendants did other than perhaps in Mrs. Markward's testimony, and it seems to me that if her testimony is believed by the jury, then there is very definite uncontradicted evidence with regard to the activities of the defendants, and there is no contradiction of that because the case was of such a nature that there could have been contradiction, but you do

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not have that.

There is, of course, no presumption against any of the defendants by reason of their failure to testify in this case. I shall tell the jury that as I do in practically every criminal case where the point arises.

Gentlemen, I am indebted to you, of course, for your further elucidation of the great many points that were suggested to me in this case, and I will endeavor to instruct the jury along the lines that are usual in conspiracy cases, and I will give as much very careful study as I can to the formulation of the requests which Mr. Buchman made.

I think the basic points have already been discussed and I think I have made clear to you all what would be the general rulings of the Court upon the subject.

We will adjourn until Monday morning at ten o'clock.

(Thereupon, at 10:50 o'clock a. m., the trial of 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.

Michael J. Owens
Official Reporter.