O. BOWIE DUCKETT
SPEC. ASST. ATTORNEY GENERAL
1208 MUNSEY BUILDING
BALTIMORE 2, MD.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

O. BOWIE DUCKETT
SPEC. ASST. ATTORNEY GENERAL
1208 MUNSEY BUILDING
BALTIMORE 2, MD.

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

Tuesday, April 1, 1952

Volume XVII

(Page 2525 to page 2622)

FRANCIS T. OWENS
Official Reporter
537 Post Office Building
BALTIMORE 2, MARYLAND
SAratoga 7126

I N D E X

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA	:	
vs.	:	
PHILIP FRANKFELD, also known as Phil Frankfeld,	:	Criminal No. 22324
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	:	

Baltimore, Maryland

Tuesday, April 1, 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

H 1

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

THE COURT: I will hand a copy of the charge to counsel for both sides before reading is.

CLERK: Yes, sir.

THE COURT: One for Mr. Flynn, and one for the other side.

COURT'S CHARGE TO THE JURY

BY THE COURT:

Members of the Jury:

During the last three weeks you have heard the evidence in this case, and the arguments of counsel. The time has now come for the Court to instruct the Jury as to the law of the case. As I think you already know, the functions of the Court and the Jury are quite different. It is the duty of the Court to instruct you as to the law of the case. As to this, you accept the statements of the applicable law without question for the purposes of the case. But as to the determination of the facts on the evidence, it is solely the province of the Jury to determine them.

In instructing you as to the law of the case, it may become become necessary for me to refer at times to some of the evidence for purposes of illustration and for possibly advisory help to the Jury in the logical

application of the law to the facts as the jury finds the facts. But I again emphasize that it is the sole power, duty and function of the jury to appraise the evidence and to determine therefrom the facts of the case, and any reference by the Judge to the evidence is advisory only to the jury.

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

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

are that petit jury.

Another well established principle is that the defendant is entitled to the presumption of innocence. That is, of course, an important right throughout with the defendants, respectively, unless and until the jury as a result of all the evidence in the case concludes that the charge has been established affirmatively by evidence which satisfies them of the truth of the charge beyond a reasonable doubt. I will later on, however, state to you what is the meaning of the words "reasonable doubt" in a criminal case.

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

The charge is that these six defendants conspired among themselves and with a large number of other persons specifically named in the indictment who, however, are not themselves now on trial, to violate a Statute of the United States, in this case known as the "Smith Act," which is

to be found in the United States Code of Criminal Laws, title 18, Section 2385. It was first passed by Congress in 1940, and somewhat amended in phraseology rather than in substance by Congress in 1948.

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

It reads: "If two or more persons conspire * * * to commit any offense against the United States, * * * and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than 5 years, or both."

As I have said, the conspiracy charged in the indictment in this case is to violate the Smith Act. That Act is now found in Section 2385 of title 18 of the United

States Code, which reads: the heading: "Advocating overthrow of Government:"

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

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

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

punished as stated in the Act.

Ows fls Hdg
10:10

1

This Act has recently been held valid and constitutional by the Supreme Court of the United States. Its obvious purpose is to protect existing government, not from change by peaceable, lawful and constitutional means but from change by violence, revolution, and terrorism. It seeks to preserve and insure in the United States that domestic tranquility which is mentioned in the preamble to our Constitution as one of the reasons for its adoption.

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

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

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

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

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

The defendants are not indicted for a violation

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

The indictment charges that the defendants

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

in this charge.

With further reference to the crime of conspiracy, you are instructed that no defendant must be convicted of the conspiracy charge unless some one of the conspirators has committed some overt act toward the purpose of the conspiracy. An overt act means simply the doing of some physical act. It does not mean, however, that the act must be one which would of itself constitute a wrongful act. To illustrate this, if two men agree to burglarize a bank and pursuant thereto one buys tools to force entrance into the bank, the purchase of such tools would be an overt act sufficient to constitute the conspiracy, although there was no actual breaking into the bank. In the indictment in the present case there are alleged to have been committed by one or more of the defendants 16 separate overt acts. They consist of alleged meetings of one or more of the alleged conspirators at a certain time and place. These meetings are sufficient to constitute overt acts in this case, if you find them to occur. It is not necessary for the government to prove each and all of the 16 overt acts mentioned. It is sufficient if any one has been performed of the character described. It is, however, necessary that the government establish by evidence that some one of the overt acts was committed within the period of three years prior to the filing of the indictment which in this

5

Cvy fls Ows
10:20

case was on January 15, 1952.

Therefore the government must prove that some one of the overt acts listed in the indictment occurred after January 15, 1949. Most of the overt acts set out in the indictment are alleged to have occurred within three years before the finding of the indictment in this case. There is evidence in this case that several of the overt acts specified in the indictment did occur within the three year period and I do not recall any evidence to the contrary.

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

defendants who were parties to the conspiracy within the three-year period.

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

3

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

The contention of the government is that on or about April 1, 1945, the Communist Party of the United States was organized by some or all of the above 13 persons named in the indictment as William Z. Foster, Eugene Dennis, John B. Williamson, Jacob Stachel, Robert B. Thompson, Benjamin J. Davis, and others with the objective of overthrowing the government of the United States by force and violence as speedily as circumstances would permit, and that this was done knowingly and intentionally and with the specific intent so to do, and that the defendants named in this case participated in and approved the plan and agreement and then or thereafter became active mebers and officers of the Party in furtherance of the objects of the Party within the State of Maryland and the District of Columbia; and that they so continued in active furtherance of the plans and conspiracy up to the time of the filing of the indictment. To sustain this contention it is not necessary for the government to

prove that all of the defendants did so actively participate in the conspiracy as early as April 1, 1945, provided you find beyond a reasonable doubt that such a conspiracy was in fact organized about that time by others named in the indictment and that thereafter the defendants respectively joined in said conspiracy and continued as such conspirators within the three-year period prior to the finding of the indictment.

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

the government has introduced into evidence numerous books, pamphlets or writings which, it is contended, were expressive of the purpose mentioned. Among such papers are one or more books referred to as stating the objectives of the so-called Communist Internationale and that the lesson to be learned from these publications is that it was the objective of the Communist Internationale to accomplish in the future and as speedily as circumstances would permit nothing short of a world revolution on the pattern of the Russian Revolution of 1917 which, the government contends, was in fact accomplished by widespread force and violence. According to other evidence in this case the meaning of the objective described as dictatorship of the proletariat is that the so-called working classes of the nation should unite and, by force of arms if necessary, seize power from the then existing governments of a particular nation and exclude other classes of thenation from participation in the exercise of power, or, in other words, to overthrow the then existing government of a particular nation by force and violence, and substitute one particular class of the nation as the rulers for the nation as a whole to the prejudice of all other classes and incidentally the seizure of property belonging to other classes for the benefit of the one substituted governing class. In this connection the term "proletariat" is said to mean the working class

6

which presumptively holds no property, while all other classes are referred to as "bourgeoisie" or property owners. The defendants give it a different meaning in their evidence. The stated objective therefore was the seizure both of power and of property of others by and for the proletariat only.

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

The government has also put in evidence tending to show that during the year 1944 the aims and objectives of the theretofore existing Communist Party of the United States were importantly revised or changed under the persuasive arguments of one Earl Browder who at that time was the Chairman of the National Governing Board of the Communist Party. The important stated change in 1944 was to the effect that the Communist Party should then abandon its prior program of overthrowing the government by force and violence and substitute therefor a program which had no such objective but which would within and in accordance with the framework of the American Constitution and by peaceful lawful means only, endeavor to accomplish desired liberalization in the laws and government of the United

States with special reference to more favorable legal and economic conditions affecting the working classes particularly. In other words, a program of peaceful change was substituted for a contemplated ultimate change by force and violence. In consequence and in accord with this change of plan there is evidence that the Communist Party was then dissolved and a new Party was organized to be known as the Communist Political Association. However the government contends on the evidence that this revision of the important objectives of the Party was of short duration and that about June 1945 the new Communist Political Association was dissolved and reconstituted under the name of the Communist Party and along the lines and with the same objectives with respect to overthrowing the government by force and violence that had existed in the Communist Party prior to 1944. There is evidence that this change came about in the following way. William Z. Foster had been strongly opposed to the revision of the Communist objectives advanced by Earl Browder and it was under Foster's leadership that the revision of the Party principles advocated by Browder was abandoned and the Party re-constituted with its former principles, and by the deposition of Browder as the leader of the Party. There is also evidence that a very influential factor in the re-constitution of the Communist Party in 1945 was a long letter written by one Jacques Duclos, an active

and prominent French Communist, to the Communist Party leaders in the United States, in which the controversy in the Communist Party in this country was reviewed at great length and it was strongly urged that the Party should abandon the changed principles advanced by Browder and the Communist Political Association and should be reconstituted as the Communist Party of the United States. William Z. Foster strongly advocated the position taken by Duclos. This Duclos letter was printed at great length in the Daily Worker, the official publication of the Communist Party published in New York City, in its issue of May 24, 1945. You have heard it read at length.

The organization of the Communist Party in the United States is that the whole of the United States is divided into districts or particular territories of which the State of Maryland and the District of Columbia are one. Thepolicies of the Party are determined by delegates elected in the several districts to attend a Convention of the Party in some particular city and there adopt resolutions which determine the policies of the Party, and elect a governing national board which from time to time makes decisions which, when made, are binding upon all officers and members of the Party in different districts. This is a policy which, according to the government's contention on the evidence in this case, is called "Democratic centralism" whereby the

9

whole membership of the Party is strictly disciplined and obliged to conform to the rulings of the governing body or of its subcommittee, of which, in 1945, William Z. Foster became the active chairman and leader in place of Earl Browder. There is much evidence in this case that at the Convention of the Party in 1945 the Communist Party was reconstituted and adopted the principles theretofore held and advocated by the Communist Party in America as it had existed prior to 1944 and consistent with the principles of the Communist Internationale which in effect advocated world revolution of the kind heretofore described, and that those revived principles have continued as the ultimate aims and objectives of the Communist Party to the present time. In this connection, however, I again repeat that the jury must determine from its own recollection of the evidence as a whole whether the contention of the government has been established beyond a reasonable doubt.

In connection with this alleged reconstitution of the Communist Party in 1945, there is evidence that in 1943 there occurred the well-known meeting at Teheran between President Roosevelt, Winston Churchill, then Prime Minister of Great Britain, and Joseph Stalin of Russia with respect to the successful conclusion of the war then existing between Russia and Germany on the one hand, and between the United States, Great Britain, France and China against Germany,

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

Ows fls Cvy 10:40 As I have heretofore indicated, the issues of fact in this case to be determined by the jury naturally divide themselves into two main questions. One is whether the jury finds beyond a reasonable doubt that the re-constitution of the Communist Party in 1945 constituted in effect a conspiracy to teach and advocate the overthrow of the government of the United States by force and violence when the time therefor became opportune, or to otherwise violate the Smith Act. The second important main question in the case is, if the jury finds that the government has

established the first, did the six defendants in this case respectively join in said conspiracy wilfully and with knowledge of the purposes thereof and with the intent herein described, and continue therein within three years prior to the finding of the indictment? In this connection I particularly call your attention to two classes of evidence so that you may properly appraise them with respect to the two main questions of fact that you have to determine. The two classes of evidence to which I now refer are (1) evidence of witnesses and particularly the witnesses Crouch and Nowell, with respect to their trips to Moscow in 1929 or '30, and 1931 or '32, and the relation by them of their experiences there with reference to indoctrination into Communist principles, and also any other evidence in the case relating to matters occurring before the alleged reconstitution of the Communist Party in 1945. This class of evidence has proper relation only to the first main question in the case, that is, what were the principles and objectives of the Communist Party after 1945, and were they, as contended by the government, the same as before 1944? With respect to the second main question in the case, that is, the alleged participation of the six defendants in the conspiracy within three years prior to the indictment, this class of evidence as to happenings before 1945 has no relation, except as to the defendant Philip Frankfeld who,

3 you will remember, was mentioned in the evidence of Nowell as one of the group of thirty young Communists who were sent to Moscow about 1931 for indoctrination in the principles of the Communist Party. The other class of evidence to which I have above referred is that the statements and opinions of about ten witnesses for the government with respect to their knowledge of the objectives and principles of the Communist Party. Some of these witnesses were former active members or officials or functionaries of the Communist Party and some were persons who for some time became and were connected with the Party for the purpose of reporting its activities to the Government. The evidence of them or some of them was to the effect that from the intimate knowledge that they had acquired of the Party as active participating members it was the principle and objective of the Party to teach the duty and necessity of overthrowing the government by force and violence when the time was opportune. In weighing their evidence to that effect you should consider the whole of their evidence, some of which as to some of the witnesses was supported by specific references to authorized literature of the Party with which they became familiar. Many extracts from such literature have been read to you by the witnesses or by counsel. It is for you to determine whether such literature did fairly represent the aims and objectives of the Party and whether

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

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

The jury are instructed that in determining from the evidence whether the principles and objectives of the Communist Party are to advocate or teach the duty and necessity of overthrowing the government of the United States by force and violence, it is not necessary for the government to show that any open armed conflict has heretofore actually occurred or been attempted to accomplish the ultimate objective but only that the objective

in fact exists and is intended to be accomplished as speedily as circumstances would permit. In this connection the affirmative of the principles was expressed by one of the witnesses, Lautner, who said he had been an official instructor for the Party authorized to teach its doctrines to members or prospective members, who testified that in his teachings he taught that it was the aim of the Communist Party to advocate the overthrow of the United States Government by force and violence, that it was the purpose of the Party to cause a revolution and that the time and circumstances for such a revolution to be brought about were in the case of a national emergency, crisis or war and when the Party had sufficient influence to carry out the revolution with success. I refer to this particular part of the testimony not for the purpose of laying special emphasis on it but only as illustrative of the government's contention with respect to the time when revolution was to be accomplished.

In determining whether it was the principle of the Communist Party since 1945, and within three years before the finding of the indictment, to advocate force and violence in accomplishing a revolution in the United States you should also consider the evidence with respect thereto given by the witness Meyers, one of the said defendants, and by Dr. Aptheker, a lecturer and writer on Marxist-Leninist history and doctrines who has for some years been an authorized

speaker in public for the Communist Party, and an active member thereof. This evidence is extended, as you will recall, and has recently been given to you. It is to the effect that the Communist Party does not teach or advocate the use of violence to accomplish a revolution but contemplates causing it only by peaceful means and consistent with the provisions of the Constitution of the United States; that it never has and does not now advocate the use of force and violence nor contemplate the existence thereof in connection with a revolution except that if and when the revolution is accomplished by peaceful means through the will of the majority of all the people, it may be necessary for the majority to use violence to suppress violence which may occur from a minority of the people in resistance to the revolutionary change. You should also consider the evidence given by these witnesses in which they define the Communist concept of Democratic centralism differently from the definition attributed to that phrase by the government witnesses. The defendants contend that Democratic centralism does not require inflexibly rigid discipline of subordinates in the Party to the expressed will of the leaders but only that conformity to the determined policy of the governing authority of the Party reached after full consideration and expression of views by all elements in what they describe as the general Democratic principle similar to that of other

7

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

8

shall be deprived of life, liberty or property without due process of law; that private property cannot be taken for public use without just compensation; and that the Constitution of the United States cannot be amended in these respects except by legislation by Congress of a proposed constitutional amendment which would have to be ratified by three-fourths of the 48 States of the Union. They, the defendants, also contend that the Communist Party program is not inconsistent with the Constitution of the United States.

The jury should consider the whole evidence in the case both of the government and the defendants on this point, including any support to the government's contention to be found in the answers of the government witnesses on cross-examination. The defendants also in support of their contention refer particularly to the wording of the Constitution of the Communist Party which in terms disavows and repudiates the use of force and violence by its members although also subscribing to the principles of Marxism-Leninism. As to this the government has offered evidence that there is a clear inconsistency between the two stated principles in that the government contends that the Marxist-Leninist principles so espoused by the Constitution of the Party is itself a doctrine of the use of force and violence to accomplish revolutionary change. In this connection some of the government witnesses say that the wording of the Constitution in this inconsistent way is illustrative of

9 some Communist literature which, according to their evidence, is often expressed in language which has a double meaning, one of which meanings is clear enough to the indoctrinated members of the Communist Party but also is expressed in English words which of themselves could not be used in court adverse to the interests of the Communist Party. Some of these government witnesses have referred to such alleged double meaning of Communist literature as being expressed in "Aesopian" language, a phrase used and explained by Lenin himself in the preface to a book that he wrote in 1916 while in Switzerland and with respect to the then existing Czarist government of Russia. The defendants' two witnesses above named deny that any Communist literature, including the Constitution of the Party, does contain any so-called Aesopian language.

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

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

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

If you do not find that this contention of the government with respect to the objectives of the Communist Party is established beyond a reasonable doubt, you must find all the defendants not guilty in this case.

10:55
Follow
Owens

H 1

But if you do so find that the Government's contention in this respect is so established, then you must pass to the second main question in this case, that is, whether any or all of the six defendants were members of the conspiracy and whether, pursuant to that conspiracy, one at least of the overt acts has been committed as alleged in the indictment.

In passing on this second main question, you must consider the evidence with respect to the several defendants separately. The Government is not entitled to obtain a conviction against any one of the six defendants unless it establishes beyond a reasonable doubt, first, that such defendant joined the conspiracy by becoming an active member of the Communist Party knowing its aims and objectives as contended by the Government, and personally intending in accordance with said objectives and as an active member or officer or official of said Party to knowingly and wilfully advance or advocate its principles of teaching the duty or necessity of overthrowing the Government as speedily as circumstances would permit, or with such intent to circulate and distribute literature which so teaches, or to organize or help to organize groups or assemblies of persons who so teach or advocate or encourage the overthrow or destruction of the government. You should not convict any of the defendants unless you find that they had this

H 2

specific intent and were wilful and knowing in what they were doing. The Government must also prove in this connection that with such knowledge, purpose, and intent a defendant became and was or continued to be a member of such a conspiracy within the period of three years before the finding of the indictment.

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

Philip Frankfeld was a member of the Young Communist group sent to Russia in 1930 or 1931 and indoctrinated in schools at Moscow, as stated. There is evidence that he has been a Communist for many years, and for several years prior to 1951 was the chairman of the Communist Party for the district, including Maryland and the District of Columbia. About a year ago he was transferred

H 3

by the party to Cleveland, Ohio. He is the husband of Regina Frankfeld, one of the other defendants in this case. There is evidence that from time to time Philip Frankfeld taught Communist doctrines to various members or prospective members. One witness stated in substance that Frankfeld himself said that he would always continue to be a professional revolutionist.

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

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

H 4

he was a member of the Steel Club in Baltimore. For a time, I think you recall, he was organizational secretary of the party in this district.

Regina Frankfeld is the wife of Philip Frankfeld. There is evidence that she has been an active Communist for some years past. On February 4, 1949, she was made organizational secretary of the Communist Party in this district. There is evidence that within three years prior to the indictment she had been employed for a time as a school teacher in the public schools of Baltimore City, but was dismissed from that position because of her Communist membership. I refer to what is in the evidence. It is not evidence itself that for Communist membership she was dismissed by the School Board. There is some evidence that before her election or appointment as organizational secretary of the party in this district she was sent to the party school for indoctrination in Communist principles.

There is evidence that Dorothy Rose Blumberg has been an active Communist for several years past and has held the office of secretary-treasurer, or secretary or treasurer, in the party in this district prior to and until some time in 1949, and within three years before the filing of the indictment. There is also evidence that she has taught Communist principles to various classes of actual or

H 5

prospective Communist members. The Communist Party in this district has a banking account with the Equitable Trust Company. Dorothy Rose Blumberg with Philip Frankfeld was authorized to sign checks on the account.

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

Each and all of the six defendants were members

H 6

of the district committee of the Communist Party for this district, which is the governing authority for the party within this district charged with the carrying out of the policies of the Communist Party as nationally determined.

With respect to each defendant, the Government has the burden of proving that he or she joined in and participated in such conspiracy knowingly and wilfully and that such defendant entertained the specific intention to teach or advocate the duty or necessity of overthrowing or destroying the government of the United States by force and violence and that he or she intended to teach or advocate such doctrine or to organize groups for such purpose with the specific intent or purpose of bringing about such overthrow as speedily as circumstances would permit. The Government must establish this beyond a reasonable doubt.

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

H 7

violence, you can infer that they had the specific intent required as an element of the crime. Each of the elements of the crime must be established to your satisfaction beyond a reasonable doubt.

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

H 8

With respect to the Jury's consideration of so-called declarations of co-conspirators, meaning thereby verbal statements made by co-conspirators out of Court and not as witnesses in a case subject to cross-examination, the rule of law is that such statements are not to be considered by the Jury as evidence against the defendants on trial unless and until the Government has established that where there was a conspiracy between the defendants respectively and the co-conspirators who made the declarations and that such declarations or statements of co-conspirators related to the general subject matter of the conspiracy. In this case, very much of the Government's evidence has been that of witnesses in Court subject to cross-examination based on their alleged knowledge, rather than on statements made by alleged co-conspirators.

With regard to the evidence of actions or statements of Philip Frankfeld before 1945, you can consider them as affecting his case, but should disregard them before 1945 with respect to the other defendants in this case.

There has been some reference in the evidence to a prior conviction of conspiracy against some of the members of the Communist Party named in the indictment, not defendants here, in the New York trial. In this connection, you are instructed again that your verdict here must be based only on the evidence that you have heard in this case.

9

You have not heard the evidence in the New York case, and you should not speculate about it. The result of that trial is not binding on these particular defendants and, as I have said, the defendants here are not charged merely with being members of the Communist Party but with being such members with the knowledge and intent that I have above described.

11:10
Cavey

Ca fs
Ha 1120

Therefore, you should disregard anything but the evidence in this case and, of course, in basing your verdict on the evidence here, you must put aside and disregard any general statements about Communists or Communism which you may have previously heard or read which have not been called to your attention in this case.

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

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

Practically all of the government's evidence with respect to the membership, holding of office or activities of the six defendants is uncontradicted testimony, if you otherwise believe it. Of the six defendants, only

C 2

one, Meyers, has testified in his own behalf. None of the remaining five defendants elected to testify. In this respect, they had the option but not the obligation to so testify. On this point I call your attention to a statute of the United States, title 18, s. 3481, which reads:

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

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

The defendant Meyers as a witness refused to answer certain questions. When a defendant by his election becomes a witness, he is required to answer questions which the court directs him to answer, unless the court rules that he is privileged to refuse on constitutional grounds. You can consider the refusal of

C 3

the witness Meyers to answer certain questions in connection with the weight and credibility of his own testimony, but you should disregard that refusal with respect to the cases of the other defendants.

I also call to your attention that the opening statements made by counsel for the parties who have not testified can not be considered as evidence in their favor. And I again remind you that your verdict must be based on the evidence that you have heard in the case orally by witnesses on the stand subject to cross-examination and from the many documents which have been offered in evidence, and that statements other than those in evidence either by counsel or by the court in colloquies with counsel as to the admission of evidence should not be considered by you in any way touching or bearing upon the guilt or innocence of these several defendants.

As to the law of the case, you take it from this charge as superseding any prior comments by the court in the trial of the case. Furthermore, I remind you that any reference in this charge for purposes of illustration as to the evidence is advisory only to you and only the matters of law upon which I have instructed you are binding upon you. I have not expressed, and have not intended to express, any personal opinion on the guilt or innocence of these defendants and anything that has been said from the

C 4

Bench other than instructions to the jury and as to the law should not be regarded by you as any indication of any opinion on the facts.

I now instruct you more particularly as to what constitutes a reasonable doubt. A reasonable doubt means a doubt founded upon reason. It does not mean a fanciful doubt, or a whimsical or capricious doubt, for anything relating to human affairs and depending upon human testimony is open to some possible or imaginary doubt. When all of the evidence in the case, carefully analyzed, compared and weighed by you, produces in your minds a settled conviction or belief of a defendant's guilt, such a conviction as you would be willing to act upon in matters of the highest importance relating to your own affairs, when it leaves your minds in the condition that you feel an abiding conviction amounting to a moral certainty of the truth of the charge, then, and in that event you would be free from a reasonable doubt. Absolute or mathematical certainty is not required but there must be such certainty as to satisfy your reason and judgment, and such that you feel conscientiously bound to act upon it.

There is another matter about which I must instruct you. The defendants have offered evidence as to certain of the activities of the Communist Party. Thus it is said that they have earnestly endeavored to promote

C 5

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

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

C 6

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

C 7

witnesses whether for the government or for the defendants.

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

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

When you have reached a unanimous verdict, you will so inform the bailiff, who will bring you into court. The clerk will then call your names to identify you as the jury. He will then ask you if you have reached your verdict. If so, you reply "Yes". The clerk will then

C 8

ask you who shall speak for you and your reply may be "Our Foreman". The clerk will then ask your foreman what is the verdict as to each of the defendants separately named and the foreman will reply, giving the verdict as to each of the defendants as their names are separately called.

Do counsel on either side with to note any exceptions to the charge?

MR. BUCHMAN: If the Court please, we do, sir. Shall I proceed?

THE COURT: Do you wish to note exceptions to the charge?

MR. BUCHMAN: Yes, sir.

THE COURT: Do you wish the jury to withdraw or not? The Rule of Court says when exceptions are noted, the Court shall give opportunity to counsel to make the exceptions out of the presence of the jury.

MR. BUCHMAN: I think it would be preferable, Your Honor.

THE COURT: Very well, members of the jury, will you please retire to your room.

MR. FLYNN: I would like to announce that the government has no exceptions to the charge.

(The bailiff was thereupon sworn by the Clerk.)

THE COURT: The case has not yet been given to

C 9

the jury and I have to wait for the exceptions, so you do not have to swear the bailiff.

I will call you back, members of the jury, as soon as we have finished the matter.

(Thereupon, at 11:25 a. m., the jury left the courtroom, after which the following occurred:)

THE COURT: Ann right, Mr. Buchman.

MR. BUCHMAN: First, generally, Your Honor, we want to object to the Court's refusal to instruct the jury as requested severally as to each and every proposed instruction in whole or in part.

THE COURT: Now, let me say as to that - had you finished your sentence?

MR. BUCHMAN: Yes. Then I was going to enumerate generally and then get down to specific points, but if Your Honor wishes to interpose at this point -

THE COURT: I understand you are making exceptions to my failure to include in the charge each and every one of 94 separate requests which you handed to me on Friday evening about 4:30 P. M., although you had promised to give them to me on Friday morning at 10 o'clock, all of which exceptions you classified in your argument before me, which was made on Saturday morning last, when we had an argument for something like three-quarters of an hour on the point. Now, your present point is that the failure of

this Court to include each and all of the 94 separate statements - - I do not think that I am called upon to give you a categorical reply to each and all of those 94 points.

Owens fs
Cavey 1125
1

THE COURT: I read them and you classified them as basic points. Now, I told you at the time what would be the ruling of the Court with respect to your several basic points. There has been a ruling of the Court in accordance thereto in the charge. Manyof the requests that you ask have been put in the charge.

With respect to the request you want to make with respect to exceptions to the charge now, call my attention to any basic points that you say I did not put in the charge.

MR. BUCHMAN: Our grounds for noting an exception to the proposed instructions were covered in the case with respect to our views on the whole case in that it violated the defendants' rights under the First Amendment for failure to instruct as requested which leaves the jury with those statements which are in violation or contravention of the constitution, and the Fifth and Sixth Amendments also dealing with the proposed instructions which fails to cover the statements made in the discussions of counsel.

THE COURT: What is that? I don't understand you.

MR. BUCHMAN: The refusal to grant our proposed

instructions denies or fails to enable the jury to get our version of the case in view of some of the prosecution's statements made in the examination.

Now, I would like to take them up or go through the charge where Your Honor formulated certain things, but I don't know whether Your Honor has a copy of our instructions, our proposed instructions before you, but I would like to take up what we consider was omitted.

The second instruction that we have asked on the question of reasonable doubt is that the jury be instructed in addition to the statement in the charge that:

"If your mind is in a state of equipoise or uncertainty as to guilt, then your verdict must be not guilty as to such defendant."

That is number one.

THE COURT: Just a minute. Let me get that.

MR. BUCHMAN: "If your mind is in a state of equipoise or uncertainty as to guilt, then your verdict must be not guilty as to such defendant."

Then the sixth proposed instruction deals briefly with the question of being influenced or affected by expressions outside the case, outside influence and we feel that in view of the unusual circumstances of the case, the prejudicial circumstances it was a rather important instruction and we feel that the request was necessary in order to insure

consideration of the case.

Then requested instruction number seven deals with the specific source of prejudicial influences, and that is requested that Your Honor charge.

THE COURT: What is that?

MR. BUCHMAN: Our seventh requested instruction deals with specific sources of potential prejudicial influence that we requested Your Honor.

THE COURT: What is that?

MR. BUCHMAN: The requested instruction reads:

"I charge that you must not allow yourself to be influenced in this case by reason of your own religious beliefs or by any decree, edict, directive or attitude which the leaders of your particular religious faith or any other religious faith may have issued, pronounced, or expressed before or during this trial."

THE COURT: I did not recall that evidence in the case about that feature of it although in the charge I did include a phrase about that.

MR. BUCHMAN: There were several attempts to raise that issue in the case, and Your Honor recalls that those things were indicated in the voir dire.

Then with respect to requested instruction number nine, I think Your Honor did deal with that in part, that is the Government as a litigant, and I don't know whether

Your Honor did instruct that the Government is to be considered as any other party and its counsel are to be considered as any other counsel for any party.

Now, requested instruction number ten deals with what Your Honor has not charged and it states that there is no oral or written statement that any of these defendants advocated or taught, but I think you did mention some of that, and then the evidence elicited by the cross-examination of the defendants or cross-examination of the Government witnesses in favor of the Government, as I recall it.

Just a minute until I get that charge.

I think Your Honor's charge was in connection with the evidence adduced through some of the Government witnesses for which they could find support without referring to any of the other evidence as it came out in the examination of Craig, Markward, Benner and Bartlett should be considered in favor of the defendants, and of course, I did want to mention that in view of Your Honor's statement.

In connection with page 18, the last paragraph of your charge to the jury, Your Honor made this statement:

"And in this connection I further instruct you that the Smith Act is not aimed against the teaching of the mere abstract doctrine of overthrowing the government or the mere teaching of the historical doctrine of Marxism or Leninism. The Communist Party and its members are en-

titled to do this so long as their teaching does not go to the extent of advocating action for the accomplishment of a violent revolution by language reasonably and ordinarily calculated to incite persons to such action."

In connection with that in this case there is no written evidence that they did so teach, and in connection with the formulation of Your Honor's instruction, it should include several of the proposed instructions, and instruction number twelve to which I would like to call Your Honor's attention which is:

"I charge you that the prosecution and the defendants are entitled to the individual opinion of each juror on the issue or fact in this case. It is the duty of each of you to consider and weigh all the evidence in the case, and from such evidence to determine," and so on.

Does Your Honor have a copy of our proposed instructions?

THE COURT: I don't have them on the Bench. I think they are probably in my chambers.

Go and get them, Mr. Murray, please. They are probably on my desk.

MR. BRAVERMAN: I will lend you my copy, Your Honor.

THE COURT: Mr. Buchman, is it your purpose to review now again each of the ninety-four instructions that

6 you requested?

MR. BUCHMAN: Your Honor, I want to refer to them by number rather than discuss each of them at length, the ones which were not included.

THE COURT: Well, I hope you won't unnecessarily consume, as it seems to me, further time in arguing on matters that were argued so very fully before.

MR. BUCHMAN: Well, suppose I read these, Your Honor.

THE COURT: How much time do you want to note these exceptions?

MR. BUCHMAN: I would like to note the numbers, Your Honor, so that I may have our exceptions in the record, just refer to the numbers as to what we consider the basic omissions for the purpose of our exceptions.

THE COURT: Well, the usual course is to call to the Court's attention any important points that you feel were not properly covered in the charge.

For your convenience I have given you a copy of the charge so that you could read it as it went along. Now, I will be glad to hear you if you call to my attention particular points that you think were left out of the charge.

It is not customary for a Judge in charging a jury, after he has heard all the argument which seems reasonable in the matter, to undertake to rule specifically

on each of ninety-four requested instructions, but if there is any important point that you think was not covered I will be glad to hear you on it.

MR.BUCHMAN: If Your Honor please, what I would like to do for the record is to just note these numbers of our proposed instructions or requested instructions that we think should have been included.

THE COURT: Of course, I do not know them by number. The practice in this Court is to call the attention to the Judge after the charge has been given to the jury, to call the attention of the Court to any errors in the charge, but not meticulously in the way that you suggest.

MR. BUCHMAN: Well, Your Honor --

THE COURT: I ask you then to please call to my attention any specific numbers of the ninety-four requested instructions, which would again take hours to go over, but the basic or more important objections that you have to the charge.

Now, you mention two or three of them and I made notes of them, and to some extent I will possibly give further comments to the jury about them.

MR. BUCHMAN: Well, Your Honor, I do not want to waive any specific requests that we have because we feel that they are material and we are making the same general objections that we made throughout the case with respect

to these things which have not been clearly set out in the charge.

So, I can cite the numbers for the record or I can discuss each point separately.

THE COURT: Well, all right. Read what you want, Mr. Buchman. What number do you want to call my attention to now?

MR. BUCHMAN: Number fifteen is the first one, Your Honor.

THE COURT: Well, can you state the substance of it?

MR. BUCHMAN: Yes, that the conspiracy as placed in issue is in co-existence with the Communist Party with the conspiracy as mentioned and the Government had to establish not only the specific conspiracy with specific intent but to cause the forcible overthrow.

THE COURT: Go on to the next one.

MR. BUCHMAN: Number sixteen is an instruction dealing with the nature of circumstantial evidence, which is:

"Circumstantial evidence is not direct proof of a fact. It is that evidence which tends to prove a disputed fact by proof of other facts which have a legitimate tendency to lead the mind to infer that the fact sought to be established is true."

9

Now, there was no charge in connection with the circumstantial evidence in the case.

MR. FLYNN: There was a charge as to circumstantial evidence.

MR. BUCHMAN: Not as to the nature of the evidence.

Number eighteen goes to the nature of conspiracy, which deals with our conception of the case that the conspiracy is not the Communist Party, but that they themselves conspired with others to advocate and teach, which is the purpose of the specific request, and in that there must be specific intent to cause the overthrow.

Then we have the further instructions dealing with that, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four dealing with that question, and I would like to call your attention to twenty-five which is:

"I instruct you that the Communist Party is not charged to be a conspiracy under this indictment and that therefore membership or being a local officer or local functionary in the Communist Party does not establish participation in the conspiracy charged.

"Twenty-six: I instruct you that the Communist Party is a legal political party in this country and membership in the Communist Party cannot be considered as proof of guilt of any of these defendants."

I wanted to refer to these numbers which represent

our contention, and I do not want to consume needless time, but I did want to have our exception noted for the record.

The same with respect to twenty-seven, twenty-eight, twenty-nine, the same, and then thirty:

"Even if the jury should find that the Communist Party taught and advocated," and so forth, "that in itself would not establish that a member of such party or a local officer taught or advocated," and that "beliefs are personal and not a matter of mere association."

Then, thirty-one, thirty-two, thrity-three to thirty-seven inclusive dealing with the doctrine of specific intent which must be established, and I think Your Honor in only one portion of the charge indicated that point with respect to teaching and advocating the overthrow and the specific intent to cause theoverthrow.

Hdg fls
11:40

11:40
Follow
Owens.

H 1

MR. BUCHMAN: And the instructions 38 to 42, dealing with the question of imputing to these defendants statements made by others, we feel that the Charge, as made, does not indicate that the acts and the teaching and advocacy of the individual defendants are on trial, and charges to impute to them the statement as to "some thirty years," or "some twenty-five years ago," some Americans went to Moscow, and holding these defendants responsible for those acts and activities and teachings. And in that connection, I might point out, Your Honor, there has been no evidence that these defendants in Maryland used the program of the "International" referred to in your statement in your Charge to the Jury.

There is no inclusion in your charge that there had been a disaffiliation in 1940 by a special convention of the Communist Party.

On the question of specific intent, paragraphs 45, 46, 47, 48, and 49, of our proposed instructions. We feel Your Honor's charge in connection with the right of advocacy does not contain the proposed instructions in 50 to 60, inclusive.

THE COURT: What are you saying now? I don't quite follow you.

MR. BUCHMAN: Your charge in connection with the right of advocacy, the right of speech, use of books, and

H 2

ideas, does not contain any of the proposed instructions in Paragraphs 50 to 60 of our request.

THE COURT: What is there you want me to tell the Jury on that point?

MR. BUCHMAN: Well, first that the defendants are not prohibited by the Smith Act from teaching and advocating peaceful change in our social, economic or political institutions, no matter how fundamental or far reaching or drastic such proposals may be. Also that the testimony as to the contents of the various books, pamphlets, newspapers and literature pertaining to the Communist Party and Communist theory and pertaining to Marxism-Leninism cannot be considered as evidence against any of the defendants to prove the conspiracy charged in the indictment since these were not the writings of any of the defendants and since such writings are capable of varying interpretations, depending on who the reader may be.

Fifty-two deals with the question of distribution of literature.

Fifty-three deals with the question of literature.

Fifty-four deals with the First Amendment. The defendants cannot be punished for the teaching or advocacy of any ideas, doctrines or principles, through the exercise of the right of press, speech and assembly, where the exercise of these rights and the teaching or advocacy of these ideas,

H 3

doctrines or principles are not a part of an attempt to cause the overthrow or destruction of the Government of the United States by force and violence as speedily as circumstances will permit.

Fifty-five, and we ask that the jury be instructed, be given the right to determine there, and Your Honor followed the Dennis case.

THE COURT: I followed the Supreme Court of the United States, almost the exact words.

MR. BUCHMAN: That is true.

Fifty-six is the same issue, somewhat different.

Fifty-seven, "I charge you that under the Constutition of the United States, the defendants and the Communist Party have a right to teach and advocate the theory of class struggle, the dictatorship of the proletariat, the abolition of the capitalistic system, peace with the Soviet Union, self-determination for the Negro people, and similar economic and political changes mentioned in the documents of the Communist Party in evidence in this case.

I might point out in Your Honor's charge, that the point where you refer to the defendants' intention, you admonished about the change by constitutional amendment, and taking property without due process of law, which seems to us to give the inference that that is inconsistent with the defendants' theory of social change.

H 4

THE COURT: No. I said the theory was consistent with that.

MR. BUCHMAN: And instruction 60 deals with the right of the people of the United States to make fundamental and revolutionary changes

THE COURT: What page is that last reference, on the Constitution of the United States?

MR. BUCHMAN: In your charge, Your Honor?

THE COURT: Yes.

MR. BUCHMAN: Page 17.

THE COURT: No. That is not the one. You refer to my quoting. The quotation, "One is that no person shall be deprived of life, liberty or property without due process of law, that private property cannot be taken for public use without just compensation."

MR. BUCHMAN: That is what I am referring to, Your Honor, because in that juxtaposition it would seem to indicate what has previously been said about the defendants' intention.

THE COURT: What page did you say it was?

MR. BUCHMAN: Page 17. The first paragraph.

THE COURT: Well, I personally told the Jury I made reference to the constitution, that the Communist Party program is not inconsistent with the Constitution of the United States. I suggested it was in the Constitution.

E 5

MR. BUCHMAN: My feeling is that the juxtaposition at that point with the added sentence does have that effect.

THE COURT: Doesn't that simply say, Mr. Buchman, the nature of the Communist's accepting of it.

It is not the usual thing for the Court to charge the jury to weave into the charge some parts that one party wants to make. It seems to me that many of the points yo u are now making are in the nature of requests for particular arguments, and were made fully before the jury. Let's go on.

MR. BUCHMAN: And, in 63, "I charge you that there is no evidence in this case that the Communist Party of the United States of America was affiliated in any international organization of Communist Parties at any time during the period defined in the indictment."

THE COURT: I haven't said to the contrary, have I?

MR. BUCHMAN: It would seem, Your Honor, from the statements, from your charge, the inference is that it is true.

THE COURT: I do not think so. Let's pass on to the next.

MR. BUCHMAN: I refer specifically to Page 12, and to instruction 64, "If you findthat the evidence shows that one of the defendants travelled abroad, visiting various countries of Europe, including the Soviet Union, as a member or representative of the Communist Party of the United

H 6

States of America, I charge you that such visits, in and of themselves, have no bearing on the guilt or innocence of that defendant, or any of them." This has particular importance because instead of the case being confined to advocacy and teaching, it has strayed, as indicated by Mr. Flynn's closing statement, and also by a portion of the charge, it has strayed to foreign dominions.

THE COURT: I forgot what I said on that. It is entirely proper. And you have an exception on that. Go ahead.

MR. BUCHMAN: That is why I do not renew my argument, but merely state an exception.

THE COURT: All right. Mr. Buchman, I think you are taking advantage of the present opportunity, as you think, in dealing with your clients. And I understand. In a way, it is rather unusual. However, I have listened, I hope patiently, and I trust advisedly, and I am sure, when you have as many points as you have in this case.

MR. BUCHMAN: I have indicated I do not wish to take the opportunity to argue, as long as I state my exceptions on the record.

THE COURT: I think it is essentially another argument. Go ahead.

MR. BUCHMAN: Number 65, which deals with the fact that you cannot infer from the evidence that the works of

Marx, Engles, Lenin and Stalin were recommended for reading.

"I charge you that if you can reasonably infer from the evidence that the works of Marx, Engles, Lenin and Stalin including the History of the Communist Party of the Soviet Union, received in evidence in this case, were recommended for reading or study as a means of teaching or studying the nature of society and of the laws governing its history and development, then you cannot find that such works were recommended with the intent to teach or advocate the overthrow or destruction of the Government of the United States by force or violence or to teach or advocate the duty or necessity of such overthrow by force or violence."

Also the instruction that books are not on trial nor is the political philosophy of communism or socialism or communism. That is Number 67.

Now, this is where we feel your charge excluded evidence which our proposed instruction asked to be included, and that is the question of the activities of the Communist Party, which we contend in instructions 69 and 70, and 71, relate directly to the question of intent to bring about the evil or present danger, and the question of inconsistency with any intent to overthrow. And Your Honor has excluded in these instructions what we requested be specifically included.

8

Seventy-two deals specifically with the fact that the defendants are not charged with any violation of the law in connection with the affiliation of the Communist Party of the United States of America with an international organization known as the Communist International, and which certainly would be an important instruction in view of the remarks made yesterday in the Government's summation.

Now, 73, 74, and 75 deal with the question of mere evidence, the defendants being in a class where someone taught something, which is not binding on the defendants and not to be considered as to evidence to teach, advocate or intend.

Seventy-six to 81 deal with our proposed request, which we discussed Saturday, on the evaluation of informer testimony, and there is no point in renewing it.

Ninety, 91, 92, and 93 deal with what constitutes evidence of membership, which we feel is particularly important in this case because of the conclusions drawn by witnesses as to what constitutes membership. That deals with the exclusion. I suppose other counsel will deal with what was stated in the charge which would be considered improper.

THE COURT: Is there anything else to be said?

MR. BRAVERMAN: While Mr. Buchman is looking at the charge, while you delivered the charge, Mr. Buchman is the

one who checked over the wording in the typewritten charge. We want to thank you, too, for the opportunity to get a copy of it this morning.

One thought has come to my mind as to a question of fact, which I think Your Honor left out, and that deals with the letter by Duclos, the French Communist leader. You spoke to it in relation to the time of the ending of the war against Germany. I think it should be pointed out that although the Duclos letter was printed in the Daily Worker of May 24, 1935, that it had been prepared and had been printed in a French magazine much prior to that, in an April issue. There is no date as to when the April issue came out, but it had been put into the original French and put into the French magazine in the April issue, which, I take it, came out much prior to May 24. I think the inference is the Duclos letter came out, it was understood, at the end of the German war. I think it is not warranted by the fact of when the Duclos letter was printed.

MR. BUCHMAN: If the Court please, on Page 4 of the Charge, reference to change by violence and revolution and terrorism, which seems to heighten the kind of change which the defendants are supposed to allegedly have conspired to advocate.

MR. FLYNN: Let me say what I think Your Honor is quoting from on the question of terrorism. You had one

witness on the stand who referred to terrorism at least fifty times.

MR. BUCHMAN: Yes. He knew how to refer to it, in Marxism-Leninism, the opposition to any advocacy of terrorism and violence in any form, and it was a denial.

THE COURT: There is no purpose in going through all of the requests and take up the charge page by page.

MR. BUCHMAN: Just very quickly, Your Honor. There is a basic point of argument, that the charge sets up one of the issues is that the Communist Party advocates and teaches violence, and that the defendants adhered to that conspiracy, which we say do not present the issues in this case.

THE COURT: What is the use of further stating on that?

MR. BUCHMAN: Very well. I want to note for the record my exception to the charge on that ground. And I have already noted that there is no comment in the charge on the testimony elicited by cross-examination from the Government's witnesses.

THE COURT: I did refer to that, and I so stated.

MR. BUCHMAN: Not for the defendants, Your Honor.

THE COURT: What is that?

MR. BUCHMAN: Not for the defendants.

THE COURT: What are you referring to now?

11

The testimony of what? Go ahead. I think that is unusual. It is not usually put in the charge. If I put everything in the charge that you asked, it would take me three hours to read it, other than the hour and a half.

MR. BUCHMAN: Here is the exact sentence, "The Jury should consider the whole evidence in the case both of the government and the defendants on this point, including any support to the government's contention to be found in the answers of the government witnesses on cross-examination."

THE COURT: Mr. Buchman, let me say this, I put that in because I thought you would like to have it in, and that is the reason I put it in. Ordinarily, I would not discuss direct and cross-examination, referring to all of the evidence. I put that clause in there because I thought it would be helpful to you. Now you are complaining about it, because I didn't put in something else.

MR. BUCHMAN: I think Your Honor misinterprets me.

THE COURT: You wanted me to refer specifically to cross-examination of the defendants' witnesses.

MR. BUCHMAN: My point is this, you refer specifically to the cross-examination of the Government's witnesses, "including any support to the government's contention to be found in the answers of the government witnesses on cross examination." That is the point.

12

THE COURT: I don't get the point.

MR. BUCHMAN: Let me state it clearly. On Page 17, the sentence reads, "The Jury should consider the whole evidence in the case both of the government and the defendants on this point, including any support to the government's contention to be found in the answers of the government witnesses on cross-examination."

THE COURT: Let me find it.

MR. BUCHMAN: Page 17.

THE COURT: Page 17?

MR. BUCHMAN: This is the second paragraph, first sentence.

THE COURT: Well, that is a typographical mistake. I am glad you called it to my attention. "Including any support to the respective defendants' contention," that is what I intended to write. That is the reason I say I put that in, figuring you would particularly want it. Now, I will be glad to correct that, of course. It is pretty difficult to pick up every bit of it. It is around 30 pages. I just didn't pick that up in reading it.

MR. BUCHMAN: On Page 18 of your charge, on "clear and present danger," we submit that there is no evidence in the case to support this assumption. "The existence of such a highly organized conspiracy with rigidly disciplined members members subject to call when the leaders feel that

the time has become opportune for action, accompanied with the nature of world conditions, similar uprisings in other countries and the touch-and-go nature of our relations with countries with whom such ideological doctrines were attuned constitutes a clear and present danger."

THE COURT: That is drawn almost word for word with Chief Justice Vinson's opinion of the Court in the Dennis case.

MR. BUCHMAN: I recall, but the Court didn't examine the sufficiency of the evidence.

THE COURT: I am afraid I will have to stand by it. I have given some thought to it, the best thought I could give. What else have you?

MR. BUCHMAN: In reference to all of the defendants, we felt that it would be proper to add that there is no evidence that any of these defendants so enumerated actually advocated and taught the duty and necessity, and so on.

Your Honor, I think our other points are covered by the argument for request for proposed instructions.

THE COURT: Very well. Counsel has finished exceptions to the charge. We will have the Jury brought back. I would say now that I have noted two or three points that I will next refer to the Jury, and otherwise, will grant the exceptions which are noted now by counsel for the

defendants.

MR. BRAVERMAN: Is it understood that the exceptions and remarks made by Mr. Buchman are for all of the defendants in the case, rather than each counsel getting up and repeating it?

THE COURT: Of course, you can seate that if you desire, Mr. Braverman. I see no objection, no harm in expressly stating it.

MR. BRAVERMAN: I wish to state for the record that I join in the record with Mr. Buchman. And Mr. Meyers has authorized me to state for the record he joins the remarks by Mr. Buchman, and also Mr. Bassett and Mr. Wright likewise join his remarks.

THE COURT: Very well. Call in the Jury.

12:05
H 1

(At 12:05 p.m. the Jury returned to the court room, after which the following occurred:)

THE COURT: The procedure in a case in this Federal Court gives counsel the opportunity at the conclusion of the Court's Charge to the Jury to note exceptions to or request corrections of the Judge's charge. Since you have been out after I concluded reading the charge to you, counsel have called my attention to a number of matters which they would like to have corrected.

And I will now call your attention to three matters, out of a much larger number, called to my attention, which we feel should be considered in connection with the Charge.

In the first place, on Page 17 of the Charge, I find a typographical error as I read it to you. The sentence, as I read it, was: "The Jury should consider the whole evidence in the case both of the government and the defendants on this point, including any support to the government's contention to be found in the answers of the government witnesses on cross-examination."

The sentence should read, by changing the word "government" to "defendants," "The Jury should consider the whole evidence in the case both of the government and the defendants on this point, including any support to the defendants' contention to be found in the answers of the

government witnesses on cross examination."

What is referred to there, considering the whole evidence, is, of course, the main contention of the case with respect to the program of the conspiracy, if the jury finds there was one.

The second point I wish to call your attention to is that I am asked to instruct you about, after considering the whole case, as I have charged you, if your minds are in a state of equipoise, you, of course, would not be able to reach an unanimous verdict, you would not be able to reach a verdict beyond a reasonable doubt. The word "equipoise" means an "even balance." It does not mean you count the number of jurors who think one way, if there is any disagreement of the jury, and those who think another. "Equipoise" means an equal balance of the minds of the jurors.

I am asked to state to you, what is certainly true, that in a trial of a criminal case, the Government of the United States is regarded as a litigant. Of course, it stands on the same basis as any other litigant, in this, case, that it is to establish the case beyond a reasonable doubt. That is their burden. And, of course, you treat them just as you would any other litigant with respect to the measure of truth in the trial of the particular case.

Are there any further exceptions?

H 3

If not, call the Bailiff. The Jury will retire. Not the alternates. The alternates will remain in the court room.

(Thereupon, at 12:12 p.m., the Jury left the court room to consider of its verdict, after which the following occurred:)

THE COURT: I will say a word to the alternate jurors in this case. The rule requires this, that where none, no one, of the twelve members of the jury selected becomes incapacitated or unable to carry on and is discharged, where no such thing as that occurs, then the alternates are discharged after the whole case has been given to the twelve members of the jury and they go to the jury room to decide on the matter. In other words, the alternates are chosen originally only for the purpose of acting as substitute jurors in the event of the incapacitation of any of the original twelve, and for that reason the rule goes on to say after the original twelve have heard the whole case and retire to the jury room to reach their verdict, the alternates are discharged, as they have performed their service in listening carefully to the evidence and the argument, with a view to the possibility that they might be called upon to be substituted for one of the original twelve. I am thanking you for your service in this case as alternates.

H 4

I will have to remind you of a phrase which has long been known: "They also serve who only sit and wait."

CLERK: You are discharged now until further notice.

THE COURT: Mr. Buchman, I don't know whether you wish to make anything out of these requests to charge.

(Mr. Buchman handed some papers to the Clerk.)

THE COURT: We will take a recess.

(Thereupon, at 12:15 p.m., a recess was taken, after which the following occurred:)

Ows 3:10pm

1

(Thereupon, the jury returned to the Court room at 3:10 o'clock p. m., after which the following occurred:)

(The Clerk called the names of the jurors.)

VERDICT OF THE JURY

THE CLERK: Members of the jury, have you agreed upon your verdict?

THE JURY: We have.

THE CLERK: Who shall say for you?

THE JURY: Our Foreman.

THE CLERK: Members of the jury, what say you, is the defendant, Philip Frankfeld, also known as Phil Frankfeld, guilty of the matters whereof he stands indicted or not guilty?

THE FOREMAN: We find him guilty.

THE CLERK: As to the defendant, George Aloysius Meyers, what say you, is he guilty of the matters whereof he stands indicted or not guilty?

THE FOREMAN: We find him guilty.

THE CLERK: As to the defendant, Leroy Hand Wood, also known as Roy H. Wood, what say you, is the defendant guilty of the matters whereof he stands indicted or not guilty?

THE FOREMAN: We find himguilty.

THE CLERK: As to the defendant, Regina Frankfeld, what say you, is the defendant guilty of the matters whereof

she stands indicted or not guilty?

THE FOREMAN: We find her guilty.

THE CLERK: As to the defendant Dorothy Rose Blumberg, also known as Dorothy Oppenheim Blumberg, what say you, is the defendant guilty of the matters whereof she stands indicted or not guilty?

THE FOREMAN: We find her guilty.

THE CLERK: As to the defendant Maurice Louis Braverman, what say you , is the defendant guilty of the matters whereof he stands indicted or not guilty?

THE FOREMAN: We find him guilty.

MR. WRIGHT: May the jury be polled, if Your Honor please.

THE COURT: Poll the jury, Mr. Clerk, poll the jury.

THE CLERK: John A. Miller, you heard the verdict of your foreman. Is that your verdict?

MR. MILLER: It is.

THE CLERK: Mr. Edward T. Blake, Sr., you heard the verdict of your foreman. Is that your verdict?

MR. BLAKE: It is.

THE CLERK: Winston R. Banbury, you heard the verdict of your foreman. Is that your verdict?

MR. BANBURY: It is.

THE CLERK: Adam Stanley, you heard the verdict of

your foreman. Is that your verdict?

MR. STANLEY: Yes.

THE CLERK: Clarence S.Brown, you heard the verdict of your foreman. Is that your verdict?

MR. BROWN: It is.

THE CLERK: Mrs. Anna A. Crow, you heard the verdict of your foreman. Is that your verdict?

MRS. CROW: Yes.

THE CLERK: Mrs. Grace A. Silver, you heard the verdict of your foreman. Is that your verdict?

MRS. SILVER: Yes.

THE CLERK: Miss Irma K. Soeder, you heard the verdict of your foreman. Is that your verdict?

MISS SOEDER: Yes.

THE CLERK: G. Stanley Kranz, you heard the verdict of your foreman. Is that your verdict?

MR. KRANZ: Yes, it is.

THE CLERK: Samuel Cooper, you heard the verdict of your foreman. Is that your verdict?

MR. COOPER: It is.

THE CLERK: Wilbert Joseph Jackson, you heard the verdict of your foreman. Is that your verdict?

MR. JACKSON: It is.

THE COURT: Hearken to the verdict.

THE CLERK: Hearken to your verdict as the Court

hath recorded it, your Foreman saith that the defendant Philip Frankfeld, also known as Phil Frankfeld, is guilty of the matters whereof he stands indicted; that the defendant George Aloysius Meyers is guilty; that the defendant Leroy Hand Wood, also known as Roy H. Wood is guilty; that the defendant Regina Frankfeld is guilty of the matters charged; that the defendant Dorothy Rose Blumberg, also known as Dorothy Oppenheim Blumberg is guilty of the matters whereof she stands indicted; that the defendant Maurice Louis Braverman is guilty of the matters whereof he stands indicted, and so say you all?

THE JURY: We do.

THE CLERK: Verdict recorded, Your Honor.

THE COURT: Are the defendants ready for sentence?

MR. BUCHMAN: Yes, Your Honor.

THE COURT: Is it the thought of counsel on either side that the Court would be benefited by having a probation report as to any or all of the defendants?

The Court has little knowledge about the several defendants -- indeed no official knowledge except what has been heard in this case.

As five of the defendants have not testified, it is possible that a probation report might be of some assistance to the Court in connection with the problem of determining sentence as to each of the defendants. The

rules of Court provide that such probation reports shall be had unless the Court orders otherwise. In many cases we have had probation reports. In some cases the Court learns enough about the defendants in the trial of the case to need no probation report.

If it is desired on either side that there should be a probation report, I would be glad to consider that.

Do you have any suggestions along that line, Mr. Flynn?

MR. FLYNN: If Your Honor please, I really do not see where a probation report would be helpful. I think Your Honor has heard so much about all of the defendants during the trial of the case that I can't see that it would help. I must say that I do not believe that a probation report in this case would add very much to what Your Honor has already heard.

THE COURT: Well, not about the merits of the case, but it is conceivable that the conditions, the physicial conditions -- I don't suggest the mental conditions because I don't know anything about it -- but some report about the defendants might possibly be a point for consideration as to the sentence.

I have had called to my attention -- I don't remember when it occurred during the trial of the case -- but I think a statement was made by counsel sometime ago

in asking in connection with various motions, one of which for postponement, that one of the defendants, I think Philip Frankfeld, had been in a hospital for some stomach disorder sometime ago. I don't know any more about it, but if counsel on either side think I would be helped in the disposition of the case as to sentence by a probation report I would be very glad, of course, to have the benefit of it. It is a serious matter for the Court always to determine the proper sentence.

MR. FLYNN: If Your Honor please, of course, we are not opposing it, but I do not see as far as the defendant Philip Frankfeld is concerned that it is necessary, and I understand he has been out of the hospital certainly for sometime before the trial started, and I understand he was in there only for observation.

THE COURT: Well, if there is no affirmative request for a probation report, I would be glad to hear what the Government has to suggest in the matter as to sentence.

Yes, Mr. Wright.

MR. WRIGHT: May it please the Court, as to the defendant Wood I would respectfully ask Your Honor to refer the matter for probation purposes.

As Your Honor will recall he was not one of the defendants who took the stand. I believe that report would be helpful in pointing out matters which have not been called

to the Court's attention and it might be of further assistance to Your Honor as Your Honor may determine in your discretion.

I think it is very helpful indeed to have matters brought to the attention of the Court as it may be helpful to the Court and I wouldurge Your Honor to do it in his case.

THE COURT: I will hear what the United States Attorney has to suggest in the matter before finally passing on it.

What do you suggest, Mr. Flynn? I am inviting your suggestions from your standpoint in your official position not any personal opinion as you know.

MR. FLYNN: Of course, may it please the Court, it is helpful to have a probation report which might be given to your Honor in determining the nature and extent of the punishment, but I am not opposing that at all, sir, as to any of the defendants.

It is true Mr. Wood did not take the stand, but I have not heard any suggestion on the part of any of the others as to the fact that they desired it. But I can't take any affirmative position one way or the other in the matter.

It is true that we have a Probation Department set up for the purpose of assisting the Court in determining what the situation is with respect to defendants, and it

might be helpful to have such a report in the matter of sentence, but other than that I can't go any further, sir.

THE COURT: Well, Mr. Wright, apparently you are the only one who suggests it.

MR. BUCHMAN: I have consulted with my clients, and I want to join in the sentiments expressed by Mr. Wright.

THE COURT: Will the defendants be available for consultation with the Probation Officer?

MR. WRIGHT: I think they will make themselves available under the circumstances.

MR. FLYNN: Your Honor, on that particular point the question of bail is one which should be determined whether or not there should be any bail allowed in this case and whether or not there is any special question involved and whether or not if there is bail what the bail should be.

THE COURT: I have not reached that point yet, Mr. Flynn.

MR. FLYNN: Yes. Of course, Your Honor asked the question whether they will be available and I thought I would suggest that to Your Honor.

THE COURT: Well, perhaps the inference there is natural.

I would like to hear now what the Government has to say or suggest with respect to the matter of sentence in this case.

9

MR.FLYNN: Well, as to the sentence, Your Honor knows I always hesitate to make any recommendation as to sentence, but I can't see in this case very much difference between any of these defendants. Of course, we know that Mr. Philip Frankfeld has been in the Party for a great length of time, longer than the balance of them. But the evidence, may it please the Court, was so conclusive in my judgment that since 1945, since this conspiracy started that these people were carrying on --

THE COURT: Well, I don't want to hear an argument on the merits of the case.

MR. FLYNN: No, sir, I don't want to argue the merits but that is why I say that I do not think there is any difference between them. I do think that this is a case which requires a substantial, if not the maximum sentence under the conspiracy act.

I can't see where there is any difference between them, but as to the suggestion of the Government, sir, I do not always make such a suggestion, but in this case I think it should be the maximum as to each of the defendants.

THE COURT: Well, do you think there is a distinction that is possible here between some of the defendants as to the duration of the sentence?

MR. FLYNN: The only distinction I can see sir, is the length of time in the Party, but I can't see where

there is any difference. Certainly Frankfeld probably knows more about the Party than any of the others because he has been in it longer; but I can't see where there is any great distinction as to their activities as charged in this case.

THE COURT: Are there any suggestions from counsel at the trial table for the defendants?

MR. WRIGHT: With respect to my client Wood, I have this to say, Your Honor, that in considering the matter Your Honor might well consider the extent of the length of membership in the Party by the defendant, and the evidence with respect to the participation in the overt acts which the government set out in the indictment, and the nature of the acts themselves, it seems to me was very persuasive upon the matter of sentence.

In that connection I want to point out that the matter of the request for the probation report was predicated upon the very thing that I now urge upon Your Honor.

MR. BUCHMAN: If Your Honor please, in connection with Mrs. Frankfeld, as I stated earlier, she is the mother of two children, and the evidence, as I think Your Honor referred to in passing in one connection that it was rather limited as to her participation as to any advocacy, teaching, and so on.

I think in her case which is a serious situation,

some serious consideration should be given as to the effect of her sentence.

MR. BASSETT: With respect to Mrs. Blumberg, I would like to call Your Honor's attention first to the nature of her activities as alleged by the witnesses as to the direction of her teaching with respect to the matters, and the fact that the last evidence against her, it is almost three years ago and the evidence that she had removed herself from the area in Maryland and the District of Columbia and was living elsewhere and had not participated in Party activities recently.

MR. BUCHMAN: One further observation with respect to the maximum sentence that I should like to call your attention to and that is that the maximum sentence was imposed upon the National leaders.

THE COURT: What?

MR. BUCHMAN: The maximum sentence was the sentence imposed upon the National Officers of the Communist Party. It seems to me that there is room for a great distinction as to the defendants in this case.

THE COURT: Well, I bear that in mind.

Now, I am quite willing to have a probation report. It may be negative in its results, but at all events it may possibly be helpful. So I will direct the Clerk to get in touch with the Probation Officer at once. I don't

12

know whether Mr. Landis is upstairs in his office or not. Somebody will please see Mr. Landis.

THE CLERK: I will send someone up to find out.

THE COURT: Now, my thought would be that the Probation Officer would be able this week to ascertain the principle facts, if any, which should be brought to my attention by his consultation with the defendants.

As I do not wish to delay the sentence unnecessarily I will pass sentence on Friday morning next.

But in the meantime is there any application for bail pending that imposition?

MR. WRIGHT: May it please Your Honor, in that connection, speaking for the defendant Wood, and by agreement with other counsel, speaking for their respective clients, if Your Honor please I think the present bail should be continued in its present amount pending such sentence.

THE COURT: What do you have to say about that, Mr. Flynn?

MR. FLYNN: May it please the Court, I must oppose the continuance of the present bail because we have an entirely new situation here as far as the defendants are concerned. You have a different situation which was in existence at the time of the trial, and I think there should be a substantial increase in bail if there is to be

13

any bail allowed at all.

In any event, sir, the continuance of bail can only be made by the bondsman being here to execute it even at this time.

THE COURT: Well, it is true, as Mr. Flynn says, that the bondsmen have to renew the bail under any circumstances.

Is there anything else for me today or not?

MR. WRIGHT: I have another thing that I should like to call Your Honor's attention to and that is that in considering the matter as to whether the defendants should be permitted to remain on bail, I respectfully urge upon Your Honor's attention the conduct of the defendants in making themselves available during the course of this matter, and at no time have they been in derogation of their respective duty in that regard.

THE COURT: That is correct.

MR. WRIGHT: At any stage of the case.

THE COURT: And I am glad to see that my own thoughts in connection with the original application for bail last summer have been carried out, as I anticipated it would be and that the defendants would be here, and I did, as you know, very substantially reduce the bail.

Of course, as Mr. Flynn points out, the situation is different now than it was during the trial.

14

MR. WRIGHT: Would your Honor be constrained to grant bail if they are able to set up the necessary machinery in order to have bail at this time?

THE COURT: It is not my wish to impose any undue hardship upon anybody.

What is your thought as to the amount of bail, Mr. Flynn, pending the sentence?

MR. FLYNN: Of course, Your Honor, there is a varying amount as to the various defendants. It is highest with Mr. Frankfeld and then Mrs. Blumberg and then it goes down to the last one, Mr. Braverman, which is $5,000.

I do not think there should be any bail less than $15,000 for any of the defendants.

THE COURT: The present bail, I believe, for Philip Frankfeld is $ 20,000; Wood and Meyers $15,000.

MR. BUCHMAN: Yes, that is right, Your Honor.

THE COURT: Regina Frankfeld, $10,000; Mrs. Blumberg, $17,500, and Mr. Braverman $5,000.

MR. BUCHMAN: That is right, sir.

THE COURT: If the bail can be renewed for everybody except to Mr. Braverman in the present amounts until Friday I will grant that request until Friday.

As to Mr. Braverman, I think the bail should be increased to $10,000.

MR. BRAVERMAN: Am I correct, Your Honor, that you

say that the bail in my case will be increased to $10,000?

THE COURT: Yes.

MR. BRAVERMAN: Pending sentence?

THE COURT: Yes.

MR. BRAVERMAN: I wonder if, Your Honor, as it is until Friday if Your Honor would not continue the same bail until Friday?

THE COURT: Friday?

MR. BRAVERMAN: Yes, Your Honor, as it is only a few days until Friday. This is Tuesday and I am still in the active practice of law and I would like to make the request of your Honor that I be allowed to remain onthe present bail until Friday. It is only a few days away, so that I might clear up matters in my office and take care of matters which my clients have entrusted to me.

I don't think that is an unreasonable request that I am making.

THE COURT: Very well, Mr. Braverman. I realize of course that in your practice you have matters on hand from your clients, and I do not think the requirements of the administration of justice necessitate my making an increase of bail in your case because at the time I had the bail question originally I thought that you would respond and you have responded and I think undoubtedly that you will respond again.

16

Now, I think that concludes all the matters we have except one which --

MR. FLYNN: I was just about to mention that what Your Honor had inmind.

THE COURT: What?

MR. FLYNN: I was just about to suggest what Your Honor had in mind, the matter which was not disposed of.

THE COURT: Yes, I still have the matter of the disposition of the contempt proceeding against Mr. Meyers. Perhaps it would be better to let that go until tomorrow morning, if that is agreeable on both sides. Is it agreeable?

MR. BUCHMAN: May I suggest, Your Honor, that be set for Friday also?

THE COURT: No, I think we better dispose of that separately. I do not know whether Mr. Meyers wishes to appear now by counsel. I hope he does.

At all events, Mr. Meyers will be in Court tomorrow morning at ten o'clock, and I hope you will have counsel with you.

I will make some further observations now possibly for the benefit of counsel in preparing for the matter. I have looked at Rule 42 of the Rules of Criminal Procedure. They have four or five specific situations there, different categories. I am not entirely clear whether the present

17

matter falls in one or the other of the categories contained in that Rule 42.

There is a certain phase of Rule 42 which seems to indicate that the determination of the contempt of court charge should be heard by a Judge other than the one who observed the contempt proceeding. It will certainly be more than agreeable to me if the rule justifies it and if counsel wish it to have the matter presented to another Judge by information filed by the United States Attorney so that there will be no possibility of any residual attitude or thought on the part of the Judge who determines what should be done in the matter of the contempt of court.

I have never in all my time on the Bench ever had the necessity of taking action with respect to anybody in contempt of court or even threatening anybody with contempt of court.

In the present case I made the ruling because I felt it necessary to properly preserve the administration of justice for the benefit of any other litigant in this Court.

So tomorrow morning at ten o'clock I will take that matter up and hear counsel and hear what the Government has to say or to suggest in that matter in connection with Rule 42.

MR.FLYNN: May it please the Court, may I suggest

18

that Mr. Landis is here now if Your Honor desires to see him.

THE COURT: Mr. Landis.

MR. LANDIS: Yes.

THE COURT: In the present case which the Clerk will give you a memorandum of with respect to the defendants, I would like to have a probation report by Friday morning. The defendants will be available in some way for consultation with you to tell you anything particularly about their personal situation, their condition of health or anything that is to be observed about them, their maternal duties in connection with their young children, the custody of young children, and anything which you think would be helpful to the Court in determining the proper sentence along the lines of many other probation reports which you have so many times very effiiently given to the Court.

MR. LANDIS: Which case is this?

THE COURT: United States against Philip Frankfeld and others.

MR. LANDIS: Yes, Mr. Frankfeld.

THE CLERK: As to all of them, as to all of the defendants.

MR. LANDIS: As to all of them?

THE COURT: Yes.

MR. LANDIS: That was not clear to me.

THE COURT: Yes, as to all ofthe defendants.

19

Now, if the defendants renew their bail until Friday morning you can get their telephone address or other information and they will be available and you can consult with them or get in touch with the Marshall and have them in this Court House to confer with you.

MR. WRIGHT: May it please the Court, in connection with the bail of the defendant Wood, I understand that his wife, Mrs. Lorraine Wood, is the surety in his case and she is present in Court at this time and his bail can be renewed in that way.

THE COURT: Well, that will have to be taken up with the Clerk.

MR. BRAVERMAN: If Your Honor please, I wonder if I can stay in the Clerk's Office until I can get in touch with my brother-in-law in that regard.

THE COURT: Yes.

Is there anything else?

Members of the jury, you are discharged, of course, from this case. You are entitled to the thanks of the Court for the very long services that you have rendered and for the sacrifice of your own time in the interests of the administration of justice.

The Clerk will notify you when he desires your attendance again as jurors in a case.

The Court will adjourn.

(Thereupon, at 3:40 o'clock p. m., the Court adjourned.)

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

Charles F. Casey

Official Reporter