IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

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

Friday, April 4, 1952

Volume XIX

(Page 2648 to page 2690)

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I N D E X

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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

Friday, April 4, 1952

The above entitled matter came on for hearing before His Honor, W. CALVIN CHESNUT at 10 o'clock a. m.

A P P E A R A N C E S

For the Government:

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

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

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

MR. HAROLD BUCHMAN

For the Defendant Dorothy Rose Blumberg:

MR. CARL BASSETT

For the Defendant Maurice Louis Braverman:

MR. MAURICE LOUIS BRAVERMAN

For the Defendant Leroy Hand Wood:

MR. JAMES T. WRIGHT

For the Defendant George Aloysius Meyers:

MR. GEORGE ALOYSIUS MEYERS

PROCEEDINGS

THE COURT: This is ordinarily the day on which the United States Attorney has various matters to bring to the attention of the Court in criminal cases. Do you have something, Mr. Flynn?

MR. FLYNN: We have the matter of sentence in the case that was tried sometime ago, Your Honor, which we could go on with now.

THE COURT: Do you prefer to take that up first?

MR. FLYNN: Yes, I think so.

THE COURT: Are all the defendants in Court with counsel?

MR. WRIGHT: Yes, all present.

THE COURT: Well, do any of the defendants wish to be heard personally before sentence is imposed?

MR. WRIGHT: I understand each of them would like to make a brief statement prior to the Court's imposing sentence.

THE COURT: Very well.

MR. WRIGHT: And I would like also and counsel would like also to make a brief statement following that.

THE COURT: Very well. Proceed.

THE CLERK: Will the defendants come forward, please, Mr. and Mrs. Frankfeld, and Mr. Meyers --

THE COURT: One at a time.

THE CLERK: Just have a seat Mr. Meyers then.

MR. FRANKFELD: May it please the Court, I understand Mr. Meyers wishes to speak and I have a very short statement, and I would like to reserve my comments until after Mr. Meyers, Mr. Wood, and Mrs. Blumberg have spoken, sir. I would like to reserve my statement.

THE COURT: All right.

MR. MEYERS: Your Honor, I have a brief statement to make this morning before sentence. I can only repeat what I have said throughout the trial both in my role as self counsel and as a witness that I am not guilty of this charge of advocating the violent overthrow of the Government or any conspiracy to do such a thing. My co-defendants are not guilty and neither is my Party.

I would like to say here this morning prior to this sentence that it is not in any spirit of defiance of the Courts of the United States but rather a feeling of anger that such a thing could happen in my country, and also a feeling of complete confidence that this whole ruling will be reversed and also this act which was brought out in 1940 by which we are brought into Court will be reversed either in the Courts or by the final Court of public opinion, the American people which is the decisive thing in our American life.

Now, I reiterate that our being hailed into Court by the Government was not because of advocacy of force and violence or conspiracy to advocate force and violence but because of our opposition to the policies today with which we do not agree, that is the whole drift toward war and everything that goes with it, and the program of our Party as it is today, fighting for the rights of

the people against discrimination, primarily because of the war policies of big business.

Now, the Government has obtained a conviction on what we consider a framed up trial through the use of stoolpigeon witnesses and excerpts from books.

After they get a guilty verdict, does that bring any closer days of peace, does it bring down the cost of living, is there any nearer the end of the Jim Crow system in Maryland and this country, or the people from my part of the state, are they getting any more jobs with this problem of unemployment, which has not been helped in any way by this verdict -- questions have still to be answered.

There is one thing I would like to say specifically about this charge, that is the use of the Negro people in our Party, in our program, and I want to say this now to you, sir and to the representatives of the Department of Justice, that if the whole Department of Justice will utilize the laws that they have including the Constitution, the Bill of Rights, and its Amendments, and wipe out every form of discrimination against the Negro people here in Baltimore, in the factories, the mills, throughout this area, in the entire state, you will never hear another word from me or my Party about any of this discrimination.

That is our answer, the Communist Party also when we suggested that the question of discrimination is

here in this trial.

I want to close again by saying that we are completely confident that this verdict will be reversed either in the Courts or by the American people.

Thank you, sir.

THE COURT: Very well.

Mr. Frankfeld.

MR. FRANKFELD: Mr. Wood. I will speak last.

THE COURT: Last. Very well.

MR. WOOD: Well, Your Honor, I would just like to say that something has happened here that with the education and background I have had I never thought could have happened or believed would have happened in the United States, that an American Political Party was put on trial for being really the only opposition Party and to the Party responsible for the situation today and because of their opposition, because of our opposition to big business and because of the fact that they interfered with the legal purpose of big business they are found guilty.

Like Mr. Meyers, I think this verdict will be reversed, and I think also the fact that we have been found guilty in this country is really a peril to our American democracy.

I think that the sentence is not the important thing, even though it will work a hardship upon my wife

and three children. The important thing is the fact that here we have the opposition being silenced in this nation, in this country, which is so contrary to the traditions that we have had here for many years, and I think the important thing is the danger that is placed before American democracy; but I feel sure that the people of this country will reverse this verdict and not before too long either.

THE COURT: Anybody else want to say anything?

MRS. BLUMBERG: Your Honor, when I first appeared before this Court to answer the charge of teaching and advocating force and violence and conspiracy to do so, I pleaded not guilty. I did so with a completely clear conscience with full realization of the responsibility in making such a plea.

I feel that all my life and all my activities are a complete repudiation of that charge, that the people who know me -- and they are many -- know that such an idea is completely repugnant to my nature. They also know that I would never associate myself with any organization or any Party that would advocate force and violence.

I am a woman. I am a mother of two children, and I am a grandmother of two little boys. My only wish, my dearest wish is that they grow up in a world of plenty and peace for all.

I am not alone in this because of the millions

and millions of women and men all over the world, of every color, of every creed, of every nationality that agree with me in this.

I have bent every effort I had in taking every opportunity that I have had in working for peace. I think that it is possible and attainable, and I believe that peaceful coexistence of all nations in the world is possible and attainable.

I sincerely believe that my Party, the Communist Party, also is working for the attainment of permanent peace in the world.

I want to say also that as and when this world of peace and plenty is finally attained, and I have every confidence that it will be, and that everything that I have done or have experienced will be well worth while.

Thank you.

MRS. FRANKFELD: Your Honor, I want to associate myself with the statements already made by Mr. Meyers, Mr. Wood, and Mrs. Blumberg. I want to associate myself with them with a great sense of pride and with a grave profound consciousness of dignity and courage with my co-defendants.

I want further to associate myself with the millions of mothers, Negro and white, in our country, and throughout the world who stand with the unshakeable determination that there will be a better world.

I further want to associate myself with the men and women of courage whose lives are devoted to building a new and better world, a world that will be free of economic crisis and fear of atomic war where there will be the real brotherhood of men and women.

It is my definite conviction, and I believe myself today in this Court and believe of my complete conviction that a third World War is not inevitable but that a world of brotherhood is inevitable.

It is for that reason that I say today that I have complete confidence that this will not continue but that the soverignty and the will and the understanding of the American people will soon have reversed and repealed the Smith Act and all repressive acts that have followed in its wake.

MR. FRANKFELD: Your Honor, I wish to associate myself completely and with great pride in the statements made by Mr. Meyers, Mr. Wood, Mrs. Blumberg, and Mrs. Frankfeld.

Thank you.

MR. BRAVERMAN: If Your Honor will hear me just a moment, I just wish to state or restate what I have already stated all through this trial from the very beginning that I have never taught or advocated force or violence, and I have never entered into any conspiracy

to teach and advocate the overthrow of our Government by force and violence.

I have always sought to be responsible to my oath of office as an attorney and to my oath to uphold the Constitution of the United States.

When members of the legal profession swear to uphold the law and safeguard the interests of those they are called upon to defend, they assume high ethical obligations. If a lawyer is to be responsible to his oath, he should fight oppression wherever it may be found and he should try to make the law an instrument of truth and justice.

I have always sought to be responsible to my profession inhelping settle disputes, in guiding human relations and in improving the law. I have always felt that the law is a living and flexible instrument which must be adapted to the needs of the people.

There are many important problems facing the American people today: war or peace, the ever rising cost of living, graft and corruption in high government places, discrimination and segregation, and high taxes.

Social progress can best be achieved through the free exchange of ideas. In all my activities as a lawyer and as a citizen I urged the fullest use of the democratic processes guaranteed the people by our Constitu-

tion and the Bill of Rights, the right to petition for redress of grievances, the right to freedom of assembly and political association, the right to freely express oneself.

The Government has used the Smith Act to prosecute men and women for their ideas. Repressive seditious legislation has been used in the past against people because of their ideas of social progress and social welfare.

History teaches us, however, that the people always fought against repressive legislation. In these struggles the people were successful and always achieved an ever wider extension of democracy.

The Government hopes that by my conviction it will intimidate lawyers from representing and associating with the Communists.

I am confident that the American people and the American Bar will resist this attack upon a free and independent Bar. I am confident that I will yet be acquitted of this charge of conspiracy.

Thank you, sir.

THE COURT: Now, do counsel wish to be heard? I don't know whether you wish to say anything further, Mr. Wright?

MR. WRIGHT: Yes, sir. I wish to address my

remarks particularly to the matter of sentence in relation to my particular client. Your Honor did request that the matter be referred to the Probation Officer for presentence investigation. I am certain that your Honor has the full and complete report before you.

With respect to the defendant Wood I might emphasize, although I have not seen the report, I am confident that it reflects that he has no prior criminal record, that he is married, the father of three children, two of whom are teen age children, and that he has one smaller child.

I think that the fact that he has no prior criminal record, has led a rather good and useful life as a citizen, having been gainfully employed at all times, are matters that the Court should take into consideration.

I think the fact that in this case the evidence of his alleged participation is rather minute, and they reflect only one or two or three occasions, his attendance at any alleged meetings, constituting overt acts, and the evidence with respect to offices which the evidence shows he was elected to, namely, Organizational Secretary, which was more of an administrative job than anything else, and finally Chairman of the District of Columbia.

Finally I want to call your attention to the fact that I believe that the assessment of the quantum of

guilt in this case only can be measured by the law controlling the evidence in the case that the Government referred to, that, namely, as Mr. Flynn stated the fact that all the defendants were equally guilty, but I don't think that was reflected because I think the extent of their participation in these activities varied, and I think that is one element which shouod be determinative of the meeting out of the sentence because it was one part in the matter of copeability.

I have made no effort to collaterally attack the finding of the jury. There are proper means provided for that in law to take care of it. I am not suggesting anything about it except, as Your Honorrealizes we would expect to file an appeal within the proper time allotted for that.

Finally I would like to say, Your Honor, that this is, as Your Honor knows, a case of the so-called lesser officials, or as the Government has referred toit, the second string Party functionaries, and I think that in itself would justify a distinction being made. So I say, Your Honor, in all sincerity that in defense of my client's rights and interests, I think Your Honor should necessarily take those factors into consideration, those factors that I have suggested to you in order to see that justice is done not only from the Government's point of view but from

the defendant's point of view also.

MR. BUCHMAN: If Your Honor please, I would like to say a few words particularly on behalf of Regina Frankfeld.

As the information before you indicates, she is the mother of two children, one 13 and the other 9. She was a woman who has devoted her work, her entire life to teaching kindergarten, teaching children. Her last occupation was as teacher of children afflicted with cerebral palsy in the school system. Her whole occupation has been a contradiction to the kind of charge which was placed against her.

I want to call your attention to the meagre if not completely missing character of any advocacy or teaching on her part, as Your Honor had occasion to point out during the course of the testimony; other than her participation as an officer, as Organizational Secretary, and an active member of the Communist Party, there is no evidence in the record of any advocacy or teaching of force and violence.

I want to remind Your Honor that the charge in this case is that of a conspiracy to overthrow the Government with all the trappings of a seditious libel charge, and I ask Your Honor to bear those considerations in mind in imposing sentence in the case of Mrs. Frankfeld.

MR. BASSETT: May it please the Court, in view of what Mrs. Blumberg herself has said here as to the plea of not guilty and her full understanding of the responsibility of that plea, and in view of the fact that there is before you the probation report, which I know Mrs. Blumberg assisted in providing, there is simply nothing in the nature of fact which I could urge upon Your Honor other than to call to your attention the difference in the social compulsions involved in a conviction of the charge and the sentence which results therefrom.

SENTENCE OF THE COURT

THE COURT: I have to announce the sentence of the Court based upon the law of the case and the verdict of the jury.

The purpose of a sentence in a criminal case is two-fold, First, it represents punishment as necessary discipline for violation of the law, and second, it should act to prevent or deter others from similar offenses. The second object is moreimportant than the first, and particularly in this case.

It is to be hoped that this trial will have emphasized public knowledge that the Smith Act passed by Congress in 1940 represents the valid and firm policy of the United States Government and that conspiracy to violate it is gravely against public interest.

The unanimous verdict of the jury in this case -- a jury consisting of nine men and three women whose listed occupations show how widely its personnel represented all sections and classes of the community -- based, as the verdict was required to be, on findings from the evidence beyond a reasonable doubt, also emphasizes the importance of the Smith Act.

It is regrettable that the defendants have heretofor not heeded this. I am therefore required by the law to impose sentences in this case on each of the six defendants as follows:

Each defendant is fined the sum of $1,000 with costs and with further commitment in the event of default in payment of the fine.

Each defendant is also committed to the custody of the Attorney General for imprisonment, the terms of imprisonment to be respectively as follows:

Philip Frankfeld, five years.

George A. Meyers, four years.

Leroy H. Wood, Maurice L. Braverman and Dorothy Rose Blumberg, three years each.

Regina Frankfeld, two years.

The sentence as to Meyers to be consecutive to the thirty-day sentence heretofore imposed.

I think that concludes this case.

What else do you have to present? Do you have other cases?

MR. GREEN: If Your Honor please, we have the case of one Gianatos to appear before Your Honor this morning.

THE COURT: I will say to counsel that I have received these probation reports, and I have them this morning, and I have looked them over and if counsel desire to see them you are entirely free to do so.

MR. WRIGHT: If Your Honor please, we would like to take up the matter of bail pending appeal.

THE COURT: Well, of course, I will hear any argument or suggestions of counsel in the proper time, but of course this is not the proper time.

MR. WRIGHT: May I inquire as to when it would be appropriate, Your Honor?

THE COURT: I have other work to do here. Mr. Green has a case, and if you wish to wait until I finish with the other cases, I will be glad to hear you.

MR. WRIGHT: Thank you, Your Honor.

(Thereupon, the Court took up for consideration other matters, after which the following occurred:)

THE COURT: We will take a ten minute recess. Then we will hear counsel with respect to bail pending appeal.

(Thereupon, there was a short recess taken, after

which the following occurred:)

THE COURT: Now, you wish to be heard further on the question of bail pending appeal?

MR. BUCHMAN: Yes, sir.

THE COURT: Has the order for appeal been filed?

MR. BASSETT: No, sir, it has not.

THE COURT: Well, it is premature then.

MR. BUCHMAN: We were awaiting the dispusition of the sentence before noting an appeal, and it was a question whether to note an appeal or file a motion for a new trial, but an appeal will duly be entered, but the noting of appeal was such a simple matter that we thought Your Honor could hear us first on that.

THE COURT: Well, I can't pass upon the question of bail pending appeal until an appeal is filed. Do you want to enter an appeal now?

MR. BUCHMAN: We will enter our appeal forthwith.

THE COURT: All right. You may proceed.

MR. BUCHMAN: Under this rule, 46(a) subdivision 2:

"Bail may be allowed pending appeal or certiorari only if it appears that the case involves a substantial question which should be determined by the appellate court," and so on.

Now, in the case of Stack v. Boyle, 72 Supreme

Court, decided on an application on appeal for bail prior to conviction in California, and in that case Chief Justice Vinson made the following statement which is, I think applicable to this case:

"In this case petitioners are charged with offenses under the Smith Act and, if found guilty, their convictions are subject to review with the scrupulous care demanded by our constitution."

Now, our feeling is that certainly there are many substantial questions here.

THE COURT: What are they?

MR. BUCHMAN: Well, we feel that here the Smith Act as applied to the facts in this case violates the First Amendment and other provisions of the Bill of Rights, and secondly is that the indictment was insufficient because it failed to allege facts on which the required intent could be asserted, nor was the evidence sufficient to sustain a conviction, and under Your Honor's charge and under the formulation of theissues with respect to them being charged with certain facts as to proof of conspiracy, and so forth, it had no relation to them, and under the Coronado Coal Company case and the Keegan case, and many other cases cited to Your Honor during the proceeding, and as we cited before with respect to the Dennis case and Chief Justice Vinson's language with respect to intent and the nature of their

activities and their power to bring about the evil, the fact that the evidence will be examined with scrupulous case.

Now, here we have a case where on the factual evidence there is no advocacy and teaching by these defendants, and not only that, but there is the positive evidence elicited on cross-examination to the contrary, and here we have the sharpest point, as enunciated by the Dennis decision and the other cases cited to Your Honor as to whether or not these defendants can have imputed to them the acts of alleged general national leaders, and also the question of specific intent which under the instructions and Your Honor's ruling in the case has been referred to with respect to inferring that to active members, and there are other aspects of the case, such as whether the conduct of the trial court deprived the defendants of a fair trial.

THE COURT: Why do you say that, Mr. Buchman?

MR. BUCHMAN: Well, with respect to the restricted cross-examination, primarily of certain witnesses with respect to proving an actual conspiracy.

THE COURT: I don't recall anything in the case in which you were prevented from proving if there was evidence that you could have proven it to be a fact. You must remember in that connection, Mr. Buchman, that only one of the six defendants testified in this case.

MR. BUCHMAN: I am aware of that, sir.

THE COURT: Despite the statements that were made this morning which all of the defendants were permitted to make, and I freely allowed them to make it, but only one of the defendants testified in this case. While that certainly does not bear on the presumption of their guilt, yet it seems to me that when you are complaining that you were restricted on the cross-examination and when the opportunity was given to you to develop any facts that really bore upon the case, it is a rather late date here now to suggest that that is a substantial question as to your opportunity to develop your case.

I don't think there is any substantial question there. What other points do you have?

MR. BUCHMAN: Under that same question, the restricted direct examination of the defense witnesses on the details of teaching or advocacy and some on cross-examination.

I believe it is a substantial question as to the restricted cross-examination, so far as the legal points are concerned and the failure of the defendants to take the stand, and also the fact that some of the evidence predated the indictment, and we feel that this is a basic substantial question with respect to the reception of evidence, particularly with respect to the evidence of

Nowell and Crouch in particular which predated the indictment and which predated the Smith Act, and imputing to them facts of which they had no knowledge, and also the admission of such questions which were asked in which the Government witnesses were permitted to ask the direct question as to whether the Communist Party advocated and taught, and also the admission of evidence with respect to the Korean War and the relationship of the Soviet Union, as particularly emphasized by the summation which were not relevant to the issues in the case whether the defendants advocated and taught or conspired, and also the instructions, the instructions of the Court, which I think is also a basic substantial question.

THE COURT: What is that?

MR. BUCHMAN: The instructions, Your Honor, with respect to the defendants.

THE COURT: You mean some ninety-four instructions?

MR. BUCHMAN: Well, sir, a substantial portion of them. I don't want to go over them now, but it is on that theory of the whole question of specific intent, the various factors such as credibility of informants, your finding of a clear and present danger, the power to bring about the evil, which is a basic question subject to review, and there is no evidence presented, and the question of the power to bring about the evil on the part of local leaders as dis-

tinguished from national leaders.

THE COURT: Let me ask you this question: Assuming that there was no substantial question other than the constitutionality of the Smith Act involved in the Dennis case on appeal, what particular substantial question do you have here which was not also raised in one form or another in the Dennis case in New York?

MR. BUCHMAN: Well, the Court itself, Your Honor, the Supreme Court said it was not considering the sufficiency of the evidence.

THE COURT: I know, but the Circuit Court of Appeals, you know, dealt with the matter, and the sequence was this, as I recall it. The trial court in the Dennis case in New York refused bail pending appeal.

MR. BUCHMAN: Yes.

THE COURT: And the Circuit Court of Appeals granted bail. The ground upon which they did so, of course, was that the Government attorneys in the case conceded that the constitutionality of the Smith Act was a substantial question.

Then after the Circuit Court of Appeals had determined that the judgment should be affirmed, certiorari was applied for, and the Circuit Court of Appeals refused bail. Then I think --

MR. BUCHMAN: Mr. Justice Jackson.

THE COURT: Mr. Justice Jackson for the Supreme

Court admitted the defendants to bail pending the hearing in the Supreme Court. Then we know what happened after that.

Now, what question arises in this case other than the constitutionality of the Smith Act which was really not inherent and included in the Dennis case before the Second Circuit Court of Appeals.

MR.BUCHMAN: If Your Honor please, it seems to me that the language of the opinion of Chief Justice Vinson in the Dennis case and reiterated by him in the Stack case involving the law of the Smith Act in that respect --

THE COURT: I think you misinterpret that opinion on that point. What the Chief Justice said inhis opinion for the Court was in relation to the argument that was made in the Supreme Court that the Smith Act was unconstitutionally applied in view of the claimed right of free speech under the First Amendment.

MR. BUCHMAN: No.

THE COURT: The Court definitely held that it was not unconstitutionally applied as against the First Amendment. That was the thing that the Court was dealing with on that pointwhen the statement was made that they would review with scrupulous care questions whether the Smith Act was being fairly or illegally or unconstitutionally applied.

What they were dealing with was whether it was

a case dealing with the First Amendment. In other words, the main contention against the Smith Act was whether it challenged the right of free speech; and the Court pointed out that you can't use the free speech privilege to create civil warfare, and they therefore held that it was constitutionally applied. I think that is the meaning of the language of the Supreme Court in that case.

MR. BUCHMAN: But they had the subsequent case dealing with the application of the Smith Act, Stack v. Boyle, and they said in that case, Chief Justice Vinson speaking for the Court: "In this case petitioners are charged with offenses under the Smith Act and if found guilty, their convictions are subject to review with the scrupulous care demanded by our Constitution."

THE COURT: Well, where is it reported?

MR. BUCHMAN: 341 United States Reports--no, 72 Supreme Court Reporter.

THE COURT: I do not have it available in that form.

MR. GREEN: Wasn't that a case or a matter with respect to bail after indictment and before trial?

MR. BUCHMAN: The Court said--

THE COURT: Well, that is an entirely different matter then.

MR. BUCHMAN: The Court said:

"The traditional standards as expressed in the Federal Rules of Criminal Procedure are to be applied in each case to each defendant. In this case petitioners are charged with offenses under the Smith Act and, if found guilty, their convictions are subject to review with the scrupulous care demanded by our constitution."

That is a repetition of the same language which we cited in the Dennis case, which is here referred to, "With the scrupulous care demanded of our constitution," and the point I wish to make in this bail application before conviction was that it is clear that if they are afterward convicted or found guilty they were entitled to scrupulous care, or scrupulous review as demanded by our constitution.

And I submit, Your Honor, that that in itself would be sufficient aside from the fact of the numerous points of substantial legal questions which we have here.

THE COURT: Anything else?

MR. BUCHMAN: I have a great many legal points which I won't go through now, but it seems to me, Your Honor, that we have some very basic legal questions here in that there is a very sharp distinction between this case and the Dennis case.

THE COURT: What are they?

MR. BUCHMAN: First, Your Honor, the Supreme Court in that case did not pass upon the sufficiency of the

evidence. There is no authoritative decision by the Supreme Court of any finding on the evidence in the Dennis case, and you have the question of the local leadership involving a question of their specific intent, and their activities, and Your Honor, we feel that there has been a misconstruction of the legal theory in this case with respect to imputing to local offices acts of the national leadership with respect to advocacy and teaching, and there is the necessity of proving advocacy and teaching and the conspiracy on the part of individual defendants,and there is no such proof here, and Your Honor, that is a sharp point of difference, and in that I submit that there should be no question about the right of bail pending appeal in this case.

THE COURT: Does anybody else wish to be heard on the point?

MR. BASSETT: If Your Honor please, there is one case I would like to bring to your attention which I think might be quite significant in this case, which is the case of D'Aquino v. United States, 180 F. 2d, 272 where the Court makes the point that:

"The granting or withholding of bail is not a matter of mere grace or favor. If these writs of error were taken merely for delay, bail should be refused; but, if taken in good faith, on grounds not frivolous but fairly

debatable, in view of the decisions of the Supreme Court, then petitioners should be admitted to bail. The question may be 'substantial' even though the Judge or Justice hearing the application for bail would affirm on the merits of the appeal."

That briefly is one of the points I wanted to make, and I think that language of D'Aquino v. United States is significant.

THE COURT: Anybody else?

MR. BRAVERMAN: If Your Honor please, in taking up the question of bail pending appeal, I should like to refer to the fact that what the Court is saying on this question as to whether or not there is a substantial question, we understand it is, is there a substantial question, it does not mean necessarily that the applicants for bail must be upheld in their contention on appeal, but what is meant really, is there an argument, a serious argument to be made which warrants a serious argument being made on the point involved. In other words, is there some dispute over the law which warrants serious consideration both by the Government and by the Court on appeal. This is, of course, the criterion in this question of bail pending appeal.

I want to point out again these points that were raised before Your Honor before, and that is in connection

with another Smith case which is now going on in California, and I think it is quite significant that the Government itself is proceeding on a different theory in the two cases. This is not based upon merely newspaper examinations, but the defense counsel in the case have been obtaining the transcript from California a few days after the hearings in the case, and the Government there is trying the case on a different theory from what they were trying to do in this particular case.

There the Government is going on the assumption that they have to prove a specific intent on the part of each of the defendants, and that this intent is not to be imputed from mere membership or active membership or holding office in the Communist Party.

I think the fact that the Government itself has those two approaches to the matter shows that there is a substantial question as to whether the Government's approach in the Baltimore case is correct or not.

I think this standing by itself should be persuasive enough to Your Honor that the Government itself is not sure of its approach to this case since there might be a question as to what is the proper approach to be used which will be effective with respect to a conviction under the Smith Act.

I might point out, Your Honor, also that in

Hawaii one of the District Court Judges did hold, although the facts of the jury composition are different, he did hold that the jury composition in Hawaii on the general allegations as to the selection of the juries was enough to warrant dismissing the indictment.

There was a difference of opinion, as I understand it, between the District Judges in Hawaii, but I merely want to point out that one of the District Judges there did hold such an opinion, and I think this raises something for Your Honor to take into consideration with respect to this being a substantial question which should be submitted to the appellate courts, and I think it is so in this case that bail should be granted pending appeal.

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

MR. FLYNN: If Your Honor please, I cannot see where there is any question in this case that has not been raised in the Dennis case. Certainly the Court of Appeals of the Second Circuit passed on all questions other than the constitutionality of the Smith Act, and the Supreme Court on certiorari dealt with the constitutional question, so I do not see that there is any substantial question involved here.

I have been listening to what has been said by counsel and I do not see anything in the arguments of counsel at this time which would indicate that there is a substantial

question involved here which was not already determined by the Circuit Court of Appeals for the Second Circuit or by the Supreme Court of the United States.

I vigorously -- if that is the word to use -- oppose and urge upon Your Honor that bail should not be granted in this case. The questions that were suggested or the points that were suggested have already been passed on by the other Circuit Court, and I submit, Your Honor, that there is no substantial question involved in this case which would justify your Honor in allowing these defendants bail pending appeal.

THE COURT: If I can conclude after reading the various notations that were called to my attention, come to a final opinion that bail should be granted pending appeal, what amount of bail do you ask for?

MR. FLYNN: If Your Honor please, I think the bail should be -- I might say that I have been in communication with the Department of Justice today, and they suggested it should be $50,000 in each case.

I do say this, Your Honor, that after hearing the defendants here today, what they said to Your Honor, that they seem to be going to carry on their activities as they have been carrying on in the past, it seems that there is no desire on their part to even accept the jury's verdict. I would say Your Honor that I think the bail should be high

so that they could not carry on exactly in the same way that they have carried on previously and the same way that they were carrying on during the trial of this case.

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

MR. WRIGHT: I have only this to say, Your Honor, that it seems to me that this would distort the purposes of bail. It is conceded that the purpose of bail is to insure the presence of the defendants when the Court requires it, and then to make bail so excessive completely distorts the purpose of bail.

THE COURT: No, I was not referring to making the bail excessive, but I was referring to Mr. Flynn's comment that certain of these defendants in their oral statements here this morning seek entirely to justify their conduct and that they intend to continue it if permitted to do so.

Now, is that not a circumstance which I should consider?

Of course, if there were a substantial question clearly apparent as compared with the Dennis case, in addition to the Dennis case, perhaps I should grant bail anyhow; but in view of what was said this morning by the defendants, which Mr. Flynn suggests is not intended to be in amelioration of their conduct or their attitude in the matter, but should I not be very cautious in granting bail?

Perhaps $50,000 seems large, but I certainly do think that if bail be granted pending appeal, it should be increased from what it is now.

MR. WRIGHT: I understand Mr. Flynn's position precisely, Your Honor, but I say that if Your Honor takes his point of view that the bail be higher because he feels the defendants will further engage in misconduct, isn't that the thing I am urging upon Your Honor that it is a recognition of the infliction of a penalty upon them, and it seems to me to argue that the appellate court will come to a final decision which will justify this verdict, and if that is the argument it seems to me that there is no substantial question of law, which in effect seems to suggest that you should fix a large amount of bail to keep these people in jail which distorts the very purpose of bail which is that the purpose is to insure their attendance in Court until there is a final adjudication of their rights, but I don't believe that we should assume that the defendants will engage in the conduct which the Government suggests.

MR. FLYNN: If Your Honor please, with respect to that suggestion, we all know the purpose of bail which is to guarantee their appearance in Court. That is the purpose of bail. Now, our experience in these cases has been that in many cases they have disappeared after they have been admitted to bail. That was so with respect to

the eleven defendants in New York where some of them were granted bail and disappeared, and are still gone. One was arrested very recently in Mexico and brought back.

Then there was the group in New York which were brought up after indictment and disappeared, and I submit, Your Honor, that bail is for the purpose of guaranteeing their appearance, but our experience in these cases has been that indicates clearly that unless there is sufficient bail to guarantee somebody being responsible for them to see that they appear that they may disappear.

I made this argument before when the bail question came up, and I want to urge again that our experience up to now in each case that we have had has been that they have disappeared and did not come to respond when called upon, and for that reason I feel that the amount of bail should be very substantial.

MR. BRAVERMAN: Your Honor, I do not think that is a correct statement to make here.

THE COURT: It is a factual statement, isn't it?

MR. BRAVERMAN: Not in this case. It is not factual here with respect to this situation because certainly Mr. Flynn must know that we have lived up to our obligations and have reported when wanted. The defendants here have responded at the various times that they were required to be here.

Mr. Flynn made that same argument at the time he was asking for $75,000 bail be set with respect to the defendants and said that they would not show up for trial. They have appeared for trial and they have appeared after conviction, and finally the defendants were released on the same bail, and they have appeared here today.

I want to say that although the F.B.I. undertook a minute surveilance, they had three cars with six men in each car, following the defendants, but that has not been so for the last thirty-five hours, so it is not so much a question of the F.B.I. surveilance being conducted so minutely, and Mr. Flynn understands that, and I want to object to that personally.

THE COURT: Well, of course, Mr. Braverman, I am willing to hear you and I understand your position, but I do not think it is such as would inspire a Judge who has heard the case for some time as would be favorable to your contention.

Now, that is all I want to say about it.

MR. BUCHMAN: I want to add to the other references which we have given Your Honor, and that is the case of Williamson v. U. S., which is 95 Law Edition 137 and page 138.

MR. GREEN: That is 184 F. 2d, 280.

THE COURT: I was going to ask where I could find

Mr. Justice Jackson's opinion which I think you indicated before with respect to it being regarded as a substantial question.

MR. BUCHMAN: Yes, and there is a decision of the Circuit Court of Appeals for the Ninth Circuit. I don't have a reference to that, but that is the case of United States v. Bridges.

MR. GREEN: 184 F. 2d, 881.

MR. BUCHMAN: In addition, there are several substantial questions, and there is such a substantial question that we feel it might result in reversal, and I think there is a very important constitutional question involved here.

THE COURT: What constitutional point do you have now?

MR. BUCHMAN: Your Honor, as I said before, we have the whole question of the power to bring about the evil of the individual defendants, and certainly the question of the constitutionality of the Smith Act as applied to the facts inthis case.

THE COURT: Now, is it your thought, Mr. Buchman, that if otherwise guilty of inciting to civil warfare or effecting a revolution --

MR. BUCHMAN: That is not the charge. It is a conspiracy charge.

THE COURT: -- that it is not constitutional to prohibit that unless the man was so close as to set off the powder keg, or that he has to put a match to the powder? I don't see that argument at all.

MR. BUCHMAN: That would be in connection with a charge of sedition --

THE COURT: I have listened time and time again, Mr. Buchman, to your efforts to analogize the Smith Act to the Alien and Sedition Acts of 1798 --

MR. BUCHMAN: The seditious libel cases.

THE COURT: And I think the analogy utterly fails as applied to this particular issue in this case. I am quite familiar with that period of American history, and historically it is so utterly inapplicable to this situation that I do not see that point at all, and I think it is just not correct to bring in to this case an effort to try to analogize that to the Smith Act and I think it is rather wide of the point.

I will be glad to read these cases and take the matter under advisement. On this question of granting bail pending appeal, it is a rather difficult question for a Judge sometimes to answer. Of course, I suppose, a Judge having heard the case and having passed upon the points in the case to the best of his ability as they went along, there the feeling is that there would not be any substantial errors made. I realize that, and I have often thought in connection

with matters of this kind in much less important cases than this, and sometimes I have granted bail, and in others I have not granted bail. Now, in each case, however, especially in those in which I have refused to grant bail, I have always had the comforting thought that my decision was not final in the matter. You could make application to the Circuit Court of Appeals just as was done in the Dennis case.

Judge Medina refused to grant bail pending appeal, and the matter was taken to the Circuit Court of Appeals, and they granted it. They granted it in that case when the attorneys for the United States conceded that the constitutionality of the Smith Act was undecided up to that time and it was a substantial question.

Now, the Supreme Court has decided that it was constitutional. Now you are arguing here for the granting of bail pending appeal on the ground that you think the situation here is quite different involving other points than in the Dennis case. I don't know what they are for the moment, not that this case necessarily is in a slavish pattern of the Dennis case, but I have asked that question with respect to whether or not there is a substantial question, and Mr. Flynn and Mr. Green answered the question affirmatively and say there is no important difference between the two cases.

Now, take this question of the trip to Moscow in

1930 by quite a few people. You think that introduces a substantial question. I asked Mr. Flynn whether that appeared in the Dennis case, and he said yes, that it did, and the same witness, as a matter of fact, Nowell, was testifying.

Now, outside of my possible mistakes in ruling on points of evidence, which I thought were right at the time, I do not know what you have in this case which really has not been passed on in the Dennis and other cases.

MR. BUCHMAN: I tried to indicate them to Your Honor.

THE COURT: I know.

MR. BUCHMAN: And Your Honor has not accepted our position, but I think the last important point is that you are dealing with a different group of defendants, and Your Honor has framed issues such as the Communist Party teaches and advocates, such as that officers or members in an organization, and that is imputed to them.

THE COURT: In this case five of the six defendants did not testify although from the opening statements you would naturally have expected them to be followed by evidence.

MR. BUCHMAN: It was our intention at the time.

THE COURT: Now, is it your thought that because the Government was unable by cross-examination to show more

detail with respect to the activities of the individual defendants that that constitutes a difference between the Dennis case and this case?

MR. BUCHMAN: Yes, Your Honor, for the reason that that was attempted to be proven in this case, but there is no testimony of the defendants teaching and advocating in that respect. There is no proof as to what the defendants advocated and taught, and in connection with the wording of Chief Justice Vinson's statement as to specific intent, the nature of their activities, and their power to bring on the evil, and you just have several witnesses testifying as to the national or alleged national character of the Communist Party, but nothing as to personal advocacy and teaching.

THE COURT: All right.

MR. BUCHMAN: That is the basic point.

THE COURT: I don't care to hear anything further on that point.

I will look at these cases that you have given me and I will try to reach a decision in the case promptly, but you have the opportunity to appeal to the Circuit Court of Appeals now in session in Richmond.

Mr. Bassett, I will return this paper to you.

MR. BRAVERMAN: Your Honor, can I make a request and that is that I be given a reasonable period of time to

get my personal affairs and my clients' affairs cleared up in my professional capacity. I have some cases to clear up and I should like a reasonable request of time. In other words, I would like to take care of these matters. I have some matters for my clients that I would like to take care of and wind up my own affairs.

THE COURT: Mr. Braverman, surely you realize that you have had ample notice about this case. I am sympathetic generally with a request of that sort, but you have had ample notice of this trial and this case.

What do you have to suggest, Mr. Flynn?

MR. FLYNN: I certainly hesitate, but I don't see that there is any difference to be made in Mr. Braverman's case with the other cases. This case has been going on for some time and there has been sufficient notice. He has had ample time to clean up matters.

THE COURT: Of course, if I grant bail pending appeal, that would meet the situation, but I cannot do that at this time. So I cannot grant your request at the moment.

Is there anything further?

MR. BUCHMAN: I would appreciate being notified of your decision as quickly as possible, or we might be notified this afternoon or this evening.

THE COURT: It won't be likely that I will decide it today; not before Monday.

There is no objection to your applying at once to the Circuit Court of Appeals for release on bail. That would relieve me perhaps of the necessity of making a further careful inspection of the matter.

MR. BUCHMAN: I would prefer Your Honor deciding that question here first.

THE COURT: All right.

(Thereupon, at 11:50 o'clock a. m., the Court adjourned.)

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

Official Reporter