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

Volume X

(Page 1578 to page 1642)

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I N D E X

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Baltimore, Maryland
Friday, March 21, 1952

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

A P P E A R A N C E S

For the Government:

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

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

MR. HAROLD BUCHMAN

For the Defendant Blumberg:

MR. CARL BASSETT

For the Defendant Braverman:

MR. MAURICE BRAVERMAN

For the Defendant Wood:

Mr. JAMES T. WRIGHT

For the Defendant Meyers:

MR. GEORGE ALOYSIUS MEYERS

Ows 10 am

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P R O C E E D I N G S

THE COURT: Gentlemen, this morning we are to consider motions which the defendants have filed in the case of United States vs. Frankfeld. A number of such motions apparently have just been handed to me a moment ago. I have not had time to read them and would not have time, of course, to read them here this morning.

MR. FLYNN: I would like for the record to show that the Government was only handed five of these motions a few minutes ago before coming to Court.

MR. BUCHMAN: I would like to state for the record that we did not complete the motions until about eight or nine o'clock last night. That was the reason for the late filing of the motions.

THE COURT: Well, Mr. Buchman, you may proceed to argue the motions if you wish.

MR. BUCHMAN: If Your Honor please I would like to proceed first with the motion to strike the testimony, beginning with the motion pertaining to the testimony of Paul Crouch. I feel that there are a number of reasons why his testimony should be stricken. They are enumerated in the motion.

First of all his testimony describes him as a member of the Communist Party and concludes with April 1941 when he says he lost contact with the Communist Party, but

actually all the things to which he refers happened a quarter of a century ago, 1927, 1928, 1929, and 1930, and I think that is significant with respect to the rule as to remoteness that it is remote and prejudicial, as referred to in the Fourth Circuit case, and that would lead to the conclusion that his testimony should be stricken.

His testimony was of an inflamatory and prejudicial nature, and if Your Honor wishes I can point out the precise portions to which that characterization applies.

Here we have a conspiracy. The indictment charges two charges, first that they conspired with eleven others to teach and advocate the duty and necessity of overthrowing, and secondly that the defendants with eleven or twelve others conspired to organize the Communist Party, an organization which teaches and advocates, and so on, and then there is the addition which the Government put in because they amended the indictment which I think is decisive with respect to all our arguments this morning, and that is that the Government must establish in all of its evidence, must relate to specific intent on the part of the defendants in advocating and teaching, by specific intent to cause the overthrow of the Government.

Now, that point is made an essential element by Chief Justice Vinson in his opinion, and he referred to the precise mental composition of the actors' or members' mind.

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Now, here we have this inflamatory and prejudicial matter with respect to the trip to the Soviet Union, meeting with Marshall Tukhavesky, and others, the atom bomb secret, and so on, all of which has nothing to do with the defendants in this case, and all of which antedates the enactment of the Smith Act in 1940, prior to which there could not be any violation of the Smith Act, as it was prior to the Smith Act, as it is charged in the indictment, all of it predating the inception of the conspiracy as alleged in the indictment, and all predating the period of limitations.

Now, as I understand the rule in the Fourth Circuit, as enunciated in, I think the Hall case and in the Walker case with which Your Honor is no doubt familiar, Walker v. United States 104 Fed. 2d, page 465 which was, I believe, a prosecution for violation of the liquor laws, and there is some testimony which antedated the conspiracy alleged in that case, and the Court, I believe, referred to the rule of reason where the matter is remote and prejudicial, that it should be stricken even though it shed some very important light on the nature of the conspiracy.

But here we have events a quarter of a century ago, and we have the presumption of innocenceand we are dealing with political doctrines, and it seems to me that to make a presumption of continuity of political thought runs counter to what was pointed out by Mr. Justice Murphy

in the Schneiderman case that you can't assume continuity of political thought.

In addition to that there is the attempt made to bring in testimony of a witness about events a quarter of a century ago connected to a conspiracy which the Government alleges began in 1945, and the conspiracy begins with the reconstitution of the Communist Party in 1945.

Now, there are a number of other things about Mr. Crouch's testimony. For example, I believe that the major part of his testimony does not have a factual foundation but merely represents conclusions on his part not only as to the period of time in which he was a member of the Communist Party but also as to subsequent events, and therefore a man is taken on as a professional anti-Communist and is qualified without any foundation of evidence as to qualifications on his part as an expert, and he is permitted to give conclusions as to certain matters as to which no qualifications have been established in his case, and secondly he is permitted to give conclusions as to matters which are for the jury to determine and they are susceptible of determination by the jury, various definitions and so on.

Now, one of the major vices of his testimony was, I believe, that he was permitted to ask questions which invaded the province of the jury, and in that connection Your Honor formulated two issues in the case, as I indicated,

with
/which we are not in accord. Your Honor formulated one of
5 the issues whether the Communist Party advocates and teaches the overthrow of the Government by force and violence as one issue to be determined by the jury.

Now, the witness, Mr. Crouch, was asked directly -- I have the page somewhere. I have not been able to really get the precise pages for this or other testimony, but the witness was asked, does the Communist Party advocate and teach the overthrow of the Government by force and violence. Now, that is a question which under Your Honor's formulation of the issues is to be determined by the jury.

That is tantamount to asking the witness with respect to the two issues in the case, are the defendants innocent or guilty.

We submit that is an improper question to be asked, a pure opinion and conclusion, and it invades the province of the jury.

Then Your Honor he referred to three books "Program of the Communist International" written in 1928 and "Program of the Young Communist International" in 1929, and the third book I don't recall, which Your Honor permitted subject to being connected up with the period of the charge or the actual period of the indictment. The evidence, we submit, does not reveal that any subsequent witness gave any factual indication that these two books were used during the period

of the indictment, and we therefore ask that these two books be stricken from the record.

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Wkr fls 10:10

Now, as to the testimony of Mr. Lautner, we again feel that some of the same objections are also applicable and should result in a strike. Here again you have a situation where the Government begins -- and I think Your Honor commented that the Communist Party is not on trial in this case. Mere membership does not establish a crime. The indictment charges specific intent, not the conspiracy of being a member of the Communist Party, but being a member with intent to cause the overthrow.

Now, it seems to me that before any of the testimony of Mr. Lautner could be admissible that the defendants would have to be established to be a part with Mr. Lautner of that specific conspiracy.

Now, I think you have a number of cases, the Coronado Coal Company case, for example, in United Mine Workers of America v. Coronado Coal Company, 259 United States Reports 344, and there, where the International Union and the officers were aware of the illegal conduct of the local union, the Court still refused to infer from that knowledge and even the silence of the International officers any ratification or any liability on the part of the International officers for the acts of the local officers, and here you have a reverse situation, and, as I show later in

the motion for judgment of acquittal, a much more accentuated situation.

Also, in the case of Keegan v. The United States, 325 U.S. 478, there the Government attempted to establish the nature of the Bund and the doctrines of the Bund and tried to pin on one defendant Schneller participation in the conspiracy of the Bund on the basis of the hierarchy and the principles of the Bund and of the elicit doctrines of the Bund. In that case the Court said that even lower level leadership, not to mention mere membership, was insufficient to establish that Schneller was in a criminal agreement which he alone among the defendants was not shown to have promulgated the allegedly illegal command.

Now, here you have Mr. Lautner testifying as to things of which, as far as the evidence showed or shows now, the defendants are not privy to; it is not shown that they are part of that agreement. The only evidence is as to defendants that through a convention resolution, through the constitution of the Communist Party, that that is the extent of their participation in any common agreement with the other eleven defendants.

Then I repeat also that Mr. Lautner's testimony is faulty, and again we don't think his qualifications as an expert are established. We think that he, too, was asked the same questions and not only the direct question that the

Communist Party advocated overthrow but a number of related questions on the meaning of democratic centralism and other allegedly expert matters, which had the effect of asking the witness, "Are the defendants" -- as under the issues formulated, "Are the defendants guilty?"

We feel, for that reason, that his testimony should be stricken.

Now, Mr. Nowell, we feel, also was in the same category. His contact with the Communist Party ended in 1936. The events to which he refers also relate to a trip to Moscow where he allegedly taught the science of civil warfare or guerilla warfare, and his other basic point of testimony was the creation of a black republic in the South. These are his two contributions, all of them occurring, I think, prior to 1931 or 1932, which is, if Your Honor please, quite some time ago, and we feel will not bind any of the defendants, including Mr. Frankfeld. While Mr. Crouch and Lautner and Mr. Nowell referred to Mr. Frankfeld, they didn't describe any acts or teachings of Mr. Frankfeld. They just summarized that they met him, and they concluded that they had done certain things. But the record is bare as to any act or teaching or advocacy on the part of Mr. Frankfeld, and, certainly, as to all the other defendants we feel that his testimony, under the rule of the Walker case -- did I cite Your Honor also the Hall case, also a Fourth Circuit

case? It is Hall v. The United States, 256 Federal Reporter 748.

MR.FLYNN: Mr. Buchman, on this Walker case, did you say 194 Federal 2d?

THE COURT: 194.

MR. BUCHMAN: That is right, 194.

MR. FLYNN: I don't think there is a 194 Federal 2d. It is not out yet.

THE COURT: What is that?

MR. FLYNN: I don't think there is a 194 Federal 2d. There is a 193 volume.

MR. BUCHMAN: I may be wrong.

THE COURT: It is 194 Federal. It is not Federal 2d.

MR. FLYNN: Is it Federal or Federal 2d? I thought he said Federal 2d.

MR. BUCHMAN: It may be 104, Your Honor.

THE COURT: Is it Federal 2d or not?

MR. BUCHMAN: I am having it checked.

THE COURT: Who wrote the opinion?

MR. BUCHMAN: I don't recall. I don't have the name of the Judge who wrote the opinion, sir.

THE COURT: If you give me the name of the Judge who wrote the opinion I can tell you about the court. The United States v. Walker, is it?

MR. BUCHMAN: Walker.

THE COURT: You think it is 194, do you?

MR. WRIGHT: I believe it is 104 Federal 2d, Your Honor.

THE COURT: 104 Federal 2d?

MR. WRIGHT: That is right.

THE COURT: All right.

MR. BUCHMAN: I am having it checked, Your Honor. We will have the exact citation for you in a few moments.

It seems to me, particularly in the case of Mr. Nowell, that you have inflammatory and prejudicial material of a very remote nature.

Now, in the case of Mr. Nicodemus, a Government's witness, there is no mention of any of the defendants in the case whatsoever, and I think Your Honor even commented that you saw no necessity for cross-examination in his case.

THE COURT: Well, we do not strike testimony of an unimportant witness that has been admitted merely because it is a little late.

MR. BUCHMAN: Well, it actually has no relevancy. He testified to nothing except that he had been at certain meetings, and I don't believe he mentioned seeing any of the defendants at those meetings in Cumberland.

That citation is 104 Federal 2d.

THE COURT: If it is so meaningless, why bother

with it?

MR. BUCHMAN: Well, except that striking it is going to take it away from the minds of the jury so that they won't be confused by extraneous, irrelevant evidence.

Cavey fls
10:20

Cvy fls Wkr
10:20

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THE COURT: Will the jury remember a particular witness by name unless you undertake to tell them what or less than what he said? That seems to me to be a trivial point, Mr. Buchman.

MR. BUCHMAN: That the evidence has no relevancy whatever.

THE COURT: Yes, but you do not strike out irrelevant evidence which has been admitted without objection or over objection merely because you find ultimately that there was not any particular good reason for calling a witness. We do not do that in the trial of law cases. We move to strike out evidence which has been improperly admitted.

MR. BUCHMAN: I am just trying to check to see -- I think he may have made some prejudicial comment which we feel is now grounds for striking it. It seems to me if the testimony is immaterial and irrelevant and obviously so, that it has no place in the case.

THE COURT: The substance of what he said was that he was a Communist up in Western Maryland and that he attended various meetings of Communists up there about certain times and finally I think he left the Party. It is not very important, it seems to me, one way or another.

MR. BUCHMAN: Except that he was also asked to testify -- asked a question about does the Communist Party

advocate and was permitted to give an answer and an answer based on no qualifications as an expert. Again, we say in the ultimate outcome, it is evading the province of the jury.

Again, we come to the testimony of Ralph Long, the young student who went to a training school in New York and who says he saw Mr. Meyers in the class.

It seems to me there that if we are dealing with the question of specific intent, the specific acts of the defendants, the specific intention and mental processes of the defendants in the case, as to what their intention was, that what was taught or what Mr. Long thought he was taught in this school is irrelevant and immaterial as far as the defendants are concerned and is not binding on them and, for that reason, we feel, too, that his testimony should be stricken, and the same thing we also feel applicable to Robert Benner, whose only function was to identify people, members, officers of the Communist Party, but his testimony, it seems to me, was completely -- it added nothing to the proof of the case as to the intention of the defendants.

THE COURT: Is it your view that the understanding of members of the Communist Party, expressed to be their understanding, that it was a doctrine of the Party that the Government should be overthrown by force and violence as speedily as circumstances would permit and success in that regard, is it your view that the understanding that as a

Party that that was their object, is not admissible evidence to show what was the nature of the Communist Party?

MR. BUCHMAN: But the question -- no, Your Honor, for this reason, that is, that the question in the case is not what the witness understood it was. The question is what the defendants understood it to be.

THE COURT: Of course, Mr. Buchman, I understand that. The language of the statute, among other things, is that no person shall become a member of the Communist Party, knowing that its purpose was to overthrow the government by force and violence.

Now, the question of the guilt of the defendants undoubtedly cannot be based on what somebody else thinks, but the fact that other people who are members of the Party know or purport to know that that is a purpose of the Party is relevant as background for the determination of the jury as to whether the defendants, when they joined the Party and became officers thereof, did know what were the functions of the Party.

Now, your defense in this case, I suppose, will be that the aims of the Party were never to use force and violence to achieve their ends, that they intended to use only peaceful means.

Now, if you establish that, then the whole of the Government's case goes out. There is nothing on which to

base the Government's case if you can establish that, but as long as there is evidence on which the jury must find that that was the aim of the Communist Party, it is relevant in this case.

The defendants can, each one, have an opportunity, if they desire, to say that that is not their understanding of the aims of the Communist Party, that the witnesses who have stated that it was the aim of the Party were entirely mistaken.

They can demonstrate that in any way that is proper under the rules of evidence, but the fact, if it be a fact, that it was the aim and purpose of the Communist Party to overthrow the Government of the United States by force and violence is a relevant fact in this case and I don't know whether you can establish it except by the testimony of people who were Communists and participated in the upper regions of the Party and base their opinion on what they heard and stop there and to illustrate that, you belong to the Bar Association and you know the aims and objects of the Bar Association. Now, are you going to establish the fact one way or another except by the knowledge of the Party members, it seems to me, would be a material effect and would help in your argument.

MR. BUCHMAN: To take up the analogy of the Bar Association, you have a common agreement in the Bar Associa-

tion based on the rules of the Bar Association. If, for example, an attempt was made to establish the guilt or innocence of a member of the Bar Association or even of an officer of the Bar Association on what the understandings are, the common understanding or special meaning to two or three other persons in upper leadership or those members of the Bar Association as to what the purposes of the Bar Association were, of what the intentions were, I would submit that would be inadmissible.

My point is this, even if the evidence reflects on the nature of the Communist Party, it is not admissible because that is not the crime charged in the indictment. The crime charged in the indictment is that the defendants conspired with a specific aim to bring about the overthrow.

THE COURT: Wait a minute. Look at the indictment. I was studying it yesterday and trying to analyze it more specifically with reference to some of the contentions that I have heard on one side or another from your side only by such as I have been able to glean from some of the questions on cross-examination.

The indictment charges that "It was a part of said conspiracy that the said defendants and their co-conspirators would become members, officers, and functionaries of said Communist Party, knowing the purposes of said Communist Party, and in such capacities would assume leader-

ship in said Communist Party and responsibility for carrying out its policies and activities to and including the date of the filing of the indictment;"

Now, that is a very specific matter with respect to the defendants as members of the Communist Party knowing the purposes of the Communist Party. Now, obviously, if there is no evidence to show that the defendants knew the purposes of the Party or if the evidence which tends to show that they did know is contradicted by the defendants and, if the jury does not find affirmatively beyond reasonable doubt that the defendants did know the purposes of the Party, then, of course, the Government case fails and properly fails, but I don't know how you can possibly establish or seek to establish the real objectives of the Party except by its documents and its proclamations, what it said in its meetings, what the members' understanding was.

The Government here has called possibly ten witnesses who were or who have been members of the Communist Party either defacto or de jure, I am not sure which, and they all say almost with unanimity, as I followed their testimony, that it was the object of the Communist Party to overthrow the government of the United States by force and violence as soon as success would be reasonable.

Now, if they are not telling the truth about it, if that is not the fact, it is now up to you to call ten or

twenty members of the Communist Party to show that that is not the case, and I am sure, in the interest of good government, we would be happy if you could do so.

MR. BUCHMAN: Your Honor, I won't proceed further along this line other than to state our position.

THE COURT: Do not misunderstand me, Mr. Buchman. Your motions are serious and worthy of careful consideration. My present reaction to the motion is this: Much of the evidence that was offered as to times prior to 1945 is of little significance in this case, if any, except it shows the history of the Communist Party.

Now, when you come to the vitality of the case, the essence of the case, it must be related to things that happened after 1945 and, of course, must be within the period of three years prior to the filing of the indictment.

First of all, and I am quite in agreement with you and I suggest that you might give consideration to the formulation, to help the Court in charging the jury when we come to that stage of the case, in which the jury will be carefully instructed as to the limited purpose only or limited relevancy of the evidence that you are speaking about. I personally understand thoroughly your objection to what you class as inflammatory -- others might simply say very prejudicial evidence, happening back in 1930 when, as a matter of fact, we all know, there being no jury here, we

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all know perfectly well that that is what actually did happen at that time. We don't know that necessarily as to particular persons without the benefit of the evidence that has been given, but as a matter of history we do know what happened in those periods and we do know, of course, about the Communist International. That is merely a matter of history.

You call this evidence of these witnesses Crouch and Nowell, you call that inflammatory --

MR. BUCHMAN: We have other accusations but we do not want to -- we dispute the veracity of them but that comes to the other motion which we do not want to mention at this time.

THE COURT: Very well. I hope very much that you will have evidence that that did not occur.

MR. BUCHMAN: And it would be hard for people to imagine that an eight-month soldier would be prepared to have a conference with a general in the Russian Army and attend maneuvers and give lectures in the academy a quarter of a century ago.

THE COURT: That is perfectly all right to argue the absurdity of that before the jury as an actual fact with regard to credibility. No one would want to limit your picturing that from your point of view argumentatively that it is utterly ridiculous to think, as you put it, that Crouch,

a youngster, just going over to Moscow for a year's indoctrination in the policies of the Communist International would be allowed to associate with the upper reaches of the Communist Red Army. You may say that is ridiculous. Whether or not it is is a factual matter that I do not have anything to do with. That is a matter for the jury, but that the Communist International did exist with its aims what is stated in the various publications, that there was a world-wide intention on the part of the Russian Government at the time, as pictured by the witnesses, and we know as a matter of history that those things did occur. The interpretation of that in relation to the defendants may be an entirely different thing. It may be, for instance, that Mr. Braverman, one defendant here, has an entirely different conception of history than what a good many history books have, and it may be perfectly well that he would be able to show in this case -- and I hope he will be able to show, as well as all the other defendants, that this idea that some of the witnesses have put forth is untenable and not believable and not sound, but you are dealing now with a matter of relevancy.

MR. BUCHMAN: That is what I want to direct your attention to. Here we have to go a quarter of a century back to prove something that occurred at a time when Mr. Braverman was in knee pants and its irrelevancy and immateriality is so glaring that --

THE COURT: In matters of history, time is not related only to the present. If we want to understand the function of the United States Government, we have to go back to 1789 and to conceptions of the right to property, which is invented in the constitution, it comes from 1791, the preamble of the constitution, and one of the reasons for forming the constitution was to secure tranquility in the United States.

The mere fact that a witness can go back to 1930, some twenty years ago, is not terminative on the question of what the Communist Party has been in the past. If, it is an entirely different Party from what it was then, then that fact can be readily established or is readily open to establishment and the only purpose, as I saw it, to that testimony of Crouch and possibly Nowell was to the effect that, as I stated to the jury at the time, to the effect that it related to the aims of the party prior to 1944, when the Party temporarily abandoned, according to the witnesses, the line that they had previously taken and in 1945 they reverted to the original stand.

In other words, now, in 1945, the Communist Political Party was dissolved because Foster overcame Browder in his arguments about the matter and in 1945 the Communist Party was again reinstituted with its plans and objects.

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Now, the evidence of some of the witnesses that the plans refer to those which had already been in existence prior to 1944, and it is only for the purpose, as I see it, only for the purpose of showing what was the object of the Communist Party prior to 1945 and what objects were revived in 1945 that the evidence was admissible.

MR. BUCHMAN: Your Honor, I will just conclude in one minute on this particular motion.

As I say, we feel that under the Hall case, that particularly the testimony of Crouch, Lautner and Nowell should be excluded.

THE COURT: I will read very carefully your cases, Mr. Buchman. I would suggest that if you want to be more helpful than giving me the suggestions, that you formulate a written instruction to the jury as to the ultimate or limited purposes or scope or relevancy of that evidence and I would be disposed to grant it to you because I don't know that it is consistent with my ideas of the administration of justice to allow these defendants to be convicted merely on the basis of what you refer to as inflammatory testimony by these other witnesses, no matter how accurate it may have been as a matter of history.

MR. BUCHMAN: Just one final word on that: The danger of attributing or imputing to these defendants what happened a quarter of a century ago is precisely what Mr.

12 Justice Vinson said in the Dennis case by the requirement of a specific intent and here we have the same thing with Crouch, Lautner and Nowell, because the effect of it is that the defendants are charged with guilt because of a specific intention that because of the nature of the Communist Party going back over a period of twenty-five years, and it is a dangerous doctrine.

THE COURT: There is one more significant sentence in the opinion of Mr. Chief Justice Vinson thatyou have not referred to.

MR. BUCHMAN: That was dictum, because he did not examine the sufficiency of the evidence. He said they were excluding from review the sufficiency of evidence and in the opinion he makes that statement, which I think Your Honor eluded to -- is that what you are referring to?

THE COURT: No, I was referring to a sentence he used as to what constitutes specific intent. You will find it in the middle of the opinion.

MR. BUCHMAN: I have concluded on this subject.

THE COURT: You may adopt my suggestion, if you want to help me, and if you don't do so, I will have to do it anyhow as it is part of my function to do it, and I might need some help and it would probably help you and your clients if you would formulate a written instruction to the jury as to the limited use only of this testimony which you find so

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prejudicial.

MR. BUCHMAN: Other counsel may wish to be heard briefly on the motion to strike.

ARGUMENT ON THE MOTIONS BY MR. WRIGHT

MR. WRIGHT: With respect to the defendant Wood, I want merely to join in the motion. I have signed it, and the memorandum of law annexed thereto and any cases cited in it, particularly the Keegan case and the Walker case, which were in this circuit and probably, therefore, more controling on Your Honor than any other.

I do not think there is any particular factual matter on the motion to strike which would distinguish Mr. Wood's case from what we are dealing with on the immediate question. As you pointed out, it is background material, establishing the nature of the party, and for that reason I see no necessity to make a further argument except to join in the argument as advanced by Mr. Buchman.

THE COURT: Do you feel it is not relevant as background material to show thenature and aims of the Party, even though you dispute its accuracy?

MR. WRIGHT: Yes, I should think under the Walker and Keegan cases, because of the prejudicial and inflammatory nature of it and its remoteness to the subject, it should be excluded because of its prejudicial and inflammatory nature.

Ows fls Cvy
10:45

THE COURT: I am not able to distinguish what you mean with regard to being first purely infirmatory and second remote with respect to it being concluded. If it is not too remote, that may be one thing.

MR. WRIGHT: Well, Your Honor, as I understand the rule laid down, remote evidence as a general proposition is admissible in evidence if it shows the general background, as Your Honor points out, and in the Walker case it deviates slightly from the requirements of the strict application of the rule with respect to evidence being remote, and in addition to its remote character it is prejudicial and inflammatory, and if it is remote and inflammatory it may be subject to exclusion.

THE COURT: Well, suppose no matter how old it is a relevant matter as a matter of history of the Party, are you going to exclude that merely because it is twenty years ago.

The whole Communist Party in Russia did not begin effectively until with Lenin who overthrew Kerensky in 1917. That was the beginning of the Communist Party. Of course, if you are going back prior to that to undertake to show something in the way of the oppressive Tzarist rule prior to that or how relentless theNihilists were a century ago, of course, I understand that would be inadmissible because that really would not be relevant. However, if the thing

is an historical matter, a matter of history, and is relevant to the case, I do not see how you could exclude that merely because it is remote, that the history is remote. All history is remote, if you go back to the beginnings of history.

MR. WRIGHT: I think that is correct, Your Honor, except as I understand the Walker case it takes the view, at least, establishes the view that it deviates slightly from the general rule, as Your Honor knows, but when you have the question of the nature of the evidence being inflammatory and prejudicial and it is remote, in addition to its inflammatory and prejudicial character it therefore gives the jury an inaccurate impression of the defendants, and for that reason, as I understand the case, the Court said it was not admissible.

THE COURT: To that extent we must bear in mind what I said to the jury when the evidence came in and when it was first objected to that the jury should very carefully be reminded that the evidence is admissible only for the purpose of showing what the objects of the Communist Party were prior to 1944, and in relation to the objects of the Communist Party since 1945, whether they are the same as those which existed from say 1930 on to 1945.

For the moment that is the only purpose that I see of that evidence or that fact. Of itself it certainly

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does not show that the defendants knew what the aims or objects were in 1945. That would come out as a matter of evidence, I suppose, for the defendants in their side of the case.

Now, Mr. Flynn, I would be glad to hear you unless somebody else wants to argue for the defendants.

ARGUMENT ON THE MOTIONS BY MR. BASSETT

MR. BASSETT: Your Honor, I would like to direct your attention to the evidence as adduced by the Government in connection with the defendant Mrs. Blumberg considered in the light of the points made by my two colleagues hereto which have special relevancy and force, and that is in connection with the point as to the admission of the background material to show the intent of the political party, and I submit there and direct Your Honor's attention to what was said in the Schneiderman case to be specific.

THE COURT: What was that? That was a deportation case or a citizenship case?

MR. BASSETT: Yes. There was language in it, one sentence I would like to read:

> "Political writings are often over-exaggerated polemics bearing the imprint of the period and the place in which written."

There is also language in there which refers to the fact that the plans of a political party changed at

least every four years.

THE COURT: I think that the Schneiderman case was relied on by counsel for the defendants in the New York case, and I notice that the Trial Judge in that case in his charge to the jury told the jury that the Schneiderman case had nothing to do with the Dennis case which was being tried.

MR. BASSETT: If Your Honor please I certainly would like to make a comment upon that. I am aware of its use by the defendants and the Court's ruling, but I do think that was not the precise point which I referred to here which was the use of the language in the Schneiderman case, the reference to the continuity of views and expressions by a political party from year to year and the vicissitudes of time and the conditions changing those.

THE COURT: I think that is correct. Your comment rather fortifies my view with respect to the relevancy of the evidence. It may very well be that the aims of the Communist Party have changed over a period of twenty years. So far I have not heard any evidence to that effect; but when the defendants' case comes on there may be evidence to that effect.

It may be that the point of view with respect to that may be changed after hearing the defendants, which is the object of giving both sides an opportunity to be heard. So far we have heard only one side of the evidence,

which is the purpose of the law suit.

We have not heard the motion yet for acquittal, but the purpose of that is to throw the whole case out of Court.

MR. BASSETT: Yes.

THE COURT: Before we have heard the other side.

MR. BASSETT: Without needing to hear the other side.

THE COURT: Without needing to hear it?

MR. BASSETT: Yes.

THE COURT: Anyone else?

ARGUMENT ON THE MOTIONS BY MR. BRAVERMAN

MR. BRAVERMAN: If Your Honor please, I don't want to go into an extended argument, but after listening to what has been said by my colleagues I thought perhaps I might add something. I thought I might take a chance, and that is with regard to the concept of history, as we all know history is subject to varying points of view. Even today there is a great dispute with respect to historical events such as you have in books circulated in the Southern schools, as for example with respect to the Civil War which varies from the books which are used in the Northern schools. So there are many points of view with respect to history.

Now, if the defendants in this case are going to be put in the position, as Your Honor indicated, of

having to disprove the testimony of Lautner -- not so much Lautner, but particularly Crouch and Nowell as to what is supposed to have been the program of the Communist Party in 1930 as to what was supposed to have been heard six or seven or eight thousand miles away in Moscow, as to what was the program of the Communist International when the burden of proof is on the Government --

THE COURT: Just a minute. Let me disabuse your mind about that so that it will be of assistance to you in your conduct of the case hereafter.

It is not necessary for you or for the defendants in this case to show affirmatively that Crouch and Nowell was wrong. On the other hand, it is the burden of the Government here to show that after 1945 the situation was the same as existed before, and that situation was that after 1945 the Communist Party does advocate the overthrow of the Government by force and violence.

Now, the way you put it, the way you started out, it is a misconception on your part as to the nature of the case. The Government has the burden affirmatively to show that the purposes of the Communist Party after 1945 are ultimately to overthrow the Government of the United States. You don't have to dispute that. The Government has to prove it.

Now, you can perfectly well take the position,

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if that be the fact, consistent with the truth, that the purposes of the Communist International have no application to the Communist Party of 1945, and it may very well be, for all I know, that that is the situation. In other words, that since 1945 the policies and objects of the Communist Party have been very different from what they were prior to 1944.

Wkr fls 10:50

Wkr fls Ow
10:55

MR. BRAVERMAN: That is exactly why, Your Honor, I think the motions to strike should be sustained. It is because, while this evidence is allowed in the case, it is allowed in for whatever value it has, and it does have some value to the Government's case because it is of an inflammatory and a prejudicial nature. The stories that are told by these Government witnesses back in 1930, 1932, infiltration into the armed forces, of studying civil warfare and so forth, are things that have been planted into the case and they are in the jury's minds, and it is difficult to meet this kind of material with just a factual statement of what are the real aims and program of the Communist Party since 1945. It remains there. It is background evidence. It has some value and a great deal of value to the Government's side of the case, and to allow it to remain in is going to cause harm to the defendants, and it is for that reason that we urge that the motions to strike should be sustained. We think that the evidence has no real probative value to the case and should be stricken from the record.

THE COURT: Very well.

Mr. Flynn, I will be glad to hear you.

ARGUMENT ON THE MOTIONS BY MR. FLYNN

MR. FLYNN: May it please the Court, the motions that we received a few days ago from Mr. Bassett are to strike out the testimony of three of our witnesses, the

witnesses Crouch, Lautner and Nowell. This morning we received, I assume, similar motions for the striking out of testimony of practically every other witness in the case. I don't think anybody was missed. I am not too sure. I don't know whether anybody was missed or not.

MR. BUCHMAN: We omitted two witnesses.

MR. FLYNN: I guess one of them was the bank man, was it not?

However, as I pointed out so often in this case, and as I said in my opening statement, the purpose of this background testimony is to show what the Communist Party was prior to 1944, and I will not burden Your Honor again with it because the same identical questions were raised in the Dennis case. They have all been passed on by the Third Circuit, by the Second Circuit, and by Judge Hand's opinion. Every single question that has been raised here was raised there, is passed on there, and I might just read --

THE COURT: Mr. Flynn, I am not sure I recall what Judge Learned Hand said in the New York case on this point of evidence as to the Communist Party prior to 1945. As a matter of fact, I don't know that I have even read that section of the opinion. I did not have it in mind at all in ruling on the evidence in this case because I did not know about it.

MR. FLYNN: If Your Honor please, you will find

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on the first page of that memorandum that on this point Judge Learned Hand said:

"There can be no logical reason for limiting evidence to prove that the defendants were in a conspiracy between 1945 and 1948 to the period of the charge; if they were in the conspiracy earlier, declarations of any one of them or any other person acting in concert with them are as competent as those made within the period laid. Whether they are relevant depends upon how far they form a rational support for believing that the conspiracy continued to 1945; but it is nonsense to say that events occurring before a crime can have no relevance to the conclusions that the crime was committed; and declarations are no different from any other evidence. How far back of the commission of the crime one may go is a matter of degree, and within the general control of the judge over the relevancy of evidence.

"This same doctrine applies to evidence occurring before the acts charged had become a crime at all: e.g., in the case at bar the visits of some of the defendants to Moscow before 1940.

"Just as in the case of events occurring before the dates laid in the indictment, so events occurring before the conspiracy had become a crime may have logical

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relevance to the conclusions that the conspiracy continued until after 1940."

THE COURT: Wait a minute. Let me read this very interesting next sentence:

"It is toto coelo a different question whether we are treating them as media concludendi or as the factum itself."

MR. FLYNN: Your Honor understands why I did not read it.

THE COURT: At least I understand that. I will say I understand it.

MR. BUCHMAN: I was going to suggest Your Honor might translate it for the benefit of counsel.

THE COURT: Do you want me to translate it? I will do so with pleasure. Judge Learned Hand, of course, is a very scholarly person.

"It is toto coelo a different question whether we are treating them as media concludendi or as the factum itself."

That is to say, he deems it is quite different to distinguish between the rational conclusions from the evidence and from the fact itself. That is to say, you can regard them as evidence of the fact. They arenot necessarily to be taken as conclusive. In other words, it is evidence and not a demonstrated fact.

MR. FLYNN: Now, may it please the Court, I think that certainly covers the contention they are making this morning. There are a great number of questions raised in their motion that were not argued at all here this morning, and I assume that they are not urging them, such limitations and hearsay and what-have-you. Now, they have pointed out two cases, may it please the Court,--

THE COURT: Let me ask you this, Mr. Flynn, relative to this very quotation from Judge Learned Hand's opinion in the New York case: What witnesses did the Government have in that case with regard to visits to Moscow back in the thirties? I know nothing about that and I did not know they had such evidence in the case.

MR. FLYNN: My recollection is, sir, that one of the main witnesses in that case was Mr. Budenz, who had been the editor of the Daily Worker, and,I think, who had testified as to some visits to Moscow. Nowell, the witness we had here, sir, testified in the case.

THE COUNT: Nowell did testify?

MR. FLYNN: Nowell testified in that case. The witness Lautner did not testify in New York, I believe, but has testified in other cases.

Now, I might point out, sir, in that connection that all these witnesses, every one of them, connected the defendant Philip Frankfeld as being active in Party work,

had been to Moscow. You will recall that Crouch's testimony was that before he went to Moscow, Crouch, that he and Frankfeld worked out this anti-militaristic program that Crouch was sent to Moscow with by the Communists in the United States. It was the brain child of Frankfeld.

MR. BUCHMAN: Oh, no.

MR. FLYNN: Oh, yes, that was the testimony. He and Frankfeld worked out the thing, took it to Moscow, had it approved in Moscow, came back to the United States, and he and Frankfeld and another one whose name escapes me were appointed to a group to put it into effect, and he went into detail as to what the routine was as to how they were to get it into the army and into the navy yards, and all that testimony was against one of these defendants you have in this case.

The testimony of Nowell was that he was in Moscow with the defendant Frankfeld and that at that time, sir -- you recall about what they were taught, as to how to set up a civil war, cut one city off, portions of a city, how to barricade, guerilla warfare, all of that. The testimony was that the defendant Philip Frankfeld was taught that in Moscow. Lautner testified as to his knowledge of Frankfeld in the Party, so I say, sir, it is something more than just a history or a background.

THE COURT: Let me ask you this, Mr. Flynn. Of

course, I understand your reference to the matter related Mr. Frankfeld personally, but how about some of the other defendants in this case? For instance, take Mr. Braverman. How does it relate particularly to him and as to whether he knows what the objects of the Communist Party were? Mr. Braverman made the point this morning that people read history and have different understandings; that a text book in Massachusetts in regards to the Civil War gives a very different aspect of it in many features of it than a history book printed in South Carolina, and that observation is true, of course, and a true historical picture, of course, is to be gotten from the basic facts which led up to the Civil War. We here in Maryland, having been a border state, our fathers and grandfathers were cognizant of both sides of the question. Therefore, probably there never has been any misunderstanding in Maryland generally as to what were the causes of the Civil War, but maybe Mr. Braverman has not been educated in regard to the history of Russia and the successful Russian revolution, which is a matter of history. Would it not be entirely permissible for Mr. Braverman to show that he just does not know what the aims of the Communist Party are?

MR. FLYNN: I think it is permissible for any of the defendants, sir, to show that they do not know what the aims of the Communist Party are, but at this particular

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moment with reference to Mr. Braverman the Government has shown that the Communist text books, the classics that were used prior to 1945 and, as a matter of fact, from the beginning of the Communist Party were used by Mr. Braverman in teaching and are used today by the Communist Party in their teachings today. No difference in the South than the North. They are the same Russian books and American books that have been written and have been used by the Communists.

THE COURT: Would it be correct for Mr. Braverman to say that he does not have the understanding of the English language that possibly you may have or I may have from his reading of the text books?

MR. FLYNN: I think that would be a question for the jury to decide.

THE COURT: The only reason I am pressing this point to you is this: I would be very glad to have both sides to undertake to formulate the proper and the only proper relevance of this testimony prior to 1945. I think, myself, that there ought to be a clear instruction to the jury as to the limited purpose of that testimony. I would not like anybody to argue that Mr. Braverman -- I use his name only because as a lawyer he is familiar with the procedures of the Court. I would not like thejury to formulate any knowledge attributable to him by reason of what Crouch may have said or Nowell may have said as to how he

heard how to take a city when the Communist revolution is ever carried out, if it is ever carried out. I do not want Mr. Braverman to be held for Crouch's and Nowell's testimony on that point if he did not know about it and if he did not understand it. Therefore, I think an instruction to the jury should be formulated on that point of testimony.

MR.FLYNN: Your Honor, on the second page of my memorandum there we have some citations or some authorities, I think that bear on that very thing. Of course, we have to keep in mind, may it please the Court, that this is a conspiracy case and that the defendants are bound by the statements and the acts of the co-conspirators. Of course, if they knew what the purpose of the conspiracy was,it is necessary for them to know that, but, as far as Crouch is concerned, the tendency has been all through the case and has been this morning to sort of belittle him because of the fact that he was supposed to have been a colonel in the army. It does sound a little bit peculiar, and the way he referred to it was maybe a little braggadocio.

May I point out to Your Honor that the Party paper, the Daily Worker, publicized, circulated, played it up as one of the great things that the American Communist Party had, was that one of their members went to Russia and was a colonel in the army of the Soviet. Now, sir, I do not

see how they can laugh that off.

THE COURT: Now, Mr. Flynn, he may never have heard of that newspaper or he may never have read it or may reserve the right, as some people say, to not believe everything he reads in the newspapers.

MR. BASSETT: Your Honor, may I ask that a copy of the memorandum that Mr. Flynn gave you will be served on us? It will certainly save us taking notes.

MR. FLYNN: Certainly. Did I hear some reference to a memorandum on the other side?

MR. BUCHMAN: It is not filed.

MR. FLYNN: Of course, under the general provisions of the law of conspiracy, as pointed out here -- and this is the brief that was filed in the Dennis case. They pointed out Coates v. The United States, 59 Fed. 2d, in which it is said:

> "It is immaterial when any of the parties entered the polluted stream. From the moment he entered he is as much contaminated and held as though an original conspirator."

And I point out to Your Honor that, while there must be injustice some element of knowledge and intent, still, when a person goes into a conspiracy of this kind he has to accept the responsibility, and the question of knowledge is one that he has to definitely prove.

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One of the cases that has been referred to by the other side, this Hall case, which, incidentally, Your Honor, is an opinion by Judge Pritchard way back.

THE COURT: Yes, Judge Pritchard was on the Court from about 1910 to 1925, I think.

MR. FLYNN: This is a case where the District Attorney at the end of the case got up before the jury and told the jury that there was not a soul came in to speak for this man and he was without friends, and he went into an inflammatory tirade before the jury apparently, and the Court said that is the wrong thing to do. It is not a question of evidence at all.

THE COURT: Was that a liquor case?

MR. FLYNN: No, Your Honor. It was a sedition case. I did not know they had sedition cases back there.

THE COURT: Yes, that was in 1917. What is the name of the case you referred to now?

MR. FLYNN: Hall v. United States.

THE COURT: Hall v. United States.

MR. FLYNN: 256, Your Honor.

THE COURT: 256 Federal.

Cvy fls
11:15

Cvy fls Wkr
11:15

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MR. FLYNN: May it please the Court, I won't labor the point any further. As I understand then, the only point argued, I want to say on the Dennis case, as far as the Communist Party is concerned, the Supreme Court has said in so many words it advocates the overthrow of the Government of the United States by force and violence.

THE COURT: Are you referring to the last paragraph in Mr. Chief Justice Vinson's opinion?

MR. FLYNN: No, I am referring to Mr. Justice Jackson's opinion in the Communications case. He said in this case and in uncertain terms, that's what it stands for.

THE COURT: What case is that?

MR. FLYNN: American Communications Association v. Douds, and that is reported in Volume 339 U. S., 382.

THE COURT: I assume, of course, if Mr. Justice Jackson used that language, it was in regard to the evidence in that case.

MR. BUCHMAN: That was a concurring opinion with the opinion written by Mr. Chief Justice Vinson.

MR. FLYNN: But in a concurring opinion. He was concurring in the opinion of the Court, the opinion by Mr. Chief Justice Vinson and in that concurring opinion Mr. Justice Jackson makes that statement.

THE COURT: What was the Douds case? I don't remember the name.

MR. FLYNN: The case that went up under the Taft-Hartley Act and there was a question there as to whether a man, as I recall the facts, whether or not he could take the affidavit under the Taft-Hartley Act, and a question as to what was Communism and Mr. Justice Jackson makes that point blank statement in there, Communism and the Communist Party stand for the overthrow of the Government of the United States by force and violence. I will read that to Your Honor.

THE COURT: You are not suggesting that I could take that as a factum as referred to by Judge Hand?

MR. FLYNN: It is certainly persuasive. I would not say it would be a factum but I still --

THE COURT: In other words, I could not accept that as evidence in the case.

MR. FLYNN: No, you could not accept it as evidence, but it is certainly persuasive if evidence is coming in as to just exactly what the Party stands for, because in this case that apparently was beyond doubt or I don't think the Justice of the Supreme Court would make that point blank statement.

THE COURT: If that is the case, if you have established that the Communist Party since 1945 and continuing up to within three years of the indictment, if you establish that that was their program, then the only question of fact

in this case is whether when the defendants joined the Party they knew that that was the fact, isn't that so?

MR. BUCHMAN: No, sir, Your Honor, I will argue that on the motion for acquittal. It seems to me that the Government has failed to establish a crime.

MR. FLYNN: I think it goes further than that. If they knew it at any time, that there was anything that would give them the impression, I think we have to go as far as that. Mr. Murphy just points out to me the evidence in this case is that each one of these defendants have taught from these books and taught the principles of Marxism-Leninism.

MR. BUCHMAN: Thatis not correct.

MR. FLYNN: Who was it that did not?

MR. WRIGHT: Wood has not been established as to that and Mrs. Blumberg has not been established in that way.

MR. BASSETT: Nor Blumberg.

MR. FLYNN: They are on the District Committee and they were the officers. I won't labor the point any further.

MR. BASSETT: That is another matter.

THE COURT: Just a minute. I want to ask you just a question. I understand the Government's theory of this case is simply this: That in 1945 the Communist Party, whatever it may have been prior to that time, became a Party devoted to accomplishing the overthrow of the Government of

the United States by force and violence as speedily as circumstances would permit.

MR. FLYNN: That is right.

THE COURT: And that with knowledge of that aim of the Communist Party, the defendants joined and became officers and functionaries of the Party subject to its discipline in doing and carrying out the policies of the Party. Is that your position?

MR. FLYNN: Our position is further than that. Our position is that in 1945 that this group reorganized the Communist Party, that they were the ones who were the organizers of the Party and put into effect what it had been prior to 1944.

THE COURT: Well, now, specifically, citing Mr. Braverman as a name which occurs to me, as one of the defendants, for illustration, did he help reconstitute the Party in 1945?

MR. FLYNN: Yes, sir.

THE COURT: Specifically?

MR. FLYNN: Yes, sir, I think our evidence shows that he was a member at that time.

THE COURT: Whether you have proved that or do not prove it with regard to the individuals, you can nevertheless contend that ifyou have established that that was the aim of the party and that the defendants joined the Party

and became officers of it and continued within three years, knowing what were the objects, that is the end of the case?

MR. FLYNN: That is right, conspirators entering into a conspiracy and --

THE COURT: All right.

MR. BUCHMAN: Just a few brief concluding remarks on the motion, if I may be permitted to.

I want to read to you a quotation from the Hall case under the Espionage Act:

> "In a time like this, when patriotism is at a high pitch and many people have to a certain extent lost their mental poise, Courts and jurors should be extremely cautious when required to pass upon the rights of an individual charged with an offense affecting the welfare of the Government."

It then goes on to say:

> "If this were not the rule, there would be no guaranty for the life and liberty of the individual, and this would be especially true in time of war, as in this instance, when the Government is involved, or on other occasions when public sentiment might be aroused as to a particular question."

If the defendants can be made responsible for the Party, for a period of history extending hundreds of years, or to 1848, or to what may have been done by the Communist

Party previously, you have two serious defects: First, not only guilt by association, but the doctrines of a political Party -- and that is what is the Communist Party, subject to censorship and restriction of that political doctrine. The precise situation was in the 18th Century.

I want to point out that the Government in a case now pending in the Supreme Court, Renner v. U. S., is taking an exactly reverse position. In that case a witness was asked whether he was a member of the Communist Party in 1937 and 1938 and privilege was claimed and he refused to answer the question on the ground that it might tend to incriminate him, the precise question being whether he was a member in 1937, 1947. The Government contends in its opposition to certiorari in that case, and I am quoting from its brief, "The argument that petitioner might have participated in a conspiracy in 1938 and continued in it through 1947 is even weaker. The probabilities of his continuance in the conspiracy are subject to the same weakness as to probabilities that he would have remained a member."

The Government here is trying to prove personal guilt by the alleged activities, policies and programs extending over a quarter of a century on the assumption of a continuation, and I say, Your Honor, that it is a dangerous doctrine, a doctrine of guilt by association and presents a real danger not only to the defendants but to the Bill of

Rights. It is precisely the doctrine of seditious libel that was existant in the 18th Century, and I now move, Your Honor, for a judgment of acquittal because I think what I have just said as preliminary to my remarks there, our position in this case is this:

That the record is bare and void -- I am referring particularly to Mrs. Frankfeld, one of my two clients, there is no mention in the record of her teaching or advocating by Mrs. Frankfeld and I challenge the Government to show one iota or scrap of evidence, because the whole theory of the Government's case and the only way in which they can prove it is starting at the opposite end and trying to work down, and they did that by establishing documents or books covering various period of historical time and as the evidence gets closer to the actual conspiracy, 1945-1951, all that is adduced is that the defendants were officers or members of the Communist Party. There is not one word, not one bit of evidence relating to the advocacy or the teaching of the defendants.

The Government's theory is -- and I think if they prove their theory, that under Mr. Chief Justice Vinson's opinion in the Dennis case, and other decisions of the Supreme Court, the Government's theory is that if they establish by their witness -- and I will refer to these witnesses in commenting on the sufficiency of the evidence --

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if they establish by these witnesses that the Communist Party is a conspiracy to advocate and teach, which we deny, and secondly, if they prove the adherence of the defendants to this concept, that they have established their case, and I submit, if they prove those things, they have not established their case because the very purpose of Mr. Justice Vinson in making the specific intent not to advocate and impeach by causing the overthrow and their purpose of making specific intent an essential element of crime is to prohibit and impune to individuals -- and it was the doctrine of a political Party -- it is necessary to establish the teachings of advocacy by the individuals charged. Otherwise, the individuals become not only charged with crime but in the sense of a Crouch, Lautner or Nowell, and if you recall in his opinion, Mr. Justice Vinson said in that case that they should scrupulously review the intent of the defendant, the nature of his or her activities or the power to bring about the evil, and the important thing is that the individual defendants teach and advocate as an issue.

As I say, if you will look at the evidence pertaining to Mrs. Frankfeld, all you find is that she was the organizational secretary, somebody said, Mrs. Markward said she knew she went to a school for women -- as a matter of fact, it was not even identified whether it was a finishing

school or a school where she was taught Marxism, and that she attended various meetings of various kinds. That is all, and I challenge the Government to show anything beyond that.

MR. FLYNN: She signed checks.

MR. BUCHMAN: If that were the case, you, too, might be charged with conspiracy.

MR. FLYNN: Not for the Communist Party.

MR. BUCHMAN: But you have signed checks. If that is a crime, then I say the Government is being hypocritical. The Government says it does not outlaw the Communist Party and does not place the Communist Party on trial and it would not go in this country because the sentiment of the people would not permit it but it starts with that premise, but how does it infer guilt, not by the teachings or advocacy of the defendants, but by imputing to the defendants the acts and programs and teachings of the Communist Party, and I say that in this case not only so far as Mrs. Frankfeld is concerned, but there is not one scrap of evidence as to where she taught or advocated, or as to any of the other defendants, there is no evidence whatever, and again I refer you to the case of the Coronado Coal Company. I think the case of Schaefer was given you.

THE COURT: Not by name.

MR. BUCHMAN: Schaefer v. U. S. 251 U. S. 466.

I believe I referred Your Honor to the Keegan case.

THE COURT: Yes.

MR. BUCHMAN: And also I might refer Your Honor to Herndon v. Lowry, 301 U.S., 242, and of course, the case of DeJonge, 299 U.S.

All those cases, I think, take the position that a member, an active member, or even a lower level officer cannot be charged with advocating or teaching in general of an organization or political party because, as I said, that is the doctrine of guilt by association, and there is a reason for making guilt a personal thing.

It is very easy for a witness to go back twenty-five years, and now I elude to the character of the Government's testimony in this case, to use a witness who refers to even twenty-five years or so, when it is not subject to proof, and it cannot be easily refuted, than it is to direct something that happened in Baltimore, Maryland, and say that Mrs. Frankfeld said this, this and this, and that is one of the reasons, of course, the primary reason of requiring the doctrine of personal guilt, of having a witness confronted by one who is charging him, and there has not been anyone, not one Government witness who has said that Mrs. Frankfeld taught or advocated the overthrow or that Mrs. Frankfeld delivered a speech and said so and so or that Mrs. Frankfeld taught a class that said so, nothing at all. The theory

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of the Government's case, therefore, is that the Communist Party is a conspiracy and anyone who was a member of it is guilty of the crime charged.

If that is so, then what the Government is seeking to do is put the Communist Party on trial and outlaw the Communist Party.

As to the character of the Government's case, I submit on the Government's own testimony these defendants are innocent.

There were two witnesses from Baltimore and Cumberland -- I refer particularly to Charles Craig. That is the man who said he was an F.B.I. agent for six years, a man who came into Court prepared to give the answers. I suppose that they had produced the answers -- he was asked certain specific questions and produced testimony. He was asked if the defendants taught force and violence and he said no, they did not. And then there was the testimony of the witness Bartlett from Cumberland, who was also an informer for six or seven years. He admitted he was expelled from the Communist Party for advocating force and violence and this is not the defendants' case but this is the Government's case.

MR. FLYNN: He did not admit any such thing.

MR. BUCHMAN: Yes, he did. I can show you his testimony.

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MR. GREEN: He said that is what he read in the Daily Worker.

MR. BUCHMAN: And he was asked if he was too radical, and other specific statements. He was charged with being a radical and he was charged with force and violence.

MR. FLYNN: What did they charge him with?

MR. BUCHMAN: I would like to also advise Your Honor of the fact, refresh your Honor's memory of the fact that this witness, everyone of them, were paid informers who have in many instances long records of traveling circuit and testifying at Immigration Hearings.

THE COURT: That is not properly a part of the present argument at all.

MR. BUCHMAN: I am referring to the sufficiency of the evidence.

THE COURT: That is a jury argument.

MR. BUCHMAN: I will pass over that, but I was referring to the sufficiency of the evidence in making those statements.

Your Honor, I won't send my remarks any further than to say that I think, as pointed out to Your Honor, the Chief Judge in the California case, speaking of membership in the Communist Party, said that was not a crime, mere adherence to the program is not a crime.

As to Mrs. Frankfeld, the only thing established

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is officership and attendance at meetings and no specific intention to cause the overthrow of any kind, no evidence has been adduced as to her and I judge the same thing is also true to a lesser degree as to Mr. Frankfeld. All of the testimony that related to him were conclusions and characterizations of the witnesses.

I therefore submit, Your Honor, particularly as to Mrs. Frankfeld that there should be a judgment of acquittal because of the complete failure of any evidence as to her advocacy and teachings.

THE COURT: I have no difficulty in overruling the motion for a directed acquittal.

Let me also say that the first few paragraphs of what you started out in the last argument as an approach to a criminal case like this are entirely correct.

The difficulty is with the application of the established principles of the evidence in the case. The heart of this case, as I see it at the moment, is this -- by the heart of it, I mean the simplest way to state it -- there was, according to Government witnesses, a criminal conspiracy on the part of the organizers of the Communist Party in reconstituting it in 1945 to overthrow the Government of the United States by force and violence as speedily as circumstances would permit.

Secondly, there is evidence which tends to show

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that the defendants respectively, each one of them, when they joined the Communist Party and became officers, knew that that was the objective of the Communist Party.

Now, I am not in any way passing on the sufficiency of that evidence. I merely am pointing out that that is the evidence on the part of the Government up to the present time and it is sufficient evidence to go to the jury.

Now, the situation may be quite radically changed after the defendants have presented their case, and it is quite conceivable that the evidence of the Government, in the light of the defendants' evidence, may take an entirely different aspect, but up to the present time, I think it very clear that there is evidence offered by the Government which tends to show or establish the charges made in the indictment. The sufficiency of that evidence would, of course, be entirely a matter for the jury, and it may be that after we have heard from the defendants' side of the case, that the whole matter will appear in very different light.

As to the points so much urged by yourself, Mr. Buchman, as to the necessity of the Government showing an intent or specific intent on the part of the defendants, it is quite clear as a matter of law that under the evidence that has been produced, if believed by the jury, the jury would be entitled, if they did so believe, to infer the

15 intent which you say is a necessary element of the case. Whether the jury would infer that intent in this evidence, after all they have had, I won't undertake to say, of course, and as I say, it may be that after we have heard the defendants' side of the case, the thing might appear in a different light.

The motion for acquittal is overruled.

The motions for striking out certain testimony will be taken under advisement at the present time and at first opportunity I will read them over and see to what extent, if any, I should grant them, and in any event, if I do not grant any of them, I would appreciate counsel on both sides formulating an instruction to the jury as to the limited purposes for which the evidence now complained of should be considered.

Is there anything else?

MR. WRIGHT: I do make a motion on the part of the defendant Wood for judgment of acquittal. I am not going behind Your Honor's ruling because as I understand it, it relates to each defendant. However, I would like the record to show the motion was made in Wood's behalf.

THE COURT: Very well.

MR. BRAVERMAN: And as a matter of record, I think the motion was signed by either counsel or all defendants, so that it goes to all of the defendants and there is one

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other point in the record, Mr. Flynn, when he got up and spoke on the motion to strike, pointed out to Your Honor that there were other grounds in the motion that have not been urged openly or orally and he suggested we were not pressing those points. I want to state for other counsel and myself that all points in the written motion to strike are being urged just as if they were orally presented.

THE COURT: I would like you to call to my attention anything you think should be brought to my attention. The purpose of having an oral argument is to have counsel acquaint the Judge with the grounds for it. If you assign a lot of grounds and you do not think they are worth mentioning in oral argument, you cannot expect me to pay lengthy consideration to them in private.

MR. BUCHMAN: The difficulty is we have to make specific applications and we would have to refer seriatum to the various points of testimony.

THE COURT: Is there any other general ground for acquittal or striking out than those which have been made?

MR. BUCHMAN: As to the motion to strike, on the question, I don't know whether I should be heard on the qualifications of these witnesses as experts but our objection is to their conclusions purportedly on the question of advocacy and teaching. It was a conclusion of the witness and inadmissible and also invading the province of the jury,

particularly as to Lautner, Crouch and Nowell, that it is not binding on the defendants, and unless the defendants are shown to have been a part of the same conspiracy with those mentioned, but it is not binding.

Finally, I did not even mention to Your Honor one of the basic points in the motion to acquit, which is, their power to bring about the evil, the present danger, and there, I think I want to make clear that one of the major reasons why I feel the motion for acquittal should be granted is that there has been no showing and no proof, nothing on the part of the Government to show and Your Honor could not take judicial notice of any power to bring about the overthrow on the part of these defendants.

THE COURT: Of course, the opinion of the Supreme Court in the Dennis case so clearly disposes of that that I am not disposed to make any further comment about it. There being nothing further --

MR. BASSETT: On behalf of Mrs. Blumberg, in view of your comment to Mr. Buchman, there is one particular ground with reference to the motion to dismiss as it applies to the defendant Mrs. Blumberg, which I would like opportunity to present.

THE COURT: What is it?

MR. BASSETT: That is the fact that the evidence first as to Mrs. Blumberg is obviously hearsay and she is

entitled to a presumption of innocence and the prosecution evidence has failed to show any connection at all with the Communist Party within the period of the limitation from the date of the indictment. The evidence with reference to her proves that she ceased to be an officer of the Communist Party or had ceased to be an officer prior to the bank teller's statement early in 1949, which is three years further away.

THE COURT: That is a matter of detail. Certainly, if Mrs. Blumberg left the Communist Party more than three years before the time of the indictment, that is a very important fact to be borne in mind. I had the general impression that the evidence did show her continued membership in the party at least, and also as an officer, within the three-year period.

MR. FLYNN: Yes, the evidence of Mrs. Markward was that she was in 1949 and Craig testified that she was here within the three-year period.

MR. BASSETT: As a matter of fact, I was directing comment on that to Mrs. Markward and to certain other people and she said "I don't know, I don't remember, I think -- " and I objeet/to it at the time and it was overruled and then there was no positive testimony put in by the Government that six months prior to that she had not resigned from the office prior to the time Mrs. Markward saw her there.

THE COURT: Counsel will have to refer to the

record on the precise facts. You can do so, Mr. Bassett, at your convenience and give me a reference to the precise testimony in the record. Mr. Flynn can do the same thing, and if that point is established, it may be important to your particular client.

We will adjourn.

(Thereupon, at 11:45 a. m., the trial of the above-entitled case was adjourned until 10 a. m., March 24, 1952.)

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

Charles J. Crowe

Leroy Walker

Charles J. Covey

Official Reporter