Voices for Freedom

A collection of opinions on the recent Supreme Court decision upholding the Smith Act and the conviction of 11 Communist leaders; including the historic dissents of Justices Black and Douglas.

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Introduction

On June 4, 1951, six men amended the constitution. By a 6-2 decision, the Supreme Court upheld the conviction of 11 Communist leaders under provisions of the Smith Act. In so doing, these six judges wiped off the books the First Amendment of the constitution—cornerstone of the Bill of Rights—which guarantees all Americans their freedom of speech, press and religion.

This ruling does not affect merely the Communists. Rather, in one sweeping blow it destroys the constitutional liberties and human rights of all Americans, regardless of political belief. The blueprint for fascism and war made in Hitler Germany calls first for the suppression of Communists. But this is only the first step in a series of moves which eventually suppress an entire people at home while abroad a war of aggression is waged.

This blueprint, in direct opposition to our American heritage of democracy, is now being put into effect in the United States by a bi-partisan coalition which has reneged on its promises to pass anti-lynch, anti-poll tax laws, and an F.E.P.C. while refusing to revoke the anti-labor Taft-Hartley Law. To bolster war abroad, plans are under way to suppress our entire people. The first steps have already been taken and sanctioned by the Supreme Court's destruction of the Bill of Rights.

Jumping the gun on the Supreme Court's decision whether or not to reconsider its disastrous verdict, agents of J. Edgar Hoover on June 20 swooped down on New York City and Pittsburgh in a series of pre-dawn raids, seized numbers of Americans on charges of thinking unsuitably.

The arrests of elderly people in ill health, of a 70-year-old bedridden man suffering from palsy, of mothers and grandfathers, the setting of excessive bail and the refusal then to accept it, is a grim warning of brutal repressive violence in store for any American who openly disagrees with administration policies.

This is the fruit of that unholy seed planted by the Supreme Court's upholding of the Smith Act, poisonous fruit that will blight

the American land as the bipartisan coalition reaps its harvest of war and terror.

You will read in this collection the indictment charged against these Americans and will find there a deadly echo of the Gestapo's disregard for human rights in a series of fantastic "overt acts," among which is the "crime" of leaving a building.

Before the next steps are taken, the people must halt this drive in its tracks, must defend and protect our American rights to freedom of speech, press and religion.

As it has always done whenever our liberties are in danger, the Civil Rights Congress will mobilize the many millions of Americans who love their freedom, who cherish their democratic rights, in a struggle to reverse this disastrous court ruling and the drive to a police state.

That is why we have published this first brief collection of opinions. It is a document written by Americans who refuse to let the current hysteria sweep away their right to express an opinion. The historic dissents of Supreme Court Justices Black and Douglas contained herein apply the ideas of free speech as Jefferson first understood them, first built our nation upon them. These opinions represent, not a minority, but an overwhelming majority of freedom-loving Americans whose will to freedom must be heard.

In this collection of first opinions you will find expressions of leaders among organized labor and the Negro people, who clearly see in the court's action a fascist-like threat to the struggle of labor and the Negro people for their rights.

You will read opinions from prominent individuals, from newspapers, magazines, all of whom have recognized in the court's abrogation of the First Amendment a direct threat to the freedom of every U.S. citizen.

The Civil Rights Congress believes that the question before Americans today is not whether Communism is right or wrong, but whether democracy is to be defended or crushed to death under the wheels of the war machine. Let there be no mistake: the Supreme Court has not destroyed the Bill of Rights "for Communists only." Rather, by illegal amendment it has destroyed it for every American. As long as this act of wanton violence can be undone, the people must undo it.

And it can be undone. As our ancestors did in the infancy of our democracy, when the infamous Alien and Sedition laws were forced out of existence by popular protest, so we today must force the reversal of this undemocratic decision. As our forefathers reversed the Fugitive Slave Law, so must we now insure our freedom by wiring President Truman to urge that the Supreme Court set a rehearing of this decision at once.

Our right to speak freely is in danger. Above all, we must exercise that right by speaking up now, at once, like those in this document, before it is too late.

—CIVIL RIGHTS CONGRESS
June, 1951

Six men amend the Constitution... the legal background

THE ORIGINAL CHARGE LEVELED BY THE GOVERNMENT AGAINST 11 COMMUNIST LEADERS:

On July 20, 1948, a grand jury indicted twelve members of the National Committee of the Communist Party of the United States. (The trial of William Z. Foster was later severed from the remaining eleven because of his serious illness). They were charged with violating certain sections of the Smith Act in that they "conspired . . . to organize as the Communist Party . . . and wilfully to advocate and teach" the principles of Marxism-Leninism which was alleged to mean "overthrowing and destroying the Government of the United States by force and violence. . . ." They were also accused of conspiring to "publish and circulate . . . books, articles, magazines and newspapers advocating the principles of Marxism-Leninism."

During the entire trial the prosecution did not charge overt acts of violence or any attempt to overthrow the government. Nor was this alleged in the indictment.

Based on several Marxist-Leninist classics, some in print for 100 years, the prosecution charged that statements by the Party in its constitution and elsewhere upholding American democracy were "just empty words." These classics, many of which like the *Communist Manifesto* can be found in most American public and school libraries, put forth a body of principles, a number of which have been put into practise by legitimate governments throughout the modern world.

After conviction on this charge the 11 Communist leaders brought their appeal through the Federal courts to the U.S. Supreme Court. On June 4, 1951, by a 6-2 decision, the court denied the appeal and upheld the Smith Act, under which the original indictment was brought.

But whether the 11 Communist leaders advocated the overthrow of the government by force and violence was not even considered by the Supreme Court.

Excerpts from Chief Justice Vinson's opinion:

The trial of the case extended over nine months, six of which were devoted to the taking of evidence, resulting in a record of 16,000 pages. . . .

Whether, on this record, petitioners did in fact advocate the overthrow of the Government by force and violence is *not* before us, and we must base any discussion of this point upon the conclusions stated in the opinion of the Court of Appeals, which treated the issue in great detail. (Our italics)

Two men dissent . . . and make history

Dissenting Opinion of Justice Hugo Black

Here again, as in *Breard v. Alexandria,* decided this day, my basic disagreement with the Court is not as to how we should explain

or reconcile what was said in prior decisions but springs from a fundamental difference in constitutional approach. Consequently, it would serve no useful purpose to state my position at length.

At the outset I want to emphasize what the crime involved in this case is, and what it is not. These petitioners were not charged with an attempt to overthrow the Government. They were not charged with non-verbal acts of any kind designed to overthrow the Government. They were not even charged with saying anything or writing anything designed to overthrow the Government. The charge was that they agreed to assemble and to talk and publish certain ideas at a later date: The indictment is that they conspired to organize the Communist Party and to use speech or newspapers and other publications in the future to teach and advocate the forcible overthrow of the government. No matter how it is worded, this is a virulent form of prior censorship of speech and press, which I believe the First Amendment forbids. I would hold Section 3 of the Smith Act authorizing this prior restraint unconstitutional on its face and as applied.

But let us assume, contrary to all constitutional ideas of fair criminal procedure, that petitioners although not indicted for the crime of actual advocacy, may be punished for it. Even on this radical assumption, the other opinions in this case show that the only way to affirm these convictions is to repudiate directly or indirectly the established "clear and present danger" rule. This the Court does in a way which greatly restricts the protections afforded by the First Amendment. The opinions for affirmance indicate that the chief reason for jettisoning the rule is the expressed fear that advocacy of Communist doctrine endangers the safety of the Republic. Undoubtedly, a governmental policy of unfettered communication of ideas does entail dangers. To the Founders of this Nation, however, the benefits derived from free expression were worth the risk. They embodied this philosophy in the First Amendment's command that Congress "shall make no law abridging . . . the freedom of speech, or of the press. . . ." I have always believed that the First Amendment is the keystone of our Government, that the freedoms it guarantees provide the best insurance against destruction of all freedom. At least as to speech in the realm of public matters, I believe that the "clear and present danger" test does not

"mark the furthermost constitutional boundaries of protected expression" but does "no more than recognize a minimum compulsion of the Bill of Rights." *Bridges v. California,* 314 U.S. 252, 263.

So long as this Court exercises the power of judicial review of legislation, I cannot agree that the First Amendment permits us to sustain laws suppressing freedom of speech and press on the basis of Congress' or our own notions of mere "reasonableness." Such a doctrine waters down the First Amendment so that it amounts to little more than an admonition to Congress. The Amendment as so construed is not likely to protect any but those "safe" or orthodox views which rarely need its protection. I must also express my objection to the holding because, as Mr. Justice Douglas' dissent shows, it sanctions the determination of a crucial issue of fact by the judge rather than by the jury.

Nor can I let this opportunity pass without expressing my objection to the severely limited grant of certiorari in this case which precluded consideration here of at least two other reasons for reversing these convictions: (1) the record shows a discriminatory selection of the jury panel which prevented trial before a representative cross-section of the community; (2) the record shows that one member of the trial jury was violently hostile to petitioners before and during the trial.

Public opinion being what it is, few will protest the conviction of these Communist petitioners. There is hope, however, that in calmer times, when present pressures, passions and fears subside, this or some later court will restore the First Amendment liberties to the high preferred place where they belong in a free society.

Dissenting Opinion of Justice William O. Douglas

If this were a case where those who claimed protection under the First Amendment were teaching the techniques of sabotage, the assassination of the President, the filching of documents from public files, the planting of bombs, the art of street warfare, and the like, I would have no doubts. The freedom to speak is not absolute; the teaching of methods of terror and other seditious conduct should be beyond the pale along with obscenity and immorality. This case

was argued as if those were the facts. The argument imported much seditious conduct into the record. That is easy and it has popular appeal, for the activities of Communists in plotting and scheming against the free world are common knowledge. But the fact is that no such evidence was introduced at the trial. There is a statute which makes a seditious conspiracy unlawful. Petitioners, however, were not charged with a "conspiracy to overthrow" the Government. They were charged with a conspiracy to form a party and groups and assemblies of people who teach and advocate the overthrow of our Government by force or violence and with a conspiracy to advocate and teach its overthrow by force and violence. It may well be that indoctrination in the techniques of terror to destroy the Government would be indictable under either statute. But the teaching which is condemned here is of a different character.

So far as the present record is concerned, what petitioners did was to organize people to teach and themselves teach the Marxist-Leninist doctrine contained chiefly in four books: *Foundations of Leninism* by Stalin (1924), *The Communist Manifesto* by Marx and Engels (1848), *State and Revolution* by Lenin (1917), *History of the Communist Party of the Soviet Union (B)* (1939).

Those books are to Soviet Communism what *Mein Kampf* was to Nazism. If they are understood, the ugliness of Communism is revealed, its deceit and cunning are exposed, the nature of its activities becomes apparent, and the chances of its success less likely. That is not, of course, the reason why petitioners chose these books for their classrooms. They are fervent Communists to whom these volumes are gospel. They preached the creed with the hope that some day it would be acted upon.

The opinion of the Court does not outlaw these texts nor condemn them to the fire, as the Communists do literature offensive to their creed. But if the books themselves are not outlawed, if they can lawfully remain on library shelves, by what reasoning does their use in a classroom become a crime? It would not be a crime under the Act to introduce these books to a class, though that would be teaching what the creed of violent overthrow of the government is. The Act, as construed, requires the element of intent —that those who teach the creed believe in it. The crime then depends not on what is taught but on who the teacher is. That is

to make freedom of speech turn not on *what is said,* but on the *intent* with which it is said. Once we start down that road we enter territory dangerous to the liberties of every citizen.

There was a time in England when the concept of constructive treason flourished. Men were punished not for raising a hand against the king but for thinking murderous thoughts about him. The Framers of the Constitution were alive to that abuse and took steps to see that the practice would not flourish here. Treason was defined to require overt acts—the evolution of a plot against the country into an actual project. The present case is not one of treason. But the analogy is close when the illegality is made to turn on intent, not on the nature of the act. We then start probing men's minds for motive and purpose; they become entangled in the law not for what they did but *for what they thought;* they get convicted not for what they said but for the purpose with which they said it.

Intent, of course, often makes the difference in the law. An act otherwise excusable or carrying minor penalties may grow to an abhorrent thing if the evil intent is present. We deal here, however, not with ordinary acts but with speech, to which the Constitution has given a special sanction.

The vice of treating speech as the equivalent of overt acts of a treasonable or seditious character is emphasized by a concurring opinion, which by invoking the law of conspiracy makes speech do service for deeds which are dangerous to society. The doctrine of conspiracy has served divers and oppressive purposes and in its broad reach can be made to do great evil. But never until today has anyone seriously thought that the ancient law of conspiracy could constitutionally be used to turn speech into seditious conduct. Yet that is precisely what is suggested. I repeat that we deal here with speech alone, not with speech *plus* acts of sabotage or unlawful conduct. Not a single seditious act is charged in the indictment. To make a lawful speech unlawful because two men conceive it is to raise the law of conspiracy to appalling proportions. That course is to make a radical break with the past and to violate one of the cardinal principles of our constitutional scheme.

Free speech has occupied an exalted position because of the high service it has given our society. Its protection is essential to the very existence of a democracy. The airing of ideas releases pressures

which otherwise might become destructive. When ideas compete in the market for acceptance, full and free discussion exposes the faults and they gain few adherents. Full and free discussion even of ideas we hate encourages the testing of our own prejudices and preconceptions. Full and free discussion keeps a society from becoming stagnant and unprepared for the stresses and strains that work to tear all civilizations apart.

Full and free discussion has indeed been the first article of our faith. We have founded our political system on it. It has been the safeguard of every religious, political, philosophical, economic, and racial group amongst us. We have counted on it to keep us from embracing what is cheap and false; we have trusted the common sense of our people to choose the doctrine true to our genius and to reject the rest. This has been the one single outstanding tenet that has made our institutions the symbol of freedom and equality. We have deemed it more costly to liberty to suppress a despised minority than to let them vent their spleen. We have above all else feared the political censor. We have wanted a land where our people can be exposed to all the diverse creeds and cultures of the world.

There comes a time when even speech loses its constitutional immunity. Speech innocuous one year may at another time fan such destructive flames that it must be halted in the interests of the safety of the Republic. That is the meaning of the clear and present danger test. When conditions are so critical that there will be no time to avoid the evil that the speech threatens, it is time to call a halt. Otherwise, free speech which is the strength of the Nation will be the cause of its destruction.

Yet free speech is the rule, not the exception. The restraint to be constitutional must be based on more than fear, on more than passionate opposition against the speech, on more than a revolted dislike for its contents. There must be some immediate injury to society that is likely if speech is allowed. The classic statement of these conditions was made by Mr. Justice Brandeis in his concurring opinion in *Whitney v. California,* 274 U.S. 357, 376-377:

> "Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burnt women. It is the function of speech to free men from the

bondage of irrational fears. To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one. Every denunciation of existing law tends in some measure to increase the probability that there will be violation of it. Condonation of a breach enhances the probability. Expressions of approval add to the probability. Propagation of the criminal state of mind by teaching syndicalism increases it. Advocacy of law-breaking heightens it still further. But even advocacy of violation, however, reprehensible morally, is not a justification for denying free speech where the advocacy falls short of incitement and there is nothing to indicate that the advocacy would be immediately acted on. The wide difference between advocacy and incitement, between preparation and attempt, between assembling and conspiracy, must be borne in mind. In order to support a finding of a clear and present danger it must be shown either that immediate serious violence was to be expected or was advocated, or that the past conduct furnished reason to believe that such advocacy was then contemplated.

"Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty. To courageous, self-reliant men, with confidence in the power of free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence."

I had assumed that the question of the clear and present danger, being so critical an issue in the case, would be a matter for submission to the jury. It was squarely held in *Pierce v. United States,* 252 U.S. 239, 244, to be a jury question. Mr. Justice Pitney, speaking for the Court, said, "Whether the statement contained in the pamphlet had a natural tendency to produce the forbidden conse-

quences, as alleged, was a question to be determined not upon demurrer but by the jury at the trial." That is the only time the Court has passed on the issue. None of our other decisions is contrary. Nothing said in any of the nonjury cases has detracted from that ruling. The statement in *Pierce v. United States,* supra, states the law as it has been and as it should be. The Court, I think, errs when it treats the question as one of law.

Yet, whether the question is one for the Court or the jury, there should be evidence of record on the issue. This record, however, contains no evidence whatsoever showing that the acts charged, *viz.,* the teaching of the Soviet theory of revolution with the hope that it will be realized, have created any clear and present danger to the Nation. The Court, however, rules to the contrary. It says, "The formation by petitioners of such a highly organized conspiracy, with rigidly disciplined members subject to call when the leaders, these petitioners, felt that the time had come for action, coupled with the inflammable nature of world conditions, similar uprisings in other countries, and the touch-and-go nature of our relations with countries with whom petitioners were in the very least ideologically attuned, convince us that their convictions were justified on this score."

That ruling is in my view not responsive to the issue in the case. We might as well say that the speech of petitioners is outlawed because Soviet Russia and her Red Army are a threat to world peace.

The nature of Communism as a force on the world scene would, of course, be relevant to the issue of clear and present danger of petitioners' advocacy within the United States. But the primary consideration is the strength and tactical position of petitioners and their converts in this country. On that there is no evidence in the record. If we are to take judicial notice of the threat of Communists within the nation, it should not be difficult to conclude that *as a political party* they are of little consequence. Communists in this country have never made a respectable or serious showing in any election. I would doubt that there is a village, let alone a city or county or state which the Communists could carry. Communism in the world scene is no bogey-man; but Communists as a political faction or party in this country plainly is. Communism has been so thoroughly exposed in this country that it has been crippled as

a political force. Free speech has destroyed it as an effective political party. It is inconceivable that those who went up and down this country preaching the doctrine of revolution which petitioners espouse would have any success. In days of trouble and confusion when bread lines were long, when the unemployed walked the streets, when people were starving, the advocates of a short-cut by revolution might have a chance to gain adherents. But today there are no such conditions. The country is not in despair; the people know Soviet Communism; the doctrine of Soviet revolution is exposed in all of its ugliness and the American people want none of it.

How it can be said that there is a clear and present danger that this advocacy will succeed is, therefore, a mystery. Some nations less resilient than the United States where illiteracy is high and where democratic traditions are only budding, might have to take drastic steps and jail these men for merely speaking their creed. But in America they are miserable merchants of unwanted ideas; their wares remain unsold. The fact that their ideas are abhorrent does not make them powerful.

The political impotence of the Communists in this country does not, of course, dispose of the problem. Their numbers; their positions in industry and government; the extent to which they have in fact infiltrated the police, the armed services, transportation, stevedoring, power plants, munitions works, and other critical places—these facts all bear on the likelihood that their advocacy of the Soviet theory of revolution will endanger the Republic. But the record is silent on these facts. If we are to proceed on the basis of judicial notice, it is impossible for me to say that the Communists in this country are so potent or so strategically deployed that they must be suppressed for their speech. I could not so hold unless I were willing to conclude that the activities in recent years of committees of Congress, of the Attorney General, of labor unions, of state legislatures, and of Loyalty Boards were so futile as to leave the country on the edge of grave peril. To believe that petitioners and their following are placed in such critical positions as to endanger the Nation is to believe the incredible. It is safe to say that the followers of the creed of Soviet Communism are known to the F.B.I.; that in case of war with Russia they will be picked up overnight as were all prospective saboteurs at the commencement of World War II;

that the invisible army of petitioners is the best known, the most beset, and the least thriving of any fifth column in history. Only those held by fear and panic could think otherwise.

This is my view if we are to act on the basis of judicial notice. But the mere statement of the opposing views indicates how important it is that we know the facts before we act. Neither prejudice nor hate nor senseless fear should be the basis of this solemn act. Free speech—the glory of our system of government—should not be sacrificed on anything less than plain and objective proof of danger that the evil advocated is imminent. On this record no one can say that petitioners and their converts are in such a strategic position as to have even the slightest chance of achieving their aims.

The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech." The Constitution provides no exception. This does not mean, however, that the Nation need hold its hand until it is in such weakened condition that there is no time to protect itself from incitement to revolution. Seditious conduct can always be punished. But the command of the First Amendment is so clear that we should not allow Congress to call a halt to free speech except in the extreme case of peril from the speech itself. The First Amendment makes confidence in the common sense of our people and in their maturity of judgment the great postulate of our democracy. Its philosophy is that violence is rarely, if ever, stopped by denying civil liberties to those advocating resort to force. The First Amendment reflects the philosophy of Jefferson "that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order." The political censor has no place in our public debates. Unless and until extreme and necessitous circumstances are shown our aim should be to keep speech unfettered and to allow the processes of law to be invoked only when the provocateurs among us move from speech to action.

Vishinsky wrote in 1948 in *The Law of the Soviet State,* "In our state, naturally there can be no place for freedom of speech, press, and so on for the foes of socialism."

Our concern should be that we accept no such standard for the United States. Our faith should be that our people will never give support to these advocates of revolution, so long as we remain loyal to the purposes for which our Nation was founded.

The press . . . and the people's liberties

ST. LOUIS POST-DISPATCH, JUNE 5, 1951:

SIX MEN AMEND THE CONSTITUTION

There is no greater right in all the world than the right to hold free opinions and to express them without fear of reprisal by those in authority.

This right is the very heart of American democracy. Keep it secure and the free way of life will survive. Take it away and the free way of life will die within itself, whether or not attack ever comes on the outside.

Jefferson, Madison, Mason and the others who started the weak little republic 160 years ago were not afraid of the right to inquire and expound and advocate. By formal amendment these wise men and their fellow citizens, with great deliberation, wrote into the first article of the Bill of Rights the guarantee that "Congress shall make no law abridging the freedom of speech."

Jefferson, the man who wrote the Declaration of Independence, said:

"If there be any among us who wish to dissolve the union, or to change its republican form, let them stand undisturbed, as monuments to the safety with which error of opinion may be tolerated where reason is left free to combat it."

Lincoln, who himself was later to see the country engage in civil war, said on the floor of Congress in 1848:

"Any people anywhere, being inclined and having the power, have the right to rise up and shake off the existing government, and form a new one that suits them better. This is a most valuable, a most sacred right—a right which we hope and believe is to liberate the world.

"More than this, a majority of any portion of such people may revolutionize, putting down a minority, intermingled with or near

about them, who may oppose this movement. Such a minority was precisely the case of the Tories in our own revolution."

What a strange and distressing contrast a century and more present. By now the feeble little nation has grown to be the strongest power in all the world. Yet the successors of Jefferson and Madison in high office are not merely less bold. They even retreat in fear of free exchange of ideas.

This is the context in which the Supreme Court decision in the case of the Communist leaders must be set. Chief Justice Vinson, speaking for himself and Justices Reed, Frankfurter, Jackson, Burton and Minton, leads the gravest departure from the guarantee of freedom of speech in our history.

These six justices say that the Communists by organizing "to teach and advocate the overthrow of the Government of the United States by force and violence created a 'clear and present danger' of an attempt to overthrow the government by force and violence."

They cite no overt acts of force.

They present no record of violence.

They find no danger both clear and present through teaching and advocacy alone.

Never before has such a restriction been placed on the right to hold opinions and to express them in the United States of America.

What is important in this case is not what happens to the Communist leaders. As the *Post-Dispatch* said, Oct. 23, 1949, if these defendants have engaged in treason or in criminal conspiracy let them be so charged, tried, convicted and prisoned. If they ought to be indicted as saboteurs or unregistered foreign agents let the proper actions be brought under the proper laws. Few can hold a brief for these men or their hateful doctrine of discord and dissension.

What is important in this case is what has now been done internally to our own historic security. The two justices who have the courage to dissent against this self-inflicted wound do so with words that history will mark.

The logical consequence of this decision would be for the Department of Justice to order the arrest of everyone who can be said to have taught or advocated the overthrow of the government by force and violence. It would be to throw perhaps as many as 75,000

or more people behind bars for their political and economic beliefs. After that might come all those who have proposed radical change in the government. Then those who have proposed any change. And so on and on.

What a plight for a nation which is fighting dictatorship on the battlefield and attempts to exemplify the free way of life to the oppressed peoples of the world.

Every American citizen must hope that it may never be necessary to resort to force and violence to defend his liberties. But, in this day when dictators seek to rule the world, every American should contemplate the possibility that under a tyrant's assumption of power the citizen would have no other recourse than to use force and violence in behalf of the freedom which he loved more than his own life.

George Washington, Alexander Hamilton, Edmund Randolph, Henry Lee and many other illustrious in our history not only taught and advocated overthrow by force and violence but practiced it with arms. Deplore force and violence today though we do, Americans should never forget that this nation was born in bloodshed.

Six men have amended the United States Constitution without submitting their amendment to the states for ratification. That is the nub of this decision.

The *Post-Dispatch* believes that this unratified amendment will some day be repealed through reversal by a later Supreme Court decision. The Supreme Court reversed its indefensible child labor decision. It reversed its archaic minimum wage decision. It has reversed itself frankly and fully many times. We believe it will do so again.

Today the Supreme Court accepts the narrow, timid, confused outlook of Fred M. Vinson. Some day it will enlarge its view to re-embrace the broad and sound conception of freedom in a democracy, as advocated and practiced by the great American and outstanding Republican, Charles Evans Hughes.

Speaking for the Supreme Court in the Communist case of De Jonge vs. Oregon in 1937, Chief Justice Hughes said:

"The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the

constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsible to the will of the people and that changes, if desired, may be obtained by peaceful means.

"Therein lies the security of the Republic, the very foundation of constitutional government."

Louisville, Ky., Courier-Journal, June 7, 1951:

In the Smith Act the Congress has clearly legislated against the right of any group to meet, speak, to write or to print anything which might advocate forceful overthrow of the government, even when this advocacy is general in aim. . . .

We have no recourse but to feel that the court, in finding the doctrine of clear and present danger applicable in this case, has dodged the grave issues inherent in the Smith Act. It has given to the unthinking a false sense of security, false in the sense that it encourages a belief that society can forbid unpopular, even dangerous thoughts.

The Catholic Worker, June, 1951:

SUPREME EXPEDIENCY

A Supreme Court which has become more and more callous to American freedom has upheld the conviction of the eleven Communist leaders. A Supreme Court whose Chief Justice did not vote once in favor of the individual and against the state in split decisions on civil liberty during his first year in office counts only two men—Black and Douglas—who have the courage to speak out against hysteria and for the rights of man.

New York Post, June 5, 1951:

MISS LIBERTY'S BAD DAY IN COURT

In affirming the conviction of the Communist leaders a majority of the Supreme Court has upheld the infamous Smith Act. We believe the bold dissenting opinions of Justices Douglas and Black

will be reverently remembered long after the tortured phrases of Chief Justice Vinson (and the uneasy, agonized concurrences of Justices Frankfurter and Jackson) have been repudiated and forgotten.

Let there be no misunderstanding about the meaning of the decision. At stake was the issue of whether, under our Constitution, men may be punished for mere advocacy of inflammatory ideas. The Communist chieftains were not convicted of serving as foreign agents, which is the only unchanging idea in the modern Communist book. They were not convicted of acts of espionage and sabotage, for which adequate legal penalties exist. They were convicted of conspiring to *teach and advocate* the overthrow of the U.S. Government by force and violence. That is the verdict which the high court has sustained.

To justify the decision Chief Justice Vinson was compelled to write his own perversion of the "clear and present danger" concept. The Communist conspiracy, he said, has "created a 'clear and present danger' of an attempt to overthrow the government by force and violence." The weasel words are unworthy of a Chief Justice. He does not seriously contend that Communist propaganda has created the peril of an imminent uprising in the U.S.A. . . . If his opinion means anything, Vinson can only be saying that the Communist leaders may legitimately be jailed because their words and music embody the hope of insurrection on some distant day. . . .

We prefer to stand with Justice Douglas' wiser words: "Free speech—the glory of our system of government—should not be sacrificed to anything less than plain and objective proof of danger that the evil advocated is *imminent.*"

No decision could be less American in spirit than that of the court majority. It will damage the democratic cause at home and abroad far more than it will inconvenience the Communists. . . .

The judges could have affirmed our national pride and confidence in our free institutions. Instead they displayed the timidity of scared politicians. . . .

But now the court has given its blessing to heresy-hunting. Henceforth, men's minds may be searched—for "intent" and for daydreams. Never was it more vital for Americans who value their liberties to speak up against repression.

THE NEW REPUBLIC, JUNE 18, 1951:

On June 4, 1951, the Supreme Court of the U. S. paid tyranny the tribute of imitation. It stepped to the front in the long retreat from the spirit and genius of American freedom carried forward from Jefferson's time to the days of Holmes, Brandeis, Cardozo and Murphy and now echoed only in the lonely protests of Justices Douglas and Black. . . .

The majority decision . . . punishes opinion and substitutes subjective notion for objective test as a standard of judgment . . . the most dramatic delinquency of the Court.

THE NEW YORK TIMES, JUNE 8, 1951:

First, the deep split in the Supreme Court which this decision caused portends a second, and possibly less hostile look at the whole question. Second, this undoing of the Communist Party has been achieved only by a violent upheaval in our judicial concepts. This disenfranchisement of a political party is not an easy price for American to pay for any sort of internal security. . . .

It is for us, the American people, to keep alive the habit of free and full discussion, to tolerate differences of opinion no matter how distasteful to the great majority. . . .

THE NATION, JUNE 16, 1951:

STRAIT-JACKETING FREE SPEECH

What the court has done is to formulate a rule of political expediency under which an obnoxious opposition can be suppressed by charging that it uses certain words and ideas with intent to violate the Smith Act. "Once we start down that road," to quote from Justice Douglas' dissent, "we enter territory dangerous to the liberties of every citizen. . . ."

. . . the First Amendment says nothing about dangers, clear or present. . . . First dismissing the (clear-and-present danger) doctrine as "a shorthand phrase" never intended as "a semantic strait-jacket," the Chief Justice ends by using it to strait-jacket the First Amendment.

But only a people aroused by a sense of the clear and present danger to their liberties which this precedent creates can generate the social and political energies which will reverse it.

Charleston, W. Va., Daily Mail, June 17, 1951:

The difficulty in dealing with the Communist Party is that in suppressing what is or might be a conspiracy you tread dangerously and perhaps fatally on freedom of speech. . . . Justice Black argues strongly for freedom unconfined. And Justice Douglas notes effectively that there is, in all the evidence, a lack of any overt act. Such arguments are in the American tradition which makes a clear distinction between what a man thinks and what he does. They serve to remind us that, just as the Communists are dangerous, so are the judicial attempts to accommodate the Constitution to their containment. Only history can tell which of the risks it was the wiser to take.

The New York Lawyer, New York Chapter, National Lawyers Guild:

Justice Black has recognized the reality that unless we stand by the First Amendment we shall lose it. The Smith Act is unconstitutional on its face. That must be so because the First Amendment speaks plainly and without qualification. Government may never encroach upon speech, press, assembly and religious worship. Upon that American idea must liberal and progressive Americans begin the reconstruction of the Bill of Rights. We can begin that now.

Boston Chronicle, June 15, 1951:

TOO HIGH A PRICE

Cabell Phillips declared in the New York *Times* of Sunday, June 10, apropos of the United States Supreme Court's upholding by a 6-2 decision, the conviction of the eleven Communist leaders: "The disfranchisement of a political party is not an easy price to pay for

any sort of security." How high the price is becomes daily evident, as many of us fear even to express agreement with the minority opinion rendered by Justices Hugo L. Black and William O. Douglas. It is un-American to be fearful of expressing an opinion contrary to the majority, and from this fact indeed springs a major portion of the hostility to the Communist Party in which dissent from the "line" is generally understood not to be tolerated. Our American government was established on the fundamental premise which Edmund Burke enunciated in his famous speech on "Conciliation with the Colonies"—"the Protestantism of the Protestant religion and the dissidence of the dissent." Therefore we are profoundly anti-totalitarian. That is why the First Amendment is so cardinal to the enjoyment of any liberties at all by any of us. Today it is the Communists; tomorrow it may be anti-Communists. . . .

That is too high a price to pay in plucking safety from the nettle of danger. How high is apparent from the eagerness which some persons exhibit in calling "Communist" everybody whom they personally dislike or whom they consider rivals for appointments to jobs.

The National Guardian, June 17, 1951:

At the outset of the action against the Communist Party leaders, the *Guardian* warned of the danger in which all America stood. Today the danger is far greater and far nearer; the warning must be far more insistent.

Daily Compass, Ted O. Thackrey, editor, June 5, 1951:

BLACK, DOUGLAS AND DEMOCRACY

Whatever communism or the 11 convicted Communist leaders have lost under the Supreme Court decision holding the Smith Act valid, we who despise the tyranny of the police state and hold freedom of thought and speech to be the most superior virtues of political democracy have lost more.

For one thing, there are more of us—for every citizen of the

United States of America is adversely affected by the decision, and every citizen, no matter how orthodox he may proclaim his views to be today, has been placed in the shadow of prison for his potential deviation from majority opinion tomorrow. . . .

The decision is a victory for those who underestimate the strength of democratic freedom and misunderstand its very character.

It imposes upon us the continuation of the struggle to repeal the Smith Act, amend our Constitution, or both, in order to restore freedom of thought and liberty of speech to the high regard in which it has been held, until now, since our nation was founded in the name of liberty.

The struggle will be long. It will be painful. One of the fears we who love political democracy have of communism is that it would rob us of freedom of speech, of thought, of the press; and now by a 6 to 2 decision of our highest court we have robbed ourselves of these virtues. The danger flung at communism sticks, instead, in the throat of Democracy. . . .

Justices Black and Douglas alone among the voting members of the court (Justice Clark abstained, but had instituted the prosecutions while Attorney General) had the wisdom and the courage to state the nature of the assault made upon us all in the name of restraining Communists. . . .

The Dredd Scott decision, handed down on March 6, 1857, by Chief Justice Taney with four justices agreeing and three dissenting, held that Scott could not be a citizen because he was a Negro. Lincoln's Emancipation Proclamation was not issued until 1863—and it was not until 1868 that the Fourteenth Amendment was promulgated.

We must not permit yesterday's decision to impair our liberties as long.

The New Leader, June 17, 1951:

Here for the first time, American law asserts that it is a crime merely to talk, to argue, to teach, to proclaim either in speech or in print a certain doctrine.

THE WALL STREET JOURNAL:

. . . There is much in this concurring opinion to encourage the inference that Justice Frankfurter puts "wisdom" above "constitutionality" as a criterion of the validity of a law or act, as though someone were to say, "Maybe this thing is unconstitutional, but it's good, so let's have it. . . ."

For a court there can be no two tests of the validity of a law or an executive action. There is only one, which is conformance with the Constitution as it stands. The Supreme Court itself has said time and again that it is no business of the judiciary to consider the wisdom of a piece of legislation brought before it. In the measure that a court departs from that correct attitude it attempts to usurp the function of the legislative branch and in doing so, to begin to undermine the basic law on which our political organization is built.

The people . . . spokesmen for the Bill of Rights

U.E. NEWS, UNITED ELECTRICAL & RADIO WORKERS OF AMERICA, JUNE 11, 1951:

A DECISION AGAINST FREEDOM

Practically the entire labor movement of the United States has at one time or another condemned the Smith Act and scores of unions and other organizations have protested against the trial of people for their political beliefs. . . .

The 7,500-word majority opinion unholding the Smith Act and the convictions is devoted principally to legalistic arguments to reconcile past decisions of the Court with this present decision striking down the American Constitutional right of free speech and free press.

At one point Chief Justice Vinson declares:

"Whatever theoretical merit there may be to the argument that there is a 'right' to rebellion against dictatorial governments {That is the right upon which the government of the United States was founded—Ed.}, is without force where the existing structure of the government provides for peaceful and orderly change."

That has a persuasive sound. However, when the Congress of the United States starts in outlawing political parties, provides for jailing Americans for what they may think, or say or write *in the future,* and the Supreme Court of the United States overrides the Constitution of the United States to uphold such action, what then becomes of the provision "for peaceful and orderly change" that Chief Justice Vinson claims to defend?

We believe that in this decision the majority of the Supreme Court has yielded to the present political atmosphere of fear and hysteria to permit reaction to deal the heaviest blow in generations to the rights and liberties of the entire American people. To get at an unpopular minority, the Supreme Court majority has consented to the undermining, to the subversion, of the right of all Americans to think, speak and write as they please on political questions and has opened wide the gates for official persecution, not only of communists, but of all who offend authority.

It was in just such decisions as this that compliant judges in Germany, yielding to pressure and hysteria, smoothed the way for and legalized Hitler's rise to power to crucify the German people and plunge the world in blood and sorrow. . . .

We believe that the people will protest, because the question is one of protecting *their own* rights and liberties.

Reactionary politicians and newspapers are already gloating that the decision opens the way to new and expanding waves of arrests and persecutions of communists, trade unionists and others. When, in any country, any man can be imprisoned, not for something he did or said, but for something he might say or do in the future, the liberty of *all* the people is in danger.

The Supreme Court of the United States has made evil decisions before, and has reversed itself, just as bad laws have been passed, and have been repealed. Such decisions have been those on human slavery, and on child labor legislation, minimum wage laws, the income tax and others.

The people of this country, whose rights as free citizens have been undermined by the Supreme Court, must insist upon the reversal of this decision and the repeal of such laws as the Smith Act and the McCarran Act. The people of Germany—the people of the whole world—are suffering to this day because the German people allowed such laws and such court decisions to stand. We Americans cannot be guilty of such a failure.

Earl Brown, only Negro New York City Councilman, in the Amsterdam News, June 10, 1951:

The Supreme Court's decision in the Communist Eleven case last Monday was not so much a curb on the Communists as it was a setback of freedom of speech and assembly . . . the six to two majority opinion of the court has created a real threat to freedom of speech for every group. . . .

The court's decision cannot curb the Communists without hurting all of us. And this is too big a price to pay for halting the infamy of those who would, but up to now, cannot destroy us. . . .

Furthermore, our security depends more upon our protection of our fundamental rights and privileges, such as freedom of speech and assembly, than upon taking away these rights from anybody. . . .

We cannot win by beating them over the head to make ourselves seem pure and virtuous. This, it seems to me, is what the Supreme Court's decision would try to do. In effect, it beats all of us over the head.

Unanimously Adopted Resolution, International Executive Board, International Fur and Leather Workers Union, June 8, 1951:

The International Executive Board of the International Fur & Leather Workers Union unequivocally supports the dissenting opinions of Supreme Court Justices Black and Douglas in the case of the 11 leaders of the Communist Party of the United States of America.

The ruling of the majority of the United States Supreme Court in this case is one of the most momentous decisions. This decision is a severe blow to the most precious democratic liberties embodied in our sacred Bill of Rights—freedom of speech, freedom of press, freedom of assembly, freedom to worship and to think as we please. . . .

The majority decision thus strikes at the foundation of the democratic rights of all American people. The denial of democratic rights to Communists or any other minority group paves the way for the destruction of the liberties not only of all minorities but of the people as a whole and especially of the trade union movement, as was the case in Germany and Italy.

The International Executive Board of the International Fur & Leather Workers Union, composed of all political opinions, therefore supports the vigorous dissent of Justices Black and Douglas and calls upon the U.S. Supreme Court to grant a rehearing on this case.

The International Executive Board and scores of thousands of members of our union and other unions are intimately acquainted with the outstanding contributions of Irving Potash, manager of the Furriers Joint Council, to the cause of labor. For over 25 years, Irving Potash has selflessly and ably devoted all his energy to the service of the fur and leather workers. His leadership is indestructibly identified with the struggle of the fur workers for clean, democratic, honest, progressive trade unionism; with the struggles of the fur workers against corruption, racketeering and gangsterism; with the struggles of the fur workers for decent wages and better work ing and living conditions. Irving Potash has demonstrated his patriotism both in peace and war. His activities have proven Irving Potash to be a loyal American—an outstanding fighter for peace, democracy and the well-being of all.

We pledge our wholehearted support to the struggle for the freedom of Irving Potash, our co-worker, brother and union leader.

We are confident that as the full gravity of this case becomes known to the American people, their protests will rise in ever-increasing volume. We are confident the aroused American people will achieve a reversal of this decision as they have in other cases injurious to the interests of the people.

In the words of Justice Black, "in calmer times, when present pressures, passions and fears subside, this or some later court will restore the First Amendment liberties to the high preferred place where they belong in a free society."

Our union dedicates itself to the achievement of this noble purpose and to the preservation of the democratic liberties of the American people.

Dr. Julian P. Boyd, Librarian, Princeton University:

Mr. Justice Douglas delivered a dissenting opinion that rejected with clear common sense the idea that a handful of Communists could create such a danger to the United States as to justify the most extensive invasion yet made in the rights guaranteed by the First Amendment. . . .

American citizens may be deprived of livelihood or even of their liberties by ex parte proceedings based on accusations made by anonymous persons. Arraigned at the bar of public opinion, innocent persons may now be required to prove themselves not guilty.

In many respects we are in danger of doing violence to the letter and the spirit of the Bill of Rights.

One-hundred Officials, United Packinghouse Workers of America:

We feel the majority decision in the case should be reconsidered because it upholds the Smith Act of 1940, which we believe to be unconstitutional. The decision negates the right of free speech guaranteed in the First Amendment to our U.S. Constitution.

While not necessarily in agreement with the views of the defendants, we feel that to deny freedom of speech, press or association to any group or individual is to destroy the basis of democracy. The test of democracy is tolerance of unpopular views. We must not allow current hysteria to sweep away our liberties and lead to thought control. We trust you will give the above your serious consideration.

Peter Lawrence, in letter to N. Y. Herald-Tribune, June 17, 1951:

As producer of two Broadway shows: *Peter Pan* and *Let's Make an Opera,* I have been watching your pages intently for the last week for expressions of horror and protestation at the majority opinion of the Supreme Court on Monday upholding the infamous Smith Act.

Since I have found no others to date uttering publicly their condemnations, I cannot wait longer. As a member of a proud profession, the theatre, and a small part of the cultural community of our great nation, I must speak out now and take my stand with the brilliant honorable decisions of Justices Black and Douglas in branding this decision a tearing down of the democratic liberties of the United States of America. . . . I would call upon other artists, scientists and professionals to protest today and insist that these liberties be restored today. Tomorrow it may not be possible to do so.

The theatre, like every democratic institution in the world, cannot truly flourish and grow without real freedom of speech and expression.

Rev. Kenneth Ripley Forbes, Philadelphia, Pa.:

The vigorous dissents of Justices Black and Douglas would seem to offer good reason to hope that the appeal of counsel for the Communist leaders for a rehearing might be granted. This is the last hope that lovers of the traditional American way of life have that the hysterical fears of today's policymakers will not be permitted to drive us any further along the road to fascism.

The First Amendment to the Constitution is the last defense we have against thought-speech control, like that of the German and Italian regimes which we fought successfully in World War II. Lovers of liberty must fight it with equal vigor now in America.

May our Supreme Court have its sober second thought before it is too late.

STATEMENT by New York United Labor Action Committee, representing A. F. of L., C.I.O., and independent unions with a membership of more than 100,000:

The First Amendment to the Constitution of the United States which guarantees the American people the right of freedom of speech, freedom of assembly, and the right to petition for the redress of grievances has been the essential protection for every progressive struggle in our history.

The recent decision of the Supreme Court upholding the constitutionality of the Smith Act deals a deadly blow to the First Amendment. The dissenting opinions of Justices Black and Douglas make that clear. The majority opinion rendered by Justice Vinson, if permitted to stand as a doctrine of law, will have ruinous effects on the already difficult struggles of labor. It is significant that Justice Vinson relies heavily on citations of the Court's decision upholding the constitutionality of the vicious Taft-Hartley Law. It is not lost upon us that the concurring opinion of Justice Frankfurter uses for justification a list of decisions of the Court against various labor unions. These facts prove that the organized labor movement will be the first to feel the destructive effects of this decision.

LEWIS W. FLAGG, N.A.A.C.P. STAFF ATTORNEY:

Negroes cannot be safe so long as the U.S. Constitution is endangered by the Supreme Court.

MAX LERNER, N. Y. POST, JUNE 6, 1951:

To argue that Communist teaching may lead to an "attempt" at overthrowing the government is to touch the margin of the ridiculous. . . .

It is a sad reflection that this monstrous backward step in the history of American free speech has been taken by a Supreme Court majority largely appointed by a Fair Deal President. Harry Truman

assures his visitors these days he is passionately concerned about the witch-hunt for dangerous thoughts. Yet the four justices he has himself appointed . . . need conscript only Justice Reed from the Roosevelt court to form an unfailing majority against freedom. It is a Truman majority.

DEAN JOHN B. THOMPSON, ROCKEFELLER MEMORIAL CHAPEL OF THE UNIVERSITY OF CHICAGO: I do not see how democracy can thrive and be healthy without the honest pluralism and the implicit trust in reason and in free debate which the First Amendment and its consistent interpretation have guaranteed to us prior to this decision.

REV. ARMAND GUERRERO, PASTOR OF THE MAYFAIR METHODIST CHURCH, CHICAGO: People should be convicted for what they do, not for their alleged opinions or political views. . . . I believe the conviction of these leaders to be part of a current witchhunting movement and a departure from traditional American policy.

REV. WILLIAM T. BAIRD, PASTOR OF THE ESSEX COMMUNITY CHURCH, CHICAGO: This must be recognized as the opinion of those who have succumbed to the fear campaign of recent years. It is not now nor ever can be the opinion of those who believe in the kind of democracy upon which this country was founded.

RABBI SAMUEL TEITELBAUM, director of the Hillel Foundation at Northwestern University, REV. MARION S. RILEY, former chairman of the Chicago N.A.A.C.P. and pastor of the Gorham Methodist Church, DR. EUSTACE HAYDON, head of the Chicago Ethical Society, attorney RICHARD WESTBROOKS and DR. BORIS RUBENSTEIN united in stating: The Bill of Rights now stands in greater jeopardy than in any previous era in our history. We call upon the American people to urge a rehearing of this case to the end that freedom of speech and conscience will be restored and afforded the protection guaranteed by our Constitution.

The F.B.I. follows a made-by-Hitler blueprint

THE TEXT of the indictment, returned by a Federal grand jury, on June 20, 1951, against Communist leaders under the Smith Act follows:

In the District Court of the United States for the Southern District of New York, United States of America v. Elizabeth Gurley Flynn, James E. Jackson, Pettis Perry, Sidney Stein, Claudia Jones, Fred Fine, Alexander Bittelman, Alexander Trachtenberg, Victor Jeremy Jerome, Albert Francis Lannon, Marion Bachrach, Louis Weinstock, Arnold Samuel Johnson, Betty Gannett, Jacob Mindel, William Wolf Weinstone, Israel Amter, William Norman Marron, Isidore Begun, Simon William Gerson and George Blake Charney.

No.

[Section 3 of the Smith Act, 54 Stat. 671, 18 U. S. C. (1946 ed.) §11 and 18 U. S. C. (1948 ed.) §371.]

The Grand Jury charges:

1. From on or about April 1, 1945, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, and elsewhere . . . the defendants herein, unlawfully, willfully, and knowingly, did conspire with each other and with William Z. Foster, Eugene Dennis, also known as Francis X. Waldron Jr., John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis Jr., Henry Winston, John Gates, also known as Israel Regenstreif, Irving Potash, Gilbert Green, Carl Winter and Gus Hall, also known as Arno Gust Halberg, co-conspirators but not defendants herein, and with divers other persons to the Grand Jurors unknown, to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U. S. C. (1946 ed.) §10 and 18 U. S. C. (1948 ed.) §2385, by so conspiring (1) unlawfully, willfully, and knowingly, to advocate and teach the duty and necessity of overthrowing and destroying the Government of the United States by force and violence; and

(2) unlawfully, willfully, and knowingly, to organize and help to organize as the Communist party of the United States of America, a society, group and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence.

2. It was part of said conspiracy that said defendants and co-conspirators would in the spring and summer of 1945, in the Southern District of New York, themselves participate, and induce others to participate, in the dissolution of the Communist Political Association and the organization of the Communist party of the United States of America as a society, group and assembly of persons to teach and advocate the Marxist-Leninist principles of the overthrow and destruction of the Government of the United States by force and violence.

3. It was further a part of said conspiracy that said defendants and co-conspirators would become members, officers, and functionaries of said party, knowing the purposes of the party, and in such capacities, would assume leadership of said party and responsibility for carrying out its policies and activities, up to and including the date of the filing of this indictment.

4. It was further a part of said conspiracy that said defendants and co-conspirators would cause to be organized clubs and district and state units of said party, and would recruit and encourage recruitment of members of said party, concentrating on recruiting persons employed in key industries and plants.

5. It was further a part of said conspiracy that said defendants and co-conspirators would conduct and cause to be conducted schools and classes for indoctrination in the principles of Marxism-Leninism in which would be taught and advocated the duty and necessity of overthrowing and destroying the Government of the United States by force and violence as speedily as circumstances permit.

6. It was further a part of said conspiracy that said defendants and co-conspirators would publish and circulate and cause to be published and circulated, books, articles, magazines, and newspapers teaching and advocating the duty and necessity of overthrowing and destroying the Government of the United States by force and violence.

7. It was further a part of said conspiracy that said defendants and co-conspirators would write and cause to be written articles

and directives in publications of the Communist party of the United States of America, including but not limited to, *Political Affairs, Morning Freiheit, Daily Worker,* and *The Worker,* teaching and advocating the duty and necessity of overthrowing and destroying the Government of the United States by force and violence.

8. It was further a part of said conspiracy that said defendants and co-conspirators would agree upon and carry into effect detailed plans for the vital parts of the Communist party of the United States of America to go underground in the event of emergency, and from said underground position, to continue in all respects the conspiracy described in Paragraph "1."

9. It was further a part of said conspiracy that said defendants and co-conspirators would do other and further things to conceal the existence and operations of said conspiracy.

OVERT ACTS

1. In pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about September 16, 1949, Betty Gannett, a defendant herein, delivered a report on the "Organization for Struggle" at a meeting of the National Committee, Communist party of the United States of America.

2. In further pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about Oct. 1, 1949, Pettis Perry, a defendant herein, *did leave 35 East Twelfth Street, New York, New York.* (Our italics)

3. In further pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, in or about September, 1949, Alexander Bittelman, a defendant herein, did issue a directive and cause it to be circulated through *Political Affairs.*

4. In further pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, in or about August, 1950, Alexander Bittelman, a defendant herein, did issue a directive and cause it to be circulated through *Political Affairs.*

5. In further pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about August 1, 1948, William Norman Marron, a defendant herein, did attend and participate in a meeting held at Lodge 500, International Workers Order Hall, 77 Fifth Avenue, New York City.

6. In further pursuance of said conspiracy and to effect the objects

thereof, in the Southern District of New York, in or about March, 1951, Albert Francis Lannon, a defendant herein, did issue a directive and cause it to be circulated through *Political Affairs.*

7. In further pursuance of the said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about Sept. 1, 1949, Marion Bachrach, a defendant herein, did prepare the contents for and did mail approximately fifty envelopes from 35 East Twelfth Street, New York, New York.

8. In further pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, in or about February, 1951, Betty Gannett, a defendant herein, did issue a directive and cause it to be circulated through *Political Affairs.*

9. In further pursuance of said conspiracy and to effect the objects thereof, on or about Feb. 26, 1951, in the Southern District of New York, William Norman Marron, a defendant herein, did prepare and issue a directive and cause it to be circulated.

10. In further pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about June 27, 1948, William Wolf Weinstone, a defendant herein, did issue a directive concerning teaching of Marxism-Leninism, and cause it to be circulated.

11. In further pursuance of the said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about July 18, 1948, George Blake Charney, a defendant herein, did attend and participate in a meeting.

12. In further pursuance of the said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about Aug. 2, 1948, Sidney Stein, a defendant herein, did participate in the demotion and expulsion of Max Bedacht from the Communist party as an anti-Marxist-Leninist.

13. In further pursuance of the said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about August 15, 1948, Alexander Trachtenberg, a defendant herein, did participate in and report on the expulsion of Max Bedacht from the Communist party as an anti-Marxist-Leninist.

14. In further pursuance of the said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about September 1, 1949, Isidore Begun, a defendant herein, did attend and participate in a meeting.

15. In further pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about August 2, 1948, Elizabeth Gurley Flynn, a defendant herein, did participate in a meeting at the Riverside Plaza Hotel, New York, New York.

16. In further pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, in or about April, 1951, Betty Gannett, a defendant herein, did issue a directive and cause it to be circulated through *Political Affairs.*

17. In further pursuance of said conspiracy and to effect the objects thereof, in Detroit, Michigan, in or about July, 1949, James E. Jackson, a defendant herein, did participate in a meeting at the Civic Center, Detroit, Michigan.

18. In further pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, in or about January, 1949, Marion Bachrach, a defendant herein, did write and cause to be published a pamphlet.

19. In further pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about December 27, 1950, Simon William Gerson, a defendant herein, did issue a directive and cause it to be circulated.

20. In further pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, in or about April, 1950, Louis Weinstock, a defendant herein, did teach at the Jefferson School of Social Science, New York, N. Y.

21. In further pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, in or about July, 1948, Arnold Samuel Johnson, a defendant herein, did issue a directive and cause it to be circulated through *Political Affairs.*

22. In further pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, in or about February, 1951, Victor Jeremy Jerome, a defendant herein, did issue a directive and cause it to be circulated through *Political Affairs.*

23. In further pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, in or about January, 1951, George Blake Charney, a defendant herein, did issue a directive and cause it to be circulated through *Political Affairs.*

24. In further pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, in or about

May, 1951, Sidney Stein, a defendant herein, and John Williamson a co-conspirator herein, did issue a directive and cause it to be circulated through *Political Affairs.*

25. In further pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about May 10, 1950, William Wolf Weinstone, a defendant herein, did issue a directive and cause it to be circulated.

26. In further pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, in or about March, 1950, Claudia Jones, a defendant herein, did issue a directive and cause it to be circulated through *Political Affairs.*

27. In further pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, in or about August, 1948, Fred Fine, a defendant herein, did issue a directive and cause it to be circulated through *Political Affairs.*

28. In further pursuance of said conspiracy and to effect the objects thereof, in Detroit, Mich., on or about February 16, 1950, James E. Jackson, a defendant herein, participated in a Communist party class on revolution at 2419 River Avenue, Detroit, Mich.

29. In further pursuance of said conspiracy and to effect the objects thereof, in Detroit, Mich., on or about September 10, 1948, James E. Jackson, a defendant herein, became section organizer of the Dearborn Auto Section of the Communist party and assumed responsibility for the party's auto industry concentration program there.

In violation of Section 3 of the Smith Act, 54 Stat. 671, 18 U. S. C. (1946 ed.) §11 and 18 U. S. C. (1948 ed.) §371.

First comments on the arrests

N. Y. Compass, Ted O. Thackrey, Editor June 21, 1951:

I weep because the bell which is tolling the death knell for freedom of thought and freedom of speech and freedom of association tolls not alone for Communists but for thee—and for me—and for all of us.

Tomorrow, it will be enough that you and I protest the scuttling of the Bill of Rights—for are not Communists also protesting—and are we not then guilty by an association of an idea?

My friends who have the illusion that they are safe if only they join enthusiastically with the present hysterical hue and cry, ask me smugly "Where is the Hitler? We are Americans. It CAN'T happen here."

I do not know . . . any more than the proud citizens, Jews and Gentiles, Social Democrats and Republicans, Communists and Catholics of the Weimar Republic recognized in the petty Munich rabble rouser of the 30's their future Fuehrer and absolute Master.

I give you Joe McCarthy as the American Hitler—as an example. I give you J. Edgar Hoover as the chief of his secret police. I give you Pat McCarran as the Fuehrer of his Reichstag. . . . Look about you and make your own nominations.

It is not inevitable, but it is late, much later than you think.

N. Y. Post, June 21, 1951:

Once again the Communists will be hauled into court, not for overt acts of espionage or sabotage, not for failure to register their palpable allegiance to a foreign power, but for the ADVOCACY of revolutionary ideas. . . .

It all reads like a burlesque of heresy-hunting, but the joke is on democracy. . . .

In the long run, we believe the citizens of this republic—and free men everywhere—will come to revere Justices Black and Douglas and others like them who refused to join the stampede.

Norman Thomas, chairman, Political Affairs Committee, Socialist Party:

This outlawry of a political party by indirection under a treatment of the First Amendment which greatly qualifies the guarantee of freedom of speech and the press may well be a greater danger to American liberty than anything which the 17 leaders of the Communists now under arrest were doing to endanger the national safety.

It's YOU they're after!

Fight for the Bill of Rights!

(TEAR OFF AND MAIL)

CIVIL RIGHTS CONGRESS
23 W. 26 St., N. Y. 10, N. Y.

☐ I am joining the fight for a rehearing of the Smith Act. I have wired Pres. Truman urging a rehearing be set.

☐ I am enclosing $..... as my contribution to the fight for the Bill of Rights.

☐ I would like to order ..... copies of this pamphlet at 10¢ per copy, for which I enclose $.....

☐ I want to join the Civil Rights Congress, the organization at the forefront of the struggle to defend our constitutional liberties and human rights. Here is $1 for my 1951 membership.

☐ I am shocked at the recent mass arrests and have wired Pres. Truman demanding that he halt these Gestapo-like attacks.

(*name*) .....

(*address*) .....

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