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set forth in the portions of the statute which I have read?

A. No, your Honor.

Q. Now I have referred repeatedly and earlier in the case I read through several times the remarks of another judge who was interrogating jurors, just as I am doing. Do you think you remember in general what I said about (T-1032) the importance of an open mind? A. I do.

Q. And listening solely to the evidence and the exhibits and things of that kind and deciding solely on that basis? A. I do.

Q. And paying no attention to any newspaper talk or gossip or anything else of that kind, and do you remember that I said that the indictment is not to be considered as any evidence of the truth of the charge made against the defendants; do you remember that? A. I do.

Q. Because that is just a way of bringing the defendants into court and formulating the charge against them. Do you remember also that I spoke about the presumption of innocence and how the defendants were clothed with that presumption of innocence throughout the trial? A. I do.

Q. Do you have any doubt that you can follow my instructions as to the presumption of innocence and as to the effect of the indictment? A. I haven't any doubt.

Q. Have you ever been employed by, made contributions to, or had any dealings with any of the following publications: The Daily Worker, The Worker, (T-1033) The Communist, Political Affairs, Morning Freiheit, New Masses, In Fact, People's World, The German American, Soviet Russia Today, Masses and Mainstream, People's Voice, The Protestant, or The Pro-testant, Contact, The National Guardian, New Foundations, New Times, and Union Voice? A. No, your Honor.

Q. Have you or any member of your family had any dealings with, or ever been employed by: Cafe Society Uptown, Cafe Society Downtown, World Tourists, Inc., Amtorg-Tass News Agency, Earl Browder, Inc., The Soviet Embassy, (T-1034) any of the former Soviet Consulates, former Soviet Purchasing Commission, Freedom of the Press, Inc., International Publishers, New Century Publishers, Workers Bookshop, Jefferson Bookshop, Four Continent Book Corp.? A. No, your Honor.

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The Court: Mr. Borman, will you hand Mrs. Schultz the last two lists, list 3 and list 4?

(Clerk hands list to prospective alternate juror No. 1, who examines same.)

Q. Have you at any time been a member of, made contributions to, or been associated in any way with any of the organizations named on those lists? A. No, your Honor.

Q. Do you know or have you had any dealings with any of the following persons said to be the sponsors of Common Cause, Incorporated, one of the organizations listed in the last list, namely: Lieutenant General Robert E. Eichelberger, Rev. Dr. Samuel Shoemaker, Eric Warburg, Goodhue Livingston, Jr., Christopher Emmet, (T-1035) Sumner Wells, Dorothy Thompson, Arthur Bliss Lane, Rev. Robert I. Gannon, General Follett Bradley, Eugene Lyons, William H. Chamberlain, Dr. George S. Counts, Mrs. Lois Mattox Miller, Major George Fielding Eliot, Dr. Harry J. Carman, Mrs. Aida de Acosta Breckenridge? A. No, your Honor.

Q. Have you read any of the following publications: This is My Story by Louis F. Budenz, I Confess by Ben Gitlow, The Whole of Their Lives by Ben Gitlow, I Chose Freedom by Victor Kravchenko, Out of the Night by Jan Valtin, The Trojan Horse in America by Martin Dies, The Red Decade by Eugene Lyons, The Road to Serfdom by Hayek, The Struggle Behind the Iron Curtain by Ferenc Nagy, The War We Lost: Yugoslavia's Tragedy & the (T-1036) Failure of the West by Constantin Fotitch, Is Communism Compatible with Christianity by Clare Booth Luce? A. No, your Honor.

Q. Do you belong to any union? A. No, your Honor.

Q. Are you now or have you ever been a member of the Federal Grand Jury Association? A. No, your Honor.

Q. Do you—well, I have already asked that next question, which had to do with the political party, to which you have already answered.

Now from reading the newspapers or written matter of any kind or from conversation had with friends or others or by listening to the radio or in any other way, have you formed any opinions or impressions as to the

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merits of the charge unfavorable either to the Government or to the defendants or any of them which would prevent or hinder you from holding your mind fully open until all the evidence and the instructions of the Court are complete?  
A. No, your Honor.

Q. Have you at any time been a member of, made contributions to or been associated in any way with business or religious organizations, or organizations of any character in connection with the activities of which you have formed any opinions or impressions as to the merits of the charge, unfavorable either to the Government or (T-1037) to the defendants or any of them, which would prevent or hinder you from holding your mind fully open until all the evidence and the instructions of the Court are complete? A. No, your Honor.

The Court: Now as to the other prospective jurors, I wish to read that omnibus question—I have some other questions to address to Mrs. Schultz but I meant to read this in the beginning and I will read it now.

I request the prospective jurors to whom I have already addressed questions to listen carefully to all questions put from time to time to new prospective jurors as they are called into the jury box. It is your sworn duty and obligation to make known to the Court any fact, circumstance, relationship, or incident called for by any of the questions, whether or not such information supplements or qualifies answers previously given. This should not be a matter of any embarrassment whatsoever.

Now Mrs. Wolfe, has anything occurred to you, as I read these questions to Mrs. Schultz, that you feel that you should like to add?

Prospective Alternate Juror No. 2: No, your Honor.

The Court: And Mr. Davis?

Prospective Alternate Juror No. 3: No, sir.

(T-1038) The Court: And Mrs. Dunn?

Prospective Alternate Juror No. 4: No, sir.

The Court: So bear in mind that general question as I go on with the rest of this because if there

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is anything that comes into your mind even though I am still addressing the questions directly to Mrs. Schultz, it is your duty to speak up and tell me right away because sometimes a person does not think right away of something and as he reflects or as she reflects it comes into their minds and it is your duty to tell me immediately upon that happening.

*By the Court:*

Q. Now Mrs. Schultz, have you at any time been a member of, made contributions to, or been associated in any way with business or religious organizations, or organizations of any character whose officers or representatives have made any expressions of advocacy of or friendliness toward the Communists or Communism in general on the one hand, or of opposition or hostility to Communists or Communism in general on the other hand, which expressions you have heard or read in any manner, which have led you to form any opinions or impressions as to the merits of the charge, unfavorable either to the Government or to the defendants or any of them which would prevent or hinder you from holding your mind fully open until all the evidence and (T-1039) the instructions of the Court are complete? A. No, your Honor.

Q. In determining the truth or falsity of the testimony of any witness, would you, in accordance with the instructions of the Court, submit the testimony of such witness to the same scrutiny and test it by the same standards whether the witness was called by the defense or by the prosecution? A. I would.

Q. And would you do the same thing whether the witness was a member of a labor union, a Congressman, an employee of the Department of Justice, or of the FBI, or a Communist, or a member of the present or some former Communist Party, or friend or associate of any of the defendants? A. I would.

Q. If you were selected as a juror and came to the conclusion that a verdict of not guilty was required by the evidence in accordance with the instructions of the Court, would you be embarrassed in arriving at or rendering a verdict of not guilty, in any way connected with your

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employment, or by reason of your membership in, or affiliation with any church, political party, club, society, or any other organization of any kind whatsoever, or in any other manner? A. No, your Honor.

(T-1040) Q. Have you such a bias or prejudice against the Administration, or any agency of the United States or against any of the defendants, or Communists in general, or the Communist Party, whatever its aims and purposes may be, as would prevent you from reaching your verdict solely on the evidence presented in court and the law as contained in the instructions and rulings of the Court? A. No, your Honor.

Q. Have you formed any opinion or impression concerning the guilt or innocence of any of the defendants of the crime charged which it would require evidence to remove? A. No, your Honor.

Q. Have you formed any opinion or impression concerning the guilt or innocence of any of the defendants of the crime charged, which might prevent you from being completely impartial and free from bias in this case? A. No, your Honor.

Q. Have you ever expressed any opinions or views as to the guilt or innocence of any of these defendants? A. No, your Honor.

(T-1041) Q. Have you ever voted for or subscribed to any resolution or petition of any kind which expressed any opposition to Communists or to the Communist Party of the United States? A. No, your Honor.

Q. Do you know of any reason why you should not serve as a juror in this case, any fact or circumstance of such a nature as would prevent you from rendering a fair and impartial verdict based solely on the evidence and on the instructions and rulings of the Court? A. No, your Honor.

Q. I will ask you a few questions about your occupation.

(Clerk hands a paper to the Court.)

Q. (Continuing) What is your present occupation? A. None.

The Court: Mrs. Dunn, have you ever discussed with your son the subject of Communism or the Communists?

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Prospective Alternate Juror No. 4: I have not.

The Court: Have you heard any statements from any source or read any literature that has left in your mind any prejudice against Communists and Communism or any of these defendants?

Prospective Alternate Juror No. 4: No, sir.

Q. Mrs. Schultz, you say you have no occupation at the present time. Did you formerly have an occupation?  
A. Yes.

(T-1042) Q. What was that? A. I was personal secretary to Dr. Mae C. Schroeder.

Q. Did you perform the usual duties of a doctor's secretary? A. Personal.

Q. Sometimes when a person says that they are a clerk or a secretary or something like that, it is a little hard to tell just what they did. Was he a medical doctor? A. No, it was a she, Dr. Mae C. Schroeder, who was the Assistant Director of The Research Laboratory, but she had, I believe, to the best of my knowledge, two secretaries in The Research Laboratory, and I was considered a personal secretary, which I had nothing to do with the Laboratory.

Q. That is, you typed out letters for her? A. No.

Q. And you— A. I just took care of her personal matters, her social obligations.

Q. Oh, yes, A. And things of a personal nature.

The Court: Very well. You may challenge, Mr. McGohey.

Mr. McGohey: I will waive my challenge at this time, your Honor.

(Jury card container handed to the defendants.)

Mr. Isserman: If the Court please, I would like to have the record note our objections in the same form as (T-1043) heretofore made in respect of the questions last put by the Court to the alternate juror.

The Court: Very well.

Mr. Isserman: And to the generality of the same and to the failure to put the follow-up questions suggested in respect of the particular alternate jurors.

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The Court: I feel that I have put the follow-up questions wherever I thought that they fitted into the answers to questions that I had previously asked, but you may take objection to all questions that were submitted and that I did not ask, although you bear in mind what I said in the beginning, that I did not think it was something that counsel could submit to me as of right. I don't think that the submission of questions on the voir dire is like the putting of questions to a witness in a trial; but whatever the exception may be worth, you have it, and I allow your objection to be made, and to take an objection to my ruling and exception.

Mr. Isserman: It goes not only to the failure to put particular questions but the inadequacy of the questions put.

The Court: Yes, it goes to my entire questions as inadequate, improper, not sufficiently comprehensive, not in accordance with the suggestions of defense counsel and in all other respects, improper, inadequate and (T-1044) wrong, and also to my failure to put various questions that have been submitted in precisely the form in which they were submitted, and so on. I desire to have the record show your objection in the most comprehensive form so that if I am wrong the error may be properly set forth, and objection and exception noted.

Mr. Sacher: If your Honor please, out of an abundance of caution, may I ask whether the disposition which your Honor has indicated in regard to the accrual of the benefit of objections made by one to all will apply—

The Court: Yes, at all times during the whole trial.

Mr. Sacher: I understand that, but that will apply also, I take it, to Mr. Dennis throughout the trial?

The Court: Oh, I think so. I see no reason why—I see no reason why I should be all the more anxious to give him the benefit of it, and I do so, and I think that it is going to be very helpful here if, as we get ahead with this trial, you all bear in

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mind that an exception or an objection made is really for the benefit of all of those, so that this getting up, one after another, which I can understand sometimes a man feels he should do, may be avoided. I think you will find things will go so much smoother and to the advantage of everybody (T-1045) concerned, including all the defendants, if you will avoid that, but I give no direction that you must not do that. I really desire to avoid directions of that kind throughout the trial. They are contrary to my way of doing, and I find that lawyers, with a little leeway, a little flexibility, are much more likely to go along smoothly than if you start giving all kinds of directions that circumscribe their way of speaking and so on.

Now, you may proceed to the challenge.

Mr. Sacher: Will your Honor indulge us a moment?

The Court: Yes.

The Clerk: Alternate No. 3, Mr. Charles F. Davis, excused by the defendants.

(Prospective Alternate Juror No. 3 excused.)

The Clerk: James Patrick McGowan, Alternate No. 3.

(Mr. James Patrick McGowan takes seat 3 as Prospective Alternate Juror No. 3 in the jury box.)

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JAMES PATRICK MCGOWAN, Prospective Alternate Juror No. 3, was examined as follows:

*By the Court:*

Q. Mr. McGowan, have you heard all these questions I have been reading again and again? A. I have.

Q. As you listened to them has anything occurred to you that might make it difficult for you to act here in a (T-1046) completely fair and impartial way in this case?

A. The name on one of the lists, your Honor, is familiar to me. I think it is list No. 2.

Q. List No. 2? What is the name? A. Mr. Louis Francis Budenz.



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Q. Do you know him? A. I met him in October of 1947.

Q. Do you know him well? A. I met him at a Communion Breakfast which was held by an organization of which I am a member and an officer.

Q. As a result of your meeting him and knowing him, do you feel that you have some bent of mind in this case that might make it a little hard for you to serve impartially? A. Well, he was invited there as the principal speaker by this organization and, of course, while he was invited by the assistant director, we approved of his being invited to this Communion Breakfast as a speaker.

Q. Did he do or say something— A. He spoke on—

Q. —that left you with an impression that you think might affect your judgment in this case? A. He spoke on Communism.

Q. Well, you see, I am anxious to find out, not a catalogue of all the little things that everybody might have heard one way or another, but I want to find out whether there having been this incident, which it was (T-1047) your duty to explain to me, whether it has left you with some—in some frame of mind that would make it a little hard for you to act impartially. Don't you think it would? A. I am inclined to think that it might, your Honor.

The Court: Then you may be excused.

(Prospective Alternate Juror No. 3 excused.)

The Clerk: Mrs. Diana E. Zagat, No. 3.

(Mrs. Diana E. Zagat takes seat 3 as Prospective Alternate Juror No. 3 in the jury box.)

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DIANA E. ZAGAT, Prospective Alternate Juror No. 3 was examined as follows:

*By the Court:*

Q. I want to know first whether possibly, as you have sat there listening and thinking and pondering, you thought of something or other that may make it a little difficult for you to serve here as a strictly impartial and unbiased juror? A. No, your Honor.

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Q. No such thing has occurred to you? A. No.

Q. As you have heard the questions? A. No.

Q. Then I will proceed to ask them again as promptly as I can. And if I seem to be reading a little rapidly, you take that as no discourtesy but merely because you have heard them so often that I feel that you will understand them without my reading very slowly.

(T-1048) The Court: Mr. Borman, would you hand this young lady the first two lists, please.

(Clerk hands papers to prospective alternate juror.)

The Court: The other jurors will remember my omnibus question and listen to all these questions as I go over them again, and if there is anything that occurs to you, that you didn't say before, why, your duty is to speak right up.

Q. Mrs. Zagat, do you know or have you had any dealings with any of the persons named on those lists or members of their families? A. No, your Honor.

Q. Do you know anybody employed in or connected with the office or staff of the United States Attorney for this district? A. No.

Q. Do you know any of the judges or employes of this court or members of their families? A. No, your Honor.

Q. Have you or any member of your family or personal friend been party to any legal action or dispute with the United States or any of its officers, agents, or employes, or had any interest in such legal action? A. No.

Q. Have you any prejudice or bias for or against any defendant by reason of the race of any defendant which would prevent you from keeping your mind fully open until all the evidence and the instructions of the Court (T-1049) have been completed? A. No, your Honor.

Q. Have you or any relative or close friend of yours ever been the subject of any investigation or accusation by any committee of Congress? A. No.

Q. Have you ever been employed by the Federal Government? A. Yes.

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Q. In what capacity? A. With the Navy Department during the war, for three and a half years.

Q. Do you think that your occupation in the Navy Department during the war would give rise any feeling of bias in this case one way or another? A. No, your Honor.

Q. Either favorable or unfavorable to the Government or favorable or unfavorable to any of the defendants? A. No, your Honor.

Q. You don't think it would have any bearing on the case? A. No.

Q. Are you now seeking Government employment? A. No.

Q. Are any of your close relatives now or were they formerly employed by the Federal Government? A. No, your Honor.

Q. Have you or any member of your immediate family ever been associated with any agency, either public or private, which was or is engaged in the detection of law violations? A. No, your Honor.

(T-1050) Q. Do you remember I read off the names of the members of the grand jury which indicted these defendants. Do you know any of them? A. No, your Honor.

Q. Is or was any member of your immediate family a grand juror in this court? A. No.

Q. Have you or any member of your immediate family ever been associated with any agency of law enforcement? A. No, your Honor.

Q. Are you related or friendly to or associated with any employe of the Department of Justice or the Federal Bureau of Investigation, generally known as the FBI? A. No, your Honor.

Q. Do you know any Congressman who is now or who has been a member of the House Committee on Un-American Activities? A. No, your Honor.

Q. Do you know any present or former employe investigator or member of the staff of the House Committee on Un-American Activities? A. No, your Honor.

Q. Have you ever testified before or given information to the House Committee on Un-American Activities or the FBI? A. No, your Honor.

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Q. Do you know any person who has testified before or given information to the House Committee on Un-American Activities or the FBI? A. No.

Q. Have you ever served as a juror before? (T-1051)  
A. Yes.

Q. Have you been summoned and did you attend in any district court of the United States within one year prior to the time that you were summoned to appear at this term of court? A. No.

Q. Do you remember my reading the indictment several times? A. Yes, your Honor.

Q. And the quotation from the statute upon which the indictment was based? A. Yes.

Q. You think you remember them sufficiently for me not to read them again? A. Yes.

Q. Now, as to the statute, I want to ask you this question: have you any prejudice against enforcement of this law or against punishment of any person for conspiracy to teach and advocate the duty and necessity of the overthrow of the United States Government by force and violence as set forth in the portions of the statute which I have read? A. No, your Honor.

Q. I also read from the comments of that judge who was formally interrogating jurors, just as I am here. Do you think you remember pretty well what I read about that? A. I remember, your Honor.

Q. And how I stated that the indictment is no evidence whatever of the truth of the charge and that the defendants are clothed with the presumption of innocence and that (T-1052) it rests with them throughout the trial? Do you remember those statements of mine? A. I do.

Q. Do you have any doubt that you can follow my instructions on those points? A. No, your Honor.

Q. Have you ever been employed by, made contributions to, or had any dealings with any of the following publications:

The Daily Worker, The Worker, The Communist, Political Affairs, Morning Freiheit, New Masses, In Fact, People's World, The German American, Soviet Russia Today, Masses and Mainstream, People's Voice, The Protestant or the Pro-testant, Contact, The National

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Guardian, New Foundations, New Times and Union Voice?  
A. No, your Honor.

(T-1053) Q. Have you or any member of your family had any dealings with or ever been employed by:

Cafe Society Uptown, Cafe Society Downtown, World Tourists, Inc., Amtorg-Tass News Agency, Earl Browder, Inc., The Soviet Embassy, any of the former Soviet Consulates, former Soviet Purchasing Commission, Freedom of the Press, Inc., International Publishers, New Century Publishers, Workers Bookshop, Jefferson Bookshop, Four Continent Book Corporation? A. No, your Honor.

The Court: Will you kindly hand this young lady the next two lists, No. 3 and No. 4.

(Clerk hands papers to the prospective alternate juror.)

Q. Have you at any time been a member of, made contributions to or been associated in any way with any of the organizations named on those lists? A. No, your Honor. I don't see the American Legion. (T-1054) Is that on this particular list?

Q. It should be on one of these lists. I think you will find it probably—yes, on that list No. 4. It should be the third one. A. I am sorry, I beg your pardon.

Q. Are you a member of the American Legion? A. I am not now, no.

Q. You were at one time? A. About ten years ago.

Q. Were you a member very long, two or three years, something like that? A. No.

Q. Several years? A. No, about eight or nine months.

Q. During that time were you one of the officers of the American Legion? A. No, your Honor.

Q. Were you on any of its committees? A. No.

Q. Did you have anything to do with forming its policies? A. No, your Honor.

Q. In connection with your activities, whatever they were, the payment of dues or talking to people or reading literature or anything of that kind, in the most comprehensive manner, did any of that association leave your mind with a feeling of bias or prejudice here, either favor-

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able or unfavorable to the Government or favorable or unfavorable to any of the defendants? A. No, your Honor.

Q. Is it a fact that, as you look back over that (T-1055) association, it seems to you to have no bearing whatsoever on this matter here? A. No, your Honor. We were purely interested in the welfare department.

Q. So that you feel that as far as that is concerned and any other matter that has been brought up thus far you have a free and open mind without any prejudice one way or the other? A. Yes, your Honor.

Q. You remember a little while ago I asked you—and I had better refer back because, if one tries to ask the same question twice, you always change a word or two, and I try to make them all identical. So that I will refer back to my notes here. Do you remember I asked you whether you are now seeking Government employment and you said no? A. Right, your Honor.

Q. I will put that a little differently. Do you have any prospects, hope or desire of Government employment in the future? A. No, your Honor.

Q. The subject is entirely out of your mind? A. Yes, sir.

Q. Very well. Do you remember about that Common Cause, Inc., I read the names of the sponsors and asked other jurors whether they knew any of them; remember that? A. Yes, your Honor.

Q. Did you know any of them? A. One, your Honor.

Q. What is that? A. Major George Fielding Eliot.

(T-1056) Q. Major George Fielding Eliot? Now, let me see that. Major George Fielding Eliot, did you or do you know him at all well? A. Yes, sir, your Honor.

Q. How did you happen to meet him, in connection with your work during the war? A. No, your Honor.

Q. Socially? A. Socially.

Q. Do you know anything about this Common Cause, Inc.? A. No.

Q. I never heard of it myself. Did you? A. No, I haven't either.

Q. Have you any knowledge whatever of whatever Major Eliot's affiliations with that organization are? A. No, your Honor. I never heard of it until in the courtroom.

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Q. So that, naturally, you don't know anything about its policies or its literature or what it tries to do or not to do?  
A. I know nothing about it.

Q. Is there anything that has ever come up in connection with your acquaintance with Major Eliot that has left any bent of mind or prejudice that would affect your judgment in this case at all? A. No, your Honor. Our contact was purely social.

Q. What is that? A. Our contact was purely social.

Q. Yes, but you see, it might be a purely social contact and yet a person might be continually talking about one subject or another and leave a person with their mind influenced by what they had said, and be hard to get that out. That is not the case with you? A. No, your Honor.

(T-1057) Q. Now you remember I read a list of books and asked whether anyone had read those books? A. Yes.

Q. Starting with the one, "This is My Story, by Louis F. Budenz"—did you read any of those books? A. No, your Honor.

Q. Do you belong to any union? A. No, your Honor.

Q. Are you now or have you ever been a member of the Federal Grand Jury Association? A. No, your Honor.

Q. Do you or any close relative now hold, or have you or any close relative in the past held any office or position in or been a member of any committee of any political party? A. No, your Honor.

Q. Now that would include being district captain or any other position, but you say that you have not been? A. No, your Honor.

Q. From reading the newspapers or written matter of any kind or from conversation had with friends or others, or by listening to the radio or in any other way have you formed any opinions or impressions as to the merits of the charge, unfavorable either to the Government or to the defendants or any of them, which would prevent or hinder you from holding your mind fully open until all the evidence and the instructions of the Court are complete? A. No, your Honor.

Q. Have you at any time been a member of, made contributions (T-1058) to, or been associated in any way

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with business or religious organizations, or organizations of any character, in connection with the activities of which you have formed any opinions or impressions as to the merits of the charge, unfavorable either to the Government or to the defendants or any of them, which would prevent or hinder you from holding your mind fully open until all the evidence and the instructions of the Court are complete? A. No, your Honor.

Q. Have you at any time been a member of, made contributions to, or been associated in any way with business or religious organizations, or organizations of any character whose officers or representatives have made any expressions of advocacy of or friendliness toward the Communists or Communism in general on the one hand, or of opposition or hostility to Communists or Communism in general on the other hand, which expressions you have heard or read in any manner which have led you to form any opinions or impressions as to the merits of the charge, unfavorable either to the Government or to the defendants or any of them, which would prevent or hinder you from holding your mind fully open until all the evidence and the instructions of the Court are complete? A. No, your Honor.

Q. In determining the truth or falsity of the testimony (T-1059) of any witness, would you, in accordance with the instructions of the Court, submit the testimony of such witness to the same scrutiny and test it by the same standards whether the witness was called by the defense or the prosecution? A. Yes, your Honor.

Q. And would you do the same thing whether the witness was a member of a labor union, a Congressman, an employee of the Department of Justice or of the FBI, or a Communist or a member of the present or some former Communist Party, or friend or associate of any of the defendants? A. Yes, your Honor.

Q. If you were selected—

(Clerk hands paper to the Court.)

Q. I am asked to ask you a few more questions about Major Eliot. You remember that you told me that you knew him socially? A. Yes, your Honor.



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Q. And I am asked to ask you whether you are a reader of Eliot's column. I never heard of him myself, I hate to say it. A. No, I am not, your Honor.

Q. You are not? A. No.

Q. Has he ever discussed with you his views on Communism or Communists? A. No, your Honor. In the past few years we haven't seen too much of him.

Q. But irrespective of that he hasn't talked about Communists or Communism to you, so far as you recall? A. No, your Honor, he has not.

(T-1060) Q. Now I will go back to this next question: If you were selected as a juror and came to the conclusion that a verdict of not guilty was required by the evidence in accordance with the instructions of the Court, would you be embarrassed in arriving at or rendering a verdict of not guilty in any way connected with your employment or by reason of your membership in or affiliation with any church, political party, club, society, or any other organization of any kind whatsoever, or in any other manner? A. No, your Honor.

Q. Have you such a bias or prejudice against the Administration, or any agency of the United States, or against any of the defendants or Communists in general, or the Communist Party, whatever its aims and purposes may be, as would prevent you from reaching your verdict solely on the evidence presented in court and the law as contained in the instructions and rulings of the Court? A. No, your Honor.

Q. Have you formed any opinion or impression concerning the guilt or innocence of any of the defendants of the crime charged which it would require evidence to remove? A. No, your Honor.

Q. Have you formed any opinion or impression concerning the guilt or innocence of any of the defendants of the crime charged which might prevent you from being completely (T-1061) impartial and free from bias in this case? A. No, your Honor.

Q. Have you ever expressed any opinions or views as to the guilt or innocence of any of these defendants? A. No, your Honor.

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Q. Have you ever voted for or subscribed to any resolution or petition of any kind which expressed any opposition to Communism or to the Communist Party of the United States? A. No, your Honor.

Q. Do you know of any reason why you should not serve as a juror in this case, any fact or circumstance of such a nature as to prevent you from rendering a fair and impartial verdict based solely on the evidence and the instructions and rulings of the Court? A. No, your Honor.

Q. Now I will ask you a question or two about your occupation. You are stated here on the card as a housewife, is that right? A. Yes, your Honor.

Q. Do you do any work other than your occupation as a housewife? A. No, your Honor.

Q. Did you have any former occupation other than what you have stated here during the war? Were you working at any time in something else? A. Yes. Prior to that I was with Wanamaker's for a year.

Q. You were working in Wanamaker's for a year? A. That is right.

(T-1062) Q. Now what were you doing there? A. I was in the adjustment department.

Q. You were in the adjustment department, and for about a year? A. That's right.

Q. What is your husband's occupation? A. He has his own business, direct mail advertising.

Q. Direct mail advertising? A. Yes, sir.

Q. And what is the name that he uses? A. W. W. Zagat, 41 Union Square.

The Court: You may challenge.

Mr. McGohey: The alternates as they stand are satisfactory to the Government, your Honor.

The Court: Very well. Now I just want to say a word to the four ladies. We have some questions of law here that we started to discuss this morning and it is necessary that the matter be disposed of before you are sworn as alternate jurors, so that I ask you to please go to the jury room and await a summons from me, which will come shortly; I hope it will be only a few moments but I am going to try to dispose of the matter this afternoon, and

*Voir Dire*

then you will return here with the other twelve tomorrow morning at 10.30. 10.30 is the time I have told the other jurors to be here, and 10.30 tomorrow is when these ladies are going to be here.

As to the rest of the jurors, they may be discharged, (T-1063) or as far as their services in this courtroom are concerned, they should go back, I suppose, to Room 109 where they will receive further instructions.

The Clerk: The balance of the panel will return to Room 109.

(Four alternate jurors retire to jury room; and the balance of jury panel return to Room 109.)

The Court: Now gentlemen, we are going to take our recess in about a moment, but before then, in a moment of leisure at lunch time, I have been busily investigating the law further and I find the state of the law on that matter of who is in a position to move to suppress is as I thought this morning. It is just too clear for misunderstanding. Now listen to this:

“The first of these, which may be termed the personal interest exception, is that the rule’s protection may be claimed only by a person ‘aggrieved’ by illegal seizure. Only one whose constitutional rights have been invaded is said to be entitled to ‘complain’; the privilege of suppressing evidence is said to be ‘personal’; and suppression is likened to a ‘remedy’ for the victim of the search, not to be sought by others.”

There are citations in considerable numbers to support that, the statement which I have quoted from (T-1064) volume 58 of the Yale Law Journal, page 154, and the rule, as far as I can tell, is subject to no doubt whatsoever.

Now if I am wrong, I am wrong, but I don’t want to hear any more argument on that, and so we will take a recess now, and then we will go back to the other open question and see if we cannot dispose of it this afternoon.

Now, Mr. McCabe?

*Voir Dire*

Mr. McCabe: If your Honor please, just before the jury is sworn I should like to repeat with regard to the alternates the objection which I made the other day as to the twelve. As I have this written out, in the interest of time I might hand it up—I have made changes.

The Court: I think it would be better if you should make an objection. Is it a lot of argumentative matter?

Mr. McCabe: No.

The Court: Let me look at it.

Mr. McCabe: Just what I read the other day; I made certain changes (handing to the Court and handing to Mr. McGohey).

The Court (After examining): This may be copied into the record and in so far as it be deemed to constitute the making of one or more motions, they will (T-1065) be denied.

Mr. McCabe: Exception.

The Court: If it is just one motion, that will be denied. If it be considered several motions, each of them will be denied with an exception to all defendants.

(The paper is as follows:)

## FINAL OBJECTION TO ALTERNATES

1. The two peremptory challenges allowed by the Court to the eleven defendants, with the order that they must be used jointly if at all, and not severally, and now exhausted. Because this number is inadequate, I move that the Court grant defendants at least one additional challenge at this time.

2. For the reason that the Court has refused to put to the prospective jurors questions and follow-up questions as suggested by counsel for defendants, and has refused to embody the subject matter of those questions in a formulation of its own, and for the further reason that the Court's method of propounding questions, and the questions put to prospective jurors did not and were not calculated to, reveal disqualifying bias or prejudice, or

*Voir Dire*

indications thereof, defendants have been deprived of information required by the essential demands of fairness. They have thus been deprived of the benefits of challenge for favor or bias, and have been (T-1066) put to the necessity of employing peremptory challenges against prospective jurors in instances where the previous examination of such prospective jurors had indicated that, because of political, economic, social or religious considerations, surroundings, associations or because of other educible factors the prospective jurors might, or possibly would, be influenced unfavorably against the defendants, one or any of them. For these reasons, defendants move that at least one additional challenge be granted them at this time.

3. As the Court has declined to grant an additional challenge, I state to the Court that the jury as at present constituted, and as about to be sworn to try this case, is unsatisfactory to defendants, and that to compel defendants to proceed to trial before this jury constitutes a denial of due process and a denial of the rights of defendants to trial by an impartial jury.

4. In support of the foregoing motions and objections, defendants incorporate the affidavits heretofore filed of Stansfeld Sargent, Benjamin J. Davis, Jr., and all other affidavits heretofore filed setting forth the difficulty or impossibility of procuring an unbiased jury.

(T-1067) The Court: Now we will take our recess for ten minutes.

Mr. Sacher: Your Honor, there is just one thing I have in mind, your Honor.

The Court: Yes?

Mr. Sacher: Some of the defendants would have need of leaving the city tonight, and if it were possible to dispense with their appearance in the morning it would be terrifically convenient. There are just two I think who would leave.

The Court: Well, if I can straighten this other matter

Mr. Sacher: Oh, I think it can.  
that we have, out—

*Voir Dire*

The Court: Then maybe we can arrange that but when we once get started with the trial—

Mr. Sacher: I understand.

The Court: —there is going to be no absenteeism on the part of any of the defendants.

Mr. Sacher: We understand that.

The Court: All right.

(Short recess.)

(T-1068) The Court: Now I think the first thing to do is to give Mr. Shapiro, who is going to enlighten me as to this contention made on behalf of the defense that before the trial and before the jury is sworn rather than before the trial proceedings begin—to give him a chance to speak.

Now what did you find out about that, Mr. Shapiro?

Mr. Shapiro: Your Honor, I have re-examined the cases, those which are cited in our brief and the Amos case which Mr. Crockett referred your Honor to, and upon re-examining the cases, I adhere to the position that I took yesterday. The law quite clearly is that for purposes of Rule 41(e) the trial begins when the case is moved for trial, and in that connection I draw your Honor's—

The Court: That means January 17th.

Mr. Shapiro: January 17th. In that connection I draw your Honor's attention to the case of *United States vs. Salli*, cited in our brief, which is at 115 Fed (2d) 292. That is a case from this Circuit, an opinion by Judge Learned Hand speaking for the Court of Appeals. The facts in that case are precisely the same as the facts in this case, with one exception, and that exception is that the delay here is more aggravated. The facts in that case, as shown by the record of the case in the Court of Appeals, appear as follows: About four months before the case (T-1069) was moved for trial a search and seizure occurred. On a given date—in this case March 19, 1940—the record shows that the Government moved the case for trial, and at that point the defendant offered a motion based on the search and seizure provisions of the Constitution. The trial judge refused to accept the papers and said that it was too late, in the absence of a showing as to why the motion had not been made seasonably.

*Voir Dire*

The Court: Now that is the very first thing they did.

Mr. Shapiro: The case was moved for trial and then the motion came.

The Court: It had not begun—

Mr. Shapiro: The jurors weren't even in the courtroom yet.

The Court: All right.

Mr. Shapiro: And that is clearly shown by the record.

Now on that set of facts, the Court of Appeals plainly, after analyzing all of the Supreme Court decisions, including the Amos decision upon which Mr. Crockett relies—the Court of Appeals affirmed the trial judge, and that decision, which summarizes the law in all the Circuits, has since been adhered to not only by the (T-1070) Court of Appeals in this Circuit but by the Courts of Appeal in other Circuits. I think perhaps it would be helpful to the Court if I just hand up the opinion—

The Court: Yes.

Mr. Shapiro: —rather than take the time to read what Judge Hand had to say.

The Court: Well, if it is Judge Learned Hand, it probably isn't very long.

Mr. Shapiro: I put a little check mark at the middle of the page where the discussion starts, the left-hand column, I think it is (handing).

The Court: (After examining) Well, you know, you must be one of these—oh, I think I have it.

Mr. Shapiro: The little pin check mark there.

The Court: It is one of those invisible pencils that you have, but I see the place—two little dots.

Mr. Shapiro: No, there is a pin check mark; perhaps I can find it.

Mr. McGohey: That is probably my fault, your Honor.

The Court: That is all right.

Mr. McGohey: I object to marking up papers.

The Court: I don't blame you—oh, there is the place right there (indicating).

Mr. Shapiro: Yes; and, by the way, Judge, on (T-1070-A) the next page you will find a discussion of this other problem which you just talked about in the Yale Law Journal, which confirms what you said.

*Voir Dire*

The Court: Yes. Well, I am not going to bother looking at that because I have got that decided. I am going to stick to one thing at a time.

(Examining.)

(T-1071) The Court: Very well. I will hear from the other side.

Mr. Crockett: If your Honor please, I assume that overnight you have had occasion to consider the Supreme Court's decision in *Amos v. United States*, 255 U. S. 313?

The Court: Yes.

Mr. Crockett: If so, you will recall that in the *Amos* case a motion was made for the return of the property that had been seized after the jury was sworn but before any evidence had been taken. The Court below refused to accept the motion and on appeal the Supreme Court ruled that the court below was in error, that the motion was properly made, since, under no circumstances, would it be presumed a collateral issue so as to interrupt the taking of testimony and require the going into of a new hearing on the issue of fact presented in that case.

The reasoning behind the rule, Rule 41(e), seems to be that a motion of this nature is timely at any time when it does not require that the Court go into consideration of a collateral issue. Obviously here where our motion was made even before we began to question jurors on the *voir dire*, and certainly before there was any juror, and obviously before there was any testimony, the motion was timely under the Supreme Court decision (T-1072) in *Amos v. United States*.

I don't want to take up the Court's time by giving a lot of citations. I have here a volume called "Defending and Prosecuting Federal Criminal Cases." There is an entire chapter on this subject. I have indicated on pages 218 through 220 the summation given by the author, where he refers to numerous Supreme Court as well as Circuit Court decisions. I shall be glad to pass this up to the Court.

In connection with the *Salli* case it is my understanding—



*Voir Dire*

The Court: Better let me look at that textwriter you have there.

(Mr. Crockett hands volume to the Court.)

The Court: Of course, in so far as your right to make copies and all that, that is already taken care of by Mr. McGohey's statement on the record, isn't it?

Mr. Crockett: I should think so. I don't think any order is necessary on it.

The Court: So we are dealing now with the matter in so far as it involves the motion to suppress.

Mr. Crockett: The motion for return.

The Court: For return.

Mr. Crockett: Or, in lieu thereof, to suppress the evidence.

(T-1073) The Court: Yes. And the present state of the record is that that motion as made was denied and that I have refused to accept the motion papers on the motion that was made, and we are now discussing whether I should persist in my refusal to receive those papers or whether I shall adhere to the ruling that I have already made.

Mr. Crockett: That is right.

The Court: Has somebody got that Amos case here, 255 U. S.?

Mr. Crockett: I have copied here, I think—

Mr. McGohey: We have it.

The Court: Oh, you have the volume?

Mr. Gordon: Yes, I hand your Honor the volume. There is a piece of paper marking the case, your Honor.

The Court: I don't think there is much contribution by that textwriter—Hauser & Walser. They just quote from one case after another, the way those textwriters so often do, and there is practically nothing in the way of indicating the principle the way the old-fashioned textbooks used to do. Nowadays they just quote from one case after another and you have what is more or less of a digest.

I don't see how, Mr. Crockett, you get around this *United States v. Salli* where Judge Learned Hand covers the case thoroughly and refers to the Amos case (T-1074)

*Voir Dire*

also at the same time. I don't see how you get around that Salli case.

Mr. Crockett: If your Honor please, with all due respect to the Second Circuit, I am relying upon a United States Supreme Court decision, the Amos case, in which the motion, as I explained before, was made immediately prior to the swearing of the jury, and the Supreme Court said it was in time. I understand the Salli case, and I must admit quite frankly, I haven't read it, but I have had one of my assistants digest it and give me a report on it, and his report indicates that the motion there was made after they had started taking the evidence. If you have the case available—I am speaking now to Mr. Shapiro—I shall be glad to check it again and see.

The Court: I will be very glad—

Mr. Crockett: But, anyway, my position is, obviously, the Supreme Court opinion on the matter takes precedence over the opinion of the Second Circuit.

What we are discussing here is what the state of the law was before Rule 41(e) was adopted because Rule 41(e) clearly indicates, in the advisory committee's note 2, subdivision (e), "This rule is a restatement of existing law and practice with the exception hereafter noted," and that exception merely provided that in the future you cannot make motions like this before a United (T-1075) States Commissioner; they must be made before the Court.

The Court: Yes.

Mr. Crockett: Otherwise the rule did not intend to change the pre-existing state of the law.

The Court: Even if you were right, there would still remain the complete absence of any excuse for waiting so long. You see, from what has been told me here, the situation was known to your client immediately upon his arrest pursuant to the bench warrant. That is the time, or immediately thereafter, that this alleged illegal seizure was made. Now, it is not as though there were some facts and circumstances that were unknown, but the delay has been entirely unexplained, there has been no reason whatever given for it, and even if it were true that the motion might be made at the time you suggest, still, in the absence of any explanation for the delay, it would not be timely.

*Voir Dire*

Mr. Crockett: I think what your Honor overlooks is that we preserved our rights against any possibility of any claim of waiver, such as your Honor is suggesting, by immediately going before the Federal District Court in Detroit and asking for the return of these documents. That is why I handed up, in connection with my motion, a certified copy of the record, to show that was done. Under those circumstances I fail to see how it can be (T-1076) contended that we waived anything.

The Court: If you make a motion in the wrong place, where you were not entitled to have it granted, I don't see how that preserves any of your rights.

Mr. Crockett: It is not a matter of making the motion in the wrong place. We were following the literal language of Rule 41(e), which says that the motion should be made in the court where the person is arrested. I believe there is language to that effect. Anyway, that is where we made the motion, and I submit it was properly presented to that Court under Rule 41(e). However, because of circumstances, property not being within the jurisdiction of that court, our motion was denied there with the suggestion that it be renewed here in the Southern District of New York.

Relying upon the existing state of the Federal Law, the United States Supreme Court in *Amos v. U. S.*, we were not compelled to make this motion at any time prior to the swearing of the jury. We made the motion at that time. Under those circumstances, I submit the motion is timely and should be allowed.

The Court: You bear in mind that when you made the motion, which was denied, you had not said anything about making any motion before this judge out—where was it, in Detroit?

(T-1077) Mr. Crockett: Your Honor is referring to the oral motion, I take it?

The Court: Yes.

Mr. Crockett: That I made on Monday? And you are correct.

The Court: I don't know which day you made it.

Mr. Crockett: Well, it was on Monday, March 7th, that is right.

*Voir Dire*

The Court: You made a motion and that motion I denied, and you did not say a word about there having been some previous motion made before some judge somewhere else to get this paper back, and it is only afterwards when—

Mr. Crockett: You are right.

The Court: —you are in effect moving for leave to renew the motion and serve papers on it, which I refuse to accept, that that question came up.

Mr. Crockett: Where I disagree with your Honor's interpretation is in your continued reference to moving to reconsider. I am offering this—you can interpret it as a motion to reconsider, you can also interpret it as an original, new motion, made prior to the time that the jury was sworn.

The Court: You see, Mr. Crockett, one of the things that I don't think defense counsel and I are in agreement about, one of the many things, you seem to (T-1078) think, and your colleagues, that you make a motion and then, when it is denied, you can make it over and over again, adding a little here and a little there, and just as though you had a right to do that. It is my understanding of the law that when you make a motion, such as the motion we are talking about, and it is denied, that you cannot make it again without leave of court, but you say, "Well, if you forget something the first time, we will make it again, and you have to take it as a brand new motion"; and then, if you forget something else again, you bring it in as a new motion, as a brand new motion; and then if you forget something else, you can bring it on all over again. That is not my understanding of the law.

Mr. Crockett: I am presenting it to your Honor with the suggestion that, for the sake of doing justice in this case, for the sake of upholding the constitutional rights, and now I am referring to the Fourth Amendment, the Court must necessarily interpret this motion, in whatever manner is necessary, to assure these constitutional rights to my client. I think that under those circumstances the Court would be justified, if it felt that there had to be a motion for leave to file, since you had ruled on the previous, earlier motion, you would be justified in considering this

*Voir Dire*

application for leave to file a new motion or, if you felt that (T-1079) otherwise it would come up as an altogether new motion, an original motion, you would be justified in considering it from that point of view.

The Court: I am frank to say, as a discretionary matter, I am not disposed to exercise my discretion favorably because I think it is obviously something that is going to interfere with the progress of the trial, and it has come too late.

What do you say, Mr. Shapiro, to this statement of Mr. Crockett's that this cannot be too late because they made the motion, which was denied—where was that made anyway?

Mr. Shapiro: The motion, your Honor, was made before Judge Picard in Detroit. The facts, briefly, are these: The indictment in this case was returned on July 20th. Mr. Winter was arrested on July 20th. The documents in question were seized at that time in his automobile under a bench warrant. The arrest was pursuant to a bench warrant issued by this Court. On July 30th the matter came on before Judge Picard and the stenographic transcript, which apparently is incomplete, the one that Mr. Crockett has attached to his papers, but that stenographic transcript shows that a motion was made before Judge Picard for the return of the documents that were taken, and at that time the assistant United States attorney represented to the Court that those documents had been sent on to New York and he thought the motion ought to be made here. Judge Picard agreed with that, and at that point the matter was dropped. That was on July 30, 1948.

Now, from that date on, Mr. Winter was represented by counsel in this court. In the month of August, in the months of September and October and November, and in January and in February motions were made in this court. Not one motion related to this matter.

Now, it is curious why the motion was not made. I suggest the possibility that this is in line with the strategy that was used on the jury challenge. Your Honor will recall that in November, when it was made, when the Government agreed that it be set down for a hearing, counsel withdrew

*Voir Dire*

it, and when the case was called for trial in January we then got tied up in a seven weeks collateral proceeding. I suggest, your Honor, that this is the same thing over again.

The Court: I kept thinking all the time they had something which was going to come out.

Mr. Shapiro: The same thing is true here. On the merits I have no concern at all because I am convinced, on the facts, as we know them, that there wasn't an (T-1081) illegal search or seizure. In fact, there was no search at all. But be that as it may, on the question of procedure, your Honor has heard from Mr. Crockett, from Mr. Gladstein, Mr. Sacher and not one of the three gentlemen has offered any reason why they waited from July 30 until the middle of March to make this motion.

The Court: All right; I will adhere to my ruling. The jurors may come back and be sworn.

Mr. McGohey, you have something to say?

Mr. McGohey: Before the jurors come back, it would seem to me, as I understand it, the whole jury is coming in tomorrow for instructions by the Court but that there will be no further proceedings?

The Court: That is right.

Mr. McGohey: And we will start on Monday?

The Court: We will start on Monday; and as soon as we get through here, we are all going back into my chambers to talk about the time to be given for openings.

Mr. McGohey: That is what I wanted to bring to the Court's attention.

The Court: I will do that privately.

Mr. Isserman: I would just like, for the record, to renew the motions heretofore made, particularly on March 7, 1949, addressed to several matters at that date, including the motion to disqualify for bias and (T-1082) prejudice, several motions to dismiss the indictment on various grounds, motion for bill of particulars—

The Court: You had better make them one at a time so that I can intelligently pass on them. Is that the day that you made—you and your colleagues—made the 22 motions?

Mr. Isserman: I didn't count them, your Honor. That is the day I believe that your Honor has reference to.

*Voir Dire*

Mr. McGohey: My notes indicate 25, your Honor.

The Court: 25 motions?

Mr. McGohey: My notes indicate that.

The Court: Well anyway—

Mr. Isserman: I might say that several of them, so far as I can see on the record, were not disposed of. Maybe we ought to take care of that first. One is a motion to reconsider a decision on the challenge to the array made on page 93—on page 98 of the record. It is completed on page 99.

The Court: Motion to reconsider the challenge on the array?

Mr. Isserman: To reconsider, your Honor, the decision on the original challenge. There was such a motion made by Mr. Gladstein and that doesn't seem to have been disposed of.

The Court: Well, I deny the motion now.

(T-1083) Mr. Isserman: And the other one that seems not to have been disposed of is a motion for renewal of a bill of particulars made on page 92 and it seems to end on page 93.

The Court: Well, I deny that.

Mr. Isserman: Now if the Court please, at this time I would like to renew the motions without stating them at length, which were made on—

The Court: I don't like to take a pig in the poke. I have been paying such close attention here that I don't like to pass on motions without knowing what you are talking about. Now you had better take your time and let me know what each one is because I am not just saying "Motion denied" without listening here. I am paying strict attention every minute of the time.

Mr. Isserman: That is what I want to do, your Honor, but I am suggesting that I do not here repeat them at length. If your Honor wants me to, all right.

The Court: You can describe them briefly, even if there are 20 or 30 of them.

Mr. Isserman: I will. The first is the motion to disqualify your Honor on the ground of bias and prejudice, made on pages 4 to 8 of the record of March 7, 1949.

The Court: I deny that, that I disqualify myself.

*Voir Dire*

Mr. Isserman: The next was a series of motions (T-1084) addressed to the indictment, motions to dismiss the indictment, one on the ground of a statement by President Truman, on pages 8 to 14 of the record; one on the ground that a speedy and public trial before an impartial jury was impossible at this time. Your Honor will remember because of the affidavit which was submitted, it was made—

The Court: Wasn't that the one that Mr. Sacher was going to have copies of the exhibits made?

Mr. Isserman: That is the one Mr. Crockett argued at that time.

The Court: Oh, but that one of Mr. Sacher's has not been served yet so that isn't before me.

Mr. Isserman: I am not referring to any motion which Mr. Sacher did not make, and I am referring here to motions which appear of record.

The Court: All right.

Mr. Isserman: Another one addressed to the indictment was one on the fact that the indictment charged no offense against the United States, which I argued on pages 41 and the following of the record; another went to the question of a 90-day postponement—

The Court: I deny all the motions addressed to the sufficiency of the indictment, but I repeat what I said before, that when the evidence is all in I will then (T-1085) entertain a motion addressed to the indictment against the background of the proof, and that is something that will come in due time, but as far as the four corners of the indictment are concerned, and those extraneous matters that you have referred to, I adhere to the determination I made previously, and I deny each of those motions.

Mr. Isserman: Another motion that we would like to renew, without stating it at length, is a motion made by Mr. Crockett at page 27 of the record for a 90-day postponement in view of the state of the community—

The Court: I deny that motion.

Mr. Isserman: Another one is a renewal of the motion for a bill of particulars, which appears on page 92 of the record.

The Court: Motion denied.



*Voir Dire*

Mr. Isserman: Another is the denial of the several motions for severance made by defense counsel at various times that day.

The Court: Yes, I deny them as they are made again. I deny each and every one of them.

Mr. Isserman: Another matter I desire to renew is the motion made to take the deposition of William Z. Foster on the grounds set forth in that application.

The Court: Motion denied.

(T-1086) Mr. Isserman: And finally—just semi-finally, I might say, the motion addressed—

The Court: That is not bad.

Mr. Isserman: —the motion addressed to the Government to disclose names of the witnesses before trial.

The Court: Motion denied.

Mr. Isserman: And, finally, renewal of all the motions in their entirety addressed to the impaneling of the jury based on all the objections which have been made before your Honor and which your Honor has ruled on.

The Court: Motion denied.

Mr. Isserman: In respect to all these motions we now ask for reconsideration and for renewal.

The Court: Well, I do not think it is necessary for me to reconsider them. They were all based on what I thought was sufficient consideration at the time. As a matter of fact, now that you have enumerated them, they were all matters familiar to me and I suppose I did, in a sense, give brief reconsideration to them, but in any event as made and as reconsidered to that extent I deny them all.

Mr. Isserman: Now, in view of your Honor's ruling now we object to proceeding with the trial on the ground that the Court's rulings on these motions and on the motions made in connection with the impaneling (T-1086-A) of the jury, each individually and taken collectively, deny the defendants a fair trial before a fair and impartial jury, and compel the defendants to stand trial on an indictment which does not charge an offense against the United States and does not apprise the defendants of the nature of the accusation against them, all of which being a denial of the rights guaranteed to them by the First, Fifth and Sixth Amendments to the United States Constitution.

(T-1087) The Court: Motion denied.

*Voir Dire*

Now what happened to that motion of yours, Mr. Sacher? You know you had that big batch of newspaper clippings and I wouldn't want to have it happen Monday morning just when we were going to have the summations begin—

Mr. Sacher: You mean openings.

The Court: —that you will come in and hand that up and say, "I have now served a copy on Mr. McGohey," and then it will take me a day or two to read all those things and there will be a little postponement.

That I do not want to have.

Mr. Sacher: Well, I suggested to Mr. McGohey this morning that the clippings, a duplicate of the clippings is in preparation, and I suggested to him that I might hand it up to your Honor and that he might borrow it from your Honor pending the completion of that, and then your Honor may have it over the week-end, but in usual fashion they declined.

Mr. McGohey: Oh, your Honor, "usual fashion." I don't know how even you and I in the past—

Mr. Sacher: Can't I make a statement to your Honor without Mr. McGohey interrupting me?

The Court: But you have made lots of statements—

Mr. Sacher: And I suggest that Mr. Gordon be (T-1088) silenced, too, because he feels that when Mr. McGohey isn't making enough headway he ought to get his gentle little voice into the situation—

The Court: Mr. Sacher—

Mr. Sacher: And I have the two of them.

The Court: Mr. Sacher, remember what I said to Mr. Gordon one day? And you can do the same thing.

Mr. Sacher: All right.

The Court: However, now—

Mr. Sacher: I think we will have it tomorrow morning.

The Court: Now what are you going to do about that?

Mr. Sacher: I think we will have them complete tomorrow morning.

The Court: That is fine.

Mr. Sacher: I will serve them on Mr. McGohey and I will give them to your Honor.

The Court: That is fine.

*Voir Dire*

Now we will have the jurors come back, and I hope that nothing happens between now and tomorrow morning.

Now does everybody agree that we have all the motions out of the way except the one that is lying on the table there that we are going to get tomorrow morning?

(T-1089) Is that your understanding, Mr. McGohey?

Mr. McGohey: Well, that is pretty hard to say. The motions have been so numerous and have come so fast, I am not quite so sure about this last series that Mr. Isserman made, but so far as my notes indicate, all of the motions have been disposed of except—

The Court: That particular one that we discussed.

Mr. McGohey: —Mr. Sacher's, yes.

The Court: Isn't that your understanding, too, Mr. Sacher and Mr. Isserman?

Mr. Sacher: Yes.

Mr. Isserman: Yes.

The Court: So then we have a clean slate except that one matter which will come up tomorrow.

(The four alternate jurors return to the courtroom at 4.35 p. m.)

The Court: Well, Mrs. Zagat—is that how you pronounce it?

Alternate Juror No. 3: Zagat, your Honor.

The Court: Zagat. Mrs. Zagat, is there something that has occurred to you that you think that I should know before the jurors are sworn in?

Prospective Alternate Juror No. 3: Your Honor, for the record, I don't know whether I brought out the fact that my husband was a member of the Legion.

(T-1090) The Court: No, you did not.

Prospective Alternate Juror No. 3: He still is.

The Court: He is a member of the American Legion?

Prospective Alternate Juror No. 3: Yes. I thought that when I said I had not belonged that would cover it, but I couldn't belong, being a civilian, but he was a member.

The Court: That is all right. I didn't ask you a specific question about that but it is quite proper that you should tell me.

*Voir Dire*

Now let me ask you one other thing. Is your husband one of the officers of the American Legion?

Prospective Alternate Juror No. 3: No.

The Court: Is he on any committee of the American Legion?

Prospective Alternate Juror No. 3: No, your Honor.

The Court: As far as you know, does he have anything to do or has he in the past had anything to do with formulating the policies of the American Legion?

Prospective Alternate Juror No. 3: The policies? No, your Honor.

The Court: Well, now having thought about it, do you answer all my questions in the same way despite the fact that your husband is a member, as you thought, of the American Legion, or to put it differently, is that (T-1091) going to affect your judgment at all in the matter?

Prospective Juror No. 3: No, your Honor, in no way.

The Court: Very well.

Then you may swear the jurors.

The Clerk: The alternates rise, please.

(Four alternate jurors rise.)

The Clerk: Raise your right hands.

(Four alternate jurors raise righthand.)

(Four alternates were duly sworn.)

The Court: Now do you ladies remember the little remarks I made yesterday afternoon to the other jurors before they left? Perhaps you were not here, but I do want to urge upon you and I direct you not to read anything in the newspapers or in magazines or pamphlets or anywhere else that has any bearing on the case whatsoever, no matter how remote. I don't want you to do any listening over the radio to any commentators about the case or anyone else that is talking about the case. I don't want you to discuss the case or any parts of the case among yourselves or with your families or with your friends or with anyone. Now you understand about that, don't you? It is so important to do that because you have been selected here just as carefully as I could select you, as persons who have free and open (T-1092) minds. Now it is of no benefit what-

*Voir Dire*

ever to have an open mind in the beginning if you are going to have something or other that isn't evidence in the case influence your mind during the time that you are sitting as a juror. There is just no sense to it, and so you have got to through this case, letting your judgment gradually crystallize up until the very end, solely based upon the evidence you hear from this witness box and from the documents that are put in. You must not listen to anything else of any name, nature or description. That is the way we administer justice here in the United States, and you are performing here one of the most sacred duties of citizenship, so do take my admonition in this regard most seriously.

Now tomorrow you will return here, as I have directed the other jurors to return, at 10.30 tomorrow morning. That is merely because that was the time that I fixed for them, and you are now, as the four alternates, to do things just the same as the other jurors. It is anticipated, however, and I feel quite certain that it will eventuate, that you will be almost immediately excused until Monday when the trial will commence by the opening statements of counsel, so that, as I believe, there will be no proceedings tomorrow other than the mere assembling of all the jurors, and (T-1093) then I will in all probability excuse you until Monday morning at 10.30.

Now the sessions of the court will probably be for some time the usual hours that we have had in the past here, 10.30 to 4.30, with a luncheon recess from one until 2.30. Probably Friday afternoons there will be no session of court so that you may plan your affairs so as to sort of count on having Friday afternoons open. If I deem it necessary, either because of my own fatigue or some other reason to shorten sessions a little or take an occasional adjournment for a day or a day or two, why, I beg of you to take all these things calmly and with a serene state of mind. Don't let little things bother you during this trial here. You know, there may be times when there will be legal argument and you will go out to the juryroom and all kinds of little irritations come up. Just make up your minds that we will all go along together here and do our duty and not let little things like that bother us. I will try to arrange the proceedings with as little inconvenience

*Voir Dire*

as may be, so that you may be excused now until tomorrow morning at 10.30.

And if counsel will come up—

Mr. Sacher: Your Honor—it is all right for the jurors to go; it is a personal request.

(T-1094) The Court: Very well.

(Four alternate jurors excused from the courtroom.)

Mr. Sacher: If it would be possible for you to excuse the defendants until Monday morning—

The Court: Oh, yes, I will do that.

Is there any objection to that, Mr. McGohey?

Mr. McGohey: Well, your Honor, if all we are going to do is convene tomorrow and advise the jury to come back at 10.30 on Monday, I would have no objection to it. But if there are going to be some motions made tomorrow—

Mr. Sacher: Well, the only thing will be the affidavit and the clippings on which there will be an oral presentation.

The Court: Well, all right.

Mr. McGohey: That is agreeable to me, but it occurred to me that overnight counsel might think of something—

Mr. Sacher: We promise not to think overnight.

Mr. McGohey: What?

Mr. Sacher: We promise not to think overnight.

Mr. McGohey: Well, I won't reply to that, your Honor. The point is this, my waiver is on the understanding that we are not going to have some motions (T-1095) made and then some question as to whether or not a defendant who is not here ought to be here or whether the making of a motion during his absence is a violation of some right that he has. That is the only question that I have.

The Court: Well, I understand, Mr. Sacher, that you have all agreed, all counsel and all defendants, that tomorrow morning the only motion that will be made will be the submission of this motion that we have been discussing, that will be submitted on oral argument and there will be no other proceedings whatsoever.

Mr. Sacher: That is correct.

The Court: Other than my letting the jurors go until Monday morning.

*Opening Statement by the Court*

Mr. Sacher: And will it be permissible for just one of defense counsel to appear tomorrow morning?

The Court: Yes, I think it will.

M. Sacher: Will your Honor also be kind enough to excuse Mr. Dennis, from attending this afternoon's conference in chambers?

The Court: Yes, yes, if you desire it.

Mr. McGohey: Oh, wait a minute, your Honor. We are going to confer in there about openings.

The Court: Oh, he is going to make an opening too, that is right. I guess he should be there.

You ought not to do this sort of thing by proxy. (T-1095-A) If you are going to represent yourself, Mr. Dennis, you had better be right on the job, and so let us go in here now and discuss the times that we are going to have for the openings, and before anything else comes up, court is adjourned for the afternoon.

(Adjourned to March 18, 1949, at 10.30 a. m.)

(T-1096)

New York, March 18, 1949;  
10.30 o'clock a. m.

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TRIAL RESUMED

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Present: Mr. Gordon, Mr. Sacher.

(12 jurors and 4 alternates in the jury box.)

The Court: Now, Mr. Sacher, have you got your motion ready?

Mr. Sacher: I have, your Honor.

(Mr. Sacher hands to Court and to Mr. Gordon.)

The Court: You may leave them right in the envelope and I will take them. That is the motion that you spoke of the other day?

Mr. Sacher: That is right.

The Court: That I said I would give careful consideration to over the weekend and announce my determination Monday morning at the opening of court.

*Opening Statement by the Court*

Now, ladies and gentlemen of the jury, including the alternates, you have come here today just as a formality, as most of you understood—at least some of you did—that we are not to start the opening statements of the trial today because of the illness of one of the counsel, but that will begin in all probability and depends somewhat (T-1097) on my determination on this motion, on Monday morning, so that you are to return here at 10.30 on Monday when probably the trial will commence by the opening statements of counsel.

Now I announced yesterday in the absence of those of you who were sworn the day before that the way we will proceed here is that the court sessions will be resumed at the schedule we had before we chose the jurors, that is to say, we will start at 10.30, then we will have a luncheon recess from 1 to 2.30, then we will proceed until 4.30, and on Fridays, so that everyone may have a little chance to do some of the things that everyone has to do from time to time, we will have no session Friday afternoons, so that you may plan your time, if there is some shopping to do or some little business affairs that you have to attend to, why you can plan on having your Friday afternoons to do that; and then as we proceed, if I feel either due to some fatigue or some other circumstances that seems to warrant it, I may take an occasional adjournment for a couple of days.

I do beg of you, as we go through this trial, to be patient. You know, I have spoken of that so often and, really, there are few qualities in life that are so important. If you once get yourself in the frame of mind where you know that you have a task ahead to be done, (T-1098) and it has to be done carefully, and it has to be done just right, and you don't let little things disturb you at all, why, then you get a certain calm and peace of mind about it. That is the sort of thing that is of the essence in the administration of justice. Now, do that.

When arguments come or things happen that may have a little tendency to stir you up, just say to yourselves, "Now, we are going to listen to the evidence and we are going to look at the proofs. We are going to keep our minds open right until the end when we go out to decide the case."



*Opening Statement by the Court*

When you get yourself in that frame of mind you will find not only that it will be much easier for you but that the quality of your work in the administration of justice will be of the quality that it should be. Justice does not flourish amid emotional excitement and stress. Justice flourishes amidst calm and serenity of mind, and that is what I beg you to do.

I have spoken several times about reading and talking and so on. You are probably going to hear me say so much about it that it will get a little tiresome, but it is so important that I feel I must keep talking about it. You must not read any newspapers, any magazines, any pamphlets, any written matter of any kind having anything (T-1099) to do with this trial. You simply must not do that. You must not listen to the radio, where anything is said about the trial, or any comment about any of the personalities connected with the trial. And you must not talk about the case among yourselves; and you will so often be tempted to do that, but you must not do it. You must not talk among yourselves or with your families, or with your friends, or with anyone else. That means that if someone approaches you, no matter how well you may know him or know her, you must just quietly say, "I cannot discuss the case at all." And if it is some stranger who approaches you and seems disposed to talk about the case, of course, you will do the same thing. Do not permit anyone to discuss the case with you in any manner, shape or form. And if someone seems to be pressing the matter in a way that you think is not right, remember, you may always report to me anything that you think I should know, whatever it may be. Just keep yourselves aloof from any discussion with anyone whatsoever.

We have got a real good start here, and if you will just go on the way I have been telling you, I think you are going to find everything will be all right.

Bear in mind one other thing too. Under the (T-1100) law I am permitted, not simply to instruct the jury at the end of the case, I am permitted to instruct the jury occasionally as the case progresses. I intend to follow this case with the utmost care and from time to time I will very likely give you some instructions that will tend to keep your minds right on the ball, so that you will always know just what the issues are; and where I think you need some help

*Opening Statement by the Court*

in following the proof, I will try to give it to you. You have had a chance to see me over a little time here and I think you will understand when I tell you that I am going to try to be just as helpful to you as I can within the sphere that the law allots to me.

As to the determination of facts and the finding of a verdict, of course, those are matters for your determination, upon which I shall not encroach, but I shall try to help you all I can as we go along.

We will take a recess until Monday morning at 10.30.

(Adjourned to March 21, 1949, at 10.30 a. m.)

(T-1101)

New York, March 21, 1949;  
10.30 o'clock a. m.

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TRIAL RESUMED

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The Court: I have considered the papers in connection with the affidavit—rather, the motion to dismiss the indictment and for a continuance of 90 days. I deny the motion.

Ladies and gentlemen, I have a few observations that I desire to make. You may remember, during the questioning of the jurors, that I read from the statute under which the indictment was drawn and read from the indictment and I construed it a little bit. I am going to do that again now very carefully, so that you may understand at the outset of the case what the case is about.

I am going to try very hard not to let this case get out of hand. I want you to keep your eye on the ball all through the trial, and I am going to help you all I can to do that.

Here is the statute, and it is quite simple:

“It shall be unlawful for any person—  
“to knowingly or wilfully advocate or teach the duty or necessity of overthrowing or (T-1102) destroying any government in the United States by force or violence;

*Opening Statement by the Court*

“to organize any society, group or assembly of persons who teach or advocate the overthrow or destruction of any government in the United States by force or violence.

“For the purposes of this section, the term ‘government in the United States’ means the Government of the United States, the government of any State, Territory, or Possession of the United States, the government of the District of Columbia, or the government of any political subdivision of any of them.

“It shall be unlawful for any person to conspire to commit any of the acts prohibited by the provisions of this Title.”

That is the law.

Let me read to you the indictment, which refers to that very law that I have just read, and I shall omit the names of the defendants because you have heard those from time to time, and you will again:

“The grand jury charges:

“1. That from on or about April 1, 1945, and continuously thereafter up to and including the date of the filing of this indictment, in the (T-1103) Southern District of New York, and elsewhere,—

then naming the defendants—

“the defendants herein, unlawfully, wilfully and knowingly, did conspire with each other, and with divers other persons to the Grand Jurors unknown, 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, and knowingly and wilfully to advocate and teach the duty and necessity of overthrowing and destroying the Government of the United States by force and violence, which said acts are prohibited by Section 2 of the Act of June 28, 1940 (Section 10, Title 18, United States Code), commonly known as the Smith Act”—

*Opening Statement by the Court*

from which I just read to you.

“2. It was part of said conspiracy that said defendants would convene, in the Southern District of New York, a meeting of the National Board of the Communist Political Association on or about June 2, 1945, to adopt a draft resolution for the purpose of bringing about the dissolution of the Communist Political Association, and for the purpose (T-1103-A) of organizing as the Communist Party of the United States of America a society, group, and assembly of persons dedicated to the Marxist-Leninist principles of the overthrow and destruction of the Government of the United States by force and violence.”

(T-1104) “It was further a part of said conspiracy that said defendants would thereafter convene, in the Southern District of New York, a meeting of the National Committee of the Communist Political Association on or about June 18, 1945, to amend and adopt said draft resolution.

“It was further a part of said conspiracy that said defendants would thereafter cause to be convened, in the Southern District of New York, a special National Convention of the Communist Political Association on or about July 26, 1945, for the purpose of considering and acting upon said resolution as amended.

“It was further a part of said conspiracy that said defendants would induce the delegates to said National Convention to dissolve the Communist Political Association.

“It was further a part of said conspiracy that said defendants would bring about 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 overthrow and destruction of the Government of the United States by force and violence, and would cause said Convention to adopt a Constitution basing said Party upon the principles of Marxism-Leninism.

*Opening Statement by the Court*

“It was further a part of said conspiracy that said defendants would bring about the election of officers (T-1105) and the election of a National Committee of said Party, and would become members of said Party, and be elected as officers and as members of said National Committee and the National Board of said Committee, and in such capacities said defendants would assume leadership of said Party and responsibility for its policies and activities, and would meet from time to time to formulate, supervise, and carry out the policies and activities of said Party.

“It was further a part of said conspiracy that said defendants would cause to be organized Clubs, and District and State units of said Party, and would recruit and encourage the recruitment of members of said Party.

“It was further a part of said conspiracy that said defendants would publish and circulate, and cause to be published and circulated, books, articles, magazines, and newspapers advocating the principles of Marxism-Leninism.

“It was further a part of said conspiracy that said defendants would conduct, and cause to be conducted schools and classes for the study of 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.

“In violation of Sections 3 and 5 of the Act (T-1106) of June 28, 1940 (Sections 11 and 13, Title 18, United States Code), commonly known as the Smith Act,” from which I read.

You will note that the defendants are not charged with being Communists generally, nor are they charged with being members of the Communist Party in general.

The charge is specific and refers to a conspiracy to organize an assembly of persons who teach and advocate the overthrow and destruction of the Government of the

*Opening Statement by the Court*

United States by force and violence in the manner and form set forth in the indictment I have just read to you and not otherwise.

The case does not involve a question of guilt by association but a charge of specific guilt against each defendant as an individual.

Now you also heard me refer from time to time to the fact that you must decide the case on the evidence. You remember when I referred to the witness stand and I said the evidence that comes from the witness stand and the exhibits that are put in evidence. Now when a person takes the witness stand that person is sworn in and gives testimony under oath subject to certain penalties, and when a witness takes that witness stand that witness is subject to cross-examination, one of the traditional (T-1107) means in our system of American jurisprudence to ascertain the truth.

Now I have also explained to you that when the lawyers speak the lawyers make arguments. In their opening statements and in their summations those arguments should be listened to by you and carefully considered for such weight as you may consider that they are entitled to.

But what those lawyers say is not evidence. You will decide the case on the evidence. The lawyers may help you in sifting the evidence, they may help you in outlining their case and what they expect to prove, but what they say is not evidence.

Now one of these defendants, Eugene Dennis, has elected to represent himself here. He has no lawyer now. Under our law he is entitled to represent himself, but when he rises to address you in his opening statement and when he makes arguments, as the lawyers for the other defendants do, you will listen, you will give such weight to those arguments that he makes as you think they may be entitled to, but what he says is not evidence until and unless he gives sworn testimony in the case.

Now you will bear those things in mind and we will now proceed with the openings of counsel.

Mr. McGohey.

*Motion of Defendants Counsel Re Opening Statements*

(T-1108) Mr. Isserman: If the Court please, before Mr. McGohey starts, I would like to object to your Honors' opening statement, that portion which refers to the charge as being not one of being a Communist or member of the Communist Party generally, and also to the reference to lawyers as not necessarily embracing counsel for the Government. I think that ought to be made clear.

The Court: Oh, I referred naturally to all the lawyers, those representing the Government and those for the defense.

You do not contend, do you, Mr. Isserman, that what a lawyer says constitutes evidence in the case?

Mr. Isserman: That is true, and that is true whether it be the United States Attorney or defense counsel.

The Court: You admit that it does not constitute evidence.

Mr. Isserman: It is not necessary to admit it. It is a fact.

The Court: That is so, and what I said before is applicable to both counsel for the Government and counsel for the defendants.

Mr. Isserman: Now if the Court please, I would like to make a short motion addressed to the matter of opening statements and move on behalf of my clients that I be permitted to make an opening statement on their (T-1109) behalf at the end of the Government's case and when the Government's case is completed rather than at this time, as is the custom and right of defendants in many federal districts, and I urge favorable consideration of this motion on two grounds.

The first ground is the vagueness of the indictment and the lack of similiarity on many issues, and there is the bill of particulars which has been demanded which makes it impossible at this time to present with any degree of adequacy the proof to be offered on behalf of the defendants. Much of the evidence to be presented by the defendants will necessarily depend on the evidence to be presented by the Government. So at this time to attempt to estimate the Government's case on the strength of this indictment places the defendants in an impossible position in respect to their opening.

*Motion of Defendants Counsel Re Opening Statements*

My second ground is that there is every indication that the prosecution's case will be of such duration as to destroy the effectiveness of an opening at this time because of the lapse of time between the presentation of the opening on behalf of my clients and the actual presentation of evidence on behalf of my clients.

Under those circumstances the effectiveness of a presentation being destroyed, to compel my clients at this time to make this presentation would be a denial (T-1110) of due process and I therefore move in the case of my clients that the opening statement be made at the end of Government's case instead of the requirement that it be made now.

The Court: What do you say about that, Mr. McGohey?

Mr. McGohey: If your Honor please, in my experience of many years it has been the practice that all openings by all counsel be made at the opening of the case. I don't know that there is any case law on it.

The Court: Can you refer to the Rules of Criminal Procedure?

Mr. McGohey: I don't think there is any rule in the Rules promulgated by the Supreme Court. Neither am I aware at the moment of any rule in the Rules promulgated by the District Court. But that is a matter we can look into between now and this afternoon and certainly between now and tomorrow morning.

The Court: I am only concerned with whether the matter is one resting in my discretion or whether it is a matter of right.

Mr. McGohey: I don't think there is any duty. That is a matter resting in the Court's discretion.

(T-1111) The Court: All right. If that is a matter resting in my discretion, in the exercise of my discretion I deny the motion.

Mr. Sacher: May I address the Court in support of a similar request? I would like to appeal to your Honor's discretion that in the light of what Mr. Isserman said that my opening be deferred to the end of the Government's case.

I have another request.



*Opening Statement on Behalf of the Government*

The Court: Let me pass on this one first.

In the exercise of my discretion I deny that motion and I will similarly rule as to all of the defendants and consider a similar motion to have been made on behalf of each and with similar ruling and exceptions to all.

Mr. Sacher: I respectfully request that in view of the fact that your Honor read the indictment in full to the jury that you be good enough to instruct the jury that notwithstanding the reading of the indictment all of the defendants are presumed at this time and until the close of the evidence and the argument and instructions of the Court to be innocent. They are clothed with the presumption that they are innocent of each and every charge contained in the indictment.

(T-1111-A) The Court: I so charge the jury. That you will remember I repeated many times during your questioning as prospective jurors, and I repeat it, and I also repeat what I said then, that the indictment is merely a charge. It is not evidence whatever of the truth of the charge.

Yes, Mr. McGohey.

(T-1112) OPENING STATEMENT ON BEHALF  
OF THE GOVERNMENT

Mr. McGohey: May it please your Honor, ladies and gentlemen of the jury, as Judge Medina has told you, I am the United States Attorney for the Southern District of New York: I represent the Government in this prosecution, which is commencing to be presented before you this morning.

It is customary, as those of you who have served on juries before know, for the prosecutor, at least, to make a statement to the jury at the commencement of a trial of this kind. We, you and I and the Court and all of us, are here together to try an indictment which was filed last summer by a grand jury in this district. The indictment outlines, as the Court has told you, outlines a charge of crime; and my purpose in making this statement to you now is to give you a sort of blueprint to help you to relate

*Opening Statement on Behalf of the Government*

to those charges, the evidence that I propose to present to you from witnesses on the stand to support the charges of crime in the indictment.

The grand jury has charged that these defendants have committed certain acts which are a violation of the law of the United States, and that law, as the Court has read to you this morning, is embraced in a statute which was passed by the Congress and signed and approved and, therefore, became law upon the approval of the (T-1113) then President of the United States in July of 1940.

That law provides, among other things, in substance, the following, which are particularly related to the case we are about to try. First, that it shall be unlawful to knowingly and wilfully advocate and teach the duty and necessity of overthrowing the Government of the United States by force and violence;

Secondly, that it shall be unlawful to organize a society, group or assembly of persons who teach and advocate the overthrow of the Government of the United States by force and violence;

And, third, that it shall be unlawful to conspire to do either of those two things which I have just described.

In this indictment the grand jury has charged that from April 1, 1945, and thereafter up to the filing of this indictment last summer, on July 20 of last summer, these defendants—these defendants here in court—conspired to do both of those things, that is to say, the grand jury has charged that William Z. Foster, who is not here and whose absence will be explained later, but the grand jury charged that William Z. Foster, Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter and Gus Hall conspired to accomplish two objectives: first, to organize the (T-1114) Communist Party of the United States of America, as a group of persons to teach and advocate the overthrow and destruction of the Government of the United States by force and violence; secondly, having created the organization through which to operate, they conspired further to carry out their program and thus to teach and advocate

*Opening Statement on Behalf of the Government*

the duty and necessity of overthrowing and destroying the Government of the United States by force and violence.

The indictment names twelve defendants. However, one of the twelve, William Z. Foster, is not presently on trial. Because of his illness, the Court has directed that the trial be severed as to him. Accordingly, we are proceeding against the other eleven defendants who are here.

The charge of conspiracy is set forth in the first paragraph of the indictment, which his Honor has just read to you.

The remaining nine paragraphs of the indictment set forth the details of the indictment. Briefly, these paragraphs charge that these defendants brought about meetings in New York City in June and July of 1945 of the National Committee and the National Board and the National Convention of the Communist Political Association, in order to dissolve that Association and to organize in its stead the Communist Party of the (T-1115) United States of America. They charged that it was a part of the conspiracy that these defendants would assume leadership of the Communist Party of the United States of America; it is further charged that the defendants would organize clubs, district and state units of their party; that they would recruit new members of their party, and that they, the defendants, would publish books, magazines and newspapers; that they would organize schools and classes, in all of which it was planned that there would be taught and advocated the Marxist-Leninist principles of the duty and necessity of overthrowing and destroying the Government of the United States by force and violence.

Now, that is what we charge. To support that charge we propose to prove by witnesses on that stand, and documents which they will introduce, just what these defendants did, what these defendants said, and what these defendants caused others under their supervision and control to do, and to say what the defendants actually did at that Convention in July, 1945, according to their own statements, was to reconstitute the Communist Party of the United States of America; to educate the working class in the course of its day-to-day struggles, for its historic mission, the establishment of Socialism. They based (T-1116) the party upon the principles of Marxism-Leninism.

*Opening Statement on Behalf of the Government*

I ask you ladies and gentlemen to remember that phrase, Marxism-Leninism. You will hear it frequently throughout this trial. We propose, we say, that we will establish that it is fundamental in the principles of Marxism-Leninism:

(1) That Socialism cannot be established by peaceful evolution but, on the contrary, can be established only by violent revolution; by smashing the machinery of government, and setting up in its stead a dictatorship—a dictatorship of the proletariat.

(2) That this smashing of the machinery of government and setting up of the dictatorship of the proletariat can be accomplished only by the violent and forceful seizure of power by the proletariat under the leadership of the Communist Party.

These defendants, by means of the schools and the publications of the Communist Party which they established in this country in 1945, taught and teach that the classic model for forceful and violent overthrow of the Government of the United States is the Russian Revolution of October 1917. That revolution, you will recall, under the leadership of Lenin, established the dictatorship of the proletariat in Russia.

At this Convention in July, 1945, these (T-1117) defendants said that they were reconstituting the Communist Party; that is, that they were setting up anew, something which, while not then existing in July 1945, had existed before. To do this, they dissolved the Communist Political Association and immediately reorganized as the Communist Party of the United States of America. By this act they made a deliberate choice between organizations which they declared were fundamentally different. In order to show that difference, and to show the nature and the choice, or the nature of the choice, rather, which these defendants then in 1945 deliberately made, it is necessary to go back beyond the holding of that Convention of 1945.

The Communist Party, which the defendants said they were reconstituting, had indeed previously existed. The Communists in this country, first established their party

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here shortly after the successful Communist Revolution in Russia at the end of the first World War.

The party adopted various names during its early days, but eventually it became the Communist Party of the United States of America, and so remained until its dissolution in 1944. At various times prior to that time, all of these defendants were members, and some of them were officers of that Communist Party.

They dissolved that party, however, in 1944, (T-1118) and established in its stead the Communist Political Association, of which they also became members.

This change was much more than a mere change in name from the Communist Party to the Communist Political Association. It was something fundamental. These defendants said that it was an abandonment by Communists in the United States of the objectives, the doctrines and the program which they advocated ever since their founding.

Now here is what happened. For some years prior to 1944, the Communists of the United States were organized under the leadership of Earl Browder. He held the office of general secretary, which was then the highest position in the party. In January of 1944 Browder recommended to the National Committee of the party that it should change its character and objectives at its forthcoming National Convention. Current historical developments, said Browder, demanded the change, and the particular historical development to which he was referring was the meeting of Stalin, Roosevelt and Churchill at Teheran, which had occurred two months earlier, in November 1943. The Teheran declaration, you will recall, had announced that these three heads of state, Stalin, Roosevelt and Churchill, had reached agreement for postwar collaboration which (T-1119) it was hoped would save the world from the scourge of war for generations to come.

Browder said that this meant that Communists in the United States should subordinate their struggle for the establishment of Socialism to a policy of collaboration and cooperation with all classes of people in the United States, in order to develop, he said, in the United States a national unity, broad enough to support the international coalition of Great Britain, Soviet Russia and the United States, which he said had been established in Teheran.

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The National Committee approved Browder's recommendations, and called a National Convention to meet in New York in May of 1944. The Convention met, and in a few moments dissolved the Communist Party of the United States, and on the same day, in the same hall, the same men and women who dissolved the Communist Party then constituted themselves a new convention, and after three days of deliberation and discussion, they organized the Communist Political Association. They elected officers, and a National Committee, which included eight of the defendants now on trial, namely, Dennis, Davis, Gates, Green, Thompson, Williamson, Winston, and Winter. William Z. Foster was also named to the National Committee; a tenth defendant, (T-1120) Gus Hall, was elected an alternate member of this Committee. Earl Browder was elected president of the new Association. The office of general secretary, which he had held previously in the Communist Party, was abandoned. The defendants Davis, Dennis, Foster, Green and Thompson were elected vice-presidents of the new Association, and the defendant Williamson was elected secretary of the new Association.

They adopted for their new Association a constitution which stated in its preamble that, the Association looked forward to an era in which the people of the United States, by their free choice, through democratic processes, could bring about a solution of the contradiction between the social character of production and its private ownership.

In his address to the convention, Browder said that it was necessary for Communists to find a program which would unite the democratic progressive majority of the American people of all classes so as to remove the fear that, after military victory had been won, peace among the nations might not become a signal for the outbreak of great class struggles within the nations.

The defendant Dennis presented a resolution which endorsed Browder's report. He expressed supreme (T-1121) confidence in Browder's leadership and he urged upon the Convention the adoption of Browder's proposals.

The defendant Williamson called Browder's report inspiring.

*Opening Statement on Behalf of the Government*

Not one of the defendants in this case opposed Browder's proposals at the Convention. Indeed, the convention adopted a special resolution extolling Browder and his leadership.

Mr. Gladstein: Mr. McGohey, will you pardon an interruption, please?

If your Honor please, I don't like to interrupt the United States Attorney and I do so very, very reluctantly, but, for the last few minutes, I have been sitting here listening to what purports to be a statement of the events antedating the period referred to in the indictment.

I have been looking carefully at the indictment in this case, which says nothing about reconstitution of any organization.

I have been looking at the indictment with particular interest in the dates.

The indictment charges that these defendants on or about April—

Mr. McGohey: If your Honor please, I don't like to interrupt, but I don't like argument—

The Court: Mr. Gladstein, you know, this (T-1122) interrupting business—

Mr. Gladstein: I don't like to do it.

The Court: —can be a nuisance. I have found sometimes, and I don't mention anybody in particular, but I have found sometimes that when a point is to be made it can be made briefly and succinctly and in contemplation of reasonable intelligence on the part of the Court, or it can be made in a prolix, repetitious, unnecessarily drawn-out manner, which generally makes a bad impression.

You object to what Mr. McGohey has been saying—

Mr. Gladstein: May I—

The Court: I understand the nature of your objection. And I tell you, there is involved in this case specific intent. This is one of those crimes which is only punishable where there is the specific intent. I rule that the background that Mr. McGohey has been referring to is relevant to that subject, and I shall permit him to continue.

Mr. Gladstein: May the record show, your Honor, my objection to this line of opening statement and to the Court's ruling because it permits—

*Opening Statement on Behalf of the Government*

Mr. McGohey: If your Honor please, I object to the "because" and for the assignment of reasons.

Mr. Gladstein: At least let me state my reasons.

Mr. McGohey: May I object? May I be heard (T-1123) in my objection?

The Court: Yes, you may, Mr. McGohey.

Mr. McGohey: Your Honor has been quite patient with all of us when we wanted to make statements, and I understand that counsel for the defense will get opportunity to make their openings, and I object to my opening being interrupted by an argument. I have no objection to counsel objecting to something, but I submit that when the Court has ruled, the trend of my argument should not be further interrupted—the trend of my opening, rather, should not be interrupted by argument by defense counsel. It is unheard of.

Mr. Gladstein: I express my regret but I feel the compelling necessity—

The Court: But you persist. I understand.

Mr. Gladstein: May the record show that the reason for my objection is that Mr. McGohey is speaking about matters not contained within the indictment and referring to dates prior to the date—

The Court: I understand.

Mr. Gladstein: —referred to in the indictment.

Mr. McGohey: That is precisely what your Honor has ruled I have a right to do.

The Court: Of course, I have so ruled. Of course it is the law and I may say, addressing myself (T-1124) to counsel here generally, there is nothing more disturbing to a lawyer making an argument than interruption. In a good many years of experience I have found that there is hardly anything that a lawyer may say that cannot be readily corrected by proper ruling by the Court if one waits until the lawyer has concluded his remarks. There may be exceptions when some highly emotional and highly inflammatory utterance is of such a character that unless stopped at once it may have an effect upon some juror or jurors that cannot be eliminated, but surely there was nothing here this morning of such a character. And so all I say is this: I think in the interests of your respective clients—and I refer to both sides—it is very much better



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to refrain from interruption. Where you have some point it can readily be made generally a little later and I will hear it, and then this interruption of the trend of thought will be avoided and then there will be avoided also another thing, because sometimes when that sort of thing goes on it gives the impression that perhaps it is done purposefully and to disturb the continuity of a lawyer's argument. I have no notion that that is so in this instance, but I say those things are open to misconstruction and I think it is very much better if we can all refrain from interruptions in the (T-1125) future.

Now, Mr. McGohey, you may proceed.

(Record read by reporter.)

Mr. McGohey: Oh yes, just before I was interrupted I had brought to the attention of the jury that the defendant Dennis had presented a resolution which endorsed Browder's report and that Dennis had expressed supreme confidence in Browder's leadership and urged the adoption of Browder's proposals.

The defendant Williamson called Browder's report inspiring.

Not one of the defendants in this case opposed Browder's proposals at the Convention. Indeed, the Convention adopted a special resolution extolling Browder and his leadership.

Now Browder also declared that the Communists assembled there wanted to convince all classes of people, including capital, labor, business and professional people, that Communists were serious and earnest in their proposals for a national unity broad enough to include capital and labor.

Browder said that the Communists wanted to make sure that humanity would be organized for peace for generations to come, and, as I said before, among the Communists assembled at that Convention, for whom Browder, (T-1126) without objection, assumed to speak, were the defendants Foster, Dennis, Williamson, Thompson, Davis, Green, Winter and Hall.

Now in sharp contrast, you will see that when the Convention met the following year in July, 1945, and reconstituted the Communist Party, as charged in the indict-

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ment, these defendants repudiated—repudiated this peaceful program of Browder, which they had approved and adopted the year before. Indeed, they repudiated Browder, too, because they removed him from office and elected the defendant Foster in his place at the head of the party.

The actions and intentions of these defendants at that 1945 Convention are illuminated and clarified by events which immediately preceded it.

Your Honor, I wonder if I might ask for a short recess now.

The Court: Yes, a ten-minute recess.

(Short recess.)

(T-1127) Mr. McGohey: May it please the Court—

Mr. Isserman: If the Court please, before Mr. McGohey continues, I understand that it is now the ruling of the Court that objections be reserved until the close of the statement.

The Court: No, I won't prevent any of you from interrupting somebody, but I would suggest that you be sparing in doing it. As I said a little while ago, my own understanding of the thing is that if somebody is making some completely irrelevant and improper, inflammatory and emotional appeal, with the shouting and yelling that goes with it, that perhaps it is necessary to interrupt, only, however, where the thing is being improperly and wrongfully done. Now I have given no instruction that you may not interrupt. I have given a little piece of kindly advice, that I think it is better not to do it. I think it is better for you.

Mr. Isserman: Well, I would like to move at this time that we be permitted to make our objections in so far as they go to the scope of the opening after Mr. McGohey is finished with his opening, and by our not making our objections while he is engaged in his opening, that our rights be preserved.

The Court: No, I will make no omnibus ruling now or later, in anticipation of things. I will pass (T-1128) on everything as it comes along, pass on it on the merits. If you feel that you have to interrupt or that you should interrupt, why, that is up to you. I make no ruling of a

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general character. It always seemed to me that it was unwise for judges to do that. I will pass on each situation as it comes up.

Mr. Isserman: I might say that our concern is not with anything inflammatory but with the matter which in our judgment went beyond the scope of the indictment.

The Court: Well, you know, Mr. Isserman, that sometimes in not taking up every little thing is better. You take the opening arguments of counsel and the closing arguments of counsel. I have always thought a little leeway was probably a good thing, and if a man steps over the line a tiny bit, which has not happened here at all yet, I think sometimes it is better to let it pass, but that is for you to decide. I make no general ruling about it at all, but whatever has been presented to me so far I have ruled on, and the references by Mr. McGohey were, in my judgment, completely relevant and proper, and he may proceed.

Mr. McGohey: If the Court please, now we had gotten to the point where we were going to discuss the (T-1129) 1945 Convention. The actions and the intentions of these defendants—I stress that—the actions and intentions of these defendants at that 1945 Convention are illuminated and clarified by events which immediately preceded the holding of the Convention.

In April 1945 when the Communist Political Association was not yet one-year old, there appeared an article about American Communists in a French publication, a publication which is the official theoretical organ of the Communist Party of France. The article was later published in full in the "Daily Worker" which, as we shall show, is an official daily organ of the Communist Party. It was published in the Daily Worker on May 24, 1945, just two days after the first anniversary of the formation of the Communist Political Association. This article was entitled, "On the Dissolution of the Communist Party of the United States." Its author was a man named Jacques Duclos, one of the leaders of the Communist Party in France. Browder, who thus described Duclos, said that the article unquestionably reflected the general trend of opinion of European Marxists in relation to America, and

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that the article thus demanded the most respectful consideration.

(T-1130) The article first analyzed Browder's 1944 reports, recommending the dissolution of the Communist Party and the formation of the new Communist Political Association. It condemned Browder's proposals for peaceful collaboration as contrary to sound Marxist-Leninist doctrine. This French Communist leader Duclos said that Browder's proposals constituted a notorious revision of Marxism for three reasons:

1. Because Browder's proposal recommended long term class peace in the United States;
2. Because Browder's proposal recommended the suppression of class struggle in the United States in the post-war period; and
3. Because Browder's proposal recommended the establishment of harmony between labor and capital in the United States.

On June 2, 1945, only a few weeks after the publication of that article by the French Communist leader, the defendants Dennis, Williamson, Davis, Foster, Green and Thompson, with other members of the National Board of the Communist Political Association, who were in effect its executive and controlling group, held a meeting at which they adopted a draft resolution accepting the views of the French Communist Duclos, condemning their existing policies as a revision of Marxism. (T-1131) They also directed that the draft resolution be published in their official organ, the Daily Worker, and announced that a special section of the Daily Worker would be set aside for the purpose of carrying on among the members a discussion concerning this draft resolution.

Moreover, they decreed that the draft resolution would govern the policy and practical mass work of the Association during this discussion period.

Thereafter, on June 20th, the defendants Foster, Dennis, Williamson, Davis, Green, Thompson and Winter, with others in the National Committee, called a convention to meet in the City of New York on July 26, 1945. They also,

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on June 20th, removed Browder from control and placed the direction of the Communist Political Association in the hands of a special secretariat consisting of the defendants Foster, Dennis and Williamson.

The views of Foster, Dennis and Williamson, on the one hand, and those of Browder, on the other, were all published in the Party organs during this discussion period.

Browder maintained that his views were correct.

The defendants Foster, Dennis and Williamson, in compliance with the views of the French Communist leader Duclos, condemned what they and Duclos called Browder's revisionism. They did this in obedience to (T-1132) Duclos and, further in obedience to him, they urged the reconstitution of the old Communist Party so as to conform to what Duclos called true Marxist-Leninist teaching, that is, as an organization dedicated to the purpose that our government must be overthrown and destroyed, and that this can be achieved only by force and violence and not by peaceful collaboration or through the ballot.

Thus, as I said before, you will see the sharp contrast. In 1944 the defendants dissolved the old Communist Party and abandoned the struggle for establishing Socialism here by violent means. They helped organize the Communist Political Association and dedicated themselves to the task of establishing Socialism in the United States by peaceful democratic means. A year later they repudiated that position. They reconstituted, they went back to the old Communist Party organized to establish Socialism in the United States according to the Marxist-Leninist teaching. That teaching is—as we shall show—that Socialism can only be established by the violent overthrow and destruction of our constitutional form of government through the smashing of the State government and the setting up of the dictatorship of the proletariat by violent and forceful seizure of power under the (T-1133) leadership of the Communist Party.

We shall show that this 1945 Convention which reconstituted the Communist Party, elected each of these defendants to the National Committee of that Party. That Committee, we shall show, is the highest authority in the Party between Conventions.

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The National Committee is also empowered to elect such officers as it deems proper; and a National Board to carry out the policy and decisions of the Committee, the National Committee, during the—between, rather, the meetings of the National Committees.

As soon as the National Committee, including all of these defendants, was elected in 1945, it in turn elected to this National Board seven of these defendants, namely, Foster, Dennis, Williamson, Thompson, Davis, Stachel and Potash. Foster was also elected National Chairman of the Party and, with Dennis, Williamson and Thompson, was elected to a fourth member secretariat of the Party.

In 1946 the National Committee, with all of the defendants still on it, added the defendant Winston to the National Board, and they also made him national organizational secretary. The defendant Stachel was made national chairman of the Department of Education, Agitation and Publication. The defendant Davis was (T-1134) made national chairman of the legislative committee.

In 1947 the National Committee, with all of the defendants still on it, reconstituted the National Board so that its entire membership consisted of the defendants named in this indictment.

Now I propose to outline to you what we shall prove concerning the organizational structure of the Communist Party of the United States of America.

The basic units of the Party are the clubs which are established in shops and in communities. Special effort is made to recruit members for shop clubs in the key industries. Every member of the Party must belong to a club. The activities of the clubs are directed by a club chairman or "Club Organizer," as he is sometimes called. He or she, as the case may be, is assisted by an executive committee. Customarily the executive committee is made up of the more active members of the club who also hold various positions, such as Educational Director, The Press Director, The Literature Director, Financial Secretary, The Membership Director or Recording Secretary.

These officials are also called "functionaries"; that is, in the case of a club, they are known as club functionaries.

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A group of clubs constitutes what is called a section. Each section also has its functionaries, (T-1135) whose titles correspond to those which I have just listed, for the club.

The section functionaries closely supervise and direct the activities of all clubs within the section. But they are in turn supervised by the county chairman and county functionaries who have various titles and similar duties in relation to the county. Next in the chain of organization is the State or district chairman and the various State and district functionaries.

It should be noted that four of these defendants act as State or district chairmen, in addition to being members of the National Board of the Communist Party. These four State or district chairmen presently on trial are Thompson, who is the chairman in New York, Green, of Illinois, Winter, of Michigan, and Hall, of Ohio.

Now above the State and district organizations is the National Committee. The National Committee is elected by the National Convention, which is held every two years. In theory the National Committee is the governing body of the party between conventions. However, as a matter of practice, all of the National Committee's authority is exercised by the National Board. This is in the nature of an Executive Committee, which supervises and directs all activities of the Party from the top to the (T-1136) bottom.

On July 20, 1948, the date when this indictment was filed by a grand jury in this district, the National Board of the Communist Party was made up, exclusively, of the twelve men named in this indictment. They are the men who have, since 1945, and do now, formulate, direct and supervise the activities of the Party right down to the clubs which I have mentioned.

Now what are these activities?

These local clubs, whether they be shop clubs, in key industries, or community clubs, are not just political or social groups. They are in reality and in fact classes for the indoctrination of their members with the theory and practice of Marxist-Leninist principles of the overthrow and destruction of the Government of the United States by force and violence.

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The meetings are customarily not open to persons who are not members of the Party. Usually their meetings are in two parts—one, a discussion among the members—the other part, a lecture by either a guest speaker or by the Educational Director or by some member well versed in these Marxist-Leninist principles, who details some feature of those principles to the members present at the meeting.

In addition, from time to time, the clubs organize (T-1137) what are called “Beginners’ classes.” These classes, usually held at the club or in the homes of the members, are designed to inculcate new recruits with the rudiments of these Marxist-Leninist teachings.

Classes are usually held once a week in the evening. They take the form of a lecture followed by a question and answer period.

At these classes beginners are urged to purchase and read and to study certain basic books, namely:

1. “The Communist Manifesto”—by Karl Marx and Frederick Engels;
2. “State and Revolution”—by V. I. Lenin;
3. “Foundations of Leninism”—by Joseph Stalin;
4. “The History of the Communist Party of the Soviet Union”—edited by a Commission of the Central Committee of the Communist Party of the Soviet Union, and authorized by the Central Committee itself.

(T-1138) All of these books have been printed by the Party’s publishing houses in editions of many hundreds of thousands, in paper-bound volumes, which sell for a few cents. They are sold at the Party’s book stores and at the Party’s meetings. The new recruit is also strongly urged to subscribe to and to read the Daily Worker and its Sunday edition which is called The Worker. This paper, as I said before, is the official daily organ of the Party.

Now, in addition to these classes for new members other classes and schools are conducted under the auspices of the



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Party. Certain members are selected for advanced training and they are sent to what are called leadership training schools. As the name indicates, the members so selected have been picked for future leadership in the Party. Of course, these classes and schools are never open to the public. In fact, as I just said, the leadership schools are restricted to those whose members are specially selected by Party leaders. The leadership schools vary, in that the training given at some is more extensive than that which is given at others. At certain of them, for instance, the student attends for only a few nights a week for a period extending over ten or twelve weeks. Others, however, are held during the day with sessions lasting the whole day. Still others ((T-1139) are held at secret, remote rural camps where for a period of two or three weeks students undertake a course in these Marxist-Leninist teachings involving the most intense study and close discipline. However, in all these classes and these schools also the same books which I have just mentioned form the basis of the curriculum of the schools and the discussions in the classes.

The revolutionary doctrines of Marx, Lenin and Stalin are constantly repeated in the lectures and in the discussions, and the thinking of both the teachers and the students is constantly checked against these revolutionary writers. In each of these schools it is reiterated constantly that the students are being trained as professional revolutionaries. Marxism, they are taught, is not merely dogma, it is a guide to action. The Russian revolution is studied in detail as a blueprint for the revolution in every other country. It is pointed out that 50,000 trained revolutionaries succeeded in establishing the dictatorship of the proletariat in Russia, and it is stressed that these 50,000 are trained leaders who, as the Communist Party, acted as the vanguard of the proletariat, and by skillfully directing the proletariat at the time of national crisis, brought about the overthrow of the Government. This is the model for the revolution in this country. At the proper time, they (T-1140) are taught—the proper time being a time of national crisis, unrest, disorder brought about by a severe depression or war—at such a time the Party members will be in positions of influence in the key trades in the basic industries, and when the National Board decides that the

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revolutionary situation is at hand, the Party will lead the proletariat in violent revolution. They teach that this revolution cannot be without violence, for to be successful the entire apparatus of the Government must be smashed. Every vestige of the bourgeois state and class must be wiped out. Only when this has been accomplished can the program of Marxian Socialism be successfully carried out.

Now there are sections in the constitution of the Communist party which was adopted at its convention in July 1945 that purport to urge support of American democracy. These are in that document for legal purposes only, as we will show from witnesses on this stand. We will show that such declarations as I have referred to are mere talk; that they are just empty phrases, that they are inconsistent with the Marxist-Leninist doctrine of the overthrow of the Government by force and violence.

We will establish, through the witnesses who take the stand, that this is the doctrine taught and (T-1141) advocated by the group of persons known as the Communist Party of the United States of America. These eleven defendants conspired to reconstitute the Communist Party of the United States of America in 1945 for the purpose of teaching and advocating this doctrine. Such a conspiracy, we charge, violates the law of this country.

Now that, ladies and gentlemen of the jury, in brief outline is the case that the Government will establish, but I ask you to remember the instructions which the Court has given and to remember that what I have said to you is not evidence. It is the burden of the Government of the United States that I have the honor to represent to prove these charges against these defendants beyond a reasonable doubt by legal and competent evidence. That evidence must come from the lips of witnesses who will testify from this stand and from the various documents which will be submitted for your consideration.

My remarks in this opening, or at any other time during this trial, are not evidence, and by the same token the remarks of any other counsel in the case also are not evidence. I am sure that you will throughout this trial, remember this caution of the Court and of myself at all times, and that you will render your verdict solely on the evidence in accordance with the law, as it will be (T-1142) explained to you by his Honor.

*Defendants' Motion for Directed Verdict of Acquittal—  
Denied*

I thank you very much for your attention during my opening.

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Mr. Isserman: If the Court please, we have a number of motions to make in connection with the opening by the Government. We would like to have the jury excused while these motions are being made.

The Court: The jury is excused.

(The jury left the courtroom at 12 noon.)

The Court: You may proceed, Mr. Isserman.

Mr. Isserman: If the Court please, I move for a direction of a verdict of acquittal on the opening made by the Government on the ground that the activities charged to the defendants, as described by the U. S. Attorney, are all activities embracing political activity, political assembly, the right of assembly, the right of petition, and expression of opinion, matters of opinion on political and other subjects, all, under the circumstances as set forth by the Government, protected by the First Amendment to the United States Constitution. In other words, taking at face value for the purposes of this motion, and for the purposes of this motion alone, the facts which the U. S. Attorney says will be proved before this jury, that those facts as depicted do not charge a crime under the Smith Act, nor under any Act of the United (T-1142-A) States, and that any effort, or rather, compelling the defendants to stand trial on the acts charged against them as contained in the opening is to put them on trial in violation of the rights guaranteed to them, as to all citizens, under the First Amendment to the United States Constitution.

The Court: Motion denied.

(T-1143) Mr. Isserman: And, further, to compel the defendants to stand trial on these facts is an application of the Smith Act, which is unconstitutional, and such a trial denies the defendants due process of law.

The Court: Motion denied.

*Defendants' Motions for Withdrawal of Juror and  
Mistrial and for Bill of Particulars—Denied  
Opening Statement on Behalf of Defendant, Dennis*

Mr. Isserman: If the Court please, I move further for the withdrawal of a juror and a mistrial—order directing a mistrial on the ground that the U. S. Attorney in his opening has alluded to matters not covered by the indictment both in point of time and subject matter, and has brought matters before this jury as items of proof which are outside of the four corners of the indictment; and on that ground move that a juror be withdrawn and a mistrial declared.

The Court: Motion denied.

Mr. Isserman: I move further, if the Court please, for a bill of particulars on the matters referred to by the U. S. Attorney which are not covered by the indictment, and which were covered by the demands particulars heretofore made and refused, and ask that until such bill be furnished and until the defendants are given an opportunity to prepare their defense in reference to those matters mentioned by the U. S. Attorney, and not contained in the indictment, that this matter be continued until such date.

(T-1144) The Court: Motion denied.

Bring the jury back, please.

(Jury returns to the courtroom.)

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OPENING STATEMENTS ON BEHALF OF DEFENDANTS

Defendant Dennis: Your Honor, ladies and gentlemen of the jury, perhaps it may seem strange to you that I, who am not a lawyer, represent myself in this court. I do so because the issues in this case are of great moment, and I have decided to defend my honor and liberty in the manner which seems to me to provide the best defense, not only of my democratic rights and those of my party, but of the liberties of the whole American people.

The only thing strange and, yes, ominous about this proceeding is that an American should be called on to defend in court the principles and practice of an American working class party.

I and my co-defendants are leaders of the Communist Party; and the defense will show that our party is the political party of the most forward-looking American work-

*Opening Statement on Behalf of Defendant, Dennis*

ers, and that our party does not bear the remotest resemblance to the fantastic conspiracy painted in the indictment.

The indictment of July 20, 1945, has been read to you. You will have noted that it names, not (T-1145) only us eleven defendants, but also the chairman of our party, William Z. Foster, who, in effect, is being tried in absentia. But the defense will show, from this indictment itself, that we Communist leaders are accused actually only of exercising our right of political association, of teaching and advocating certain political doctrines and, hence, we are on trial for our political beliefs.

We defendants will explain our political theories in the plainest of all language, the language of our program and our deeds, which we will put in evidence.

We Communist leaders will put in evidence all that we have taught and advocated and done in the period covered by the indictment and this evidence will establish the working principles of Marxism-Leninism, what they are and what they are not, and at the same time this evidence will inevitably expose the sinister purpose behind this political heresy trial.

In view of the opening statement of the prosecution the defense is obliged to make sure that the jury fully understands just what the indictment charges and what it does not charge. The foreboding-sounding words "overthrow and destruction of the Government of the United States by force and violence" appear five times in the ten paragraphs of the (T-1146) indictment. But I call to your attention that not one of the ten of these ten paragraphs charges that we Communist leaders at any time committed a single act, a single overt act of force and violence against the Government of the United States, or that we ever directly or indirectly advocated or attempted its forcible overthrow.

The alleged conspiracy as stated in the indictment limps only on three active verbs—to organize the Communist Party, to teach, and to advocate.

Since no overt criminal act is even alleged there is no X to mark the spot where it was not committed. Consequently I tell the jury frankly that I and my co-defendants will have no alibis to offer attempting to prove that we were some

*Opening Statement on Behalf of Defendant, Dennis*

place else, nor will we bring fingerprints or ballistics experts to prove that we Communist leaders had no connection with unnamed and non-existing acts of force and violence against the Government of the United States.

The allegation of crime rests on the charge that we Communist leaders used our inalienable American rights of free speech, press and association, and sought to advance certain general political doctrines which the indictment falsely says teach and advocate the duty and necessity to overthrow the Government of the United (T-1147) States by force and violence.

These are the general ideas which the indictment calls the principles of Marxism-Leninism.

The defense will establish that the prosecution's arbitrary description of these general political, social and economic theories is wholly false. The indictment in one place refers to the well known fact that the 11 defendants in this court and Mr. Foster took steps to dissolve the Communist Political Association and to organize as the Communist Party. The defense will establish that there is no Federal statute forbidding the dissolution of a Communist Political Association or denying American workers the right to reconstitute or to organize as the Communist Party.

We will prove that the Communist Party was in fact organized almost 30 years ago and that it has changed its name and its form of organization more than once while adhering to the scientific socialist aims and principles of the working class.

The defense will also prove that the June and July meetings cited in the indictment were widely publicized at that time.

We will prove that the decisions to rectify the Communist Political Association is a correct estimate of the outlook for a postwar world and its status of (T-1148) a non-partisan political organization was made with the intent to serve more effectively the interests of the American workers and common people.

The defense will prove that these decisions were democratically discussed by the members of the Communist Party and ratified by the delegates to our July 1945 National Convention.

We will prove that the Communist Political Association was only a phase, an episode in the political life of the

*Opening Statement on Behalf of Defendant, Dennis*

Communist Party and that the proposal to end that phase was made on the exclusive initiative of Mr. Foster, myself and our co-workers. We will prove that at no time in its 30 years of existence did the Communist Party ever before face Federal prosecution on the false charge that the principles of scientific socialism of Marxism-Leninism teach and advocate the violent overthrow of the United States Government.

The defense will also show that the Smith Act under which this indictment was brought was on the statute books for eight long years before any attempt was made to allege its violation by the defendants.

Moreover in establishing the nature of this indictment we will prove that it seeks in effect to outlaw the Communist Party and to nullify the rights secured (T-1149) to the American people in the first Ten Amendments of the Constitution of the United States.

Ladies and gentlemen of the jury, there is another curious fact about this indictment to which I now call the jury's attention.

The word "did"—the word "did" appears in the indictment only once and that is in the first paragraph which alleges that the defendants did conspire.

Although the indictment was brought three years after this fictitious conspiracy is alleged to have begun no other verb in the indictment is used in the past tense. All the other paragraphs allege only that the defendants "would do" something, "would convene", "would induce", "would publish", "would teach" and so on.

Of course we Communist leaders actually did do certain things on or about April 1, 1945. We will put into the record what we did do. We will put in the record what we did in evidence to establish that there is no basis for the allegation as to what we would do, such as is charged by the prosecution.

We 11 defendants will prove that the very time when we allegedly began this menacing conspiracy we were in fact advocating and organizing all-out support to the Government of the United States.

We will prove that on or about April 1st, 1945, (T-1150) it was not the defendants who menaced the United States by the criminal war conspiracy of the Axis Powers which advertised itself as a crusade against Communism.

*Opening Statement on Behalf of Defendant, Dennis*

The overt acts of force and violence committed by Hitler Germany and militarist Japan for the purpose of overthrowing and destroying the Government of the United States and other governments have a vital bearing on the charges brought against the defendants.

We will prove that all of us and Mr. Foster and I specially taught the duty of upholding the United States Government and of intensifying the anti-Axis war effort on the battlefronts and on the home front and we defendants will put in evidence the honorable war record of the 15,000 American Communists who, in accord with what we taught and advocated, served with the armed forces in the military defense of our country.

And certain of my co-defendants will establish in evidence their service records, including their citations for valor under fire.

I did not hear the prosecution offer to prove that on or about April 1, 1945, we 11 defendants taught that Communists in the armed services are to desert their World War battle posts.

Mr. McGohey: That is objected to, your Honor.

Defendant Dennis: I did not hear the prosecution (T-1151) charge that the—

The Court: Just a moment. I am afraid I did not hear that last part. I will have the reporter read it.

(Record read by reporter.)

The Court: Is that the part?

Mr. McGohey: That is the part.

The Court: Yes, that is not involved in the case, Mr. Dennis. There is another portion of this statute that has to do with that, and that is not involved in this case.

Mr. McGohey: Precisely.

Defendant Dennis: I think, your Honor, and I respectfully submit, that since we are charged with teaching and advocating certain things since April 1, 1945, that it is very relevant and essential that we establish really what we Communists taught, advocated and did, and therefore, sir—

The Court: Mr. Dennis, I anticipate certain difficulty in inducing you to appreciate the force of my instructions because you are not a lawyer and I am going to try to deal with these matters just as intelligently and as patiently as I can.



*Opening Statement on Behalf of Defendant, Dennis*

This statute, that has been referred to here, has, in a section which is not involved in this case, (T-1152) the following provision: That it shall be unlawful for any purpose, with intent to interfere with, impair or influence the loyalty, morale or discipline of the military or naval forces of the United States, (1) to advise, counsel, urge or in any manner cause insubordination, disloyalty, mutiny or refusal of duty by a member of the military or naval forces of the United States.

There is no charge here that any of the defendants did that or any part of it, and so, as it will not help very well to disprove a charge that is made, I rule that that part is irrelevant to the case merely because it is not involved in the charge. So I hope you will try not to refer to that again.

Defendant Dennis: If I may, your Honor—

The Court: You would like to argue about it some more, would you, Mr. Dennis?

Defendant Dennis: No, just one word.

The Court: Well, you see, I don't think that is a matter that should be argued any further, but I don't want to appear to be unduly severe about it. You see, with these cases, Mr. Dennis, if everybody gets arguing, as much as they wanted to argue, we would just have a lot of confusion in the case, and it would be a matter of taking a lot of time to eliminate the confusion. (T-1153) I think it better if you would drop that part of your opening because it has nothing to do with the case.

Defendant Dennis: I will continue with another phase.

The Court: Thank you.

Defendant Dennis: We will prove, further, and I am sure this is relevant and material, that the meetings of June 2 and June 18, 1945, urged that Communists and non-Communists intensify and strengthen their efforts to attain victory over the Axis.

We will prove, further, that in the July 26-28, 1945 Communist National Convention that we used this occasion to further enhance and to mobilize all-out support to the U. S. Government, to oppose any appeasements of its enemies, of the Japanese war lords or the German cartels.

The defense will bring additional evidence to establish that what we Communist leaders did was wholly inconsis-

*Opening Statement on Behalf of Defendant, Dennis*

ent with what the indictment alleges we would do, and this evidence is related to well-established facts published long before the jury was instructed to refrain from reading the newspapers, such as the fact that, until April 12, 1945, the Government of the United States was headed by Franklin D. Roosevelt; it is a matter of public record that we Communist leaders supported the Roosevelt Administration and vigorously (T-1154) campaigned for the re-election of the great wartime President in 1944. We will also show that at various times we criticized certain acts of the Roosevelt Administration and publicly advocated that its policy on many issues should be opposed or changed.

In respect of the Government headed by the late President Roosevelt, you will have an opportunity—

Mr. McGohey: I object to this line.

Defendant Dennis: —to compare it—

The Court: Yes; I don't see how, Mr. Dennis, to disprove a charge of conspiring to teach and advocate the overthrow of the United States Government by force and violence it is going to be relevant for the defendants to show what very good boys they were in some other respects. The fact that they liked one of the Presidents or upheld his policies, I don't quite see the bearing of that.

Defendant Dennis: It is extremely and, in fact, indispensably material, your Honor, to show what we really taught and advocated and did since—

The Court: You see, it is apparently your view that, in order to disprove the charge that you did certain things, that you should be permitted to prove all the other things that you did, whereas the law permits of proof tending to show that you did not do (T-1155) the thing you are charged with doing. You see, you may have done a lot of good things, and that is true in criminal cases generally, but a man who is charged with crime does not have a defense to him to show that in many other respects he was very good and obeyed the law in other respects continually. That scarcely constitutes a defense.

I am inclined to permit a certain amount of digression strictly from the issues. Perhaps you have only a little more on that and I need not rule now upon the admissibility of evidence. I want to give you a reasonable lati-

*Opening Statement on Behalf of Defendant, Dennis*

tude, and if you have not got very much more on that, I am disposed to let you go ahead and follow what you planned to say.

Defendant Dennis: I will pass on very quickly.

The Court: Yes.

Defendant Dennis: And go into another point, including the question of really what are the principles of Marxism-Leninism, which are to be partially established, or very much to be established in relation to what we Communists actually do.

The defense will establish that we Communist leaders in the period, in the dates covered in the indictment, then advocated that labor and the people uphold the Government against its domestic as well as (T-1156) its foreign enemies, and we will show that we advocated that the people strengthen their support for the Roosevelt policies, most vital—this being most vital to achieve a speedy victory over the Axis Powers, a lasting peace and to help bring about a progressive postwar America.

The defense will also show that we Communist leaders particularly increased popular support at the dates mentioned in the indictment, support for the Yalta Agreement, the agreement to found the United Nations and the Roosevelt Plan for securing the postwar economic security of the American people as embodied in the economic bill of rights.

The indictment alleges that it was part of this supposed conspiracy that the defendants would convene certain meetings in June and July, 1945. No doubt the Court will take judicial notice of the fact that by then President Roosevelt was dead and the Truman Administration had become the Government of the United States. I and my co-defendants will show that we took political notice of this change at the meetings mentioned in the indictment, and that we did discuss and come to certain conclusions about its significance, and when the defense puts in evidence the draft resolution, which the indictment refers to but nevertheless never quotes, the jury will see that in this connection we Communists issued certain (T-1157) warnings. You will

*Opening Statement on Behalf of Defendant, Dennis*

see that in June and July of 1945 Foster, I and my co-defendants warned that the American trusts would try to use their gigantic postwar, military and economic power against the American people and the peoples of the world. You will see that we warned from these and certain other things which follow, such as, (1), that despite their huge war and peacetime profits the employers would refuse to grant adequate wage increases;

(2) That the food trusts would raise, not cut prices;

(3) That returning veterans would face a serious housing shortage, and that the real estate interests would oppose—

The Court: What has that got to do, Mr. Dennis, with this charge of the conspiracy here? It seems to me that is the same sort of thing that you were talking about before, that there were some things that you wanted that you considered very good.

Defendant Dennis: Well, this refers, your Honor concretely both to the draft resolution mentioned specifically in the indictment. I am merely referring to the key points referred to there as well as what we actually did at those meetings. That is referred to in the indictment, and it seems to me, your Honor, therefore, (T-1158) it is very relevant and material.

The Court: Well, I think perhaps it is better to let you go on, but I won't rule now on the relevancy of any of that. We will pass on that when the offer of proof comes.

Defendant Dennis: Fourthly, we warned that Americans who had risked their lives in battles against the Nazi hordes would come home to find that Negroes are still lynched and Jews discriminated against in the United States.

And, fifthly, that the victory of the United Nations over the Axis Powers would not automatically bring lasting peace unless labor and all democratic peoples here and abroad worked together to curb the economic royalists, the war mongers.

We Communist leaders will show that in June and July of 1945 we thought that labor and the people could not rely on the Truman Administration to curb the greedy

*Opening Statement on Behalf of Defendant, Dennis*

monopolists. We taught that, on the contrary, the people would have to resist the efforts of the administration and the bi-partisan Congress, to scuttle FDR's progressive policies. We will also prove that we did not even consider, let alone teach or advocate, that the Government, headed by President Truman, should therefore be overthrown by force and violence. We will (T-1159) establish that everything we did teach and advocate was in the interests of the American people and in accord with their understanding of achieving a Government of, by and for the people.

We Communist leaders issued our warnings, but as the defense will show, we did not fold our hands and wait for the worst to happen. My co-defendants and I will show that we put into practice the real principles of Marxism-Leninism, by teaching that labor and the people should intervene to defend their living standards, their democratic rights and world peace, and many witnesses will tell you by what means Foster and I and my co-defendants taught that these desirable and constitutional ends could be achieved.

We Communists will establish that all of our teachings and advocacy in regard to the questions of foreign policy had as its purpose the defense of the national interests of the American people and the cause of world peace, and we will prove that we defendants advocated the building of a strong United Nations, and not the violent destruction of the United States, and we will show that with this patriotic and peaceful intent we have taught and advocated in the period covered by the indictment, for instance, the duty and necessity to do, among other things, the following:

(T-1160) First, to oppose American cartel deals with Hitler's former ally, Franco Spain—

Mr. McGohey: Now this is objected to.

Defendant Dennis: —Second—

The Court: Yes. Mr. Dennis, I cannot see how that has a bearing on the case. It is the same old story. The question is whether you were guilty of the conspiracy which is charged. Now the fact that you advocated a lot of other things seems to me quite beside the point.

*Opening Statement on Behalf of Defendant, Dennis*

Defendant Dennis: Your Honor, to prove my intent, what I willingly and knowingly did, I will have to prove my political conduct in this period, not a part of it but all of it; not a fragment of it but everything.

The Court: Well, I can assure you, Mr. Dennis, that I am not going to have that. We might be here for years trying this case if everything, if all the political conduct of all the defendants were given and everybody orating about all the things that he ever did, if that were given, and the question here is only whether he is guilty of this conspiracy as charged, and I direct you not to go on with the subject you are now discussing.

Mr. Sacher: May it please the Court, I rise only to point out—

Mr. McGohey: If your Honor please—

(T-1160-A) The Court: Are you Mr. Dennis's lawyer now?

Mr. Sacher: No, I am rising on behalf of my clients to point out that some of your Honor's indications here will affect the interests of the other defendants. I think therefore I should ask for an opportunity—

(T-1161) The Court: Perhaps you had better let the jury retire and then you can file your protest.

Mr. Sacher: Well, I was wondering whether it wouldn't be convenient to permit the jury to sit here now, let Mr. Dennis continue his presentation, but will you be good enough to give us an opportunity later without disturbing the jury—

The Court: No, I think it is better to have it out now.

Mr. Sacher: Then I will reserve it, your Honor, thank you.

The Court: Very well. You think you will reserve it. If you want to make any objection I will have the jury leave now and you can make it.

Now Mr. Dennis—

Mr. McGohey: If your Honor please, I respectfully submit that the objection has already been made by Mr. Sacher, and I think it ought to be discussed now.

The Court: Well, you know, you get into matters of refinement here. I thought it was a protest. It may be an

*Opening Statement on Behalf of Defendant, Dennis*

objection but what I have deemed it to be is a statement by Mr. Sacher on behalf of his clients, in effect an exception to my directions to Mr. Dennis, which I think should dispose of the matter.

Defendant Dennis: Do I understand your Honor's (T-1162) ruling that I cannot establish what my intent was, what I taught, what I advocated and what I did? Because, that, your Honor, is precisely what I am dealing with.

The Court: Well, it seemed to me, as I was listening to you, that you were just arguing that you were in favor of this and you were in favor of that, and you were in favor of the other thing which, it seemed to me, was a little but further than just establishing your intent. Your intent is involved very materially in this case, but if you think that to prove your intent you will be allowed to go over your whole political lifetime and explain all the good things that you did or all the things that you thought were good, that I am not going to allow. Now when it comes to what you did at this time, at the time of this Convention, if you want to tell the jury what you talked about then and there, or shortly before or within a reasonable time thereafter, I will let you tell them that.

Mr. Isserman: If the Court please, I would only like to call to the Court's attention that the charge is a continuing conspiracy which Mr. McGohey says continues even until this day.

The Court: You know, it is a funny thing, the other day Mr. Dennis said he wanted to be his own lawyer, that he could plead for himself, and now it seems as though (T-1163) there were a number of assistants.

Mr. Isserman: I am not pleading for Mr. Dennis, your Honor, but this has a bearing on the opening which I intend to make for my client and I do not expect to be precluded.

The Court: I will reserve—is this a motion or an objection? What is it?

Mr. Isserman: I object to the limitation—

The Court: All right, the objection is overruled.

Mr. Isserman: May I state the objection?

*Opening Statement on Behalf of Defendant, Dennis*

The Court: What is that?

Mr. Isserman: May I state what I am objecting to?

The Court: No. I understand what you are objecting to. You are objecting to my limitation upon the opening by Mr. Dennis.

Mr. Isserman: No. I am objecting to your Honor's ruling that matters between 1945 and 1948, affecting the teaching and advocacy of these defendants, may not be gone into, and my objection is based on the ground that the indictment says that it is a continuing conspiracy, continuing to the date of the indictment.

Mr. McGohey: Your Honor, I do not understand your Honor's ruling to be any such thing as Mr. Isserman has stated it. I understood that there was an attempt by Mr. Dennis to describe what he had recommended, for (T-1164) instance, with respect to cartels, and I objected to that, because I think it is inappropriate and not within the issues of the indictment, and your Honor ruled on it,—

Defendant Dennis: But it is the truth, Mr. McGohey. This is part of what happened during the meetings—

Mr. McGohey: I suppose, your Honor, I shall have to be patient, too, when a layman interrupts me right in the middle of a sentence and so I shan't make a point of it.

The Court: I think probably the best way to do is for me to let Mr. Dennis go ahead a reasonable amount, other wise we will have one continual wrangle here. After all, it is not proof, it is merely his statement of what he is going to prove, and then when you come down to the offer of the proof I can rule on it and we will have the proceeding a little bit more orderly.

Mr. McGohey: That is what I understood your Honor's statement to be in any event, that the proof would be ruled on as offered.

The Court: Yes, but I am going to let him go ahead now and get it off his chest.

Mr. McGohey: Very well, your Honor.

Defendant Dennis: We will show further—

Mr. Sacher: If your Honor please, I wish to object (T-1165) to the terms you used, about getting it off his chest, and to reactions among the audience to that statement.



*Opening Statement on Behalf of Defendant, Dennis*

The Court: Yes, I suppose that is very prejudicial.

Defendant Dennis: We will show with what peaceful intent we taught and advocated, amongst other things, to continue where I left off, to oppose American support to the unjust and criminal war against the Chinese people waged by the miserable Chiang Kai-shek, to oppose the civil war against the Greeks, waged by the monarchist-fascist puppet of the American trusts, with the American people footing the bill, to oppose the Anglo-American oil lords against the new State of Israel, and the people of Indonesia, and to oppose the restoration of the German and Japanese monopolies and war potential under the new management of the American cartelists. And the defense will establish that we Communist leaders saw that American national security and universal peace were weakened and were not strengthened by the Truman doctrine and the Marshall Plan. We will show that we teach that the North Atlantic Pact, now being rushed to signature—

Mr. McGohey: If your Honor please, the North Atlantic Pact was only signed the other day. We are talking about something that happened in 1945.

The Court: I will not let that go on any more. (T-1166) It is so plainly irrelevant. It is just using the courtroom for the purpose of propaganda, and I won't have it. Now please desist from any further opening or alleged opening along that line.

Defendant Dennis: I object to that statement, your Honor. Do I understand it is the ruling of the Court that I cannot offer proof of either my intent, what I have advocated, what I have taught, what I have done during the period covered by the indictment?

The Court: Well, those things that you just have been talking about there do not seem to me to be very relevant to the charge, whether you were conspiring—

Defendant Dennis: Those are the things, your Honor, that actually I and my co-defendants did and not this Goebbels-like charge contained in the indictment.

The Court: Well, you will kindly refrain from any further reference to Chiang Kai-shek and the war in Spain and everything else under the sun. That seems to me to have nothing to do with the case. Try to get down to what you are charged with here.

*Opening Statement on Behalf of Defendant, Dennis*

Defendant Dennis: Your Honor, may I continue?

The Court: Yes, but please eliminate those things that I have just spoken of.

Defendant Dennis: At this time I would like (T-1167) to establish further that in our work and efforts to secure a lasting peace for our people that we consider that World War III is not inevitable. May I deal with that?

The Court: What has World War III got to do with the case?

Defendant Dennis: It is very important for the American people, and it is what we have taught and advocated in this period, your Honor, and I am very particular—

The Court: Well, I cannot see that World War III has anything to do with whether you were a party to this conspiracy or not. I suppose it is easy to get off everything else under the sun and maybe we will forget what the charge is, but I am not likely to do that.

Mr. Isserman: If the Court please, on behalf of my clients I object to your Honor's comments.

The Court: Yes, I know.

Defendant Dennis: To conclude on this point, then, your Honor, I and my co-defendants will show, we will show that we publicly advocated that all peace-loving Americans should unite that the Truman Administration enter into direct negotiations with the U. S. S. R. and respond in good faith to its repeated disarmament and other peace proposals.

(T-1168) The Court: I knew you were going to do that. You are going to be an awful problem to me, I can see that. I tell you to stop and you go right on. I suppose the best thing to do is to just take it cheerfully. Go ahead.

Defendant Dennis: We will show that we taught that Americans must take their choice between a pact with the Soviet Union or an aggressive alliance against our most powerful World War II Ally, and against other democratic people.

We Communist leaders will prove that in this we have acted with wilful intent to save our country from the devastation of bombing and invasion and our people from the horrors of another World War.

*Opening Statement on Behalf of Defendant, Dennis*

We will prove that we have attempted wilfully to realize what is popularly known as Roosevelt's great design for a lasting peace and hence with the purpose directly opposite to that alleged in the indictment.

The defense will show that we Communist leaders have taught that the American people should have confidence in their power and the power of the people to help prevent another World War and we have taught that for the first time in history the peace camp is stronger than the war camp and we have directed our efforts in favor of peace.

The Court: If you think you are going to get this (T-1168-A) case off on a question of war and peace you are making a big mistake. We all remember what the case is about.

Defendant Dennis: We defendants will show that we teach that great design for peace can be realized and that World War III is not inevitable.

(T-1169) And to establish further the record of what we defendants actually have done in the period covered by the indictment, we Communist leaders will show that we have advocated defense of the people's living standards as an inseparable part of the struggle for democracy and peace; and the jury will see evidence, that we defendants will produce, that we did participate in labor's three postwar rounds of wage struggle; we Communists did teach that big business should be compelled to give substantial wage increases without raising prices; and we will show that this trial has not interrupted our advocacy even of a fourth round wage struggle nor has it eliminated the threat of a first round of wage cuts.

We Communists will show that what we taught and advocated—

The Court: You mean you think will show. I don't believe you are going to get around to that.

Defendant Dennis: We Communists will show that what we taught and advocated did not prompt trade union leaders, Communists or non-Communists, to propose the violent overthrow of the Government, but that it did result in many trade union attempts to raise wages, attempts which, in many cases, were successful.

We Communists will also show that our (T-1170) advocacy of substantial wage increases and other economic

*Opening Statement on Behalf of Defendant, Dennis*

measures was motivated by our desire to strengthen the American workers' standard of living and to avoid the chaos of an economic collapse.

Competent witnesses, who will testify for the defense, will show that at this very time an economic depression has begun in our country and threatens to give rise quickly—

The Court: Oh, you are going to put that in too, Mr. Dennis?

Defendant Dennis: That is right. (Continuing)—to a full blown economic storm. And these witnesses will prove that there are already more than 5,000,000 unemployed persons and nearly 11,000,000 workers reduced to part time employment.

And we Communist leaders will show that we have not only warned of this coming catastrophe but that we have advocated over these past three years an immediate and a constructive program to lessen the suffering which depression and economic crisis inflict on the American people. And to this end we have advocated increased taxation of the multi-millionaires, curbs on the power of the trusts, a raise in real wages, strong Federal laws against racial discrimination in employment and extension of social security.

(T-1171) The Court: Now, Mr. Dennis, that is the end, that is enough. You are not going to go on any more with that and you will kindly desist. I have tried to be just as patient as I could here and it is evident to me that, while you understand what I have told you, you are determined that you will go on and bring in all these irrelevant matters. So, I have no other alternative now than to tell you to desist.

Defendant Dennis: May I proceed to a different point, your Honor?

The Court: Well, I have had you purportedly go to a different point three or four times and it just seemed the same old—

Defendant Dennis: On the contrary, your Honor said that I might continue, and at various points I did continue. I now ask permission, if—I only yield—

The Court: As I said, you are going to be a terrible problem for me, I don't know what I am going to do,

*Opening Statement on Behalf of Defendant, Dennis*

because you just have it in your mind that you are going to go into wage increases, the Spanish War, the Chinese War, all these things under the sun, and I don't know, frankly, how I am going to stop you without taking some action that I don't want to take.

Defendant Dennis: Most of these things were dealt with in the Convention of 1945.

(T-1172) The Court: The trouble is, if you were running the court here, it would be all right, and you would decide what to do, and that would be the end of it; but I am the one who is running the court, and the difficulty is, when I instruct you, you pay no attention. Now, that is a kind of difficult situation, and I try to maintain the dignity of the court here. I don't want to start some sort of a thing that will only lead to disorder and trouble here, but you are an intelligent man, you know perfectly well the purport of the rulings here, and yet, when you say you are going to another subject, it is always another one like the Spanish War or how you are going to get the rich to pay more taxes, and it is evident enough that that has got nothing to do with the case here. The case here is whether you conspired in the way that is charged by the Government. If you think, perhaps, you are going to advantage yourself some by attacking the rich and then attacking this one, and that one, and the other one, I tell you not to do it.

Defendant Dennis: Your Honor, I am just—your Honor, while it may sound distasteful to some, I am trying—

The Court: No, it just sounds a little obstinate.

Defendant Dennis: I am trying to establish (T-1173) my intent, which is the intent of the defense as a whole, my political conduct and, really, truly, what we advocated and taught.

The Court: Yes, I know.

Defendant Dennis: And it is on the question of peace, on the question of defense of the Bill of Rights, and the question of the living standards of the people. These are the things.

The Court: You see, after I tell you to stop, you look me right in the eye and you say it all over again. Now, it may be that there will be no alternative other than to

*Opening Statement on Behalf of Defendant, Dennis*

just let you go on talking and then I will do a little talking, and then we will dispose of it in the course of time. So you may go ahead now with just what you proposed to add and we will see what it is.

Defendant Dennis: May we have a recess, your Honor?

The Court: Well, you are going to have a recess in three minutes. Go right ahead to the next point, so you will get a little more of it done. Then you can continue after lunch.

Defendant Dennis: Under protest—

The Court: If you have forgotten your trend there and desire the adjournment to examine your notes, I will let you do that, and I hope you will take the advantage of the time to try to keep a little bit more to the point here this afternoon. So we will now take a recess until 2.30.

(Recess to 2.30 p. m.)

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(T-1174)

## AFTERNOON SESSION

The Court: Ladies and gentlemen of the jury, there is one thing I neglected to tell you the other day when I told you about reporting to me if anyone tried to talk to you about the case. Now if you receive any written communications of any kind be sure not to read them and bring them down to the marshal and he will give them to me.

Now you may proceed, Mr. Dennis.

Defendant Dennis: Up to now, ladies and gentlemen of the jury, I have been telling you about the program and the activity of our Communist Party, outlining what we will prove it has taught, advocated and done under the leadership of the defendants and Mr. Foster.

What we have taught and advocated and what we have done flows from our principles and thus all the points raised in my opening remarks have a most direct and vital bearing on the \$64 question, namely, what are the principles of Marxism-Leninism and what are they not?

That very big and complicated question has been brought into this case by the prosecution, not by the defendants.

*Opening Statement on Behalf of Defendant, Dennis*

I sympathize with the jury as I would if you had been brought here to pass on the merits of the Einstein theory of relativity.

(T-1175) The defense will show that the theories of scientific socialism while much easier to understand than the theories of relativity are nonetheless far more extensive and comprehensive in their scope and subject matter and that they are even less triable in a court of law.

But since this difficult and complex subject has been brought into the court the defense will squarely meet and disprove the prosecution's charge that the principles of scientific socialism teach or imply the duty or the necessity to overthrow the United States Government by force and violence.

We defendants are going to tell you now about only a few of the things we Communist leaders will prove about these principles, for even to outline this tremendous subject would take many hours.

First, we will show you how this working class social science has developed and tell you about the two men from whom it gets its name.

We will show that the German-born Karl Marx is acknowledged by most scholars, Communists and non-Communists, to have been one of the greatest minds and thinkers of modern times.

We will show that Marx and his colleague, Frederick Engels, studied and wrote about many things, and particularly (T-1176) about social conditions in France, Germany, England and the United States. We will show that for many years Marx was a columnist for the staid and respectable New York Tribune, then edited by Horace Greeley. The defense will put in evidence Marx's correspondence with Abraham Lincoln and establish what he did to organize British labor support for the Union cause in the Civil War.

We will prove that Marx called the Government of the United States, headed by Abraham Lincoln, the only truly popular government in the world at that time. The defense will also tell you about V. I. Lenin, whose name is so closely linked with that of Carl Marx. We will show how this great man who suffered exile and imprisonment under the Russian Czars deeply loved his country and nobly

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served not only his own people but the common people everywhere, and how under the leadership of the Russian Communist Party, headed by Lenin and Stalin, the Russian workers and peasants freed themselves from Czarist tyranny and capitalist oppression. The defense will establish that a century ago Marx and Engels put forward a proposition that man can find a scientific explanation for wars, poverty, economic depressions, race prejudice and organized force and violence.

(T-1177) We will establish that Marx and Engels also declared that when men and women understand fully what makes human society tick, they will make a better and a happier life for themselves.

We will show that the founders of scientific socialism said that this historic mission would be carried out by the working class, the class destined to become the ruling class in all countries, and thus the creator of Socialism in all lands.

The defense will show that the world did not stand still after Marx's death and that, consequently, the social science he founded also developed as well as modified some of its propositions.

We will show that Lenin, the greatest Marxist of his time, enriched and continued Marxism by his explanation of the new social conditions and phenomena brought about by the rise of imperialism.

We will show that the writings of Marx and Lenin and their followers fill many books, enough to line the walls of this court from floor to ceiling. We will show that these books, known as the classics in Marxism-Leninism, have been studied and discussed by millions of people and are even to be found and to be read in the libraries of our country.

The devil can quote Scripture and the prosecution (T-1178) surely will quote Marx and Lenin out of context in this court, but the defense will prove that these immortal classics are not blueprints nor directives. You cannot find out what to do in March 1949 by reading what Lenin said the Russian workers should do under quite different circumstances in March 1917.



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The defense will prove that the founders of Marxism-Leninism and their followers have taught that certain propositions, as well as strategy and tactics, are modified to conform with the developments of history and new social situations.

We will show that the principles of Marxism-Leninism are held not only by the 11 defendants before you and by Mr. Foster but by 70,000 other American Communists. We will establish that these principles are also subscribed to, at least in part, by several million more Americans who favor a Socialist society.

We defendants will prove that for 30 years the American Communist Party has taught that 60 million American workers and 30 million farmers and their families, Negro and white, could do a better job of running their country and its great productive capacity than has been done by the 60 families of Wall Street and the 250 ruling corporations.

We thought that the American workers in alliance (T-1179) with the majority of the Negro people, with the working farmers and progressives of all classes should and some day will bring about this fundamental change in existing social conditions.

The jury knows, and we Communists will establish, that throughout human history such far-reaching social change has often been accomplished by force and violence, but we will bring evidence to show that Marx and Lenin and their followers did not and do not advocate force and violence, but taught that force and violence results when reactionary minority groups, representing powerful vested interests, try to stop the march of social progress. We Communists will show, for instance, that this happened in our own country in 1776 and in 1861.

When the defense puts our Communist Party constitution in evidence, the jury will see that it speaks of the duty to organize and educate the working class, and declares that Socialism should be established, not by force and violence, but "by the free choice of the majority of the American people."

We defendants will prove that we have always taught that capitalism in America or elsewhere cannot be abolished

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by plots, or conspiracies, or adventures, or by power revolutions. We will put in evidence our (T-1180) teaching that this fundamental change can be brought about only when both of two conditions have been fulfilled, when capitalism has fully outlived its social usefulness and when a majority of the American people—I repeat, a majority—led by labor and the Communists resolve to get rid of a system of social production that has become destructive of their right to life, liberty and the pursuit of happiness.

We Communist leaders will prove that we have advocated that labor and the people and the people endeavor to create conditions that will make possible the peaceful establishment of Socialism; and, above all, we will show that we advocate and seek to assure that the American people will avert the tragedy of arriving at their inevitable Socialist future by the hardest of all possible routes, after passing through the tortures of Fascism, the fires of a new World War, and the purgatory of national dishonor and disaster.

(T-1181) I have already indicated how we American Marxists will prove that we teach that Socialism is not an immediate issue in the United States today, but that the central issues, the central immediate issues confronting our people are peace or war, democracy or fascism. And we will demonstrate and prove that the American people are menaced by the force and violence of fascism and atomic war and not by United States Communists who advocate that the people use their constitutional and popular means to save themselves from disaster.

In establishing what the principles of the Communist Party are and also what they are not, the defense will have to show how and when we Communist leaders and other advanced American workers came to believe in, teach and advocate the principles of scientific Socialism.

The jury will learn that we eleven defendants and Foster became Communists as a result of a variety of circumstances and different experiences.

For instance, you will learn that the National Chairman of our Party, Foster, has been engaged for over 50 years in the struggle of the American labor movement and has been an advocate of Socialism for more than four decades.

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You will learn that all of us became Marxists-Leninists long before April 1945 and that, by (T-1182) the way, American workers first organized as the Communist Party of the United States nearly 30 years ago.

We will show that the social conditions brought into being by the growth of the giant American trusts gave rise to our Communist Party as well as to the modern American trade union movement and labor's independent political action.

You will see that our Communist Party Constitution acknowledges not only that we learn from Marx and Lenin but that we owe much to and learn from the teachings of men like Thomas Jefferson, Abraham Lincoln, Frederick Douglass William Sylvis and Eugene V. Debs.

And we will show that these honored Americans gave voice to the democratic and some even to the socialist aspirations of America's working people.

We will establish that we American Communists have learned from our own experience as well as from the experience of Communists and other workers in other countries and that this has enabled us better to defend the best interests of our people and our nation.

We will show that our working class internationalists breathed the spirit expressed by Abraham Lincoln in the much quoted words: "The strongest bond of human sympathy outside the family relation should be one uniting all working people of all nations and tongues, and kindred."

(T-1183) We will demonstrate that the principles that we teach are no less true for the working people of America because they are true for working people everywhere.

We will show that there is no more reason to reject as foreign the theories common to advanced workers in all countries than to refuse our children pasteurized milk because it has been put through a process advocated by the French man, Louis Pasteur.

We Communist leaders will show that we teach that there is no higher patriotism than that which seeks to enable the American people to benefit from the achievements of science in all fields.

And from the experience of all people who have taken the road of social progress, no matter what the nationality of those who pioneered in science and social advance.

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Ladies and gentlemen of the jury, I have outlined for you today some of the things we defendants will prove during the course of this trial. The very indictment has obliged me to give you at least a sketchy outline or a glimpse of what the social science of Marxism-Leninism is all about. I realize that the theories we Communists teach and advocate and the scientific language we use are (T-1184) strange and unknown to most, if not to all of you, but the defense will show that millions of workers in every land have come to understand and to hold the principles of Marxism-Leninism, which have been indicted by the prosecution in this case, and we will also demonstrate that these principles are subscribed to by more than 600,000,000 people who, although most of them are not Communists, support working class governments led by Communists, by Marxists-Leninists.

We defendants will show that we have taught that it is only natural that peoples who strive for national and social freedom, for real equality and economic security, should study and learn from the experience of the peoples in Socialism, who have emancipated themselves from national and class suppression. We Communists will also demonstrate our teaching that in an earlier period people striving to free themselves from the despotism of monarchs and feudalism learned much and were inspired from our own American Revolution in 1776.

Ladies and gentlemen of the jury, in July and June 1945 when we defendants allegedly met, according to the prosecution, to teach and to advocate force and violence, our concern, as we will really show, was totally different from what is charged by the prosecution. We will establish (T-1185) that at these meetings, to which the indictment refers, we Communists paid tribute not only to the Americans who had died in World War II but to the anti-Fascists of all lands and to the victims of Fascist force and violence who at that very time were being liberated from the Nazi concentration camps. We will establish from authentic documents adopted at our 1945 National Convention that we Communists leaders in our party pledged ourselves to do all in our power to save our people and our country from the consequences of an American

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Reichstag fire trial and an American version of the Japanese system of punishing those alleged to hold dangerous thoughts. The prosecution asks this jury for what amounts to a preventative conviction, in order that we Communist leaders may be put under what the Nazis called protective custody. I ask the jury to weigh the prosecution's case against the proof we defendants will offer to establish that we have taught and advocated the duty and necessity to prevent the force and violence of Fascism, imperialists of war and lynching and anti-semitism. I ask you to weigh carefully our sincere offer of proof which demonstrates that we Communists are second to none in our devotion to our people and to our country, and that we teach and advocate and practice a program of peace, of democracy, equality, economic security and social progress.

Thank you.

(T-1186) Mr. Crockett: May it please the Court, members of the jury, this is a most unusual case—certainly the most unusual case in which I have ever participated. While I am sure most of you have had previous experience as trial jurors I think that before the case is over you too will say that it has been the most unusual experience “in my lifetime,” because in this case we are really not trying facts, we are really not trying men, we are trying ideas, we are trying a basic philosophy in which men believe. You are being called upon as a cross-section of the American public to determine whether or not these defendants are entitled to hold the beliefs which they believe.

And, secondly, whether or not the remainder of your fellow citizens, the remainder of the American Republic is entitled to hear their expressions of what they believe. That is the background against which this case must be tried. It is pretty obvious, therefore, that whenever any attempt is made to contain all of the evidence within the more or less straitjackets provided in our judicial Code, there are bound to be certain difficulties. I mention that in order that you might be persuaded to bear with us if in

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our endeavor to prove what we have not done we attempt to prove what (T-1187) we have done. I represent two of the defendants. One is Mr. Carl Winter from Detroit, Michigan.

Will you stand, Mr. Winter, please?

(Defendant Winter stands.)

Mr. Crockett: The other is Mr. Jack Stachel from right here in New York City.

Will you stand, Mr. Stachel?

(Defendant Stachel stands.)

Mr. Crockett: I myself am from the City of Detroit, and Mr. Winter is, of course, one of my neighbors. Prior to coming to Detroit, the evidence will show, Mr. Winter lived right here in New York. As a matter of fact, he is a draftsman by trade and was engaged in designing some of your subway stations here in the City of New York. It was during that period of time when he became interested in the teachings of Karl Marx and the teachings of Lenin, and began to read them and became persuaded that there at long last was a philosophy of life which he individually could follow, and since he individually could follow it he felt that he had a right to persuade others to do likewise. As a result he began to devote his entire time and energy to the promulgation of the theories and practices of scientific Marxism-Leninism.

It was not very long after that before he became a district organizer for the Communist Party up in Harlem—(T-1188) that was during the depression days, and the evidence will indicate how he put into practical effect his belief in Socialism by the method by which he organized Negroes in voicing their protest against the denial of relief during the depression days.

Following that period here in New York, Mr. Winter came to Detroit, Michigan, and that is where I knew him.

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He is, of course, State chairman of the Communist Party in Michigan. I happen to be a Democrat, but there are certain things about which we both believe. One is sworn opposition to white Chauvinism; sworn opposition to poll taxes; sworn opposition to Jim Crow laws; sworn opposition to anything that attempts to deny—

Mr. McGohey: If your Honor please, that is objected to as not within the issues.

The Court: Yes, Mr. Crockett: It does seem to me that the beliefs of counsel and what counsel is for or against hasn't got much to do with the case, and, of course, this part you have just been referring to does seem to me to be a little remote. Now I don't desire in these openings to curtail people. I think it is better to give everybody his head, but just bear in mind what I have said. Now don't go far afield if you can help it, and I really don't think that your own personal beliefs (T-1189) are of any moment in the case but I don't intend to curtail you. I just mean these comments to be of a little advice, and I think perhaps if you will bear them in mind you can go right on without any interruption to the conclusion of your opening.

Mr. Crockett: I will abide by the Court's instructions.

The second defendant whom I represent, Mr. Stachel, the evidence will indicate that he grew up in New York's Lower East Side where he came in daily contact with many of the injustices to which people, according to the evidence which we shall present, who live on the Lower East Side, must necessarily come in contact with.

Jack attended one of your New York public schools. He became a voracious reader, so much so that after going through most of the books that appeared in the library he began to read some of the social studies. He began to read, for example, Plato's Republic, Thomas Moore's Utopia, and from that he went into a reading of the writings of Marxism and Leninism. It might come as a surprise to some of you, and the evidence will indicate that he is somewhat of an authority on the writings of Jefferson and Lincoln.

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(T-1190) The evidence will further show that all of his manhood has been devoted to the cause of organizing workers into trade unions. Long before the CIO came into existence Jack Stachel, with the assistance of William Z. Foster, chairman of the present Communist Party, organized what at that time was known as the Unity Trade Union, which was devoted to the idea of industrial unionism. From that background he proceeded to the point where he is today the National Education Director for the Communist Party of America. Now those are the two defendants whom I represent.

Suppose we turn now to find out what it is that they are charged with. I recall that in making his opening statement the United States Attorney read to you the Smith Act and the Court has instructed you that that is a part of the law in this case. There is another law that I should like to read to you at this time, and I think you will recognize it. It also has pertinence in this case. It says:

“Congress shall make no law abridging the freedom of speech or of the press or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.”

That, I think you will recognize, is the First Amendment to the United States Constitution. That is (T-1191) the law on which we rely as justification for everything that my clients have done or have said or have influenced others to do or to say. Among other things, the United States Attorney pointed out that this so-called conspiracy with which my clients are charged had as its purposes the accomplishment of two objectives. He mentioned those two objectives. One, the organization of the Communist Party as a group of persons devoted to the teaching of the overthrow of the Government by force and violence. The second objective which he pointed out was that my clients in company with the other defendants had conspired to teach and advocate the duty and the necessity of overthrowing the Government of the United States by force and violence.



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I listened with considerable interest to the opening remarks of the United States Attorney because I had expected that he would tell you, and in the course of telling you tell me something of the method by which he intended to show that these defendants had at any time advocated or engaged in any acts of force and violence against the Government of the United States.

So far I have not heard that. So what I should like to do right now categorically is to deny that there has ever been any advocacy or any teaching on the part of my clients of the necessity of overthrowing the (T-1192) Government of the United States either by force or violence or by peaceful means.

That is a denial that I make and that is a denial concerning which we shall offer testimony.

But we are more or less in the position of struggling with a shadow man because all that we have to guide us are the allegations set forth in the indictment. So that in outlining to you the nature of our proof I must of necessity follow the allegations set forth in the indictment.

Now there is one allegation to the effect that we here were part of a conspiracy.

Just what is a conspiracy? The mere word "conspiracy" carries with it the idea that there is something secret about it, it is a sort of plot; and yet even though it was secret or a plot, even though the United States Attorney has pointed out that he will present evidence—and if he doesn't present evidence we will present evidence to show that every act, every meeting which is set forth in this indictment was publicized in the public press.

We will show that long before any action alleged in this indictment occurred there was a period of public discussion on the part of the members of the Communist Party as to whether they agreed, whether or not (T-1193) they approved or whether they disapproved of what was contemplated.

Under those circumstances it strikes me that you must necessarily conclude that it is certainly strange that they can be guilty of a conspiracy and yet publicize their acts in a manner in which those acts have been publicized.

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Now aside from the charge that there is something illegal we go to the second charge, and that is that they organized the Communist Party. The Court has told you in the course of your examination on voir dire that you were expected to approach this case with a fair and open mind. I seem to recall that his Honor held up a piece of paper and pointed out to you that your minds should be just like that piece of paper. I should like to assume that all of you do enter upon your deliberations in that frame of mind, and yet I would deny my experience as a human being and I think I would be doing an injustice to your experience as human beings if I assumed that all of the anti-Communist propaganda which we have read in the press or heard over the radio within the past few years have not had some influence in one way or another on your thinking. I bring that to your attention, that there is a thinking (T-1194) prevalent in America today that the mere word "Communist" or "Communism" speaks of something which is evil. I should like therefore when someone uses the word "Communist" or "Communism" in connection with the defendants that you will for your own benefit substitute the word "Republican" or "Democrat" and see if you can come to the same mental conclusions that you would have come to had you not made such a substitution.

In his opening statement the United States Attorney detailed the method by which the Communist Political Association was first organized, then dissolved, and then the Communist Party reconstituted, as he put it; and yet for the life of me as I listened I could not help thinking of the many organizations that I have been associated with, such as church organizations which followed precisely the same procedure which was followed here.

There is always in our democratic process a majority and a minority and the mere fact that you are today in the majority does not mean that you may not tomorrow be in the minority. That is precisely what happened in each of the allegations set forth in here. But he seeks to show and he intends to prove that under the constitution of the

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Communist Party they are committed to the idea of Socialism. I believe I am correct when (T-1195) I say he quoted from the preamble, and I hope you will bear with me while I quote from it. It is part of the documents in the indictment and it is certain to be introduced in evidence here.

Mr. McGohey: I object to the reading of any document until it is in evidence.

The Court: That is technically so, but I think I will allow that. It seems to me in all likelihood that the document will find its way into evidence and I am inclined to allow every latitude to everybody in opening.

Mr. Crockett. The preamble reads as follows:

“The Communist Party of the United States is the political party of the American working class, basing itself upon the principles of scientific socialism, Marxism-Leninism. It champions the immediate and fundamental interests of the workers, farmers and all who labor by hand and brain against capitalist exploitation and oppression. As the advanced party of the working class, it stands in the forefront of this struggle.

“The Communist Party upholds the achievements of American democracy and defends the United States Constitution and its Bill of Rights against its reactionary enemies who would destroy democracy and popular liberties. It uncompromisingly fights (T-1196) against imperialism and colonial oppression, against racial, national and religious discrimination, against Jim Crowism, anti-Semitism and all forms of chauvinism.

“The Communist Party struggles for the complete destruction of fascism and for a durable peace. It seeks to safeguard the welfare of the people and the nation, recognizing that the working class, through its trade unions and by its independent political action, is the most consistent fighter for democracy, national freedom and social progress.

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“The Communist Party holds as a basic principle that there is an identity of interest which serves as a common bond uniting the workers of all lands. It recognizes further that the true national interests of our country and the cause of peace and progress require the solidarity of all freedom-loving people and the continued and ever closer cooperation of the United Nations.

“The Communist Party recognizes that the final abolition of exploitation and oppression, of economic crises and unemployment, of reaction and war, will be achieved only by the socialist reorganization of society—by the common ownership and operation of the national economy under a (T-1197) government of the people led by the working class.”

And this is the part that the United States Attorney quoted:

“The Communist Party, therefore, educates the working class, in the course of its day-to-day struggles, for its historic mission, the establishment of Socialism. Socialism, the highest form of democracy, will guarantee the full realization of the right to ‘life, liberty and the pursuit of happiness,’ and will turn the achievements of labor, science and culture to the use and enjoyment of all men and women.

“In the struggle for democracy, peace and social progress, the Communist Party carries forward the democratic traditions of Jefferson, Paine, Lincoln and Frederick Douglass, and the great working class traditions of Sylvis, Debs and Ruthenberg. It fights side by side with all who join in this cause.

“For the advancement of these principles, the Communist Party of the United States establishes the basic laws of its organization in the following Constitution.”

On the basis of much that you have read concerning the Communist Party, and which, as I indicated before,