

Colloquy of Court and Counsel

Mr. McGohey: Both the Court and myself have indicated that the part that deals with what is happening or is said to be happening in India is not relevant to the case.

The Court: Is there any other part of the first feature of the offer that is in the same category with the reference to India?

Mr. McGohey: Well, there are other parts that I think are repetitious, your Honor.

Mr. Sacher: If Mr. McGohey will be good enough to put a circle around India there, I will keep it out.

Mr. McGohey: Well, if the Court please, on page 16, next to the last paragraph, beginning with the words "Let me sum up on this general point"—

The Court: Yes.

Mr. McGohey: —I would suppose if you went from there to the end of the paragraph on page— to the end of the paragraph which begins at the bottom of page 16 and encompasses the first six lines on page 17—

The Court: Going down to the word "justify". Which is the part that you desire to have excluded? The part about India I have got clearly in my mind.

Mr. McGohey: I would think, your Honor, that every part of this offer up to what is the next to the (T-9565) last paragraph on page 16, because page 16, that next to the last paragraph, is a summary of all that has gone before.

The Court: Oh, yes. But they say things in so many different ways, that—it says it is a summary but maybe it is not. I suppose we are to take that as though it were a summary.

Well, I will receive at the moment the three paragraphs beginning at the bottom of page 17 and going to the bottom of page 18, and after that has been marked, and while it is being read, I will study further that first part which begins on page 14.

(Marked Defendants' Exhibit 8 x Z-5 in evidence.)

*Excerpts From Defendants' Exhibit 8 x Z-5,
Read into Record*

Q. Are you a little bit tired, Mr. Davis? Would you like me to read it to the jury? A. All right.

Mr. Sacher: Now, there is no use reading the book backwards, but here it is. It begins at the bottom of page 17:

“Another important question we shall have to study much more than we have done in this session is the concrete relations of the Negro nation to the American nation as a whole. In the past, when we first developed the self-determination slogan, we brushed this question aside very cavalierly. There was a tendency to plump for a Negro Republic. But (T-9566) the situation is much more complicated than that. Talk of an American Negro Republic has no foundation in present-day reality. The relation of two or more peoples to each other within broader states is an extremely complicated one and assumes many forms in different nations. We have to become very familiar with these forms, especially as we begin to popularize the slogan of self-determination among the Negro people. I, for one, have no doubt that before very long, when we find the way of advancing the slogan more skillfully, the Negro people will begin to accept it. Especially I felt this when I listened to our brilliant young Negro Marxists discuss this question at this National Committee meeting.”

This is part of Mr. Foster's speech that I am reading.

“The last point I want to touch upon is the practical use of the self-determination slogan in the national liberation struggle of the Negro people. We did not deal with this practical question sufficiently in our discussion. What we have done mostly has been to establish the validity of the slogan. The practical use we are going to make of the slogan in the struggle is going to take much more study (T-9567) than we have given it here. There are two things I am sure of: first, that this slogan is not going to be put on the shelf as one

*Excerpts From Defendants' Exhibit 8 x Z-6,
Read into Record*

comrade indicated; and second, that we are not going to go to the sectarian extreme of using it to propagandize for the setting up of a Negro Republic. We have got to find the proper methods of using this slogan. In my opinion, our use of it will be pretty much in an educational sense in the beginning. But experience will teach us in this matter. Slogans are often two-edged swords. They can do great harm if wrongly applied, and this slogan can only be of value to us if we use it properly.

“Now, comrades, this is all I have to say on the question of self-determination. In this meeting, although we have not discussed all phases of the question, we have certainly discussed the fundamental ones. This is very important. In my opinion we have established a correct and basic attitude toward the general question during the course of the discussion. We should, therefore, on the basis of our discussion, endorse Comrade Ben Davis’ report and our draft resolution.”

(T-9568) The Court: Well, I will receive from the fourth paragraph on page 14 over to the end of the first full paragraph on page 16, and omit the rest. We probably have just got time enough to read that.

(Marked Defendants’ Exhibit 8 x Z-6 received in evidence.)

* * *

Mr. Sacher: This is the first part of Mr. Foster’s speech:

“What have we been saying in this discussion? We have been re-examining the whole theoretical basis of our approach to the Negro question, not simply the application of the self-determination slogan. During the course of this discussion, we have clearly established three or four fundamental propositions regarding the mooted question of self-determination in the Black Belt of the South.

“First, that the Negro people in the Black Belt are a nation, that they possess the essential qualities

*Excerpts From Defendants' Exhibit 8 x Z-6,
Read into Record*

of nationhood, as elaborated in the words of that great expert on the national question, Stalin. This lays a firm basis for the self-determination slogan. So I will not deal further with this basic matter of whether or not the Negroes in the Black Belt are a (T-9569) nation.

“Secondly, we have made an important contribution in answering a question that has puzzled our comrades for the past twenty years, namely, why, if the Negro people are a nation, don't they put forth the slogan of self-determination. Fundamentally, the reason is that they are essentially a young nation, a developing nation. A nation has to be at a certain stage of political growth before it advances the demand for self-determination. As a number of comrades have pointed out, all over the world there are to be found peoples who do not advance the slogan of self-determination. We have had one illustration from India. I might add further that there are some 18 distinct peoples in India, with very few of them advancing the slogan of self-determination. Nevertheless the Communist Party of India does advance this slogan in their name.

“Nations are a matter of growth, of course. Our own nation took some 150 years at least before it had developed a real national consciousness, until it advanced the slogan of self-determination, backing it up to the point of separation from Great Britain. Of course, the Negro people in the United States are developing under far more complicated and difficult (T-9570) circumstances than did the 13 American colonies.

“It has been pointed out in this general connection (and I think this throws much light on the question) that some of the nations of India are advancing their self-determination slogan under the guise of religion. It is also true that in certain circumstances national slogans are put out by other peoples in primitive or in distorted forms, for example, as racial slogans. One of the characteristics of the American Negro people has been that they,

*Excerpts From Defendants' Exhibit 8 x Z-6,
Read into Record*

too, have put out what are basically national slogans very largely in a racial sense. Hence we have to look more closely than we have in the past at these racial slogans and at the conceptions the Negro people have with regard to race and racial oppression. Behind these prevalent concepts of race are actually developing national concepts. I think the discussion has proved that it is no decisive sign that a people does not constitute a nation if it does not advance clear-cut slogans for self-determination.

“Thirdly, our discussion has shed considerable light on another very elementary matter, bearing directly upon the central question of whether or not the Negro people in the Black Belt are a nation, (T-9571) and on the slogan of self-determination. Some comrades in the discussion have said that the Negro people are not only not now a nation but also that they are not moving in the direction of becoming a nation. To help clear up this matter we have pretty clearly shown in our discussion what the orientation, or general course of development of the Negro people, really is. This orientation is developing along two general lines:

“First, the Negro people most distinctly feel themselves to be Americans in the fullest sense of the word and they are fighting resolutely for full participation in all phases of American life on the basis of complete economic, political and social equality. The second main trend in the orientation of the Negro people is to unify their own ranks on a national basis and to develop more and more systematically a definite national consciousness. One of the most important developments in this respect has to do with the change that has already been noted by some comrades, namely, that the Negro people no longer speak of themselves so much as a race, but rather as a people. When the Negro people begin to designate themselves as a people rather than as a race, they are already taking a long stride (T-9572) in the direction of national consciousness.”

Benjamin J. Davis—Defendant—Direct

The Court: Ladies and gentlemen of the jury, remember the admonition I have heretofore given you: Do not discuss the case among yourselves and do not let the matter be discussed by anyone with you. You will express no opinion of the merits of this controversy until finally submitted to you under the instructions of the Court.

We will now take a recess until 10.30 tomorrow morning.

(Adjourned to July 12, 1949, at 10.30 a. m.)

(T-9573)

New York, July 12, 1949;
10.30 a. m.

TRIAL RESUMED

BENJAMIN J. DAVIS, resumed the stand.

(The clerk confers with the Court.)

The Court: Mr. Sacher, are you the only lawyer here besides Mr. Dennis this morning?

Mr. Sacher: I am, your Honor.

The Court: Let the record show that the jury is present, and the defendants and the attorneys for the defendants, with the exception of Mr. Gladstein, Mr. Crockett, Mr. Isserman, and Mr. McCabe, concerning whom I am informed the usual stipulation is being prepared for signature and filing, and the attorneys for the Government are present.

Very well, Mr. Sacher.

Direct examination continued by Mr. Sacher:

Q. Mr. Davis, I show you Defendants' Exhibit 8 x Z-2 for identification, and ask you to tell the Court and jury what that exhibit is (handing)? A. That is excerpts from

Colloquy of Court and Counsel

the concluding remarks of Eugene Dennis at the December 3rd to 5th session of the National Committee in 1946.

((T-9574) Q. Did you hear him make the remarks which are set forth in this exhibit 8 x Z-2 for identification?
A. I did.

Mr. Sacher: I offer 8 x Z-2 for identification in evidence (handing to Mr. McGohey).

Mr. McGohey: This is objected to, your Honor, and I call your Honor's attention to the opening paragraph (handing to Court).

The Court (After examining): Mr. Sacher, did Mr. Davis testify that his report had been approved by those who were present?

Mr. Sacher: I believe he did, your Honor.

The Court: And I take it that Mr. Dennis was one of the ones who supported your report in the matter?

The Witness: Yes.

The Court: According to your recollection?

The Witness: He was.

Mr. Sacher: If it please the Court, I should like to make this observation, if I may.

The Court: Yes, you may.

Mr. Sacher: The spelling out of the question of self-determination and the political setting in the country and circumstances in which it may be realized, and the significance and meaning of the term "self-determination," as expressed by the secretary of the Communist Party at (T-9575) that session of the National Committee seems to me to be a very illuminating factor in the ultimate determination of the adoption of the resolution, and I think it is important to observe that it was not merely Mr. Davis's report which was approved but it was the ultimate adoption of the resolution which was significant, and therefore the remarks made in support of the thesis contained in Mr. Davis's report as well as in the culminating resolution assumed importance, and I would therefore urge the Court to—

The Court: Why is it not sufficient to have it as it now stands, to show that Mr. Dennis supported

Colloquy of Court and Counsel

Mr. Davis's position, and Mr. Davis has stated his position at great length?

Mr. Sacher: I should like particularly—

The Court: You see, it is the endless repetition which has distressed me for many weeks.

Mr. Sacher: This is the only other exhibit I have on the question of self-determination, and your Honor will recall with the exception of Mr. Davis's printed report, which I wish to offer but I do not want to read, of course, from this—I would like to invite your Honor's attention to the last three paragraphs on page 25 and ending at the top of page 26 of Exhibit 8 x Z-2.

(T-9576) The Court: All right, let me read those.

(After examining) Well, it is just a question of verbiage. It seems to me that he is saying there exactly what Mr. Davis said on the witness stand yesterday and when Mr. Davis says, as he just has here a moment ago, that Mr. Dennis supported his position, and he has already stated his position clearly, it becomes a clear case of repetition.

Mr. Sacher: Your Honor, I don't think when a due regard is had for the intent of Mr. Dennis's statement, and more particularly the next to the last paragraph on page 25—I feel circumscribed in not spelling out what I am referring to because I don't want to make a specific reference in the presence of the jury.

The Court: I think it is quite proper that you do have that diffidence about it.

Mr. McGohey, that last full paragraph on page 25 has a reference to the Progressive Presidential ticket—

Isn't that what you mean, Mr. Sacher?

Mr. Sacher: No, your Honor; I meant the one preceding that, as well as the first one. I think that next to the last paragraph I mentioned, your Honor, that expresses an idea.

Mr. McGohey: Which one?

(T-9577) The Court: Well, I am going to sustain the objection. I think it is just clear repetition.

Benjamin J. Davis—Defendant—Direct

I thought you had reference to that part I spoke of, but as you have not the rest is sufficiently before the jury now.

Mr. Sacher: I don't think it is, your Honor. I should like to call your attention to the testimony of Nowell on this very question.

The Court: I don't want to hear any more argument on this, Mr. Sacher. You see, you have been several days on these preliminaries.

Mr. Sacher: Your Honor, I have been exactly one and one half days with Mr. Davis. We had an hour on Thursday, one hour on Friday, and yesterday was the first full day. That is all we had with Mr. Davis.

The Court: I think it would be better to get on. I don't think I desire any more argument as to this particular offer.

Mr. Sacher: I should like to point out that Mr. Nowell was on the stand considerably more than Mr. Davis and so was Mr. Cummings and so were other prosecution witnesses.

The Court: They testified to things quite close to the charge here, but let's not argue that. I am excluding this because it is repetition, not because I (T-9578) deem it irrelevant.

Mr. Sacher: May I trouble your Honor for the original, if you have it?

The Court: Yes, it is right here (handing).

By Mr. Sacher:

Q. Now Mr. Davis, at page 5094 of the transcript there was introduced Exhibit 99 which purported to be a registration card of the witness Cummings in which it appeared that there were boxes labeled "Man," "Woman," "Negro," "White," and that he was asked to check off the approximate box. Do you recall that exhibit? A. I do.

Q. Will you please tell the Court and jury what the purpose of the Party was in eliciting that information? A. Well, in our understanding—

Mr. McGohey: If the Court please, before this witness answers, may I have just a moment?

Benjamin J. Davis—Defendant—Direct

The Court: Yes.

Mr. McGohey: I object to that question.

The Court: I was wondering what he knew about it or, perhaps you might ask some preliminary questions. I was just referring to Cummings' testimony here. Let's see, this was Toledo, Ohio, wasn't it?

Mr. Sacher: That is right.

(T-9579) *By the Court:*

Q. Mr. Davis, was there some time when in the National Board there was a resolution or determination made to the effect that in enrolling in the Party that there should always be sought information as to the color of the person applying for membership? A. There was discussion.

Q. The first answer is either yes, that there was; or no, that there was not. A. There was discussion at the Board at various times relative to membership books and application cards.

Q. You see, that isn't exactly what I asked you.

Mr. Sacher: May I perhaps put the question?

The Court: No, you will just wait until I get through.

Q. Was there a time when the Board, the National Board, passed a resolution or otherwise decided that in connection with applications for membership in the Communist Party the applicant should indicate whether he was a Negro or white? A. There was a time in the Board when the specific application books and forms and re-registration cards were approved by the Board, yes.

The Court: I see, and those registration cards had on them the matter I mentioned?

The Witness: That is right.

The Court: To show whether a person was Negro or white?

The Witness: Yes.

(T-9580) *By Mr. Sacher:*

Q. It had other things too, did it not, Mr. Davis—

The Court: Oh, yes, yes.

Colloquy of Court and Counsel

Q. —such as—

Mr. McGohey: I object to this. The card is in evidence, your Honor.

Mr. Sacher: What is—

The Court: But it is obvious that it did have other matters on there too.

Now, Mr. Sacher, instead of asking him what was the purpose, I think you should ask him what the discussion was or what was put in the resolution or decision about it.

Mr. Sacher: Now, if it please the Court, the witness Budenz was permitted, without meeting the requirements of time, place, discussion, who was present, etc., to answer questions such as, What was the purpose of various things. And I respectfully submit that if it was proper to permit such a question to Budenz, it is proper to put it to Mr. Davis. The precise question, what was the purpose of such things, was put and allowed over our objection.

The Court: Well, I have no recollection of this specific matter being put to Mr. Budenz. It may be that at the early part of the trial and before I understood, as fully as I came to later, the issues, and the type of questions and the prolonged character of the things we (T-9581) had to handle here, I may have on one or two occasions permitted questions that I decided later I would not. You know, in a long trial like this there are serious administrative problems, and they aren't all apparent to a judge at the outset. It may well be that I did permit certain questions to be put to Mr. Budenz, I don't remember the particular one, but I am not going to permit the question to this witness of what was the purpose because I have found that that merely leads to a long speech and does not cast very much light on it.

Now, if there was discussion, if there was some particular way in which the matter came up and was included in a resolution or in a determination made, then it seems to me that it is admissible, and the purpose and intent become something different.

Benjamin J. Davis—Defendant—Direct

Q. Mr. Davis, was there a meeting of the National Board after the reconstitution of the Communist Party in which there was discussed the question of taking a census of the membership of the Communist Party?

Mr. McGohey: May I have the time fixed?

Mr. Sacher: First I must have—

The Court: Yes.

Mr. Sacher: I wish to object to these interruptions “May I have the time?” before the question is even answered. There may be no occasion for the time it is answered (T-9582) “No.”

The Court: You get excited without the slightest justification. You get yourself into a perfect heat this way.

Mr. Sacher: No, I am being interrupted with this “What is the time?”, “What is the time?”. Just let the question be answered first and we will see whether there is occasion for it.

The Court: I think you will remember, Mr. Sacher, that witnesses for the defense here, with the possible exception of Mr. Davis, who has been better than the others were, instead of giving a clear, simple answer to a question and then permitting the usual interrogation to proceed—we have had witnesses who, whatever the question was, have proceeded to go on into all sorts of things. Now, I think that your question as put is a perfectly proper preliminary question and it was your intent to bring out the time and place.

So that if the reporter will read the question, I think we will get along without any trouble.

Q. (Read.) A. There was.

Q. Do you recall when that meeting took place? A. Well, I cannot recall exactly when. I think that it took place, I am sure, between the period of the emergency convention in July and the end of the year. I would say (T-9583) perhaps a couple of months after the emergency convention in July.

Q. Do you recall who was present at that meeting? A. Well, Mr. Williamson was present, and Mr. Dennis, and Mr. Foster, and Mr. Green—no, I am wrong about Mr. Green;

Benjamin J. Davis—Defendant—Direct

as I recall, he wasn't present, but I think Mr. Stachel was present, and those are all I recall at this moment.

Q. And do you recall what the discussion in regard to the census was? A. Yes.

Mr. McGohey: I object to that, your Honor.

The Court: Was this the time when they approved these forms of application for membership, Mr. Davis?

The Witness: Yes, yes.

The Court: I will allow it. You may answer.

A. As I recall, there was a discussion concerning the whole organizational problems and status and apparatus of the Party.

With respect to these particular registration cards or, rather, to registration cards and their content, it was pointed out that it was necessary to have a census in our Party with respect to both men and women, and workers—from what unions they came, from CIO or AFL or independent unions—and also with reference to Negro and white. (T-9584) And with reference to Negro and white this discussion—it was stated that it came from the fact that our Party consistently regarded the Negro question as a special question and that the designation—the number of Negroes in our Party was a sign of the Party's health in the battle for the rights of the Negro people; and that the only way, the surest test and the surest guide of the health of our Party in the struggle of our Party on the question of Negro rights was the extent to which we had large membership, and that was due to the fact that we always considered the Negro workers and the Negro people the most oppressed section of the population.

Then also, on the question of—

The Court: Did they need to do all that talking about this?

The Witness: Oh yes, we discussed everything quite thoroughly because we know that sooner or later somebody is going to try to take advantage of the things we do in this view. And so a second reason why designation exists is in order to make sure that at all times in our Party there is a promotion and

Benjamin J. Davis—Defendant—Direct

development of Negro workers who haven't been in the labor movement and had experience that white workers have over a long period of time.

So, therefore, the designation "Negro and white" facilitated our Party's own fight against the Jim Crow system, quite different from the designation "Negro and white" in most organizations, which is for the purpose of Jim Crow.

(T-9585) Q. Now Mr. Davis, I wish to direct your attention to the following testimony given by the witness Younglove at page 4924 where he testified as follows, under examination by Mr. Wallace:

"Q. Mr. Younglove, I believe you testified yesterday that Government's Exhibit 97, this outline, was used by you at this school from about the middle of September of 1946 to some time in October 1946; is that correct? A. That is correct.

"Q. On the last day that you attended school, in October of 1946, was there a meeting held? A. There was.

"Q. Was there a speaker at the meeting? A. There was.

"Q. Who was the speaker? A. Ralph Shaw.

"Q. Will you tell us your best recollection of what Ralph Shaw said at this meeting? A. Ralph Shaw stated that he had just returned from a National Committee meeting that had been called by the National Board, and at this meeting a personal representative of Stalin spoke, who said that war was near and may come about at any time, and if it did, we must be prepared to go underground; and then Shaw said himself at this meeting—he was quoting this representative; (T-9586) now this is what Shaw said—'If war does come about, we will do all we can as Party workers to sabotage the war effort.'"

Do you recall that testimony, Mr. Davis? A. I do.

Q. Was there any National Committee meeting in October 1946?

Mr. McGohey: Objection.

The Court: Mr. Borman, will you get that volume for me, please?

Benjamin J. Davis—Defendant—Direct

All I am looking to see is whether Mr. Younglove testified that there had been a meeting in October.

Mr. McGohey: He said that Shaw said there was.

Mr. Sacher: He said that Shaw said he had just returned in October 1946 from a National Committee meeting, and I am asking Mr. Davis as to whether there was a National Committee meeting.

The Court: I will allow it.

A. Not to my recollection.

Q. Well, was there or wasn't there, Mr. Davis, in October 1946 a meeting of the National Committee?

Mr. McGohey: If the Court please, this is direct examination. I submit the question has been answered.

(T-9587) The Court: Well, I will permit him to ask a further question. I will overrule the objection.

Read me back the first question and answer, Mr. Reporter.

(Question and answer read as follows:)

“Was there any National Committee meeting in October 1946? A. Not to my recollection.”

The Court: Now what was the next question?

(Question read as follows:)

“Well, was there or wasn't there, Mr. Davis, in October 1946 a meeting of the National Committee?”

A. There was not.

Q. What was the last National Committee meeting—

Mr. Sacher: I will withdraw that, your Honor.

The Court: That was a National Board meeting you are talking about, the second one?

Mr. Sacher: No. The witness said “National Committee” and I have asked about “National Committee.”

The Court: All right.

Mr. Sacher: And when I say “the witness” I mean Younglove.

Benjamin J. Davis—Defendant—Direct

The Court: Well, the question you just put to Mr. Davis was about a National Committee meeting?

Mr. Sacher: Yes, your Honor.

(T-9588) Mr. Gordon: Younglove didn't say there was a meeting. He said Shaw said so.

The Court: That's all right. Now go ahead.

Mr. Sacher: Well, I just wanted him to conduct his own trial.

The Court: This is all caused by the fact that I had in my own notes "National Board," and I wanted to correct it, and I did correct it.

Now go ahead.

By Mr. Sacher:

Q. Was there—you testified yesterday that there was a meeting in July 1946 at which you were named chairman of the Legislative Committee; is that right, Mr. Davis? A. Yes, sir.

Q. Now what was the next National Committee meeting in the year 1946? A. In December 1946.

Q. And was that December 1946 National Committee meeting the meeting at which you submitted your report in regard to the Negro question to which you testified yesterday? A. It was.

* * *

(Marked Defendants' Exhibit 9 x A for identification.)

(T-9589) Q. Now Mr. Davis, ever since you have been a member of the National Committee and National Board of the Communist Party, has there ever been a personal representative of any other Communist Party at a meeting of the National Committee? A. Not that I can recall.

Q. Specifically, was there ever a personal or other representative of Stalin present at any National Committee meeting since you have been a member of the National Board and National Committee of the Communist Party since 1945? A. No; that is absurd.

(T-9590) Q. Has any such representative either of Stalin or of any other Communist Party ever been present

Benjamin J. Davis—Defendant—Direct

at any meeting of the National Board of the Communist Party? A. No.

Q. Since you have been a member of that body? A. No.

Q. Now Mr. Davis, I show you Defendants' Exhibit 9 x A for identification, and ask you what it is? A. That is a printed copy of the report which I delivered to the December 1946 National Committee meeting on the question of self-determination.

By the Court:

Q. That is the one that you gave us a long oral description of yesterday, is it not? A. No, that is part of it.

Q. What? A. That is part of it.

Q. You were asked to state what was your report and, according to my recollection, you went on for some little time telling the jury and me what the report was. A. I said that my report to the National Committee meeting was divided into two sections, one dealing with the question of self-determination and one dealing with many current analyses of the problems of the Negro people.

Q. Well, when you said it was divided into two parts you went on to describe it—in fact, I have several (T-9591) pages of notes with various subdivisions and so on. Wasn't that this same report? A. That was a part of the report, only that part of the report that was printed that had to do with the question of self-determination.

The Court: Very well.

By Mr. Sacher:

Q. Now Mr. Davis, was there at the meeting of December 3rd to 5th a discussion by the members of the National Committee concerning the publication and circulation of your report, or a portion thereof? A. Yes, it was agreed that that section of my report should be published and printed.

The Court: Will you read the question?

(Question read.)

The Court: And now the answer.

(Answer read.)

Benjamin J. Davis—Defendant—Direct

The Court: It doesn't make any sense to me.

Q. Which section do you refer to when you say "that section of my report"? A. The section of the report dealing with the question of self-determination. That section which you have in your hand.

Q. And do you say that the exhibit 9 x A for identification constitutes that portion of your report which concerned itself with the question of self-determination? (T-9592) A. Yes.

Q. And is Exhibit 9 x A—I withdraw that, your Honor.

Q. Do you know when Defendants' Exhibit 9 x A for identification was printed, Mr. Davis? A. I think in the early part of 1947—March or April.

The Court: It says April 1947.

Q. It says April 1947. Does that refresh your recollection as to when it was published? A. Yes.

Q. Do you know about how many copies of Defendants' Exhibit 9 x A for identification were printed?

Mr. McGohey: Objection.

The Court: Sustained.

Q. Did you yourself deliver any copies of Exhibit 9 x A for identification to any persons in the City of New York subsequent to its publication and during the year 1947?

Mr. McGohey: Objection.

The Court: I will sustain the objection.

(To witness) There was a distribution of that pamphlet, was there not?

The Witness: There was.

Q. In fact, it was decided, was it not, by the National Committee at its meeting of December 3rd to 5th that it should be distributed to members of the Communist Party (T-9593) and persons not members of the Communist Party, isn't that so?

Mr. McGohey: Objection.

The Court: Sustained.

Benjamin J. Davis—Defendant—Direct

Q. Was there any discussion—

The Court: Oh, don't go into that any more. It is in evidence that it was printed and it was distributed. What difference does it make how many copies went to this person and how many copies went to that person? It gets interminable and all these details amount to nothing.

Mr. Sacher: If we don't have it we have objections.

The Court: I think the objections go to its being quite immaterial and I take that view myself. Every time there is one of these questions how many copies and—

Mr. Sacher: This evidences the fact that the Communist Party is an open public political party.

Mr. McGohey: I object to the summation. That is what we have been leading up to.

Mr. Sacher: How else do you determine whether a political party exists—

Mr. McGohey: I object to it. I think we ought to go ahead, as your Honor directs.

The Court: I think of many ways of showing whether it was open, not merely by showing that certain pamphlets (T-9594) were distributed. However, the proof is that the pamphlet was distributed. I don't consider it material to know how many copies and just who got them and all that.

Mr. Sacher: I offer Defendants' Exhibit 9 x A for identification in evidence.

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

The Court: Sustained. He has just testified it is the very self-same thing he testified to for some 30 or 40 minutes yesterday.

By Mr. Sacher:

Q. Was there a time, Mr. Davis, during the year 1947 when you were requested by the editors of a university magazine to write an article setting forth why you are a Communist? A. Yes.

Q. What university magazine was that? A. Atlanta University.

Benjamin J. Davis—Defendant—Direct

The Court: Atlanta University?

The Witness: Atlanta University.

Q. Did you write such an article? A. I did.

Q. Do you recall whether it was published? A. It was.

Q. When was it published, Mr. Davis? A. I think in the June 1947 issue of the magazine Phylon.

(T-9595) Mr. Sacher: Would you be good enough to mark the magazine for identification and the article at pages 105 to the middle of 116 as 1 of that exhibit?

(Marked Defendants' Exhibit 9 x B for identification, and pages 105 to 116 marked Defendants' Exhibit 9 x B-1 for identification.)

The Court: All right, Mr. Borman.

Q. This magazine of Atlanta University is sold on subscription, is it not, throughout the country? A. So far as I know, it is.

Q. After this article in Phylon, which is 9 x B for identification, was published, was there a meeting of the National Board of the Communist Party at which this article was discussed? A. Yes.

Q. Do you recall when and where that meeting took place? A. During the month of July or August.

Q. Do you recall who was present? A. Well, Mr. Stachel was present and Mr. Dennis, and I think Mr. Thompson, myself, Mr. Winston; and those are as many as I can recall.

Q. Was there any discussion at that meeting concerning the publication and circulation of this article as part of the teaching and advocacy of the Communist Party?

Mr. McGohey: Objection.

The Court: Sustained.

(T-9596) Q. Will you please state what discussion there was, if any, concerning the publication and circulation of this article?

Mr. McGohey: Objection.

The Court: I will allow it.

Benjamin J. Davis—Defendant—Direct

A. Mr. Stachel proposed—rather, said, that the article was a very valuable one and could be used in a very broad sense to explain and to answer many of the questions that had been raised concerning our Party. He said he proposed that the National Board would approve the article and make arrangements for its publication and then the—this was the consensus of opinion of the other members and such approval was voted.

Q. Was the article thereafter reprinted and distributed? A. It was.

* * *

(Marked Defendants' Exhibit 9 x C for identification.)

Q. Mr. Davis, I show you Defendants' Exhibit 9 x C for identification and ask you whether that is the article which is contained in the magazine Phylon, which was reprinted and distributed after the discussion and action of the National Board which you have described? A. Yes.

(T-9597) Mr. Sacher: If it please the Court, I now offer Exhibits 9 x B-1 for identification and 9 x C for identification in evidence.

Mr. McGohey: Both of them?

Mr. Sacher: Yes. We will only read it once, though.

Mr. McGohey: Object to both of them.

The Court: Sustained.

Mr. Sacher: I should like an opportunity to be heard on this, your Honor, because I think—

The Court: No, I don't want to hear any argument on that. It seems perfectly clear to me.

Mr. Sacher: You mean—

The Court: I don't want to have happen again what happened when that paper that was prepared by Mr. Foster was offered.

Mr. Sacher: But, your Honor, this was approved by the Communist Party.

The Court: I know. I don't want any argument on it, Mr. Sacher.

Mr. Sacher: Not only that but—

The Court: Please do what other lawyers do when the Court has ruled.

Benjamin J. Davis—Defendant—Direct

Mr. Sacher: Well, this man has to defend himself. This is why he was a Communist and I think that—

(T-9598) The Court: Please don't become offensive, Mr. Sacher. I understand he has a right to defend himself. I am giving him every opportunity under the rules of law to defend himself, and this insinuation of yours, that I am doing something different, is very offensive to me, and I hope you won't repeat it.

Mr. Sacher: But it is incomprehensible to me that a document written at the instance—

The Court: That may be because you read so much of this material here that you got queer notions. I don't know, but however that may be, I rule it out.

Mr. Sacher: Would it be permissible to excuse the jury and permit me to—

The Court: I don't desire any argument on this. I don't see any necessity. It seems perfectly clear to me.

Mr. Sacher: Will your Honor give me an opportunity to go over this exhibit during the recess, to offer individual sections of it, if I may?

The Court: I will give you the opportunity to do that. It seems to me offhand that the objection goes right to the root of the whole matter.

You have an impression that what a person may write and then have some resolution issued, that necessarily that makes it admissible, and I cannot see that, but you (T-9599) may go over it and you may offer such portions as you desire and I will give them consideration.

Mr. Sacher: The only thought I have, your Honor, is that when a man has written under these auspices—

The Court: I don't want any argument, Mr. Sacher. If you will, please make a special effort to desist.

Q. Now, Mr. Davis, the witness Hidalgo testified at page 5851 and page 5852 of the transcript that there was a Party building congress held in June 1947 at the City Center in New York City. Do you recall that testimony? A. I do.

Benjamin J. Davis—Defendant—Direct

Q. He also testified that you were the first speaker at that meeting. Do you recall that? A. Yes.

Q. And at page 5852 of the transcript he testifies as follows, referring to you:—Hidalgo said, quoting now—“He,” referring to you, “opened up the meeting by stating what was the first question as to Comrade Foster on his latest trip to Russia. The question was, how big is the Party in America? Comrades, that question is a very important one—to the best of my recollection.”

Do you recall that testimony? A. I do.

Q. Will you be good enough, Mr. Davis, to tell the Court and jury what you actually said on the occasion referred to by Hidalgo? A. I did not say what Hidalgo said that I said. (T-9600) I spoke at this Party building conference. I made reference to the fact that there was a great need to build the Communist Party in our country and that that was the main purpose of the congress. I said that Foster had taken a trip and had returned from this trip, in which he informed me and other members of the Board that he had visited England, and France, and Switzerland, and Italy, and Czechoslovakia, and Poland, but that he had not been to the Soviet Union; and that he was struck by what he found in the people's democracies, the countries of Poland, Czechoslovakia, Bulgaria and other countries in Central and Eastern Europe.

And he said that these people's democracies were something new and that they were a type of democracy which had broken and curbed the power of the big monopolies and that the various nationalities and groups who lived in these people's democracies were—had a degree of freedom that they never had under capitalism and under the various reactionary monarchies that had existed in the Central European areas before World War II, and that these people's democracies there were bulwarks against war and fascism and that they had been democratically elected by the people, and that most of them were governed by parties which consisted of the Communist Party and Socialist parties, a few Catholic parties (T-9601) and various other groups that had come together to establish these people's democracies.

Benjamin J. Davis—Defendant—Direct

He also pointed out that these—

The Court: This is what you were telling the meeting that Foster told you.

The Witness: Correct.

A. (Continuing) He also pointed out that these people's democracies were finding their own way to Socialism and that they were very good examples of peaceful and democratic achievement of Socialism in their countries, and that nevertheless there were constantly forces being used, especially by American imperialism to overthrow these people's governments and to deny these people the right to have their own self-determination of—establish their own destiny and the type of government they wanted, and that these people's democracies were characterized by very, very large Communist parties, and he said that these Communist parties, their size, had been decisive in facilitating the most peaceful and democratic transition to Socialism which these governments and people's democracies were evolving, and he said that like the American workers have learned experience from other countries and like other countries had learned experiences from the American working class and the American people, that certainly here was something (T-9602) that stood out, that the American workers needed to learn very much—a lot of information about these people's democracies so that lessons could be drawn that would be useful here in the American working class finding a way, an American way, to establish people's democracies.

Then I spoke on the Party and I said that it was very necessary for us to have a very large Party in America, that our Party had made signal contributions to democracy in America, to the fight of the American working class, and in many other respects, and that certainly our Party had pioneered in the whole course of building and preparing the ground for industrial unionism in America, and that all was one of the many contributions made by our Party in its 30 years of history in this country.

Then I said that another contribution was our Party's fight for Negro rights and I said that on this question—

Benjamin J. Davis—Defendant—Direct

The Court: I guess we had better take our recess. I waited five minutes here, but evidently you have quite a little more to say on that, haven't you, Mr. Davis?

The Witness: Yes, I do.

The Court: Then I think we had better have our (T-9603) ten-minute recess now.

(Short recess.)

Mr. Sacher: Will your Honor excuse me just one moment, please?

The Court: Yes, certainly.

By Mr. Sacher:

Q. Will you be good enough, Mr. Davis, to proceed with the speech which you say you made at this meeting of the Party building conference? A. I said that our Party had made historic contributions to the labor movement and historic contributions to the struggle for the freedom of the Negro people and that this contribution with respect to the Negro people was not just a contribution affecting the Negro people alone but was a contribution affecting the whole of American democracy.

I said that the Scottsboro case had marked a milestone in the development of the struggles of the Negro people, the biggest one since the Civil War; and I said that the new thing which our Party had contributed in the struggle for Negro rights on Scottsboro was that it had brought to the attention of the whole American people and burned into their conscience the oppression of the Negro people and how this was the touchstone of American democracy and how this was the (T-9604) real item which showed the hypocrisy of our own democracy.

And I said that our Party in that Scottsboro case had brought the labor movement, the white workers into this struggle for the rights of the Negro people and that this had marked a new turn in the whole struggle for Negro rights and that this was possible only because our Party based itself upon the principles of Marxism-Leninism.

And I said our Party had a splendid war record, that it had a good war record with respect to Spain where our

Benjamin J. Davis—Defendant—Direct

Party had helped to contribute to the Spanish people's fight against Franco, and how our Party had been struggling in America for many, many years against all manifestations of war and fascism; and that for these reasons we should have a deep appreciation of what the Communist Party in our country meant and that we should defend our Party and that there were forces that were constantly threatening, the forces of monopoly capitalism and American imperialism, were constantly threatening through their agents and others to destroy our Party and to outlaw our Party, that we must defend our Party because it is the instrumentality through which we will one day achieve the freedom, the principles of the Declaration of Independence, it is the instrument through which we are going to really have a free (T-9605) America where there will be no exploitation of man by man and oppression of peoples because of their race or their creed or their color or nationality, and that this day in America which we were looking forward to and which we were working forward to was going to come very soon in proportion to the size of our Party and how we were able to work among the basic workers of America, those workers who constitute the great majority of the American people, and convince them of the desirability of Socialism, of the correctness of Socialism, of the barbarousness of capitalism, of the great danger of war and fascism that was beginning to threaten our country, and I asked them with that hope to build our Party and to defend our Party, to build it among the workers, among the Negro people, among the Jewish people, among the Catholic people and all so we might have the day that the American people all hope for and dream for much earlier and that this was decisive in terms of the way, the speed and the size with which we built our Party and spread its science of liberation and freedom for the people of our country.

(T-9606) Mr. Sacher: I should like, if I may, at this time to indicate to the Court and to Mr. McGohey what portions of 9 x C for identification I would like to offer if I may. Those portions are, your Honor, from the bottom of page 7—

Benjamin J. Davis—Defendant—Direct

The Court: Yes, they are all parts marked but you desire to state them for the record and you may do so.

Mr. Sacher: Just for the record.

The Court: I see the pencil marks here.

Mr. Sacher: That is right.

The Court: And for the record you may state just what you are offering.

Mr. Sacher: Beginning with the heading at the bottom of page 7 and going over to the end of the second full paragraph on page 10; then from the bottom, the very last line, on page 12, over to the end of the third line on page 14; then beginning at the top of page 15, the first full paragraph on page 15, and going over to page—to the middle of the—to the end of the first paragraph on page 19.

Mr. McGohey: I object to each of these offers.

The Court: Sustained.

Q. Mr. Davis, did you in the month of September 1947 attend a National Conference of the Communist Party (T-9607) concerned with the problems of the Negro people? A. I did.

Q. Where was that conference held, Mr. Davis? A. It was held in Harlem on 124th Street between Lenox and Seventh Avenue. I don't know the exact number.

Q. Do you have any present recollection as to who attended that conference? A. Yes, Mr. Winston, Mr. Potash, Mr. Williamson, Mr. Stachel, myself. Those are all that I can recall at the present time.

Q. You mean, do you, that other people— A. There were others there.

Q. —were present whom you don't recall? A. Yes.

Q. Did you make a report to that conference, Mr. Davis? A. I did.

Q. Will you be good enough to state the substance of that report?

Mr. McGohey: Objection.

The Court: Mr. Sacher, isn't this going to be on the Negro question?

Mr. Sacher: But there are phases of that question.

Benjamin J. Davis—Defendant—Direct

The Court: This is a new phase?

Mr. Sacher: Yes, I think it is.

The Court : I really don't know what I am going to do about this repetition, it is just completely baffling (T-9608) to me, because no suggestion seems to be acceptable to the defense about it, and you have just been over this thing so many times, but I will receive this and we will see if it is new.

Go ahead, Mr. Davis.

A. Among the things that I said, I discussed the question of the crisis and the Negro people, and I said that the— one of the most unfailing indications of a coming economic crisis was the degree of unemployment which was already beginning to hit the Negro workers, and that there were lay-offs and cut-backs which affected the whole working class in America, and that we were beginning to have a large period of unemployment in this country but that the major brunt of this unemployment and this period of economic recession which we are moving into was falling heaviest on the Negro workers, and that one of the most important tasks for the labor movement and progressive forces as a whole was to fight already—to struggle to smash the system of imposing upon the Negro workers the biggest single burden of coming economic recession, and that when Negro workers were themselves beginning to feel the heavy brunt of disemployment, then that was time for the whole working class, for the labor movement, for CIO for AFL to then realize it was time to start fighting, to see that the burdens of this economic (T-9609) crisis were not placed primarily upon the workers and upon those Americans who could least afford to bear this burden, and that the real danger that faced the country with the growing acuteness of an economic crisis was the danger of fascism and that there was already a head start toward fascism in America by virtue of the fact that the system of white supremacy with respect to Negro workers had so long existed, so that the real big danger that faced the American working class and the American people was the danger of fascism and that this danger could quickly be intensified by the fact that we already had in America a Jim Crow system.

Now those were the principal things I said on the crisis; and then I pointed out as one of the main ways of over-

Benjamin J. Davis—Defendant—Direct

coming the especial unemployment which Negro workers had to go through with, was this fighting against the long system which existed in our country, symbolized in the words that the Negroes are the last to be hired and the first to be fired, and that this could be fought against and defeated only to the extent that the Negro and white workers fought together side by side, and that the white workers took the initiative against this idea that the Negro workers must always do the lowest form of work and (T-9610) receive the lowest pay.

Those were the principal things I said.

Q. Was there any special discussion by you at that time of the problem of seniority? A. Not by me; there was by Mr. Williamson.

Q. Will you be good enough to state what Mr. Williamson said on that subject? A. Mr. Williamson said that one of the principal things that had existed in American industrial life was the fact that Negro workers had been so long kept out of industries in which they had gotten into just a little bit during the war, and that the Negro workers who had gotten into industry during the war were going to surely be the first to be fired because they would have such low seniority that most everywhere the white workers would have much greater seniority, because the same kind of Jim Crow bans against them in industry had not existed but with the Negro workers this was true, that they would only have the seniority that they received during the war and therefore it was necessary for the labor movement, as one of its means of strengthening seniority, of maintaining Negro and white workers in the factories that they had gotten into during the war—that one of the things that was necessary in that regard was to find—for unions to find a way in which (T-9611) an adjustment of seniority could be made, and that really it wasn't asking extra seniority for Negro workers, in effect, for the simple reason that the Negro workers had never had any seniority because they had been kept out of these factories and that therefore it was just recognizing a right that the employers had long denied to Negro workers, and therefore it was supposed that wherever possible progressives in unions—not only our own Communist Party members but progressives in unions

Benjamin J. Davis—Defendant—Direct

should find a way to have an adjustment in seniority so that all the Negro workers wouldn't be kicked out of industry, as the employers were attempting to do, because that would mean certainly that the employers were going to not only keep the Negroes out of industry but also use that as a means of dividing Negro and white in the labor movement, keeping the white workers in the labor movement and trying to kick the Negro workers out.

Q. Did Mr. Winston say anything at that conference that you can recall? A. Yes. Mr. Winston spoke and said that he considered that the fundamental task of the Communist Party in the whole coming period, with reference to the question of the employment of Negro workers, was to guarantee that there should be the broadest understanding in the labor movement, in the trade unions of a correct way of fighting (T-9612) this attempt to isolate and to—to expel the Negro workers from American industry, and he said that our Party, if it fought along those lines, would certainly be able to accomplish much and our Party would grow and the Negro workers would be able to remain in industry to a degree that they weren't, and the white workers would be able to strengthen themselves by virtue of defeating this obvious measure of the employers to take advantage of the crisis to drive Negro workers out of industry.

Q. Did Mr. Potash participate in the discussion, too?

A. He did but I don't recall just what he said.

Mr. Sacher: Mr. Borman, will you be good enough to mark pages 445 to 455 (handing to clerk). Thank you.

(Marked Defendants' Exhibit 9 x D for identification.)

(T-9613) Q. Mr. Davis, did you on February 20, 1948, appear before a Congressional Committee to testify concerning pending legislation at that time? A. I did.

Q. I show you Defendants' Exhibit 9 x D for identification, and ask you to glance through those pages and to state whether there appears at the pages of the exhibit the questions that were put to you by the Committee and the

Benjamin J. Davis—Defendant—Direct

answers that you made to those questions. A. (After examining) Yes.

Q. And the exhibit which I show you, that is, 9 x D for identification, is part of a document that comes from the Government Printing Office, that is, the United States Government Printing Office, is that right?

Mr. McGohey: I think that appears on the face of the document.

A. Yes, yes.

Mr. Sacher: I offer 9 x D for identification in evidence, your Honor.

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

The Court: Sustained.

Q. Did you in the month of June 1948 engage in any activity as a member of the Communist Party in the City of Washington? A. I did.

Mr. McGohey: Objection.

(T-9614) The Court: I will allow a yes or no answer.

A. I did.

Q. Will you please state what that was?

Mr. McGohey: Objection.

A. In the City—

The Court: Sustained.

Mr. Sacher: What did your Honor say?

Mr. McGohey: (To Mr. Sacher) The Court sustained it.

By the Court:

Q. Does this have anything to do with force and violence, Mr. Davis, except in a remote and indirect sense?

A. Well, we had a delegation in Washington to get the anti-lynching bill passed.

Q. It was a delegation? A. Yes.

The Court: Then I will sustain the objection.

Benjamin J. Davis—Defendant—Direct

By Mr. Sacher:

Q. Did you say anything while you were in Washington in June 1948 concerning the subject of force and violence?

Mr. McGohey: Objection, your Honor.

The Court: Sustained.

(To witness) Is this some school that you were going to there or was it a delegation to effect some legislation?

Mr. Sacher: Excuse me, your Honor. Does your (T-9615) Honor's question imply that statements made in schools alone have significance? That a statement teaching people outside a school doesn't have significance?

The Court: No. The character of the proof that has been adduced against these defendants is something that I take it in the course of time you will seek to refute or call witnesses to testify about. I thought this had something to do with that but it hasn't. If he merely went to Washington with a delegation it seems to me we have had a lot of that already and it is so remote to the issue I can't conceive it having any probative force.

Mr. Sacher: But it is so close to the date of the indictment. That is what is significant about it. It is just slightly about a month before the indictment and it seems that that should be of significance.

The Court: Well, it seems otherwise to me.

Mr. Sacher: In view of your Honor's most recent statement concerning force and violence, may I offer that portion of Mr. Davis's testimony before the Congressional Committee—

The Court: My most recent statement? I don't remember making any statement on the subject.

Mr. Sacher: Your question on force and violence addressed a moment ago to Mr. Davis.

(T-9616) The Court: You call that a statement?

Mr. Sacher: I am sorry; it is a question. You have my apology, your Honor.

May I re-offer that portion of Mr. Davis's testimony before the Congressional Committee, which is marked off in the upper half of page 451 of Exhibit 9 x D for identification?

Benjamin J. Davis—Defendant—Direct

The Court: Yes.

Mr. McGohey: This is objected to, your Honor. It is the part that is marked here in the margin on the page, to the right hand side.

The Court: Yes.

(After examining) Sustained.

(T-9617) Q. Mr. Davis, how long have you known Mr. Dennis? A. About 12 or 13 years.

Q. And do you recall about how long you know Mr. Williamson? A. About 10 years.

Q. And Mr. Stachel? A. Oh, about 14 years.

Q. And how about Mr. Thompson, Robert G. Thompson? A. About seven or eight years.

Q. How long, about, have you known Mr. Winston? A. About 15 years.

Q. And Mr. Gates? A. About seven or eight years.

Q. And how long have you known Mr. Potash? A. I don't recall any more than five years. Maybe six or seven years.

Q. And Mr. Green? A. About 12 or 13 years.

Q. And how long have you known Mr. Winter, if you recall? A. About 12 or 13 years.

Q. And finally Mr. Hall, how long have you known him? A. About eight or nine years.

Q. With some of these men you have sat in various National Board and National Committee meetings since the reconstitution of the Communist Party in 1945, have you not? A. I have.

Q. And with some of them you have sat since a later date, that is, when they were elected or appointed to the National Board, is that right, or the National Committee? (T-9618) A. I have.

Q. Have you, during any of the years that you have known any of these gentlemen, ever heard any of them teach or advocate the overthrow or destruction of the Government of the United States by force or violence?

Mr. McGohey: Objection.

The Court: I will allow it.

Benjamin J. Davis—Defendant—Direct

A. No, I have never heard any of them teach and advocate the overthrow of the Government of the United States by force and violence.

Q. Have you, Mr. Davis, ever taught or advocated the overthrow or destruction of the Government of the United States by force and violence? A. I have not.

Q. Did you ever enter into any agreement or conspiracy with any of your co-defendants or with anybody else to organize the Communist Party as a society, group or assembly of persons to teach and advocate the overthrow and destruction of the Government of the United States by force and violence? A. I have not.

Q. Did you ever enter into any agreement or conspiracy with any or all of your co-defendants or anybody else to teach and advocate the duty and necessity of overthrowing and destroying the Government of the United States by force and violence? A. I have not.

Q. Paragraph 2 of the indictment, Mr. Davis, reads (T-9619) as follows:

“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 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.”

Do you recall that? A. Yes.

Q. Are there any Marxist-Leninist principles that you are aware of which are principles of the overthrow and destruction of the Government of the United States by force and violence?

Mr. McGohey: Objection.

The Court: I will allow it.

A. No.

Benjamin J. Davis—Defendant—Direct

Q. Paragraph 6 of the indictment reads as follows:

“It was further a part of said conspiracy that said defendants would bring about the organization (T-9620) 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.”

Do you recall that? A. Yes.

Q. Your Party is based and was based on the principles of Marxism-Leninism, was it not? A. It was.

Q. Was it your intention in participating with the defendants to the end of reconstituting the Communist Party in 1945 to teach and advocate the overthrow and destruction of the Government of the United States by force and violence? A. No.

Q. Paragraph 10 of the indictment reads as follows:

“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.”

Do you recall that? A. Yes.

Q. I ask you whether you ever entered into any (T-9621) agreement with any of the defendants or anybody else to conduct or cause to be conducted schools and purposes—schools and classes for the purpose of teaching and advocating the duty and necessity of overthrowing and destroying the Government of the United States by force and violence? A. I did not.

Q. Have you and your co-defendants whom I have named to you earlier—have you and your co-defendants whom I have named earlier wholeheartedly subscribed to the following contained in the preamble to the Constitution of the Communist Party, namely:

Benjamin J. Davis—Defendant—Direct

“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”?

Mr. McGohey: Objection.

A. Yes.

The Court: Well, I am not disposed to take a technical view of this phase of the case. I am going to allow it.

Q. What is your answer? A. Yes.

Q. Thank you. Now, Mr. Davis, did you, during the period covered by the indictment, receive any awards, distinctions or honors? A. I did.

(T-9622) Q. Will you please state what they were?

Mr. McGohey: Objection.

The Court: Where were these awards and honors?

Read me that other question, Mr. Reporter.

(Question read as follows: “Now, Mr. Davis, did you, during the period covered by the indictment, receive any awards, distinctions or honors?”)

The Court: I will sustain the objection.

Is it in connection with some military service, Mr. Sacher?

Mr. Sacher: No, it is not military service. It is for service to his people.

Will you be good enough, Mr. Borman, to mark this (handing).

(Marked Defendants' Exhibit 9 x E for identification.)

Q. What is the Chicago Defender, Mr. Davis, please?

A. It is one of the largest Negro weekly newspapers.

Q. Is it the practice of the Chicago Defender to issue an annual honor roll of those who have rendered distinguished service on behalf of democracy?

Mr. McGohey: Objection.

The Court: Sustained.

Benjamin J. Davis—Defendant—Cross

Q. I show you Defendants' Exhibit 9 x E for identification and ask you whether in the month of (T-9623) December 1945 you received this communication from the editor of the Chicago Defender (handing)? A. I did.

Mr. Sacher: I offer it in evidence, your Honor. (Handing to Mr. McGohey.)

Mr. McGohey: That is objected to.

The Court: Sustained.

Mr. Sacher: You may examine, Mr. McGohey.

Mr. McGohey: Mr. Borman, do you have there the record in the case of Angelo Herndon against the State of Georgia, which was transmitted to the clerk of this court by the clerk of the Supreme Court of the United States?

The Clerk: Yes, I have. I have it in a file outside.

Mr. McGohey: Beg pardon?

The Clerk: I have it in a file inside (indicating).

Mr. McGohey: May I have it, please?

(Clerk leaves the courtroom and returns with a file and hands to Mr. McGohey.)

Cross examination by Mr. McGohey:

Q. Mr. Davis, I hand you this record entitled "Transcript of record in the Supreme Court of the United States, October Term 1934, No. 665," entitled "Angelo Herndon, Appellant, against The State of Georgia."

You prepared that record, did you not, Mr. Davis (handing)? A. You mean for the Supreme Court of the United (T-9624) States?

Q. Yes. A. No, I didn't prepare the direct record for the Supreme Court of the United States because I wasn't a member of the Bar of the Supreme Court.

Q. You prepared that record for the Court in Georgia, for the State Court in Georgia?

Mr. Sacher: Just a moment. I object to the question because the previous question indicates this is the record for the Supreme Court, unless it appears that it is also the record of the—

The Court: Well, a man doesn't have to be a member of the Bar of the Supreme Court of the United States to prepare one of its records.

Benjamin J. Davis—Defendant—Cross

Mr. Sacher: No, that isn't the point I am making. The second question that Mr. McGohey has put was whether Mr. Davis prepared that record for the Supreme Court in Georgia, and if that is the record in the Supreme Court I do not know whether it indicates whether it is also the record in the Supreme Court—

Mr. McGohey: Your Honor, I will save some time; I will withdraw that question and ask another question.

The Court: Yes.

Q. I ask you, Mr. Davis, whether that record now on the table before you was not prepared under your supervision? A. You mean—

(T-9625) Q. Will you look at it please? A. (After examining.) I prepared a part of this record, that part of it dealing with the trial proceedings up to the Supreme Court of the State of Georgia.

Q. Now it appears on page—it appears in there that you designated as the contents of that record the proceedings—all of the proceedings with respect to the trial of Angelo Herndon in the State of Georgia, isn't that correct? A. Yes.

Q. Now I ask you to look through that portion of the trial record which you prepared and show me where, any place the judge that tried Angelo Herndon called you any name. A. Well, I wouldn't have to look in there to find that. All I am—

Q. I ask you, Mr. Davis, to show me in that record where the judge called you any name.

Mr. Sacher: Just a moment. I object to that question on the ground that no foundation has been laid that the record contains all that transpired at the trial. This is Georgia, your Honor, where this case was tried.

The Court: I see no reason to doubt that the transcript of the record of the Georgia proceeding is as accurate as elsewhere.

The Witness: This record was prepared in the most vicious lynch fashion that I have even seen in my (T-8626) whole life and that is one of the main

Benjamin J. Davis—Defendant—Cross

reasons why I joined the Communist Party, because the stenographer left those things out, because all of those things that the court called me and my client the court reporter absolutely refused to put in the record and I made one hundred objections because the court reporter wouldn't put it in the record and the judge called me "nigger"—he called me everything he could think of, including "nigger", including my own client. I know what I heard. I wouldn't believe the record of a court of Georgia, especially that judge that tried the Herndon case if he swore on a stack of bibles as high as Stone Mountain in Georgia.

Q. But you prepared that record? A. Yes, I prepared it but I had to prepare it within the framework of what a Negro lawyer fighting for his people could get out of a court of Georgia.

The Court: Let me take a look at that record.

Mr. McGohey: I beg your pardon?

The Court: I want to see that.

Mr. McGohey, will you assist me in finding the certificate? The certificate made by the witness?

Mr. McGohey: Is it the certificate of the Supreme Court?

The Court: No, the certificate of designation made by the witness.

(T-9627) (Mr. McGohey hands book to Court.)

The Court: Very well, you may proceed.

Q. Now, Mr. Davis, my question was and it is now repeated: where in that record is there any place where the judge called you a name? A. I told you that it is not in there—probably isn't in there, and I recall that it wasn't in there, and the reason it wasn't in there is because there was a conspiracy between the judge and the clerk of the court, or rather the court reporter. That is why it is not in there, and it wasn't just a question of his calling me "nigger"—

Colloquy of Court and Counsel

(T-9628) The Court: You even claimed or one of your associates claimed that there was something that didn't look right in this record.

The Witness: I know what was done in Georgia. I wish you would quit attacking my fellow defendants here.

Mr. Sacher: I object to your Honor's interpolation as highly improper. Mr. Davis's observations are limited to the Court in Georgia.

The Court: There is nothing in Mr. McGohey's question which justifies the witness's stating what he did about some conspiracy. The question merely was to show the place in the record where that appears.

Mr. Sacher: Mr. Davis explains why it doesn't appear.

The Court: He wasn't asked for any explanation.

Mr. Sacher: The explanation is the only significant thing about it because, unless that record was properly certified, then it is meaningless to ask the witness if what he says took place appears there, and anybody who knows anything about Southern justice to a Negro knows that it wouldn't be there.

The Court: I don't think you are justified in saying that. We are not trying the Judge who tried the Herndon case. We are not trying here the question of what you call Southern justice and this and that. We have (T-9629) enough collateral issues that have been brought in.

Mr. Sacher: But Mr. McGohey brought it into this record. The witness didn't bring it in; Mr. McGohey did.

The Court: I think not. I think it was the witness who brought in this about the conspiracy between the Judge and the reporter.

Mr. Sacher: Mr. Davis has publicly made these charges against Judge Wyatt.

The Court: Mr. Green made the same charge against the record here I don't know how many days ago.

Colloquy of Court and Counsel

Mr. Sacher: No; Mr. Davis—

The Court: Just a second. You doubtless desire to continue but I was about to say something.

I was about to say that it was only a few weeks ago or perhaps a few days ago—it is hard to remember the exact time—that Mr. Green made the statement that this record here had been monkeyed with, and I remember a number of references of the same sort of thing. That is easily done. Such charges are easily made.

Mr. Sacher: I most respectfully submit that what your Honor is doing is reflecting on the credibility of Mr. Davis as to the truth of the statements he has made about this Judge, and in view of the implication in your Honor's statement I ask your Honor to instruct the jury (T-9630) to disregard it and to say that the credibility of this witness as well as all other witnesses is for the jury and for the jury alone to pass on.

The Court: That is true, the credibility of this witness and all other witnesses is for the jury alone to pass on but I am not going to sit here and have this witness in answer to perfectly simple questions go into a lot of things that he drags in by the heels.

Mr. Sacher: Be that as it may, I ask your Honor to instruct the jury—

The Court: I will give them no further instructions than what I have given.

Mr. Sacher: If it is the purpose of your Honor's remark to reflect on the credibility of Mr. Davis—

The Court: I don't see how my remark can reflect on the credibility of the witness but I hope I can stop him from adding these things to his answers.

Mr. Sacher: May I inform Mr. Davis that to the extent that a question from Mr. McGohey requires further elucidation that can be done in redirect examination?

The Court: He is a lawyer.

Mr. Sacher: That he be afforded an opportunity to make any explanation on redirect examination.

Benjamin J. Davis—Defendant—Cross

The Court: He doesn't have to be told that.
(T-9631) He knows what redirect examination is.

By Mr. McGohey:

Q. Now Mr. Davis, it is a fact, is it not, that nowhere in that record which you prepared does it appear that the Judge called you any name? That is a fact, is it not? A. Well, I haven't examined it thoroughly.

Q. Well, I suggest, Mr. Davis, that you do. A. O.K. It doesn't make any difference in my answer. I know what I heard. I can't help what is in this record.

Q. It is a question of what you put in the record.

The Court: That is the kind of thing, Mr. Davis, that there is no occasion for you to do at all. I think you were about to state that as far as your recollection was concerned there was nothing in there, in this actual paper you have before you, which contained the statement that the Judge called you any name, and if that is your recollection it seems it may save the time of your going through the whole paper, but if you would rather do that you may.

(T-9632) (A pause.)

A. Well, I'll say that to the best of my recollection that this isn't in the record,—

Q. Very well. A. (Continuing) That the Judge called me "nigger", but he did call me "nigger" and he called my people "niggers."

Q. But you didn't put that in that record when you prepared it, did you, Mr. Davis? A. I couldn't—

Mr. Sacher: Just a moment. I object to the question on the ground that it assumes that Mr. Davis could put it in the record if he wanted it there.

Mr. McGohey: And I object, your Honor, to this—

The Court: You know, Mr. Sacher, you are certainly a problem. Now, you have no right to make any such statement. You must know as a lawyer that it is absolutely not so. A lawyer has a right to propose as the record what he claims the record is.

Benjamin J. Davis—Defendant—Cross

Mr. Sacher: But this is not a proposal. This is the ultimate record, your Honor.

The Court: Well, I know. I think if you will leave out those comments, it will be better.

Mr. Sacher: Well, I stated the grounds of objection.

(T-9633) The Court: This particular one seemed to me especially misleading. A lawyer has a right to propose the record as he claims the record accurately should be. Evidently that was not done here.

Mr. Sacher: But, if it please the Court, that statement I do not think is, at this juncture, warranted, but whenever Mr. McGohey can give the impression—

The Court: You know, I told you some time ago I wasn't going to let you get away with a thing, and I am not. Just keep that in mind.

Mr. Sacher: All I want to do is to protect the rights of my client.

The Court: I understand.

Mr. Sacher: Beyond that I want nothing more.

The Court: You would protect him a lot better if you would leave out this misleading statement.

Mr. Sacher: I object to that. I have made no misleading statement.

The Court: Well, you did make a misleading statement.

Now I state the fact to be that a lawyer, when he proposes a record, may put in there what he thinks accurately and truly should go there.

Now did you do that, Mr. Davis?

(T-9634) The Witness: I can't recall.

The Court: All right.

The Witness: That was my first trial case. I made many mistakes in it and it is quite possible that I did not take advantage of every legal recourse that I had, but it was my first trial case, as I recall, and I am pretty sure that I made many errors, but that what I was trying to do was basically sound, and so I don't say at all that I got that into the record but I tried in the way I knew how to get it in.

Benjamin J. Davis—Defendant—Cross

Q. Yes. Well, now, one of the things that occurred in that trial and which was the basis of your appeal—one of the bases of your appeal was an offensive remark addressed to the defendant Herndon by a witness, wasn't it? A. That is right.

Q. One of the witnesses made an offensive reference to Herndon, didn't he? A. That is right, and the Judge adopted that reference himself.

Q. No; let me suggest now, isn't it the fact that when the reference was made by the State's witness that you objected; that is correct, isn't it? A. Yes, I objected.

Q. And your objection was sustained, wasn't it? A. It was not sustained.

Q. Well, I suggest that you look there at page 102 of (T-9635) that record. A. This is not the final truth to me, you know.

Q. Well, it is the record that you prepared, Mr. Davis, and I ask you to look at page 102 of that record, which you prepared—page 102 and page 103.

Mr. Sacher: Excuse me, Mr. McGohey: Is the paper that Mr. Davis is being asked to state the contents of in evidence?

Mr. McGohey: I am asking him to look at a record before him which he prepared, to refresh his recollection as to whether or not what I have just asked him about occurred.

Mr. Sacher: I object to the question if it calls for the contents of any part of that document.

The Court: Overruled.

Mr. Sacher: Exception.

A. Yes, I am looking at the record but it doesn't say that the Judge upheld my objection.

Q. Did he issue a direction to the witness? A. He did, but he refused to rule on my objection.

Q. He directed the witness to refrain from using the epithet, didn't he? A. Yes, he tried to do it in such a way that I could not make it a basis of appeal.

Q. But you did? A. Yes, I did anyway.

The Court: Now!

(T-9636) Q. Now, you say that this name-calling occurred throughout the trial, the names addressed to you

Benjamin J. Davis—Defendant—Cross

and names addressed to your client, the defendant, Mr. Herndon; that is your testimony, is it not? A. That is right.

Q. Will you look through that record and tell me if you can find anywhere in that record any other reference than the one to which I have just directed your attention?

Mr. Sacher: If it please the Court, I object to the question.

A. No, I know it is a crooked record. I am not going to look.

Mr. Sacher: Please, Mr. Davis. I object to the question on the ground that it calls for the contents of a written document.

The Court: I will let the answer stand as it is made.

Q. This point of the calling Mr. Herndon an offensive name was one of the points that was argued on the appeal, wasn't it? A. Yes, I argued it in the Supreme Court of the State of Georgia.

Q. Yes, and then it was argued also in the Supreme Court of the United States, wasn't it? A. I think so, except I didn't argue it there.

Q. Now, did you make, when you argued the case in the (T-9637) Supreme Court of Georgia, any claim that the record was a fraudulent record? A. I don't recall. You mean legally, did I make that claim in legal form, in that paper?

Q. Yes, yes, when you argued before the Supreme Court of Georgia, I want to know if you said to the Supreme Court of Georgia, to the highest Appellate Court there, that you were being forced to argue your appeal on a falsified record? A. I'll tell you what I told the Supreme Court of Georgia. I told them—

Q. I would like an answer to my question, did you or did you not complain to the highest court that you were being forced to argue your appeal on a fake record?

The Court: Crooked record.

Benjamin J. Davis—Defendant—Cross

Q. (Continuing) A crooked record. A. Well, I really don't know. All I know, I denounced that trial plenty before the Supreme Court of Georgia.

The Court: Yes, but what he is asking you, Mr. Davis, is whether on that appeal you raised the same question, that these epithets had been used and they actually had been used, and they hadn't been put in the record, and that you raised that question when you argued it?

The Witness: I think I did. I think that I raised the question of the word "darky," that had been (T-9638) used, which is just as insulting.

Q. No, that is not what I am asking you, Mr. Davis. Just let us get my question clear. What I want to find out from you, is, at the time you appeared before the highest court in the State of Georgia, when you were appealing in this case, did you state to that highest court of Georgia that you were being compelled to argue your appeal on a crooked record? A. I don't know. I might have said that to the court. I might have said that to the court. I said quite a bit.

Q. Did you put it in a brief? A. I cannot recall. It might have been in the brief, or it might not have been in the brief. And if it wasn't in the brief, it was just because I didn't know—I wasn't sufficiently—it was the first case I had ever carried to the Supreme Court of the State of Georgia and I wasn't sufficiently familiar with the practice of the Court. So it is quite possible that it wasn't in the brief but that doesn't mean that I did not denounce this case as a lynch case.

Q. No, but you were admitted to the bar of Georgia, were you not? A. That is right.

Q. And you had been graduated from Harvard Law School? A. That is right.

(T-9639) Q. Had you not? A. That is right.

Q. The question of being required to argue an appeal in a case of this kind on a crooked record was something pretty important, wasn't it, at that time, to you? A. Very important.

Benjamin J. Davis—Defendant—Cross

Q. And is it your testimony now that you don't know whether you raised that point before the highest court of that State on your appeal? A. It is my answer that the possibility of one Negro lawyer overcoming the crooked lynch system in the Georgia courts is just so remote as not to even bear any basis for belief that I could myself defeat the crooked court reporter, the crooked Judge, the crooked prosecutor, the anti-Negro officials in that court. It is impossible—

Q. Now, but—

The Court: I think this is a good time to adjourn for lunch.

(Recess to 2.30 p.m.)

(T-9640)

AFTERNOON SESSION

BENJAMIN J. DAVIS, resumed the stand.

The Court: Let the record show that the jury is present and the defendants and the attorneys for the defendants with the exception of Mr. Isserman, Mr. Gladstein and Mr. McCabe, in respect to whom the usual stipulation has been signed and filed, and the attorneys for the Government are present.

Mr. McGohey: May I proceed, your Honor?

The Court: Yes, if you will.

Cross examination continued by Mr. McGohey:

Q. Mr. Davis, after you graduated from Harvard Law School, did you return to Atlanta and reside there until the time that you came to New York? A. No. I went back to Atlanta and then I went to Chicago.

Q. When did you go to Chicago? A. I think in the latter part of '28.

Q. And how long did you reside in Chicago? A. I think until some time in 1929.

Q. About a year did you remain in Chicago? A. Perhaps; I don't recall exactly.

Benjamin J. Davis—Defendant—Cross

Q. And then was there a period when you lived in Baltimore? A. There was.

Q. And when did you go to Baltimore? (T-9641) A. After I left Chicago.

Q. That would be in late '29? A. Possibly.

Q. And how long did you reside in Baltimore? A. I think until I returned to Atlanta in the latter part of '31.

Q. The latter part of '31? A. Yes.

Q. Now in January of 1932 you submitted a petition to the Superior Court in Fulton County, Georgia, for admission to the bar, did you not? A. I think so.

Q. And in that petition didn't you state that for ten years immediately preceding that application that you had been residing in Atlanta? A. I don't recall what I said in the petition.

The Court: How many years did you say?

Mr. McGohey: Ten.

* * *

Q. I show you Government's Exhibit 187, certified by the Superior Court of Fulton County, and ask you to look at that and see if that doesn't refresh your (T-9642) recollection that you stated in that application that you had resided for ten years in Atlanta, Georgia, prior to the time that you filed that application in 1932 (handing)? A. (After examining) I don't recall.

Q. You don't recall what, Mr. Davis? A. I just don't recall signing this. I probably did but I don't recall.

Q. Well, you signed an application, didn't you? A. That's right.

Q. In the Superior Court of Fulton County? A. That's right.

Q. And you have looked at that, haven't you? A. Yes.

Mr. McGohey: I offer this in evidence, your Honor (handing to Mr. Sacher).

(T-9643) Mr. Sacher: I object to this, your Honor.

The Court: Overruled.

(Government's Exhibit 187 for identification received in evidence.)

Benjamin J. Davis—Defendant—Cross

Mr. Sacher: If you have a copy of that, Mr. McGohey, I would appreciate it.

Mr. McGohey: No, I do not, but I will have a copy.

Mr. Sacher: Thank you.

Q. You are Benjamin J. Davis, Jr., are you not, Mr. Davis? A. I am.

Q. And in 1932 you lived at 230 Boulevard, NE, Atlanta, Georgia, did you not? A. That is right.

Mr. McGohey: Now, your Honor, I desire to read the exhibit, the application.

The Court: You may read such portion as you desire or the whole of it.

Mr. McGohey: It is very short. I will read it all.

The Court: Very well.

Mr. McGohey: "Georgia, Fulton County.

"To the Hon. Verland Moore, Judge of the Superior Court of said County.

"The petition of the undersigned male citizen of Atlanta, Georgia, shows, first, petitioner has (T-9644) resided at 230 Boulevard NE, Atlanta, Georgia, for ten years next preceding this application and is of good moral character.

"Second, petitioner has read law at Harvard Law School for three years.

"Wherefore, petitioner prays to take the examination required by law to be licensed to practice law in this State."

And then appears typed in the name B. J. Davis, Jr., petitioner.

And then appears the voucher of two members of the bar of the State of Georgia who say they are acquainted with the applicant, and their names.

Mr. Sacher: Excuse me, I would like to read what the two members of the bar say.

Mr. McGohey: I would be glad to do it for you.

Mr. Sacher: Just a moment. You had the opportunity.

Benjamin J. Davis—Defendant—Cross

The Court: I think Mr. Sacher is entitled to read it.

Mr. Sacher: Thank you.

“The undersigned, members of the bar of Atlanta, State of Georgia, are acquainted with said applicant and know applicant to be of good moral character. We recommend that the application be granted.

(T-9645) “Austin T. Walden
“Thomas J. Henry, Jr.”

By Mr. McGohey:

Q. Mr. Davis, you joined the Communist Party in 1933, January of 1933, did you not? A. I did.

Q. Beg your pardon? A. I did.

Q. And when you became a member you were given a membership book, were you not? A. I think so.

Q. And that membership book contained excerpts from the statutes of the Communist Party, didn't it? A. I can't recall now. It has been a long time.

Q. Well, now I ask you if the book did not contain an extract from the statutes of the Party to this effect on membership: A member—

Mr. Sacher: Excuse me, Mr. McGohey. I object to a reading from any document that is not in evidence, your Honor.

The Court: I will sustain the objection at this time.

Mr. McGohey: Will you mark this, please.

(Marked Government's Exhibit 188 for identification.)

The Court: All right, Mr. Borman.

Q. Now I show you the lefthand page of this Government's Exhibit 188 for identification, and ask you if that doesn't (T-9646) refresh your recollection that you got a book similar to that and containing the excerpts of statutes similar to that? A. (After examining) It does not.

Benjamin J. Davis—Defendant—Cross

Q. At the time you joined the Communist Party was it not a rule of the Party that discussion on basic Party questions or general party lines could be carried on by the members only until the Central Committee had decided them, and that after a decision had been adopted by the Congress of the Comintern, the Party convention, or by the leading party committee, it had to be carried out unconditionally even if some of the members or some of the local organizations were not in agreement with that decision? A. Well, I can't even recall all that question, I would like to have it re-read. Pretty long question.

The Court: You may. The reporter will read it.

(Question read.)

A. I don't recall any such rule.

Q. Isn't there a similar rule at the present time, Mr. Davis? A. In the Communist Party?

Q. Yes. A. Of today?

Q. Yes. A. No.

Mr. McGohey: May I have Exhibit 26, please?

Q. I show you Government's Exhibit 26 in evidence, Mr. Davis, which is the constitution of the Communist (T-9647) Party, adopted at the convention in July 1945, and I direct your attention to article IX, section I, "Disciplinary Procedure." Begins on page 17—page 19 and goes over to page 20. A. You mean just section 1 or the rest of it?

Q. No, section 1. A. Well, section 1 has absolutely nothing in common with that long complicated question which you put to me.

Q. I read you from Section 1:

"Conduct or action detrimental to the working class and the nation, as well as to the interests of the Party," and then particularly the following: "violation of decisions of its leading committees or with this constitution"—

Mr. Sacher: —"or of this constitution."

Mr. McGohey: —"or of this constitution."

Benjamin J. Davis—Defendant—Cross

Q. (Continuing) And then, “or other conduct unbecoming a member of the Party, may be punished by censure, removal from posts of leadership, or by expulsion from membership” A. Well, just having that—

Q. (Continuing) Does that not mean that a member of the Party who persists in disagreeing with a decision of the National Convention or the National Board or the National Committee is not subject to expulsion? (T-9648)

A. Well, you put two questions to me, Mr. McGohey. One is the question on whether or not this is the same as that long, complicated thing you read, and now you are asking another question concerning this.

Q. I am asking you now, Mr. Davis, if that provision which I have just read from the constitution doesn't mean that a member will be expelled if he persists in disagreeing with a decision of the National Convention, the National Committee or the National Board of the Communist Party?

Mr. Sacher: I object to that question on the ground that it includes matters not contained in article IX, section 1, of Exhibit 26, your Honor.

The Court: It seems to me, except for the “will be expelled,”—I suppose it is “may be expelled” instead, but it seems to me that that is the plain reading of it. What is the other section that you say nullifies or modifies it?

Mr. Sacher: It is not a question of nullifying or modifying. This section speaks of violations, your Honor, it speaks of “conduct detrimental to the working class and the nation, as well as to the interests of the Party.” That is one group.

The Court: That is right.

Mr. Sacher: Then “violation of decisions of its leading committees.” Not disagreement with decisions (T-9649) of leading committees, but violations of decisions of leading committees. And then, “conduct unbecoming a member of the Party.”

The Court: Wait a minute.

Mr. Sacher: That is a provision—

The Court: How would they violate decisions of leading committees other than by acting contrary to them persistently?

Benjamin J. Davis—Defendant—Cross

Mr. Sacher: But Mr. McGohey is asking about disagreement and not about that conduct. That is what his question contains, not conduct violation but disagreement, a mental operation.

The Court: Perhaps you can reframe the question, Mr. McGohey.

Q. Isn't it a fact that this provision of the constitution means that anyone, any member who refuses to obey a decision of the leading committees of the Party: the Convention, the National Board or the National Committee, is subject to expulsion? A. My understanding of this section is that it means just what it says, the "Conduct or action detrimental to the working class and the nation, as well as to the interests of the Party."

Q. Now, isn't it a fact, Mr. Davis— A. That's what the section says and that is what the—

(T-9650) The Court: Yes, but that isn't the part that he is asking you about. As Mr. Sacher pointed out, that first part is separate and distinct from the second part which reads: "violation of decisions of its leading committees or of this Constitution."

Now Mr. McGohey's question is as to whether or not it is your understanding of that that if a person—

Better have the phraseology of the question given again.

Read it, Mr. Reporter.

(Question read as follows:)

"Isn't it a fact that this provision of the constitution means that anyone, any member who refuses to obey a decision of the leading committees of the Party: the Convention, the National Board or the National Committee, is subject to expulsion?"

A. Then my answer to that question would be that this section says "may be punished by censure, removal from posts of leadership, or by expulsion from membership." It doesn't say "must be." It says "may be."

Benjamin J. Davis—Defendant—Cross

Q. No. My question is, is not a person who refuses to obey the decisions of the National Convention, the National Committee or the National Board subject to expulsion for such disobedience? A. According to our constitution, which was democratically (T-9651) accepted and voted upon by our members, that is true.

Q. And it was unanimously accepted, wasn't it? A. Yes, through the delegates.

Mr. Sacher: Just a moment. Is that an invidious implication, "it was unanimously accepted"?

The Court: You know you always seem to bring in some comments which might be raised on summation.

Mr. Sacher: But it might be forgotten then and now it is fresh.

The Court: That is what makes it bad.

Mr. Sacher: Oh, I see—

The Court: You see, lawyers are not supposed to make these running comments as the trial goes on, and particularly when their client is under cross-examination.

Mr. Sacher: May I respectfully suggest that the tone of Mr. McGohey's voice was comment?

Mr. McGohey: Now if the Court please, I think it ill becomes Mr. Sacher who has such consummate skill in the use of his voice to comment upon my skill, and I certainly make no claim, and I think I have not demonstrated any skill in the use of my voice. I ought to be complimented, I suppose.

The Court: Well, I think we had better leave the subject of the voice intonations. The question is, (T-9652) was that passed unanimously and the answer is yes, that it was.

The Witness: I wish to change that because I am not—I don't recall just what the vote was on this particular constitution, whether it was a majority or unanimously or just what it was. I would have to refresh my own recollection.

Q. You were at the convention, though, that adopted it, were you not? A. Yes.

Benjamin J. Davis—Defendant—Cross

Q. Now do you recall now whether there was any dissent from that provision as it was voted on? A. I can't recall all the votes taken on all the many questions that were voted in the July convention.

Q. Then your answer is that you cannot recall any dissent on that question? A. My answer is that I cannot recall whether it was unanimous or not unanimous. That isn't important anyway.

Q. Now do you recall whether there was any dissent on any provision of that constitution at the time that it was adopted by that convention in July 1945? A. I couldn't possibly, because it was voted on as a whole and also section by section, as I recall now.

Q. Isn't it a fact that Earl Browder was expelled from the Communist Party pursuant to that provision of the Constitution?

(T-9653) Mr. Sacher: I object to that question.

The Court: You mean you have objected and I overrule the objection.

Mr. Sacher: May I point out to the Court that we tried to prove that certain people were expelled for other offenses under this constitution, that your Honor excluded that testimony?

The Court: I have some recollection of there being some separate question that came up there about that, and I think I understand what you are trying to do, but we will let it pass. I will overrule the objection.

A. Earl Browder was expelled as an enemy of the working class, and that is included right here in section 1, "Conduct or action detrimental to the working class and the nation"—that's why.

Q. Wasn't it also because of the fact that he refused to abide by the decision of the National Committee in the convention—by the National Convention of 1945? A. His refusal was itself detrimental to the working class and the nation.

Q. Now Mr. Davis, you told us on your direct examination that you had been arrested and convicted in New York City shortly after you came here, did you not? A. I think I said about 1935, as I recall.

Benjamin J. Davis—Defendant—Cross

Q. Well, now, you were discharged, as a matter of fact, (T-9654) in that case, were you not?

The Court: That is right, in 1935.

A. I can't recall. I thought I was fined and given a suspended sentence but I wouldn't recall the exact terms.

Q. Now Mr. Davis, you are a member of the bar, are you not? A. I am.

Q. You are a member of the bar of the State of Georgia? A. Yes.

Q. And you studied law at Harvard Law School? A. Yes.

Q. Now don't you know whether or not you were convicted or not? A. Well, that's a question of fact, not a question of law. I can't recall. I don't recall exactly just what the disposition of the case was. As I recalled in my direct, I thought I was fined and given a suspended sentence for picketing.

Q. Now you also told us that you were arrested and convicted in Atlanta in a street car, did you not? A. That's right.

Q. Now you have from time to time filled out forms of various kinds where you have been asked the question, in substantially this form: "Have you ever been arrested?" have you not? A. I may have.

Q. How did you answer that question?

(T-9655) Mr. Sacher: I object to the question.

The Court: I will allow it.

Mr. Sacher: May we ask that Mr. McGohey fix a specific place and time?

The Court: It looks as though he was going to get around to it. I think this is preliminary.

The Witness: Read the question.

(Question read as follows.)

"Now you have from time to time filled out forms of various kinds where you have been asked the question in substantially this form: "Have you ever been arrested?" have you not?"

Benjamin J. Davis—Defendant—Cross

Q. I say, how have you answered that question “Have you been arrested,” when you were required to answer that question on any form that you filled out?

Mr. Sacher: I object to the question unless the time is fixed, your Honor.

The Court: Overruled.

A. Well, I don’t recall how I answered it.

(T-9656) Q. Well, you have a license to drive a car in New York, haven’t you? A. Yes.

Q. And in your application for a license did you tell the Motor Vehicle Bureau that you had never been convicted of any offense in any court?

Mr. Sacher: I object to the question unless Mr. McGohey accurately states the form of question.

A. Really, I don’t know. I don’t know what I said.

The Court: I will allow the question.

Mr. Sacher: I have a license, too, but I don’t recall how I answered it.

Mr. McGohey: Did your Honor make a ruling?

The Court: I will allow the question.

Mr. McGohey: I think the witness said he didn’t recall.

The Court: Yes.

The Witness: That is right.

Mr. McGohey: May I have this marked.

(Marked Government’s Exhibit 189 for identification.)

The Court: Very well, Mr. Borman.

Q. Mr. Davis, I show you Government’s Exhibit 189 for identification, which is a certified set of papers, and I ask you if that isn’t a photostatic copy of your application and a photostatic copy of your signature (T-9657) that appears there? A. I don’t know whether that is my signature or not.

Q. In September nine hundred and—in November 1944 you were living at 1 West 126th Street, were you not? A. Yes.

Benjamin J. Davis—Defendant—Cross

Q. And your business address was 200 West 135th Street, was it not? A. Yes.

Q. You did apply in that year for a license to operate an automobile, didn't you? A. I think I did.

Q. And at that time you were employed, were you not? A. Yes.

Q. And you were employed by the City of New York, were you not? A. Yes.

Q. And your birthday was—

Mr. Sacher: Just one moment. I wish to object to both the question and answer. A Councilman is not an employee of the City of New York; he is an official of the City of New York.

The Court: Well, that is a good point. He probably put it down the other way.

Q. And you were about 220 pounds? A. Yes, I think so.

Q. What is that?

The Court: More or less.

Q. And your height was about 6 feet 2? A. That is about right.

(T-9658) Q. Brown eyes? A. I think so.

Q. And black hair? A. Yes.

Q. And your name was Benjamin J. Davis, Jr., correct? A. In 1944, in November, it was.

Q. And that "J" stood for the name Jefferson, didn't it? A. That is right.

The Court: Why don't you take another look at it and see—

The Witness: It is hard to read.

The Court: I know, but you just make another effort.

Q. I show you this part that I have been reading from and then on the reverse side where the signature appears, and ask you to tell me if that is the application that you signed and filed at that time for a license to operate a

Colloquy of Court and Counsel

motor vehicle (handing)? A. I wouldn't swear that is my signature.

The Court: No, but don't you remember signing an application and making those answers?

The Witness: I remember making an application and getting a license, but I wouldn't swear that that is my signature because I don't know.

The Court: The question is whether you didn't sign the original of that paper, the photostat of which is shown you.

(T-9659) Mr. Sacher: The only way he can answer is if he recognizes his signature.

The Court: You tell him what to answer and he will know how.

Mr. Sacher: I am not telling him anything.

The Court: I know all about that.

Now, Mr. Davis, you look at that paper and tell us if you signed the original of that.

The Witness: Again it looks similar to my signature, but I wouldn't swear that I signed it. I can't recall signing it and if I had said I recall signing that particular document, well, I wouldn't be telling the truth because I just don't recall signing it.

The Court: Nobody is saying that particular document because it is a photostat. The question is whether you didn't sign the original of which that is a photostat.

The Witness: I don't know. I readily acknowledge that I made an application, that I signed an application. I must have, but I don't recall signing, when I did it or anything.

The Court: Nobody is asking about when you did it.

Mr. McGohey: I offer the exhibit in evidence.

Mr. Sacher: May I look at it?

The Court: Now I will save you a little time. (T-9660) If you object on the ground that there is no proper foundation I am going to sustain the objection. Do you so object?

Mr. Sacher: I do, your Honor.

The Court: I sustain the objection.

Colloquy of Court and Counsel

Q. Mr. Davis, I show you this stipulation in this case dated July 12, 1949, and ask you if the second signature on the lefthand column there is your signature? A. Yes. That is today. Yes.

Q. Yes? A. Yes, that is my signature.

The Court: That is the one you signed this morning?

The Witness: Yes, I remember that.

Mr. McGohey: If the Court please, I offer Government's Exhibit 189 and today's stipulation in evidence.

The Court: Well, I think the stipulation may be regarded as in evidence without giving it an exhibit number, unless you particularly desire that that be done.

Mr. McGohey: No.

The Court: But we have been signing these every day and this has today's date on it, so I will regard it as being before me.

Mr. McGohey: Now I offer Exhibit 189 for identification—I re-offer 189 for identification.

(T-9661) Mr. Sacher: May I confer for a moment with Mr. McGohey?

The Court: Certainly. Certainly you may. Maybe some good will come of it.

(Mr. Sacher confers with Mr. McGohey.)

Mr. Sacher: Your Honor, I object to it.

The Court: All right, let me look at it.

(After examining.) I have an idea, Mr. McGohey, that with photostats like this without the production of the original that it is doubtful whether there is a proper foundation. I don't remember the authorities offhand, but I have some vague recollection.

As I am in doubt I think I will sustain the objection.

Mr. McGohey: If the Court please, if your Honor will hear me—

The Court: Yes, I will hear you.

Mr. McGohey: I can't cite the section but my recollection is quite clear that there was legislation

Benjamin J. Davis—Defendant—Cross

in the State of New York to provide for just this, the certification of applications to the Motor Vehicle Bureau.

The Court: If that is so I will give you a chance to find out. We will take our ten-minute recess now and perhaps you can call my attention to that.

(Short recess.)

(T-9662) Mr. McGohey: With your Honor's permission I desire for the moment to pass to another subject.

The Court: Very well, you may do so.

By Mr. McGohey:

Q. Mr. Green, you told us you came to reside—

Mr. Sacher: Pardon me, this is Mr. Davis, Mr. McGohey.

Mr. McGohey: Didn't I call him "Mr. Davis"?

Mr. Sacher: You called him "Green."

Mr. McGohey: Oh, I apologize, Mr. Davis.

The Court: That is another one of Mr. Sacher's good points.

Mr. McGohey: Yes.

The Witness: It is a privilege to be called Mr. Green also.

The Court: Now, we have all passed that around. I think you can reframe your question.

Mr. McGohey: Yes.

Q. Now, Mr. Davis, you told us that you came to reside in New York in the latter part of 1934 or the early part of 1935. When did you first vote in New York State? A. I think in '35.

Q. Do you know what the residential requirements in New York are in order to be eligible to vote? A. I think I do.

(T-9663) Q. Would you tell me what they are? A. I think they are a year.

Q. Residence in the State for a year? A. Yes.

Q. And residence in the County for, or in the City for a certain period? A. I think so.

Benjamin J. Davis—Defendant—Cross

Q. And then there is also a provision that—what is that provision, what is the length of time that you are required to be in the City or in the County? A. I think six months.

Q. And then there is a period of 30 days in the Election District, is there not? A. I think so.

Q. You say you voted the first time in 1935? A. I think so.

Q. Are you sure? A. I am not absolutely sure.

Q. But you registered in order to vote in 1935, did you not? A. I think so.

Q. Now, at the time you registered to vote in 1935, that would be some time in October, would it not? A. I think it would be.

Q. And had you been in the State of New York a year in October of 1935? A. Yes, yes, I think I had.

Q. How long had you been in New York? A. I think I had been in New York for more than a year in October 1935. I think I had. That is my best recollection now.

Q. Well, how long? A. I can't recall the exact (T-9664) number of months or—that I was here—months and weeks and days.

Q. You told us on your direct examination and here again now that you had come to New York for the first time in late 1934 or early 1935, that is correct, is it not? A. Yes, but I have since checked my own opinion and recollection and I think it was somewhere around the middle of 1935. It might have been a little later than June—

Q. Middle of '35? A. I mean '4.

Q. '34? A. I beg your pardon, I think it was somewhere—

Q. I see. A. —around June or July.

Q. Of 1934? A. I think it was.

Q. Well now, do you desire to change your testimony now to make it that you arrived here in June or July of 1934? A. I think so. I would do that.

Q. And you are sure now that is when you arrived here? A. As I recall, I think I did.

Q. Wasn't earlier than that? A. I don't think so, my best recollection.

(T-9665) Q. Now, Mr. Davis, I show you this Registry of Voters from the 22nd Election District, the 19th As-

Benjamin J. Davis—Defendant—Cross

sembly District of the year 1935, and I call your attention to this line beginning with the number 165 (indicating), and then I direct your attention to a signature over on the righthand side and I ask you if that is not your original signature (handing)? A. (Examining.)

Q. I have asked you to look at the signature there and tell me if that is not your signature? A. It looks very much like it.

Q. Well, it is, isn't it? A. It looks like it but I don't know; I wouldn't say.

Q. That is an original signature? A. Well, I say I still don't know.

Q. Yes, but it is an original signature? A. It has been 14 years.

Q. Yes, but I say the signature that appears there is an original signature; it is not a photostat or a copy of it?

A. Well then, I don't know.

Q. You mean you don't know whether it is a photostat?

A. No; I mean I don't know whether it is an original or not.

Q. Well, it isn't a photostat, is it, Mr. Davis? A. It doesn't look like it.

The Court: That's an original all right. Let us not play around with that.

(T-9666) Now do you recognize your signature or don't you?

The Witness: It looks very much like my signature, but I wouldn't know exactly whether it was. It looks very much like it, but I don't know.

Mr. McGohey: Now if the Court please, I offer in evidence pages 34 and 35 of this original document and ask leave to substitute a photostat in lieu thereof (handing to Mr. Sacher).

Mr. Sacher: I object to this, your Honor, and I would like to be heard, if I may.

The Court: Well, let me look at it.

(Mr. Sacher hands to the Court.)

The Court: Yes, I will hear you, Mr. Sacher.

Mr. Sacher: The point I wish to make, your Honor, is that the only thing which is provided for

Colloquy of Court and Counsel

in regard to election statements is that when a citizen has misstated a fact concerning his eligibility or qualification to vote at the date of the election next ensuing his registration, that that constitutes an offense. Now inasmuch as Mr. Davis moved into New York, according to his testimony, in June or July 1934, and therefore had more than a year of residence and would have had, I think, precisely 20 months of residence at the time of the election in 1935, and since that fact is so (T-9667) stated, I think that anything else in the record is utterly irrelevant, immaterial, has no bearing on credibility or anything else.

The Court: Is it all right for people to make false statements?

Mr. Sacher: Oh, I haven't said anything about a false statement yet, your Honor.

The Court: No, I noticed you did not. I was kind of curious.

Mr. Sacher: I do not know that anything in there is false.

The Court: Well—

Mr. Sacher: The point I am making is that taking everything there in conjunction with what Mr. Davis has said, that he has amply and conclusively established his eligibility under the requirements brought out by Mr. McGohey to vote in the election of 1935 and therefore that is the end of the matter.

The Court: It is the end of the matter unless there be some false statement in here. Is there something inconsistent with the testimony of this witness, Mr. McGohey?

Mr. McGohey: Why yes, your Honor. I direct your Honor to column 34.

The Court: Column 34?

(T-9668) Mr. McGohey: 24, and also columns 18 and 19.

The Court: (After examining.) Yes, yes, yes.

Mr. Sacher: I wish, however, to add another ground, if I may and that is that there is nothing—no evidence to indicate that Mr. Davis read any of the things contained in any of the columns that ap-

Benjamin J. Davis—Defendant—Cross

pear there, I have registered any number of times—

The Court: Well, what you did is not very material, Mr. Sacher.

Mr. Sacher: That is quite true. I am just calling your attention to the fact that nothing in that book is in anybody's—is in Mr. Davis's handwriting except perhaps—and I say "perhaps" in view of the testimony—the name, but everything else is written by somebody else.

The Court: I will receive it.

(Marked Government's Exhibit 190 in evidence.)

(T-9669) The Court: What is that election district? 122?

Mr. McGohey: No, it is the 22nd Election District and the 19th Assembly District for the year 1935.

The Court: All right, 22nd.

Q. Mr. Davis, I hand you the original book which contains the original of pages 34 and 35 which have been marked in evidence.

Mr. Sacher: Mr. McGohey, may I trouble you for a copy so I can follow it?

Mr. McGohey: I don't have another copy now, but I will have one made, Mr. Sacher.

Mr. Sacher: Thank you.

Q. Now the address you gave there, Mr. Davis, was 2121 Fifth Avenue. Was that your correct address? A. I think it was.

Q. Now I direct your attention to column 18—first I direct your attention to column 17. That column says "Married, single or widowed," and the letter M appears in that column. Were you married at that time, Mr. Davis?

Mr. Sacher: I object to that question unless it appears that the witness made that entry himself or was aware of the entry made at the time.

The Court: Overruled.

A. (No answer.)

Benjamin J. Davis—Defendant—Cross

(T-9670) Q. Mr. Davis, will you look under column 30 just above your name? You will find there, do you not, these words: "The foregoing statements are true"? That appears just above your name, does it? A. Yes.

Q. Now going back to column 17 I ask you whether or not you were married at that time? A. No, I wasn't.

Q. Now the next column, column 18: "Length of residence in the State in years—3 years." Were you on this date, October 15, 1935, three years in the State of New York? A. No; only about 18 months, I think, or a little more.

Q. In column 19: "Length of residence in the County—months"—and there appears "3 years." Had you been in New York County at that time three years? A. No.

Q. Now in column 20: "Length of residence in the Election District in days"—and there appears here "20 months." Had you on October 15, 1935, been in this Election District for 20 months? A. I don't recall.

Q. Well, you have testified that—this afternoon,—that you came here in July or possibly June of 1934, and you further testified that it was not earlier than June or July of 1934 that you began to reside in New York. (T-9671) That is correct, is it not? A. That is right.

Q. Now I ask you, were you 20 months in this Election District? A. No.

Q. On October 15, 1935? A. No, no, I guess I wasn't.

The Court: You were not?

The Witness: No, I guess I was not.

Q. Now I direct your attention to the answer which appears in column 24: "Year of last vote or registration," and there appears "1933," and then under columns 25, 26 and 27, you were required to state when you last registered for voting and where you lived, and the answer is given "New York State." Were you living in New York State in 1933? A. No, I wasn't.

Q. Were you living in New York City in 1933? A. No.

Q. Were you living in 2162 Seventh Avenue in 1933? A. No.

Q. Did you register to vote in New York in 1933? A. No, didn't register to vote anywhere then.

Benjamin J. Davis—Defendant—Cross

Q. All of these answers concerning which I have questioned you in this registration, Mr. Davis, were false, were they not?

Mr. Sacher: I object to the question. There is (T-9672) no evidence that Mr. Davis gave any of these answers.

The Court: Overruled.

A. Well, these answers don't correspond to the facts.

Q. They are false, aren't they, Mr. Davis? A. I say the answers don't correspond to the facts.

Q. I say they are false answers, are they not, Mr. Davis? A. I say the answers don't correspond to the facts and I don't recall giving them.

Q. Now, you have testified, haven't you, that you never told Mr. Budenz, as he testified, about what occurred at a meeting of the National Committee held in January or February 1944? A. I think I testified to that.

Q. Were you present at that meeting in January of 1944 or February 1944, that Mr. Budenz testified about?

Mr. Sacher: I object to Mr. McGohey's question on the ground that the question put to Mr. Davis concerned itself with the meeting of February 1944.

Mr. McGohey: I will accept the amendment.

Q. (Continuing) I ask you if you were at the meeting of February 1944? A. I think I was.

Q. And now let me read what Mr. Budenz testified to, and I am reading at 1576, the question,

“Q. What did Mr. Davis tell you had taken place at the meeting? A. He said that about 40 comrades had (T-9673) been called together hurriedly to discuss a letter written by William Z. Foster.”

Were there about 40 comrades at that meeting in February 1944? A. I cannot recall.

Q. Had they been hurriedly assembled? A. I cannot recall.

Q. Had they been assembled to consider a letter written by Mr. Foster which attacked Browder's recommendations to the National Committee in January? A. That was a question discussed at that meeting.

Benjamin J. Davis—Defendant—Cross

Q. Then Mr. Budenz continued,

“and that these people, gathering together, had, with the exception of two, as I recall, Foster and Darcey, voted down Foster.”

Did that happen? A. Yes, I think that is true.

Q. Everybody except Foster and Darcey voted against Foster? A. I think so.

Q. I show you page 655 of Government's Exhibit 17, entitled, “A note by William Z. Foster,” and ask you if Mr. Foster himself didn't say that that had occurred? A. Yes, there is no question about that.

Q. Now, Mr. Foster—Mr. Dennis—Mr. Budenz continued “that Foster had been given a good shellacking; (T-9674) and that the only thing left for him was to appeal to a higher authority.”

That statement—that happened, didn't it? A. No.

Q. Wasn't Foster beaten in the Committee? A. No, that is not the question you are asking me. You are asking me whether I told Budenz that and I say I did not.

Q. No, no, I am not, Mr. Davis. I am asking you if it is not a fact that in the meaning of the committee, to use this language, “Foster was given a good shellacking”? A. You want me to agree to that language?

Q. No, I want you to agree or disagree. I want you to tell me the truth as to whether or not Foster was not beaten in the committee on his proposal. A. Foster's—correct—proposals were defeated in that committee.

Q. So Foster was defeated? A. The proposals that he made in the line of policy which he advanced were rejected.

Q. And they were rejected to the extent that only himself and one other man, named Darcey, voted in favor of them?

Mr. Sacher: I object to it as having been (T-9675) answered?

The Court: Sustained.

Q. And it is a fact also that the meeting there was strongly in support of Browder in regard to the Teheran line in the Communist Political Association; that is a fact, isn't it? A. That is a fact but that is not the whole truth.

Benjamin J. Davis—Defendant—Cross

Q. Now, was Frederick Myers present? A. I don't know; I don't recall.

Q. Do you know whether or not he tried to reconcile Browder and Foster? A. I know nothing whatsoever about that.

Q. Do you know Frederick Myers? A. I know him.

Q. You don't know whether he was at that meeting or not? A. I cannot recall.

Q. You told us in your direct examination that in the course of your campaign in 1945 for re-election to the City Council you spoke about the Schneiderman decision— A. Yes.

Q. in your campaign. And you told us that even the Supreme Court—you said, rather, in your campaign that even in 1943 the Supreme Court had handed down the Schneiderman decision, "showing that our Party did not advocate force and violence"; you testified to that in your direct examination (T-9676) A. I think I did.

Q. You are a graduate of Harvard Law School, are you not, Mr. Davis? A. Yes.

Q. When you were making these speeches in your campaign did you also tell your audience that the Supreme Court in the same Schneiderman decision had said, at page 148 of the report, "This Court has never passed upon the question of whether the Party does so advocate and it is unnecessary for us to do so now"? A. You are asking me—

Q. I ask you if in your speeches, when you were talking about the Schneiderman decision, you told your audience that the Supreme Court itself said in the same decision, "This Court has never passed upon the question whether the Party does so advocate and it is unnecessary for us to do so now"? A. Well, I considered that an obiter dictum and I didn't say that—

Q. The answer is you did not tell your listeners anything about that part of the Schneiderman decision? A. I told them the decision, what the decision had decided, and, that is, that a tenable conclusion from studying the Marxist classics of our Party, which were studied by the Supreme Court of the United States—that it was possible to draw the conclusion that the Communist (T-9677) Party did not advocate force and violence.

Benjamin J. Davis—Defendant—Cross

Q. You say that is what the Supreme Court decided in the Schneiderman case? A. Yes.

Q. Despite the language which I have just read to you where the Court said, "The Court has never passed upon the question whether the Party does so advocate," and the Court then expressly says, "and it is unnecessary for us to do so now," you say despite that language that the Supreme Court did decide that the Communist Party did not teach and advocate the overthrow of the Government of the United States by force and violence? A. Well, you want me to adopt your opinion—

Q. No. A. —your view of that case.

Q. No. A. I cannot do so. Even the Supreme Court of the United States disagrees on what it thinks is the law.

Q. I am trying to find out, first, what you told your listeners in the campaign, and I have asked you if you had referred to the part of the Supreme Court decision which I just read to you? A. I gave them my view, which was a correct view and the view of our Party upon the decision.

The Court: Did you mention that part of the opinion that Mr. McGohey has quoted to you now several times? Either you did mention it or you did not mention (T-9678) it, or you don't remember. Now, which is it?

The Witness: I remember telling the people in my campaign what the conclusion—the decision of the Supreme Court was. I wouldn't make a legal argument in a political campaign on street corners.

The Court: Now, I ask you again, Mr. Davis, in your speeches, did you mention the language—

The Witness: I am sure I did not mention that.

The Court: That you did not mention it?

The Witness: No. It is a wrong view of the decision.

The Court: You could have said that five minutes ago and saved us a lot of time.

The Witness: It is a wrong view of the decision, in my opinion.

Q. Now, did you in that campaign say to your audiences or any of them that the Supreme Court in the same opinion

Lyman Moakley—for Government—Direct

also said at page 153, and I quote, “We do not say that a reasonable man could not possibly have found as the district court did that the Communist Party in 1927 actively urged the overthrow of the Government by force and violence, but that is not the issue here.” A. No, I didn’t say anything about that. I gave them the decision. I was not reading the opinion around on street corners.

(T-9679) Mr. McGohey: If the Court please, I should like to call Mr. Moakley of the Motor Vehicle Bureau.

The Court: You may do so.

Mr. McGohey: He had some original records.

The Court: You may step down a moment, Mr. Davis.

Mr. McGohey: Oh, I don’t desire to put him on the stand.

Mr. Davis may stay on the stand. I just wanted him for the original records.

The Court: I thought you wanted leave to introduce him to testify in order to identify some paper. If not, you may get whatever you asked for.

Mr. McGohey: Mr. Davis, if you don’t mind, I would like the officer to take the stand, please.

(Witness excused temporarily.)

LYMAN MOAKLEY, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. McGohey:

Q. What is your occupation, Mr. Moakley? A. I am a Motor Vehicle license examiner, commonly known as a motor vehicle inspector.

The Court: State of New York?

The Witness: Yes, sir.

Q. Mr. Moakley, I show you Government’s Exhibit 189 for identification, and I ask you if you have produced the original of that document pursuant to subpoena (handing)?

Lyman Moakley—for Government—Cross, Redirect

Mr. Sacher: I object to this question, unless the witness's duties and qualifications to answer the question are adduced because—

The Court: Overruled.

Mr. Sacher: —because it is simply a question of looking at it.

The Witness: Shall I answer the question, your Honor?

The Court: Certainly, answer the question.

A. Yes, this is the original application of which you had a photostatic copy.

The Court: You have the original right there, (T-9681) have you?

The Witness: Yes, sir.

The Court: Pursuant to subpoena?

The Witness: Yes, sir.

Mr. McGohey: That is all, thank you, Mr. Moakley.

(Witness starts to leave the witness stand.)

Mr. Sacher: Just one question, Mr. Moakley.

The Court: Yes, Mr. Moakley, this is cross-examination.

Cross examination by Mr. Sacher:

Q. Did you remove the original from the files of the Motor Vehicle Bureau yourself? A. No, I did not.

Mr. Sacher: That's all, Mr. Moakley.

Redirect examination by Mr. McGohey:

Q. Where did you bring this from, Mr. Moakley? A. I brought this from the Motor Vehicle Bureau where a clerk had removed it from the files.

Mr. Sacher: I move to strike that out, that the clerk had removed that from the files.

The Court: Motion denied.

Mr. McGohey: Thank you, Mr. Moakley.

The Court: That's enough nonsense about this paper.

(Witness excused.)

Colloquy of Court and Counsel

(T-9682) Mr. McGohey: Now Mr. Davis, will you resume?

BENJAMIN J. DAVIS, resumed the stand.

Cross examination continued by Mr. McGohey:

Q. Mr. Davis, I show you this paper, this original of Government's Exhibit 189 for identification, and I ask you now, looking at the original, if that isn't your original signature which appears there (handing)? A. It looks very much like it.

Mr. McGohey: I offer—

The Court: Is it?

The Witness: I can't answer that one way or another, your Honor.

The Court: All right.

Mr. McGohey: Now, your Honor, I offer the photostat—I offer the original and ask leave to substitute a photostat.

Mr. Sacher: I object to it.

The Court: Overruled.

(Government's Exhibit 189 for identification received in evidence.)

Mr. McGohey: Mr. Moakley, let me have the original, please.

(Mr. Moakley hands to Mr. McGohey.)

Mr. McGohey: I may read from the original, (T-9683) may I not?

The Court: Yes, you may read from the original.

Mr. McGohey: Ladies and gentlemen of the jury, I read from the original of Government's Exhibit 189 in evidence, bearing the signature of Benjamin J. Davis, Jr., and just above that appears: "I, the undersigned, state that the information I have given in the foregoing application is true to the best of my knowledge, information and belief," and question No. 17 in this application is: "Have you ever been

Benjamin J. Davis—Defendant—Cross

found guilty of any offense in any court,” and the space for the answer is filled in “No.”

Thank you, Mr. Moakley (handing).

By Mr. McGohey:

Q. Now Mr. Davis, were you lying to this jury or were you lying to the Bureau of Motor Vehicles when you answered that question—

Mr. Sacher: I object to that question.

Q. —that you had never been—

Mr. Sacher: I withdraw the objection.

A. I wasn't lying to either.

Q. Now during the period from April 1, 1945, to July 20, 1948, you were a member of the National Board of the Communist Party, were you not? (T-9684) A. April what?

Q. April 1, 1945. A. To what?

Q. To July 20, 1948. A. Yes.

Q. And during that period did you ever disagree with any decision, resolution or program of the Communist Party or a National Convention or the National Board or the National Committee, and, if so, where was your disagreement recorded or published?

Mr. Sacher: I object.

The Court: Overruled.

A. I can't recall whether I ever did.

Q. As a matter of fact, you didn't ever disagree, did you, Mr. Davis? A. I couldn't answer that question. I just told you I don't recall.

Q. Very well. A. That's not material anyway, because we have majority decision and opinion in our Party, and those who are defeated in the vote, why, they abide by the democratic decision of the majority.

Q. But you never disagreed with those decisions after they were arrived at? A. I don't know; I may have at some time during the long three-year period that you mention there.

Benjamin J. Davis—Defendant—Redirect

Q. After they were arrived at by the National (T-9685) Board or the National Committee or the National Convention you say you may have disagreed with them? A. After they were arrived at, if I disagreed with them as a good—as a disciplined Communist, I carry them out because I accept that when I join the Communist Party.

Mr. McGohey: Very well.

Your witness.

Mr. Sacher: May I trouble you, Mr. McGohey, for Exhibit 187?

(Mr. McGohey hands to Mr. Sacher.)

Mr. Sacher: Thank you.

(T-9686) *Redirect examination by Mr. Sacher:*

Q. I hold in my hand, Mr. Davis, Government's Exhibit 187, which purports to be your petition to the Honorable Virlyn Moore, Judge of the Superior Court of Fulton County, for admission to the Bar of the Superior Court. I take it that is what this is, Mr. Davis? A. It is a court of general jurisdiction there in Georgia.

Yes, Superior Court of Georgia.

Q. Thank you. I notice in this Exhibit 187 the address 230 Boulevard Northeast, Atlanta. Do you notice that, Mr. Davis? A. Yes.

Q. Whose address was that? A. That was the address of my home, my father—

Q. And how long— A. —and mother.

Q. And how long prior to the date of your application in January 1932 to Judge Moore had your father maintained that residence at 230 Boulevard Northeast?

Mr. McGohey: Objection.

The Court: I will allow it.

A. Oh, for more than—I think for more than 10 years.

Q. Your father was a pretty well known citizen in Atlanta, wasn't he?

Mr. McGohey: Objection.

The Court: Sustained.

(T-9687) Q. Did you regard 230 Boulevard Northeast as your residence while you attended Amherst?

Benjamin J. Davis—Defendant—Redirect

Mr. McGohey: Objection.

Mr. Sacher: Residence, your Honor, is a matter of intention.

The Court: A man make a petition for admission to the Bar and states that he is residing at a certain place for ten years certainly can't mean that he has been off to Baltimore and off to Chicago.

Mr. Sacher: That is not the question. I am talking about Amherst and not Baltimore or Chicago. I will get to those cities, but at the moment I am talking about Amherst, about a college student who is off to college. What is his residence? Is his residence his home or a dormitory?

Mr. McGohey: The question of where his residence was at the time he was a student at Amherst was not gone into on cross-examination at all.

The Court: No.

Mr. Sacher: This covers a 10-year period and that falls within that ten-year period.

The Court: I think it obviously means the 10 years immediately before the filing and signing of the petition, not when he was in school.

Mr. Sacher: But the 10 years immediately (T-9688) preceding includes that time.

The Court: I don't want to argue it. I sustain the objection. I know what you are up to. I don't want to hear any argument. I sustain the objection.

Mr. Sacher: This is a fact.

The Court: Please stop arguing.

Q. Were you at Amherst at any time within the 10 years immediately preceding January 5, 1932?

Mr. McGohey: Objection.

The Court: Sustained.

Q. Were you at Harvard Law School at any time during the 10-year period immediately preceding the date of your filing of the petition which is Government's Exhibit 187?

Mr. McGohey: Objection.

The Court: Sustained.

Benjamin J. Davis—Defendant—Redirect

Q. Did you intend your father's residence to be your residence during the 10-year period immediately preceding the filing of this petition which is Government's Exhibit 187?

Mr. McGohey: Objection.
The Court: Sustained.

Q. Did you intend to deceive Judge Virlyn Moore when you filed this petition, Government's Exhibit 187?

Mr. McGohey: Objection.
(T-9689) The Court: I will allow it.

A. No.

Q. Will you tell the Court and jury who Mr. Austin T. Walden was, one of the two lawyers who sponsored you for admission to the Bar in Georgia?

Mr. McGohey: Objection.
The Court: Sustained.

Q. For how many years had you known Mr. Walden prior to the time that he signed your petition for admission to the Georgia Bar?

Mr. McGohey: Objection.
The Court: Sustained.

Q. Did you know Mr. Thomas J. Henry, Jr., the other lawyer who sponsored you for admission to the Georgia Bar?

Mr. McGohey: Objection.
The Court: Sustained.

Q. For how many years had you known Mr. Henry?

Mr. McGohey: Objection.
The Court: Sustained.

Q. What was your residence for the 10-year period preceding the date of your filing of this petition, Government's Exhibit 187? A. 230 Boulevard. That is the way I considered it.

Mr. Sacher: May I trouble you for Exhibit 189, please?
(T-9690) Mr. McGohey: Surely (handing).

Benjamin J. Davis—Defendant—Redirect

Q. Will you please state to the jury on what grounds you believe 230 Boulevard Northeast to be your residence?

Mr. McGohey: Objection.
The Court: Sustained.

Q. Did you believe it in good faith to be your residence at the time you filed Government's Exhibit 187 with Judge Virlyn Moore?

Mr. McGohey: Objection.
The Court: Sustained.
He has already answered that.

Q. Now, Mr. Davis, on cross-examination Mr. McGohey asked you whether you had lied to the Motor Vehicle Bureau or whether you had lied to this jury concerning the incidents to which you testified in regard to the commission of offenses. Do you recall that? A. Yes.

Q. At the time that you signed this Government's Exhibit 189, if you signed it, did you intend to deceive the Motor Vehicle Bureau as to whether you had been found guilty of violating the segregation laws of Atlanta, Georgia? A. No.

Mr. McGohey: Objection, and I move to strike the answer.

The Court: I will allow it. The question in (T-9691) substance is when he put "No" to that answer did he intend to deceive the Motor Vehicle Bureau?

Mr. Sacher: Precisely.
The Court: I will allow it.

A. No, I did not.

Q. Will you please explain your answer?

Mr. McGohey: Objection.
The Court: Sustained.

Q. Did you believe that the violation of segregation laws would be regarded an offense by the Motor Vehicle Bureau in the City of New York?

Mr. McGohey: Objection.
The Court: Sustained.

Colloquy of Court and Counsel

He is supposed to answer the questions truthfully.

Mr. Sacher: Well, in view of your Honor's observation then I ask that the witness be given an opportunity to state whether at the time that he signed this great serious document, the application for an automobile license,—

The Court: You can't belittle it that way.

Mr. Sacher: No, it is a great serious document.

The Court: I see you do that all the time.

Mr. Sacher: I wish to apologize. I have a proper regard for motor vehicle licenses.

The Court: It would be better if you do less (T-9692) of that.

Mr. Sacher: In light of your Honor's observation I ought to be able to elicit the attitude of this witness at the time of this application some 20 years after that event in regard to the offense of violating the segregation laws of Georgia. That is all I wish to have so that the jury may see what his state of mind was.

The Court: I thought he didn't even remember putting it down.

Mr. Sacher: That is not what he was asked.

The Court: He was asked whether he said that and he answered it that way.

Mr. Sacher: I don't remember at the moment.

The Court: That is what I thought I heard him say a little while ago.

Mr. Sacher: He wasn't asked that; he was asked whether the signature on this photostat was his signature and he confessed to inability to recognize it on the photostat. But this specific question was not asked of him.

The Court: I sustain the objection.

Now we will take—

Mr. McGohey: If the Court please, the witness testified on direct examination that he had been convicted twice.

(T-9693) The Court: Yes, I know.

Mr. Sacher: And I think Mr. McGohey disproved one conviction.

Colloquy of Court and Counsel

The Court: That is a matter of inference. My own recollection is that at the first he had been fined \$10 and sentence suspended. If that means anything that means he was convicted one time.

Mr. Sacher: That is not an offense I understand.

The Court: The second one I understood him to say he had been convicted down in Georgia, and having been convicted twice he answered this question which asked him whether he had ever been convicted for any offense "No."

Mr. Sacher: I should point out that the decisions in the State of New York in regard to the offense of disorderly conduct is that that does not constitute an offense.

The Court: If that is what he wants to explain I will permit him to do that.

Mr. McGohey: That is not the fact. There is a provision distinguishing offenses from other forms of crime, but the statement Mr. Sacher makes is not accurate.

Mr. Sacher: Do I understand Mr. McGohey to say that an applicant who gets a \$5 or \$10 fine for picketing is disqualified from getting an automobile license?

(T-9694) Mr. McGohey: The question is not one of disqualification; the question is whether you are telling the truth when you are asked to answer a question, and particularly when you make an affirmation that the answers to the questions are true.

The Court: I have an idea this is about the time to go home.

Ladies and gentlemen of the jury, remember the admonition I have heretofore given you. Do not discuss the case among yourselves and do not let the matter be discussed by anyone with you. You will express no opinion of the merits of this controversy until finally submitted to you under the instructions of the Court.

We will now take a recess until tomorrow morning at 10.30.

(Adjourned to July 13, 1949, at 10.30 a. m.)

Benjamin J. Davis—Defendant—Redirect

(T-9695)

New York, July 13, 1949;
10.30 o'clock a. m.—————
TRIAL RESUMED
—————

BENJAMIN J. DAVIS, resumed the stand.

(The Court and the clerk confer.)

The Court: Let the record show that the jury is present and the defendants and the attorneys for the defendants, with the exception of Mr. McCabe, Mr. Isserman and Mr. Gladstein, with respect to whom I am informed the usual stipulation is being prepared for signature and filing, and the attorneys for the Government are present.

The Court: You may proceed, Mr. Sacher.

Mr. McGohey: If the Court please, before the examination starts I have some photostats of the exhibits which the Government introduced yesterday for the Court and I have another set for Mr. Sacher (handing).

The Court: Very good.

You may proceed, Mr. Sacher.

Redirect examination continued by Mr. Sacher:

Q. Mr. Davis, yesterday afternoon Mr. McGohey on cross-examination asked you the following questions and (T-9696) you made the following answers thereto at page 9675:

“Q. You told us in your direct examination that in the course of your campaign in 1945 for re-election to the City Council you spoke about the Schneiderman decision— A. Yes.

“Q. —in your campaign. And you told us that even the Supreme Court—you said, rather, in your campaign that even in 1943 the Supreme Court had handed down the Schneiderman decision, ‘showing that our Party did not

Colloquy of Court and Counsel

advocate force and violence'; you testified to that in your direct examination?"

And you answered, "I think I did."

Do you recall those questions and answers? A. I do.

Mr. Sacher: Now if the Court please, on the basis of the questions and answers put by Mr. McGohey to Mr. Davis yesterday afternoon concerning the Schneiderman decision and more particularly on the basis of Mr. McGohey's actual quotation from pages 148 and 153 of the decision of the Supreme Court in Schneiderman against United States in 320 U. S. 118 I now offer the decision of the majority of the Supreme Court in evidence.

The Court: Justice Murphy's opinion?

Mr. Sacher: That is the decision of the Supreme Court.

(T-9697) The Court: I say, that is the one?

Mr. Sacher: That is right.

The Court: You don't offer any of the other opinions, either the concurring or dissenting opinions?

Mr. Sacher: That is correct, your Honor.

The Court: Very well.

Mr. McGohey: If the Court please, I object to the admission of the opinion.

The Court: Objection sustained.

Mr. Sacher: Now if it please the Court, I offer in evidence pages 147 to 159 of the opinion of the majority of the Supreme Court in Schneiderman against U. S. in 320 U. S. 118 and I should like an opportunity to be heard, if I may in support of this second offer.

Mr. McGohey: That is what?

Mr. Sacher: 147 to 159.

The Court: What puzzles me is that I should suppose that the thing has been sufficiently gone into. Now Mr. Davis particularly yesterday afternoon, as I remember it, made clear what his view as to that quotation that was formally in the answer made by Mr. Foster to one of the Herald Tribune questions, and Mr. McGohey has made clear his position on

Colloquy of Court and Counsel

behalf of the Government that there were two other parts of the opinion and there it is.

Now the rest is a matter of legal argument that (T-9698) is of no concern to the jury and would only serve to confuse them it would seem to me. I think the position of Mr. Davis is pretty clear about it. I will, however, glance at those pages but my feeling is that going into those legal matters which in all these cases are intricate and difficult of understanding even by lawyers who are not particularly well versed in the special field would only make confusion. But I will look at those pages after I hear what Mr. McGohey has to say.

Mr. Sacher: But may I first be heard as to the reasons why I think they ought to be received, your Honor?

The Court: Well, Mr. Sacher, I hesitate to do that because almost every time I allow you to state your reasons you make what I consider to be a brief interlocutory summation to the jury.

Mr. Sacher: No, I do not intend to do that.

The Court: And you appear not to be arguing to me at all but, rather, to the jury, and I don't like that.

Mr. Sacher: I don't think I have done that but, in any event, I promise your Honor I shan't do it this time.

The Court: You see, I am very familiar with the difference between legal questions, which my whole life has been taken up with arguing, discussing and hearing, (T-9699) and I know when I hear a legal argument and I know the difference between that and a factual matter, which is the sort of thing that should be argued at the end of the case.

Now let me first see whether there is objection and read the pages, and then I will consider whether I will hear you.

Mr. McGohey: I do object to the pages as offered, your Honor.

The Court: Now let me look at them.

(Proffered exhibit handed to the Court.)

Colloquy of Court and Counsel

The Court: I will excuse the jury for a few moments.

(The jury leaves the courtroom.)

The Court: Now, before I hear you, Mr. Sacher, let me make a very brief statement as to how this matter seems to me. It was injected into the case first, as I remember it, by the defense offering those three questions and answers which were part of the group of questions submitted by the Herald Tribune and answered by Mr. Foster.

It may well be, indeed it seems to me, that if a person unlearned in the law should read that answer of Mr. Foster to the third question, they would get the impression that Mr. Foster was saying that the Supreme (T-9700) Court had held that it was not a part of the tenets of the Communist Party to overthrow the Government by force and violence and yet all the Supreme Court in the opinion of Mr. Justice Murphy was saying was that it was a tenable view on the evidence then before the Court on that particular case. It did not hold at all that it was so. Indeed, the rest of the opinion made it very clear that they took the position that the matter was not before them and not in issue and they were not going to decide it.

Now, that having been interjected in that way by Mr.—by one of the counsel for the defense, Mr. McGohey very properly brought out that there were other parts of the opinion, which he briefly quoted, which showed that the Court in this very same opinion of Mr. Justice Murphy had stated that it was not an issue and that they were not deciding it.

Now, the pertinency of that, as I see it at the moment, is to inquire, as Mr. McGohey did, as to whether, when Mr. Foster put that part of the answer in about the Schneiderman case and when others made speeches about it, did they fairly state what was there or give such a partial statement, by the omission of these other parts, that that might be misleading. Now, if all this other material of a highly technical character, which the (T-9701)

Colloquy of Court and Counsel

jury could not possibly understand without taking a regular course in constitutional law, were brought in, I have grave doubt as to how it is going to be helpful and do anything other than make confusion.

Now, let me hear what you have to say with that in mind.

Mr. Sacher: I should like to say this first, your Honor. I think that early in the trial your Honor said that what we are concerned about, or rather what you regarded the case as being concerned with was not the objective facts as such but what the defendants taught and advocated concerning them. Consequently, throughout the trial, your Honor has limited definitions and factual statements to their significance or meaning to the defendants and not in terms of their objective reality. I mention that because I believe that in deference to that principle, assuming it to be sound, and for present purposes we must regard it as sound in view of the fact that your Honor has laid that down as the guiding principle of the trial. Was it a material question as to whether or not Mr. Foster correctly reflected the decision of the Supreme Court. I say that in obedience to the principle that your Honor laid down that that was not an important question, not a relevant question. Indeed the significance of Mr. Foster's (T-9702) statement lay in the fact that regardless of what the Supreme Court actually decided, he and the Communist Party, by adopting that interpretation and construction of the opinion of the Supreme Court, were saying in so many words, "Our Party teaches and advocates social change by peaceful means."

That's what he said, regardless of what the decision said. Indeed, I think it would be valid in following through your Honor's premise to say that if the Supreme Court decision said quite the opposite, the fact that Mr. Foster and the Communist Party were using language from the Supreme Court in support of a thesis and teaching that they teach and advocate peaceful change was the sole significance of

Colloquy of Court and Counsel

that document if we are to have regard to your Honor's major premise, so to speak, in the case.

Now what has happened as a result of the introduction of that has been a cross-examination by Mr. McGohey, in the course of which, I think it is fair to say, on the basis of the record as it stands, that the cross-examiner intended, or regardless of his intention, the effect was to accomplish one or both of two things: first, to establish objectively that the decision of the Supreme Court did not hold what Mr. Foster and Mr. Davis and Mr. Green stated it to hold; (T-9703) secondly, that the defendants or those of them who testified to their opinion or view or belief of what the Supreme Court opinion decided, and Mr. Foster, had misstated the decision of the Supreme Court. On either ground, therefore, it becomes relevant and material for the defense to have an opportunity to lay before the jury those portions of the majority decision which would, 1, tend to rebut the charge of the prosecution or claim of the prosecution that the decision does not reflect that status which the defendants attributed to that decision; and, in any event, in view of your Honor's major premise, to support their view of the decision as being a reasonable view in the light of all that was said.

Now in the pages which I have latterly submitted for receipt in evidence, there appear passages on the basis of which I respectfully submit as a matter of law the defendants were fully warranted in saying to the people of the country that the decision of the Supreme Court showed—and that was the language, if your Honor will recall the record—

The Court: Let me get that exhibit out.

What is the number of that exhibit with those questions?

Mr. Bailey: 6 X E.

(T-9704) Mr. Sacher: 6 x E is it?

Mr. Bailey: Yes.

The Court: Let me get that before me.

Mr. Sacher: My last reference, your Honor, is to Mr. Davis's testimony which was incorporated, I

Colloquy of Court and Counsel

think, in the question which I read to him this morning (examining); yes, that appears at 9675, your Honor, at the bottom of the page.

The Court: You see, it was a denaturalization proceeding there.

Mr. Sacher: That is correct.

The Court: And the subject is a most intricate one as a matter of law. If you were to take the average lawyer, not specially skilled in that phase of the law, it would probably take him about a week with constant study before he could reasonably understand all the implications that are in there, and you open the door a little bit here and the first thing you know there will be hopeless confusion in the minds of the jury about it, but let me go back.

Mr. Sacher: You see, I would like to make one point, if I may, your Honor, preliminary to your looking at pages 6 and 7 of 6 x E for identification, because I think that the formulation of Mr. Foster's answer really demonstrates beyond all doubt that cross-examination (T-9705) as to other parts of the opinion was clearly, if not improper, if not erroneous, then certainly cross-examination on that should now afford us the opportunity to lay all of the decision before the jury, because in answering the question "Does the Communist Party advocate the overthrow of the United States Government by force and violence or by any other unconstitutional means?" Mr. Foster said the following—he did not make any representation as to what the Supreme Court decided. He said:

"We'll let the Supreme Court of the United States answer this question for us."

The Court: Now right there—

Mr. Sacher: Yes.

The Court: —doesn't that give the inference that the Supreme Court did answer the question?

Mr. Sacher: Your Honor, no—

The Court: But—

Mr. Sacher: You are taking it out of context.

The Court: I can't get any other meaning.

Colloquy of Court and Counsel

Mr. Sacher: Let us read the whole thing. Bear with me for a moment.

The Court: Let us stop at that part. The question is: Does the Communist Party advocate the overthrow of the United States Government by force (T-9706) and violence or by any other unconstitutional means?

“Answer: We’ll let the Supreme Court of the United States answer this question for us.”

Now so far you certainly get the impression that the Supreme Court did answer the question, whereas as a matter of fact it did not at all.

Mr. Sacher: Suppose then, for purposes of argument but without conceding the validity of it I go along with your Honor to the extent of that first sentence.

The Court: All right.

Mr. Sacher: Then he says in the succeeding sentence as follows:

“In its decision in the *Schneiderman* case, June, 1943, after examining exhaustively, on the one hand, the charges that the Communist Party advocates a violent seizure of power, and on the other hand, the practices and doctrines of the Party, including the writings of Marx, Lenin and Stalin, the Court said:

“‘A tenable conclusion from the foregoing is that the Party in 1927 desired to achieve its purpose by peaceful and democratic means, and as a theoretical matter justified the use of force and violence only as a method of preventing an attempted forceable counter-overthrow once the Party had obtained control in a peaceful (T-9707) manner, or as a method of last resort to enforce the majority will if at some indefinite time in the future, because of peculiar circumstances, constitutional or peaceful channels were no longer open.’”

But here is the decisive sentence—

The Court: But so far, the average untutored and even lawyer reading this would get the impres-

Colloquy of Court and Counsel

sion, so far, that the Supreme Court had decided that, whereas they did not.

Now let us hear these vital words that you are speaking of.

Mr. Sacher: Now the words that are vital are the following:

“We Communists accept this formulation as a fair statement of our attitude toward the question of political violence.”

In other words, what Mr. Foster is saying there is, “We adopt this. This is our attitude toward force and violence. We believe in peaceful democratic means of achieving Socialism, etc.” And I therefore say that this constitutes—and I have no objection to reading the balance; it only fortifies what I said—

The Court: I had no such thought that you object to reading the balance. That is all right.

(T-9708) Mr. Sacher: The point I am making is solely this: that when reference was made here to the Supreme Court decision that the sole issue that was raised by the reference to the Supreme Court decision in Mr. Foster’s answer to the question was the issue as to whether or not the Communist Party and Mr. Foster really meant what they said here, not whether other parts of the Supreme Court decision tended to or did not negate the validity or the correctness or the implications of what was said; for let’s bear this in mind: the fact that there are other statements in the opinion which the prosecution contends either conflict with or explain away or modify fortifies the position we are taking here because if the prosecution is correct then there were alternatives, there were choices which the Communist Party could then make out of that opinion and which choice did it make? It made the choice of that portion of the opinion which described its program and policies as being peaceful and democratic. And therefore I say this was the teaching and advocacy.

Colloquy of Court and Counsel

The Court: You don't think a person reading this would get the impression that Mr. Foster was saying that the Supreme Court had decided that they didn't advocate any use of force and violence? I don't see how you could read it without getting that impression.

(T-9709) Mr. Sacher: Let's assume that they did. As a matter of fact that again strengthens our position because whether they be tutored or untutored if they were led to believe by the Communist Party that the Supreme Court of the United States, the highest court of the land, had found judicially that the Communist Party does not teach and advocate force and violence, then everybody would know, the Supreme Court having said so, that you don't expect when you join the Communist Party and you don't participate in any forceful and violent action, but on the contrary you are to expect when you join a party of peaceful and democratic teaching and advocacy.

The Court: But the Supreme Court did not decide that. That is where the misleading part comes in.

Mr. Sacher: What happens is the following: the question is not what the Supreme Court decided because that is your Honor's premise in this case, that that is not the basic premise, because what we are concerned with is teaching and advocacy, and just as your Honor is not concerned with what happened in Spain or China or India so your Honor cannot be concerned with what is actually in the Supreme Court decision but must be concerned solely with the teaching and advocacy of the Communist Party concerning that decision; (T-9710) and therefore what my position here is is as follows: that when the prosecution moved into the area of demonstrating that the decision held something different from that which, as your Honor says, was the decision as described by the Communist Party or Mr. Foster or the defendants here, then I say that what happened then was that the so-called objective reality was intruding its ugly head into the case and once

Colloquy of Court and Counsel

objective reality is here then we must have objective reality; we can't have bits and pieces.

The Court: Now you get into this kind of talk that I don't understand. Every once in a while it gets off into this mist and it becomes obscured. I don't know where we are going. We are groping around.

I know this much: that when this paper came in, this exhibit with these questions and answers, I thought it was offered to show what had been said and adopted by various of these defendants on this question of force and violence. Now their good faith in the matter, their intent in the matter is a most material element.

Mr. Sacher: Precisely.

The Court: And if they state a matter that is misleading, that gives an impression that is not a just and proper impression I felt it was entirely right (T-9711) to permit Mr. McGohey to show what was true also, namely, that the Supreme Court while it did make the statements contained in the answer, it also stated that it was not deciding that question and that that question was not an issue before it.

Now there, on this matter of good faith and intent, I should suppose the matter should rest.

Mr. Sacher: Ah! But what has happened is the following: No. 1, the thing that is material in the case, the thing that is relevant is the teaching and advocacy of the Communist Party as your Honor has—

The Court: Yes, not just what the defendants say the teaching and advocacy was. There is another little difficulty. You all have taken the position that if a defendant says something or writes something then that is the end of that, that is positive fact; whereas it may be that he said that with his tongue in his cheek intending just the opposite perhaps or intending something different, and whenever we get into that field beyond the mere statement of a thing as being so you resist it. Now there is a dispute. There are two sides, not just one.

Colloquy of Court and Counsel

(T-9712) Mr. Sacher: No, but the point is—

The Court: Now, there is a dispute here. There are two sides, not just one.

Mr. Sacher: My argument this morning proceeds on your Honor's premise, and not on any premise of my own. In other words, this question and answer, you will recall the testimony, was taught by Mr. Green in school. Therefore, this is the teaching and advocacy at least in that instance, and then you have Mr. Davis's teaching and advocacy in the campaign speeches of Nineteen—

The Court: Let me ask you a question. Let us take an assumption. Let us assume that when Mr. Green was teaching in the class about the force and violence and telling them about what the Supreme Court had decided, let us assume that all the time he was doing that he knew as a positive fact that they had not decided, and yet he was going ahead just the same and telling the students, "Now, the Supreme Court has held that this Party does not use any force and violence at all," but he knows all the time that they did not decide that. Now, do you think the fact that that was so, assuming it to be so, would be material—

Mr. Sacher: No.

The Court: —bearing on intent?

Mr. Sacher: It would be material but in the (T-9713) opposite way that your Honor's question implies because the important question is what did he actually teach and advocate on the question of force and violence and not on the decisions of the Supreme Court, because the point I am making is that even if the Supreme Court decision said the contrary, if, in order to teach peaceful, democratic change and in order to induce in his listeners a belief in and a participation in democratic and peaceful change, he stated that a decision held something that it did not, that should be to his credit and not to his discredit, because it then fortifies the determination of the Communist Party and its National Board members and its teachers to teach and advocate peaceful change.

Colloquy of Court and Counsel

The Court: Supposing that to be so, how would that make the use of this opinion admissible? It would simply confuse.

Mr. Sacher: No, because what happened here, your Honor, is this: Mr. McGohey has gone under the teaching and advocacy with a view to establishing that the decision may have had other statements which negated the passage quoted and that the decision itself was different from what was, they believed, to have been the decision as stated and, therefore, seeking to undermine both the objective foundation of the teaching and advocacy and, (T-9714) secondly, to impair the good faith and bona fide intention of the defendants and, therefore, the purpose now is to rebut that by showing the entire context in which the two sentences quoted by Mr. McGohey from the opinion appear so that the jury may see whether or not this was just a lot of mumbo-jumbo or whether there was a solid objective basis for this opinion, in the first place, and, secondly, whether or not there was a distortion and a misrepresentation of the teaching and advocacy of the Communist Party.

The Court: Let me hear from Mr. McGohey.

Defendant Dennis: May I be heard?

The Court: Yes, I will hear you first, Mr. Dennis.

Defendant Dennis: As the Court knows, in an effort to substantiate the grotesque allegations set forth in the indictment and in the case of the prosecution, the prosecution brought into evidence isolated quotations from a number of Marxist-Leninist classics, and amongst those quotations taken out of context were excerpts from the Communist Manifesto, from *State and Revolution* and *Foundations of Leninism*.

We, the defendants, have shown our understanding of these classics as well as the doctrine of Marxism-Leninism as a whole. We have placed before the Court our interpretation of what actually we advocated and taught.

(T-9715) Now, I think the Supreme Court decision in relation to this case is highly relevant and ma-

Colloquy of Court and Counsel

terial because, in addition to what we defendants have set forth before the Court, we have an expression, a judicial opinion of the majority of the Supreme Court on three of the classics which the Government itself has brought into the case, namely, the Manifesto, State and Revolution and Foundations of Leninism, and I think it would be appropriate to quote that part which—

The Court: You may read anything you want.

Defendant Dennis: In the decision.

The Court: As long as you bear in mind what you are trying to argue to me is to put in these pages of the opinion which Mr. Sacher is offering.

Defendant Dennis: That is right; that is right.

Preceding—

The Court: Keep your eye on that ball and, whatever you say, I will listen to you.

Defendant Dennis: Preceding the quotation contained in Mr. Foster's answer to question 3 of the Herald-Tribune, Judge Murphy's opinion states, "The reality of the conflict in the record before us can be pointed out quickly. Of the relevant prior to 1927 documents relied upon by the Government, three are writings of outstanding Marxist philosophers and leaders, the fourth (T-9716) is a world program. The Manifesto of 1848 was proclaimed in an autocratic Europe engaged in suppressing the abortive liberal revolutions of that year. With this background, its tone is not surprising. Its authors later stated, however, that there were certain countries, 'such as the United States and England in which the workers may hope to secure their ends by peaceful means.' Lenin doubted this in his militant work, the State and Revolution, but this was written on the eve of the Bolshevik revolution in Russia and may be interpreted as intended in part to justify the Bolshevik course and refute the anarchists and social democrats. Stalin declared that Marx's exemption for the United States and England was no longer valid. He wrote, however, that 'the proposition that the prestige of the Party can be built upon violence . . . is absurd and absolutely incompatible with

Colloquy of Court and Counsel

Leninism.' And Lenin wrote 'In order to obtain the power of the state the class-conscious workers must win the majority to their side. As long as no violence is used against the masses, there is no other road to power. We are not Blanquists, we are not in favor of the seizure of power by a minority.' The 1938 constitution of the Communist Party of the United States, which the petitioner claimed to be the first and only (T-9717) written constitution ever officially adopted by the Party and which he asserted enunciated the principles of the Party as he understood them from the beginning of his membership, ostensibly eschews resort to force and violence as an element of party tactics.'

And from this examination of the classics, and the majority of the Supreme Court taking into account the time, the place and the circumstances, the majority of the court—

The Court: Now, what did they decide?

Defendant Dennis: (Continuing) They drew a conclusion—

The Court: What did they decide? Because that is the important thing.

Defendant Dennis: "A tenable conclusion from the foregoing is that the Party in 1927 desired to achieve its purpose by peaceful and democratic means, and as a theoretical matter justify the use of force and violence only as a method of preventing an attempted forcible counter-overthrow once the Party had obtained control in a peaceful manner," and then the decision goes on.

Now, I would like to say to your Honor that we Communists know that the principles of Marxism-Leninism are sound, are correct, and their application protects and advances the interests of our people, of all people, (T-9718) but we also know and believe and consider, and are reinforced in our consideration on the basis of the majority decision of the Supreme Court, that what we advocate and teach is not only correct and sound, it is also legal and constitutional, and it seems to me the Court—

Colloquy of Court and Counsel

The Court: There is where you get to the whole point: Did the Supreme Court decide in that case that it was not one of the tenets of the Communist Party to advocate the overthrow of the Government by force and violence? And you keep indicating that you think they did decide that whereas it is obvious to any learned person who studies the opinion that they did not decide it and they said they did not decide it.

Defendant Dennis: I do say, your Honor, the Supreme Court did, and it is not a matter of opinion, it is a fact.

The Court: They made that statement that is quoted in Mr. Foster's answer. They did; that is in there.

Defendant Dennis: And they expressed a judicial opinion on three classics which have been introduced into this case, and it seems to me this subject matter must be or should be presented before the jury. The jury is called upon to express certain opinions and draw certain (T-9719) conclusions regarding the whole science of Marxism-Leninism, whatever their wish may be.

The Court: I am quite sure if these pages got before the jury the result would be utter confusion in their minds. I do not see how they could possibly understand them without a lot of explanation and this is not the time to have a couple of classes in law school to teach the jury the various things that would be taught to first-year law students in the matter of analyzing opinions of courts, and that would be taught in a course in constitutional law to third-year students.

Let me hear from Mr. McGohey.

Defendant Dennis: I concur in the opinion—I am concluding,—

The Court: Yes, I am listening.

Defendant Dennis: I concur in the opinion that the science of Marxism-Leninism, the doctrine of Marxism-Leninism in our Party, a political party of the working class, a Marxist party, neither our doctrine, our practice or our belief should be on trial

Colloquy of Court and Counsel

in any court but, since the matter has been brought before the Court and the jury is weighing many documents, many classics, listening to various interpretations, it seems to me that the Court should allow this opinion of the Supreme Court before the jury; and it was Mr. McGohey who introduced many (T-9720) of the classics and who brought certain excerpts, additional excerpts, from Judge Murphy's opinion. Let the jury weigh the entire opinion.

The Court: Now I think Mr. Crockett—

Mr. Crockett: May I be heard very briefly?

The Court: —is showing indications of a desire to speak and I will hear you, Mr. Crockett.

Mr. Crockett: One of the primary issues in this indictment is the character of the Communist Party. That is put in issue by virtue of the first paragraph of the indictment, which characterizes the Communist Party as an association—as a society, group or assembly of persons who teach and advocate the overthrow and destruction of the United States by force and violence.

That, of course, is an allegation which the Government has the burden of proving. By way of proving that allegation, the Government has offered in evidence, as Mr. Dennis just pointed out, certain documents, presumably, according to their theory, documents which indicate that it is a principle of Marxism-Leninism to advocate the overthrow of the Government of the United States by force and violence; and to the extent that the defendants may have circulated, used or taught from these documents, they necessarily taught also the duty and necessity of overthrowing the Government of the United States by force (T-9721) and violence.

So it becomes crucial in this case whether or not there can be any reference or any use of these documents, the Communist Manifesto, Foundations of Leninism, and the other books that Mr. Dennis has mentioned, which doesn't necessarily constitute advocacy of the overthrow of the United States Government by force and violence.

Colloquy of Court and Counsel

Now, obviously what is said by five distinguished Americans, who have read these books, studied them, becomes material to the jury as a characterization, shall I say, as an expert opinion of what is to be found in these books.

The Court: Do you admit that the record in the Schneiderman case is far different from the record in this case?

Mr. Crockett: The over-all record? Yes.

The Court: The whole record. I don't see how you can deny it.

Mr. Crockett: I said yes, but so far as—

The Court: And that record there is different from the record here, to say nothing of the issues of credibility of the witnesses, which necessarily are different.

Mr. Crockett: Your Honor has already mentioned that the Schneiderman case was a Naturalization proceeding—

The Court: A denaturalization proceeding.

(T-9722) Mr. Crockett: A denaturalization proceeding. This is not such a proceeding. As a matter of fact, the element of proof in the Schneiderman case—rather, the rules of evidence in the Schneiderman case were such that any number of documents could have been brought in that case which we would vigorously oppose in this case.

And in that connection, let me mention this: The Court will recall that each time these documents were offered, the Manifesto, Foundations, Imperialism, so forth, we stated that we had no objection to the contents of the document. In other words, we approved the contents generally.

The Court: Yes, I will never forget that. I was always puzzled by that but it doesn't mean they didn't get in just the same.

Mr. Crockett: But we objected to the use of the documents in the manner they were being used here.

My basic thesis is that it is the province of the jury to decide the character of the Communist Party on the basis of the testimony that is presented here.

Colloquy of Court and Counsel

Assuming that it is permissible under the Constitution for us to even have such a trial as this, to that extent, it becomes important, material and relevant here to know what five justices of the Supreme Court think about the character of the Communist Party. Indeed, it becomes just as important and just as material as it was for (T-9723) two justices in the Hiss case to give character evidence. It is part of the same pattern. We are calling on five justices of the Supreme Court to say—

The Court: That is a pretty far-fetched statement to say it is the same thing as two justices appearing as character witnesses in the Hiss case. I do not see the slightest parallel there. You are, in effect, asking me, Mr. Crockett, to hold that every time a judge writes an opinion and, in the course of the opinion, he discourses on some subject and says this and that, that that is to come in as part of the proof in a case wherever the matter being discussed by the learned justice is in issue.

Mr. Crockett: No, I am asking the Court in effect—

The Court: If that were so, a trial would never end, if lawyers could go through the books and find there was a judge who said this and that or the other thing about the subject in issue.

Mr. Crockett: No, I am asking the Court to agree to the extent that the Supreme Court, at least five justices, have expressed a considered opinion on the nature of the teaching and advocacy that is to be found in these documents which were used by these defendants, that becomes important in determining whether or not the defendants (T-9724) could, by the use of those documents, teach and advocate, not the overthrow of the Government by force and violence, but Marxism-Leninism to be attained by peaceful and constitutional means, and the Supreme Court decision says in effect—

The Court: Let me hear from Mr. McGohey.

Mr. Crockett: —that this question—

The Court: Now, what have you to say, Mr. McGohey?

Colloquy of Court and Counsel

Mr. McGohey: I don't know whether I need to spend a great deal of time on Mr. Crockett's last argument, which is, as I understand it, this: these five judges—

The Court: You don't need to spend any time on that last point of Mr. Crockett's—

Mr. McGohey: Very well.

The Court: —because the two records are entirely different.

Mr. McGohey: I intend—

The Court: And even if he should be right on the general proposition, which I doubt, he would not be right when the records are different as they are here.

Mr. McGohey: Clearly, those justices would not be competent witnesses even if they were brought here in person to give their opinion on what the teaching is.

The Court: That is right.

(T-9725) Mr. McGohey: With respect to the Schneiderman case, I will only pause long enough to make the statement, which is in complete agreement with what your Honor observed, namely, that the charge in the Schneiderman case is entirely different from the charge here; that the facts in the Schneiderman case are entirely different than here; and that the issue, the ultimate issue to be decided in the Schneiderman case, was different; and that, furthermore, the Supreme Court in the Schneiderman case was talking about the Party as of 1927 and we are talking about the Party during the period from 1945 to July 20, 1948, and what its teaching and advocacy were in that period.

Now, the point—

The Court: I will tell you what is troubling me at the moment, Mr. McGohey. I am beginning to be convinced that I never should have let that defendants' exhibit in in the first place.

Mr. McGohey: Well, now, I desire to come to that right now, your Honor.

The Court: And having let it in, how far does