the majority which in its opinion said (page 328): "Undoubtedly, the United States can declare war and it, not the States, has the power to raise and maintain armies. But there are other considerations. The United States is composed of the States, the States are constituted of the citizens of the United States, who are also citizens of the States, and it is from these citizens that armies are raised and wars waged, and whether to victory and its benefits, or to defeat and its calamities, the States as well as the United States are intimately concerned. . . . *from the contention that it encroaches upon or usurps any power of Congress, there is an instinctive and immediate revolt.* Cold and technical reasoning in its minute consideration may indeed insist on a separation of the sovereignties and resistance in each to any cooperation from the other, but there is opposing demonstration in the fact that this country is one composed of many and must on occasions be animated as one and that *the constituted and constituting sovereignties must have power of cooperation against the enemies of all.* . . . The same view of the statute was expressed in State v. Holm, 139 Minnesota, 267, where, after a full discussion, the contention was rejected that the Espionage Law of June 15, 1917, abrogated or superseded the statute, the court declaring that the fact that the citizens of the State are also citizens of the United States and owe a duty to the Nation, does not absolve them from duty to the State *or preclude a State from enforcing such duty. 'The same*

act,' it was said, *'may be an offense or transgression of the laws of both' Nation and State, and both may punish it without a conflict of their sovereignties* Numerous cases were cited commencing with Moore v. Illinois, 14 How. 13, and terminating with Halter v. Nebraska, 205 U.S. 34.

"The latter case is especially pertinent in its sentiment and reasoning. It sustained a statute of Nebraska directed against the debasement of the National flag to trade uses against the contention that the flag being the National emblem was subject only to the control of the National power. In sustaining the statute it was recognized that in a degradation of the flag there is a degradation of all of which it is the symbol, that is, 'the National power and National honor' and what they represent and have in trust. To maintain and reverence these, to 'encourage patriotism and love of country among its people,' may be affirmed, it was said, to be a duty that rests upon each State, and that 'when, by its legislation, the State encourages a feeling of patriotism towards the Nation, it necessarily encourages a like feeling towards the State.'

"And so with the statute of Minnesota. An army is an instrument of government, a necessity of its power and honor, and it may be, of its security. An army, of course, can only be raised and directed by Congress, in neither has the State power, but it has power to regulate the conduct of its citizens and to restrain the exertion of baleful influ-

ences against the promptings of patriotic duty to the detriment of the welfare of the Nation and State. To do so is not to usurp a National power, it is only to render a service to its people, as Nebraska rendered a service to its people when it inhibited the debasement of the flag.

"We concur, therefore, in the final conclusion of the court, that *the State is not inhibited from making 'the national purposes its own purposes* to the extent of exerting its police power to prevent its own citizens from obstructing the accomplishment of such purposes.'

"The statute, indeed, may be supported as a simple exertion of the police power to preserve the peace of the State. . . . 'It is simply a local police measure, aimed to suppress a species of seditious speech which the legislature of the State has found objectionable.' "

It is apparent that there is far less justification in the instant case for the majority theory of supersession than there was for the minority view in *Gilbert v. Minnesota.* All of Nelson's arguments in this case and all of the theories of the majority were, we repeat, rejected by the Supreme Court in *Gilbert v. Minnesota.* Moreover, the Supreme Court cited with approval the *Holm* case, supra, which sustained a state statute dealing with Espionage and rejected the contention that the Espionage Law of 1917 abrogated or superseded a state statute,

and specifically held that the citizens of each state owe a duty to the state as well as to the nation and that nothing precluded a state from enforcing such duty since our sovereign federal government needed the cooperation of its constituent sovereignties against the enemy of all. Moreover, as the Supreme Court there said, the same act may be an offense or transgression of the laws of both the nation and the state and both may punish it without a conflict of their sovereignties.

It is to be noted that the state statute in the *Gilbert* case was sustained both as a legitimate measure of cooperation by the state with the United States and as an exercise of the police power to preserve the peace of the State. These two grounds are present here with even greater cogency than there.

The majority opinion has signally failed to distinguish the *Gilbert-Minnesota* case or the famous *Gitlow* case or the *Whitney* or *Fox* or *Holm* or *Halter* cases.

Gitlow v. New York, 268 U.S. 652, is both analogous and in principle controlling. In 1909 the State of New York passed an Act *which prohibited the advocacy or teaching the necessity of overthrowing organized government by force or violence.* Benjamin Gitlow, noted communist, was indicted and convicted under this statute and given a five to ten year sentence. He appealed to the Supreme Court of the United States contending that the statute

under which he was convicted violated the freedom of speech and press guaranteed by the First and Fourteenth Amendments to the United States Constitution. The decision of the Supreme Court, affirming the conviction, has become famous as the *Gitlow* case (*Gitlow v. New York,* 268 U.S. 652). The Supreme Court said: "That a State in the exercise of its police power may punish those who abuse this freedom by utterances inimical to the public welfare, tending to corrupt public morals, incite to crime, or disturb the public peace, is not open to question. Robertson v. Baldwin, supra, p. 281; Patterson v. Colorado, supra, p. 462; Fox v. Washington, supra, p. 277; Gilbert v. Minnesota, supra, p. 339; People v. Most, 171 N.Y. 423, 431; State v. Holm, 139 Minn. 267, 275; State v. Hennessy, 114 Wash. 351, 359; State v. Boyd, 86 N.J.L. 75, 79; State v. McKee, 73 Conn. 18, 27. Thus it was held by this Court in the *Fox* case, that a State may publish publications advocating and encouraging a breach of its criminal laws; and, in the *Gilbert* case, that a State may punish utterances teaching or advocating that its citizens should not assist the United States in prosecuting or carrying on war with its public enemies.

"And, for yet more imperative reasons, a State may punish utterances endangering the foundations of organized government and threatening its overthrow by unlawful means. These imperil its own existence as a constitutional State. . . By enact-

ing the present statute the State has determined, through its legislative body, that utterances advocating the overthrow of government by force, violence and unlawful means, are so inimical to the general welfare and involve such danger of substantive evil that they may be penalized in the exercise of its police power."

Another analogous case is *Whitney v. California,* 274 U.S. 357. That case sustained a conviction under the California Criminal Syndicalism Act, which like the New York statute in the *Gitlow* case, specifically prohibited advocating or teaching or aiding an organization to advocate certain criminal acts, to effect any political change by force, violence or terrorism. The Court said (page 371): "That the freedom of speech which is secured by the Constitution does not confer an absolute right to speak, without responsibility, whatever one may choose, or an unrestricted and unbridled license giving immunity for every possible use of language and preventing the punishment of those who abuse this freedom; and *that a State in the exercise of its police power* may punish those who abuse this freedom by utterances inimical to the public welfare, tending to incite to crime, disturb the public peace, *or endanger the foundations of organized government* and threaten its overthrow by unlawful means, *is not open to question.*"

Cases in other analogous fields likewise demonstrate how untenable the majority opinion is. A

leading case is *Fox v. Ohio,* 46 U.S. 410. The defendant in that case was indicted, convicted and sentenced under an Ohio statute for passing " 'a certain piece of false, base, counterfeit coin, forged and counterfeited to the likeness and similitude of the good and legal silver coin, currently passing in the State of Ohio, called a dollar.' "

There is no field or activity in our country in which the federal government has a more *exclusive monopoly* than that which has to do with the monetary system of the United States. Article I, §8 of the Constitution of the United States gives Congress power to "coin Money, regulate the Value thereof . . . [and] To provide for the Punishment of counterfeiting the Securities and current Coin of the United States." The states have no such power under the Constitution or under any Act of Congress.

Neverthless, the defendant's conviction was affirmed by the Supreme Court of the United States, which held that the crime punishable under the Ohio statute "*is deemed by this court to be clearly within the rightful power and jurisdiction of the State.* So far, then, neither the statute in question, nor the conviction and sentence founded upon it, can be held as violating either the constitution or any law of the United States made in pursuance thereof." Could anything be more analogous or decisive? The same arguments made here by defendant Nelson and sustained by a majority of this

Court were there made and rejected by the Supreme Court of the United States. For example, Fox argued that since the State Government and the Federal Government had legislated on the same subject, "*an individual* under these separate jurisdictions *might be liable to be twice punished for the one and the same crime,* and that this would be in violation of the fifth article of the amendments to the constitution, declaring that no person shall be subject for the same offense to be twice put in jeopardy of life or limb." In answer to this argument the Court said: "The prohibition alluded to as contained in the amendments to the constitution, as well as others with which it is associated in those articles, were *not designed as limits upon the State governments* in reference to their own citizens. They are exclusively restrictions upon federal power, intended to prevent interference with the rights of the States, and of their citizens."

The language of the Attorney General of Ohio is equally applicable to the instant case which differs only in its greater magnitude and importance: "Such a jurisdiction, if not indispensable, is to the last degree useful and expedient. And it has been exercised almost, if not quite, universally by the different States which compose the Union. The rightfulness of this jurisdiction is now, for the first time, questioned in this Court. Certainly it presents a question of the first magnitude, for *no one can foresee what may be the consequences of taking*

from the States the power of self-protection, which they have so long exercised, against a class of criminals swarming over the entire Union, and against a species of crime which, more than any other, affects the common business of the people.''

Powerful as is our Federal Government, extensive as are its departments and ramifications, wonderful as is the FBI, there are still not nearly enough FBI agents, United States district attorneys, marshals and agencies to cope with this far-flung masked threat against the very life of our American System of Government.

Cases in other fields over which Congress is generally considered to have exclusive judisdiction further demonstrate the error of the majority opinion. For example, Congress is given by Article I, §8, Clause 3 of the Constitution of the United States the power to regulate interstate commerce. This power Congress has exercised in numerous acts. Nevertheless, it is now well settled that a state can regulate as well as tax interstate commerce for limited purposes, such as local activities or for the use of its highways or local facilities: *Interstate Busses Corp. v. Blodgett,* 276 U. S. 245; Dixie Ohio Express *Co. v. State Revenue Comm.,* 306 U.S. 72; *Clark v. Gray, Inc.,* 306 U.S. 583; *Hendrick v. Maryland,* 235 U.S. 610; *Capitol Greyhound Lines v. Brice,* 339 U.S. 542; *Aero Transit Co. v. Commissioners,* 332 U.S. 495; *Shirks Motor Express Corp. v. Messner,*

375 Pa. 450, 100 A. 2d 913; *Keystone Metal Co. v. Pittsburgh,* 374 Pa. 323, 97 A. 2d 797; *Southern Pacific Co. v. Gallagher,* 306 U.S. 167, 176; *McGoldrick v. Berwind-White Coal Mining Co.,* 309 U.S. 33, 58; *Western Live Stock v. Bureau of Revenue,* 303 U.S. 250; *International Harvester Co. v. Department of Treasury,* 322 U.S. 340; *Norton Company v. Department of Revenue of Illinois,* 340 U.S. 534; *Missouri Pacific Ry. Co. v. Larabee Mills,* 211 U.S. 612.

Congress has assumed what many believed was complete and therefore exclusive jurisdiction in the labor-management field under the Acts popularly known as the Wagner Act and the Taft-Hartley Act. The question has frequently arisen whether Congress by such Acts clearly manifested an intention to supersede all state police power in this field. This question has been resolved by the Supreme Court in favor of the States in many cases where the State statute was sustained: *Hughes v. Superior Court of California,* 339 U.S. 460; *Bakers & Pastry Drivers v. Wohl,* 315 U.S. 169; *Dorchy v. Kansas,* 272 U.S. 306; *Milk Wagon Drivers Union v. Meadowmoor Dairies Inc.,* 312 U.S. 287; *Hotel & Restaurant Employees' International Alliance, etc. v. Wisconsin E. R. Bd.,* 315 U.S. 437; *Carpenters & Joiners Union v. Ritter's Cafe,* 315 U.S. 722; *Giboney v. Empire Storage & Ice Co.,* 336 U.S. 490; *Wortex Mills v. Textile Workers Union,* 369 Pa. 359 85 A. 2d 851.

All of these analogous cases demonstrate that the Police power of a state, especially where it attempts to protect the very life and existence of our State and Federal Governments, must be sustained unless restricted or prohibited by the Constitution, or clearly, expressly and validly prohibited by Congress, or unless Congress has clearly and validly manifested an intention to exclude the States from exercising their police power on the matter in question.

The only decision cited by the majority which, in my judgment, might be said to even remotely support its application of the supersession doctrine is *Hines v. Davidowitz,* 312 U.S. 52. Congress had passed the Federal Alien Registration Act of 1940 which, together with the Immigration and Naturalization Laws, constituted, as the Court pointed out, a comprehensive and integrated plan for the regulation of all aliens (14 years of age and over) and precluded the enforcement of State Alien Registration Acts. The Court said, inter alia (page 63): "The Federal Government, representing as it does the collective interests of the forty-eight states, is entrusted with full and *exclusive responsibility for the conduct of affairs with foreign sovereignties.* . . . Our system of government is such that the interest of the cities, counties and states, no less than the interest of the people of the whole nation, imperatively requires that *federal power in the field affecting foreign relations* be left entirely free from local interference."

A reading of the majority opinion makes it clear that the basis for the decision was the Court's conviction that a State Alien Registration Act would likely involve us in grave international controversies and might even lead to war. No such result could possibly ensue from State treason or Sedition laws; and the case is clearly distinguishable on its facts.

If there were any doubt on this issue, and in my judgment there is none, it would be resolved by the recent decision of the Supreme Court of the United States in *Dennis v. U. S.,* 341 U.S. 494 (1951). In that case Dennis and others were convicted of conspiring to organize a Communist Party to teach and advocate the overthrow of the government of the United States by force and violence. The Court sustained the constitutionality of the Smith Act and held that it did not violate the First or Fifth Amendments or any other provision of the Bill of Rights. In the course of its opinion, *Gitlow v. New York,* 268 U.S. supra, and *Whitney v. California,* 274 U.S., supra, were cited or discussed with approval (pages 505, 506, 536, 537).

If the contentions of the defendant, Nelson, which the majority of this Court adopt, were legally sound, isn't it reasonable to assume that the Supreme Court of the United States would have pointed out that the New York statute, which was the model for and almost identical with the Smith Act (as well as with the California Syndicalism Act) had been su-

perseded and suspended or invalidated by the Smith Act, instead of quoting and discussing these cases with approval!

The majority seeks to support its application of the doctrine of "suppression" by stating that "The old saying that 'Self-preservation is the first law of nature' is as true of nations as it is of animal life"; and then goes on to illogically, impractically and unjustifiably deny the first law of nature to a Sovereign State. It seems inconceivable to me that anyone would deny to a Sovereign State the right of self-preservation, or even deny its right (except where Constitutionally limited or prohibited) to help preserve the Government of the United States, of which each State is a basic, component, constituent, indispensable part.

It seems necessary to recall and to frequently reiterate that a State has an inalienable right and an inescapable duty to protect the life, liberty and property of its citizens, and in their behalf to preserve its own existence and the existence of our National Government: *Thornhill v. Alabama,* 310 U.S. 88, 105; *Carlson v. California,* 310 U.S. 106, 113; *Wortex Mills v. Textile Workers,* 369 Pa. 359, 85 A. 2d 851.

II. *Double Jeopardy.*

In addition to the principle of "preemption and supersession by implication", the majority advance a second reason to support their position, namely,

Pennsylvania's Act must be suspended or invalidated because otherwise Nelson would be subjected to double jeopardy, i.e., he might be convicted in every State where he plotted the overthrow of our Country or of the Government of that particular State. We may appropriately ask why shouldn't he be convicted and punished in every State and in every County where he commits a separate crime? If there is any principle well settled in criminal law it is that a person may be indicted, tried, convicted and sentenced for every separate criminal offense he commits in that County! See: *United States v. Lanza,* 260 U.S. 377; *McKelvey v. United States,* 260 U.S. 353; *Com. v. McCusker,* 363 Pa. 450, 458, 70 A. 2d 273; *Com. v. Valotta,* 279 Pa. 84, 88, 123 A. 681; *Albrecht v. United States,* 273 U.S. 1; *Com. ex rel. Garland v. Ashe,* 344 Pa. 407, 408, 26 A. 2d 190.

The error of the majority's position on the subject of double jeopardy is made more conspicuous by their failure to cite any authority to support it. The reason for the omission is obvious—the authorities hold exactly to the contrary.

The fact that the same or similar criminal or traitorous offenses are prohibited by a State Act as well as by an Act of Congress does not violate any provision of the Constitution of the United States or of the Commonwealth of Pennsylvania or constitute double jeopardy, since a person by the same act can commit two distinct criminal offenses, one against the United States and one against the

State, and may be subjected to prosecution and punishment in the Federal Courts for the one and in the State Courts for the other: *United States v. Lanza,* 260 U.S. 377, 381-384; *Barron v. Baltimore,* 7 Peters 243; *Fox v. Ohio,* 46 U.S. 410; *United States v. Marigold,* 50 U.S. 560, 569; *Moore v. Illinois,* 55 U.S. 13, 19, 20; *United States v. Cruikshank,* 92 U.S. 542, 550; *Ex parte Siebold,* 100 U.S. 371, 390; *Cross v. North Carolina,* 132 U.S. 131, 139; *Pettibone v. United States,* 148 U.S. 197, 209; *Crossley v. California,* 168 U.S. 640; *Southern Railway Co. v. R. R. Commission of Indiana,* 236 U.S. 439, 445; *Gilbert v. Minnesota,* 254 U.S. 325, 330; *McKelvey v. United States,* 260 U.S. 353, 358, 359; *Hebert v. Louisiana,* 272 U.S. 312; *Sexton v. California,* 189 U.S. 319; *Westfall v. United States,* 274 U.S. 256; *Com. ex rel. Garland v. Ashe,* 344 Pa., supra.

In *Gilbert v. Minnesota,* 254 U.S. 325, 330, the Court said: " 'The same act,' . . . 'may be an offense or transgression of the laws of both' Nation and State, and both may punish it without a conflict of their sovereigns."

In *United States v. Lanza,* 260 U.S. 377, the defendants were charged in both the Federal Court and in the County Court of Washington with manufacturing and possessing intoxicating liquor. Defendants contended that punishment under separate Federal and State indictments for these same offenses subjected them to double jeopardy since both

the National Government and the State were each punishing them for the same act. This contention was rejected by the Supreme Court of the United States. The Court held that the United States derived its power to punish the crime by virtue of the Eighteenth Amendment, whereas the States, although given concurrent power to punish the crime by the Amendment, possessed such power prior thereto by virtue of its police power. The Court then said:

"To regard the Amendment as the source of the power of the States to adopt and enforce prohibition measures is to take a partial and erroneous view of the matter. Save for some restrictions arising out of the Federal Constitution, chiefly the commerce clause, each State possessed that power in full measure prior to the Amendment, and the probable purpose of declaring a concurrent power to be in the States was to negative any possible inference that in vesting the National Government with the power of country-wide prohibition, state power would be excluded. . . .

"We have here two sovereignties, deriving power from different sources, capable of dealing with the same subject-matter within the same territory. Each may, without interference by the other, enact laws to secure prohibition, . . . Each government in determining what shall be an offense against its peace and dignity is exercising its own sovereignty, not that of the other.

"It follows that *an act denounced as a crime by both national and state sovereignties is an offense against the peace and dignity of both and may be punished by each.* The Fifth Amendment, like all the other guaranties in the first eight amendments, applies only to proceedings by the Federal Government, Barron v. Baltimore, 7 Pet. 243, and *the double jeopardy therein forbidden is a second prosecution under authority of the Federal Government after a first trial for the same offense under the same authority.* Here the same act was an offense against the State of Washington, because a violation of its law, and also an offense against the United States under the National Prohibition Act. The defendants thus committed two different offenses by the same act, and a conviction by a court of Washington of the offense against that State is not a conviction of the different offense against the United States and so is not double jeopardy.

"This view of the Fifth Amendment is supported by a long line of decisions by this Court. In Fox v. Ohio, 5 How. 410, a judgment of the Supreme Court of Ohio was under review. It affirmed a conviction under a state law punishing the uttering of a false United States silver dollar. The law was attacked as beyond the power of the State. One ground urged was that, as the coinage of the dollar was entrusted by the Constitution to Congress, it had authority to protect it against false coins by prohibiting not only the act of making them but also the act of utter-

ing them. It was contended that if the State could denounce the uttering, there would be concurrent jurisdiction in the United States and the State, a conviction in the state court would be a bar to prosecution in a federal court, and thus a State might confuse or embarrass the Federal Government in the exercise of its power to protect its lawful coinage. . . . [The Court rejected this contention and further said, page 383]:

". . . in United States v. Marigold, 9 How. 560, 569, . . . the same Justice said that '*the same act might,* as to its character and tendencies, and the conseqences it involved, *constitute an offense against both the State and Federal Governments,* and might draw to its commission the penalties denounced by either, as appropriate to its character in reference to each.'

"The principle was reaffirmed in Moore v. Illinois, 14 How. 13; in United States v. Cruikshank, 92 U.S. 542, 550, 551; in Ex parte Siebold, 100 U.S. 371, 389, 390, 391; in Cross v. North Carolina, 132 U.S. 131, 139; in Pettibone v. United States, 148 U.S. 197, 209; in Crossley v. California, 168 U.S. 640, 641; in Southern Ry. Co. v. Railroad Commission of Indiana, 236 U.S. 439; in Gilbert v. Minnesota, 254 U.S. 325, 330, and, finally, in McKelvey v. United States, [260 U.S.] 353.

"In Southern Ry. Co. v. Railroad Commission of Indiana, supra, Mr. Justice Lamar used this lan-

guage (p. 445): 'In support of this position numerous cases are cited which, like Cross v. North Carolina, 132 U.S. 131, hold that *the same act may constitute a criminal offense against two sovereignties, and that punishment by one does not prevent punishment by the other.* That doctrine is thoroughly established. . . .' ''

In *McKelvey v. United States,* 260 U.S. 353, 358, the Court said: ''The following excerpt from Moore v. Illinois, 14 How. 13, 20, is pertinent: 'The same act may be an offense or transgression of the laws of both. Thus, an assault upon the marshal of the United States, and hindering him in the execution of legal process, is a high offence against the United States, for which the perpetrator is liable to punishment; and the same act may be also a gross breach of the peace of the State, a riot, assault, or a murder, and subject the same person to a punishment, under the State laws, for a misdemeanor or felony. That either or both may (if they see fit) punish such an offender, cannot be doubted. Yet it cannot be truly averred that the offender has been twice punished for the same offence; but only that *by one act he has committed two offences, for each of which he is justly punishable.*' ''

Another analogous case is *Sexton v. California,* 189 U.S. 319. In that case the Revised Statutes of the United States provided that a person who received money as a consideration for not informing against any violation of any internal revenue law

should, on conviction, be punished by a fine not exceeding $2000 or by imprisonment not exceeding one year, or both; and gave exclusive jurisdiction of such offenses to the Courts of the United States. Defendant was indicted, convicted and sentenced in a State Court for extorting money by threatening to accuse Greenwald of an offense under the Federal Statute. The conviction was sustained by the Supreme Court of the United States because the defendant was charged with and punished for the violation of the State crime of extortion.

In *Com. ex rel. Garland v. Ashe,* 344 Pa., supra, the Supreme Court of Pennsylvania said (page 408): "The relator's petition must be dismissed. The Fifth Amendment to the Federal Constitution which declares that no person shall for the same offense be twice put in jeopardy of life or limb is a restriction only on the power of the Federal Government: Hurtado v. California, 110 U.S. 516, 534. The tenth section of the Pennsylvania Bill of Rights also contains a prohibition against a person being 'twice put in jeopardy of life or limb' and is a restriction on the power of the state government. But the same act *'denounced as a crime by both national and state sovereignties is an offense against the peace and dignity of both and may be punished by each.* The double jeopardy therein forbidden [i.e., in the Fifth Amendment] is a second prosecution under authority of the Federal Government after a first trial for the same offense under

the same authority.': * United States v. Lanza, 260 U.S. 377, 382."

The foregoing authorities completely demolish Nelson's contention and the majority opinion's theory of double jeopardy.

For each and every one of the foregoing reasons, I dissent from the decision of the Court.**

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* The majority, in an attempt to buttress this part of their opinion, improperly state, based upon newspaper reports, that Nelson, subsequent to his conviction in a State Court in the instant case, was convicted of this same offense in a District Court of the United States and was sentenced to 5 years' imprisonment; and that "the acts proven in the Federal Court to effectuate the alleged conspiracy [to violate the Smith Act] consisted of practically the same matter as was offered against Nelson in the trial in the State Court." *None of this was a part of the Record* in the instant case. There is no evidence in this Record that Nelson was subsequently tried and convicted in a Court of the United States, nor is there any evidence herein of the crime or crimes of which Nelson was charged and convicted in the United States Court; nor do we know whether the evidence was the same in both cases or whether the crimes charged were based upon the same acts. The majority omit to mention that the newspapers state that Nelson has appealed from the Federal convictions. However, the majority's reliance upon newspaper reports is, in my judgment, of no moment, since in no event could it constitute double jeopardy.

** It will not escape notice that except for four of the Judges of this Court, all of the Judges of Pennsylvania who have considered the constitutional question here involved, including the Superior Court, are in accord that Pennsylvania's Act has *not* been superseded or invalidated by the Smith Act.