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OPINION BELOW

The opinion of the Supreme Court of Pennsylvania dated January 25, 1954, from which the Commonwealth of Pennsylvania takes this appeal, and a note regarding the order of the Supreme Court of Pennsylvania denying the petition by the Commonwealth of Pennsylvania for a rehearing dated April 27, 1954, are reported at 377 Pa. 58, 104 A. 2d 133.

STATUTES INVOLVED

The Pennsylvania Sedition Act of 1919, re-enacted as a part of Pennsylvania's Criminal Code of 1939 by Section 207 of the Act of June 24, 1939, P. L. 872 (18 P. S. §4207), provides:

The word "sedition," as used in this section shall mean:

Any writing, publication, printing, cut, cartoon, utterance, or conduct, either individually or in connection or combination with any other person, the intent of which is:

(a) To make or cause to be made any outbreak or demonstration of violence against this State or against the United States.

(b) To encourage any person to take any measures or engage in any conduct with a view of overthrowing or destroying or attempting to overthrow or destroy, by any force or show or threat of force, the Government of this State or of the United States.

(c) To incite or encourage any person to commit any overt act with a view to bringing the Government of this State or of the United States into hatred or contempt.

(d) To incite any person or persons to do or attempt to do personal injury or harm to any officer of this State or of the United States, or to damage or destroy any public property or the property of any public official because of his official position.

The word "sedition" shall also include:

(e) The actual damage to, or destruction of, any public property or the property of any public official, perpetrated because the owner or occupant is in official position.

(f) Any writing, publication, printing, cut, cartoon, or utterance which advocates or teaches the duty, necessity, or propriety of engaging in crime, violence, or any form of terrorism, as a means of accomplishing political reform or change in government.

(g) The sale, gift or distribution of any prints, publications, books, papers, documents, or written matter in any form, which advocates, furthers or teaches sedition as hereinbefore defined.

(h) Organizing or helping to organize or becoming a member of any assembly, society, or group, where any of the policies or purposes thereof are seditious as hereinbefore defined.

Sedition shall be a felony. Whoever is guilty of sedition shall, upon conviction thereof, be sentenced to pay a fine not exceeding ten thousand dollars (\$10,000), or to undergo imprisonment not exceeding twenty (20) years, or both. 1939, June 24, P. L. 872, §207.

The Smith Act of 1940, as amended, Section 2385 of the Federal Code of Crimes and Criminal Procedure of June 25, 1948, 62 Stat. 808 (18 U. S. C. A. 2385), provides:

Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or

propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or

Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or

Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof—

Shall be fined not more than \$10,000 or imprisoned not more than ten years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

In addition see other enactments by the Congress dealing in part with problems of sedition against the United States, including the Internal Security Act of 1950, 64 Stat. L. 993 and 996 (1950), 50 U. S. C. (1952) §§785 and 789; The Immigration and Nationality Act of 1952, 66 Stat. L. 166 (1952), 8 U. S. C. (1952) §1101 et seq.; and the Communist Control Act of 1954, P. L. No. 637, 83rd Congress, 2nd Session (August 24, 1954).

QUESTION PRESENTED

Must this Court reverse the Supreme Court of Pennsylvania's decision *that* in view of the preëminence of the Federal Government's interest in defending itself efficiently and effectively against sedition its control of the field must be exclusive, and the Smith Act, defining and punishing sedition against the United States, preëmpted the field and suspended operation of the Pennsylvania Sedition Act, and reversing the judgment of conviction of sedition entered against Steve Nelson in the Court of Oyer and Terminer of Allegheny County and quashing the indictment charging him with sedition.

STATEMENT OF INTEREST

The Civil Liberties Committee of the Philadelphia Yearly Meeting of the Religious Society of Friends (hereinafter called the "Committee") is concerned to protect and nurture civil liberties, that is: freedom, justice, and equality for each person regardless of ancestry, religion or political belief. This concern stems from the experiences of Friends over the past 300 years. An outline of these experiences appears in Appendix A.

The Committee was established by the Philadelphia Yearly Meeting of the Religious Society of Friends in March, 1955. In this Brief the Committee speaks for itself alone.

The Committee regards the issues posed for this Court by this case as grave and far-reaching in the life of our society. We feel we cannot remain silent when personal liberty and human rights are being sacrificed in the name of national security.

As the Supreme Court of Pennsylvania pointed out:

The prosecution's evidence consisted in large part of proof of the defendant's membership and official position in the Communist Party, his attendance at Party meetings and the introduction of a mass of documentary evidence consisting of books, papers and pamphlets advocating, teaching or promulgating Communist doctrine, found in the Party headquarters and bookstore in Pittsburgh of which the defendant was a supervising principal.

From our reading of the record, it appears to us that this case involves solely freedom to speak and to hear, freedom to write and to read, and freedom to be a member and officer of the Communist Party which Congress has declared not to be a crime. See Section 4(f) of the Internal Security Act of 1950, 50 U. S. C. §783 (1952).

ARGUMENT

Petitioner seeks to have this Court reverse a decision by the Supreme Court of Pennsylvania. If this Court finds that decision to be a proper one, either for the reasons given by the Supreme Court of Pennsylvania, or for constitutional reasons not considered by that Court, or for any other reason, then the decision below must be affirmed.

The Supreme Court of Pennsylvania rested its decision on the soundness of defendant's contention that the Pennsylvania Sedition Act of 1919 was suspended by operation of law when Congress enacted the Smith Act of 1940 and preëmpted for the Federal Government the field of sedition against the United States. For a lucid review of relevant cases on preëmption see *Federal Supremacy and State Anti-Subversive Legislation* by Alan Reeve Hunt, J. D., appearing in Michigan Law Review, January 1955, Vol. 53, No. 3.

The Trial Judge in his lengthy charge to the Jury (Record pp. 1388-1420) summarized the issues thus:

The fundamental question to be answered is: Did the defendant intend and was the purpose of the Communist Party of the United States of America to work within the framework of democracy as limited by the Statute we are considering; or did he and his party intend to go outside the bounds set up by the Statute in accomplishing their purposes. This is the controversial question. (Record 1417; folio 2706).

Accordingly, this case also presents for this Court the question: Are the limitations placed upon the framework of democracy by the Pennsylvania Sedition Act permissible under the Constitution of the United States?

The Committee respectfully contends that these limitations are not permissible and that the Pennsylvania Sedition

Act as here applied offends against the Constitution of the United States.

When the Smith Act was upheld despite the prohibitions of the First Amendment, two Justices of this Court dissented. Their warnings are most apposite to the issues in the case at bar.

Mr. Justice Douglas said: “. . . The Act, as construed, requires the element of intent—that those who teach the creed believe in it. The crime then depends not on what is taught, but on who the teacher is. That is to make freedom of speech turn not on *what is said*, but on the *intent* with which it is said. Once we start down that road we enter territory dangerous to the liberties of every citizen.”

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

Among those who protested was a Friend who has participated in the work of the Committee. Together with four other citizens, Clarence Pickett declared his agreement with the views of Justices Douglas and Black. (See Appendix B.)

The Committee believes that no man should be prosecuted for advocacy of religious or political ideas nor be condemned for mere associations. It believes the Pennsylvania Sedition Act as applied violates these fundamental principles and must be found to abridge individual liberties protected by the Constitution. For a statement by Steve Nelson concerning his motivation and beliefs, see Appendix C.

The Supreme Court of Pennsylvania rested its decision on preëmption by the Federal Government of the field of sedition against the government of the United States. In a Federal system such as ours there must be orderly division of authority and responsibility between Federal Government and the State Governments in areas affecting both.

But in a field where the First Amendment and the Fourteenth Amendment of the United States Constitution forbid legislative encroachment on freedom to speak and to hear and on freedom to write and to read, the determination of how far these freedoms can wisely be limited should be for Congress rather than for the legislatures of 48 States. Ultimately the determination of what is constitutionally permissible is for this Court in a democracy where these freedoms are not only ends in themselves as necessary to the dignity of man, but also essential means to that peaceful change which makes revolution in America as unlikely as it is unnecessary.

In his Report of The Fund for the Republic dated May 31, 1955, President Robert M. Hutchins wrote:

Although in some particulars the atmosphere is better than it was five years ago, the misunderstanding of civil liberties, the indifference to them, and the violations of them, to which we too easily grow accustomed, are still such as to give cause for alarm. These hard-won rights are the distinguishing characteristic of the Western tradition; they are the deepest values in American life. America would be unrecognizable without freedom of speech, freedom of the press, freedom of religion, freedom of association, and the freedom to differ; without due process of law and the equal protection of the laws; without the conviction that all men are created equal and are entitled to equality of opportunity. Without these there would be no hope for the American Dream. . . .

The Committee respectfully suggests to this Court that faith in America and her citizens is the antidote to the fear that has colored so much of our national life during the past ten years. America itself was an act of faith—and so was the great charter by which its development was to be guided.

Often the interest of the nation in security and the interest in freedom for each individual are said to be in

conflict. We respectfully submit that in the long run the two are interdependent. The strength of America lies in our ability to experiment with truth, to accept new ways of coöperating with nature to meet human needs. Difficult problems confront all men, such as how to achieve order under law in the world community and render war obsolete before war renders us obsolete, and how to distribute the abundance we now know how to produce and thereby make its production and enjoyment possible. The quest for solutions to these pressing problems requires unfettered inquiry, association and discussion. The best efforts of all our people will be needed to help find answers along the way. Freedom to speak and freedom to hear, freedom to write and freedom to read, freedom to associate and to travel—these are ends of great worth but they are also necessary means to a vital, functioning democracy.

If we are to co-exist on this earth with other political, social and economic systems, then we want to compete with them for the allegiance of those not yet committed to any system. We want to demonstrate the superiority of our way of meeting human needs. To do so requires faith in our institutions and faith in the decency of men and women of all nations. To weaken, postpone or abandon our faithful exercise of the freedoms that lie at the heart of the American dream is to promote not the security of America but its downfall.

CONCLUSION

For the reasons given the Committee respectfully submits that the decision of the Supreme Court of Pennsylvania must be affirmed.

Respectfully submitted,

By WALTER C. LONGSTRETH

ALLEN S. OLMSTED, 2ND

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APPENDIX A

THE RELIGIOUS SOCIETY OF FRIENDS AND THE CIVIL LIBERTIES COMMITTEE

The interest of the Civil Liberties Committee of the Philadelphia Yearly Meeting of the Religious Society of Friends in the issues now before this Court can best be understood in the light of the history of the religious experiences and social testimonies of the Religious Society of Friends (Quakers).

Who Are the Quakers?

The Religious Society of Friends arose in England more than 300 years ago in a time of turbulence and change in both religion and politics. In the Established Church great emphasis was placed upon outward ceremonial. There and in some of the dissenting churches religious faith tended to be identified with acceptance of a creed. Many restless seeking spirits broke away from the churches and, singly or in groups, turned inward in quest of a religion of personal experience and direct communion with God.

George Fox (1624-1691), the founder of the Religious Society of Friends, was one of these "seekers." From his youth he was serious and thoughtful, given to lonely pondering of the Scriptures and to deep searching of his heart. In vain he sought counsel and help from the official spiritual guides in the churches. None could give rest to his soul or speak to his condition. But finally, he records in his *Journal*,

when all my hopes in . . . men were gone, so that I had nothing outwardly to help me, nor could I tell what to do, then, O then, I heard a voice which said, "There is One, even Christ Jesus, that can speak to thy condition." And when I heard it, my heart did leap for joy.

Within himself, as a present experience, he had found the spirit of the living Christ and knew that it was an

experience open to all men. "This was the true Light that lighteth every man that cometh into the world."

In 1647 George Fox began to preach, convincing many persons, who presently associated together, calling themselves "Children of the Light." A powerful prophetic personality and a born leader of men, he soon attracted a group of young men and women who joined him in the joyous work of spreading abroad the good news that "Christ has come to teach His people himself." These "first publishers of Truth" did not think of their message as a new gospel. It was "primitive Christianity revived." They came to call themselves "Friends of the Truth" or simply "Friends." By the world they were called "Quakers" because of the fervor with which they spoke. They were subjected to indignities and cruelties in prisons and at the hands of mobs. But nothing could quench their ardor or chain their spiritual power. By their faithfulness and the organizing genius of their leader they shaped a religious community which was able to survive when various other sects of the period disintegrated and disappeared.

Not only with their words but with their lives did they preach. Along with intense religious fervor there ran a zeal for practical righteousness. At this early period arose most of the distinctive Quaker testimonies, which expressed in action their belief in equality, simplicity and peace. To provide succor for those under persecution and to nourish and discipline the individual and group life of the members, George Fox took the lead about 1667 in organizing the system of Monthly, Quarterly and Yearly Meetings, which have given stability and continuity to the Society.

As early as 1655 the New World had attracted Friends and within a remarkably few years the seeds of Quaker faith were planted in virtually every one of the British colonies in North America and the West Indies. Friends were widely persecuted but the test of martyrdom came in Massachusetts, where the authorities resorted to severe measures to stop the publishing of the Quaker truth. Many faithful men and women underwent tortures and imprisonments; four suffered death before the intolerant laws were

finally broken down. During this period, however, a haven was found in Rhode Island, where the first Quaker Yearly Meeting was established in 1661.

A period of expansion and consolidation followed George Fox's visit to America in 1671-73. The succeeding decade saw West Jersey and Pennsylvania established as Quaker colonies. Here Friends under the leadership of William Penn undertook to carry out a "holy experiment" in conducting a government on New Testament principles. Friends retained political control in Pennsylvania until 1756, when at the onset of the French and Indian war they gave up their seats in the Assembly rather than vote war measures.

Quaker policy toward the Indians was an outgrowth of their conviction that all men are equal before God, irrespective of color. This principle gradually formed the Quaker attitude on the question of Negro slavery. George Fox had been an early advocate of the Negro's rights. Philadelphia Yearly Meeting advised against the slave trade in 1696 and antislavery sentiment grew slowly until 1758, when John Woolman made a moving plea for the liberty of the slaves and began his great work on behalf of the Negro. He, with Anthony Benezet, aroused the consciences of many Friends and others in both America and England, and gave strong impetus to the movement that finally resulted in the abolition of slavery.

Friends' opposition to war took many of them out of public life after about 1750 and this withdrawal, together with increasing quietism, caused a profound transformation in the Society. More and more the Friends shunned the outside world and centered upon deepening their own spiritual lives and hedging their Society about with their distinctive rules and customs. Although this preserved some valuable elements of the Quaker way of life, it also brought a narrowing introspection which was fertile ground for controversy.

By 1800 two divergent tendencies became apparent

among American Friends. Both had roots in early Quaker thought but had subsisted together without seriously disturbing the unity of the Society. One was an increased emphasis upon the Inner Light as the basis of faith; the other, an increased interest in evangelicalism, which centers upon the meaning and influence of events in Christian history and finds its primary authority in Scripture. Both these trends, the liberal and the evangelical, reflected influences dominant in contemporary Christian thought. The chasm between the two Quaker groups grew steadily wider until in 1827 a separation took place in Philadelphia Yearly Meeting, followed by similar separations in Baltimore, New York, Ohio and Indiana. Later in the century there were further separations within the orthodox body.

Despite these unhappy developments, the nineteenth century saw some notable advances among American Quakers. Friends in great numbers migrated to successive new frontiers in the Northwest Territory, Iowa, Kansas, and the trans-Mississippi West, reaching finally the Pacific coast. Education, always a major concern of Friends, was promoted by the establishment of schools and colleges. The withdrawal of Friends from active participation in political life left them free to work for the abolition of slavery and of war, the welfare of Negroes and Indians, temperance, prison reform, and the rights of women.

In the twentieth century Friends were once again called to be faithful to their peace principles. Early in the World War of 1914-18 the Meeting for Sufferings of London Yearly Meeting initiated humanitarian service in the relief of wartime suffering. The American Friends Service Committee was organized in 1917 to make possible the participation of American Quakers in this European emergency work. From modest beginnings this organization has gone steadily forward in the number and variety of its undertakings at home and abroad, providing the principal agency through which Friends all over the American continent give expression to their faith in the effectiveness of love and goodwill.

What Is the Philadelphia Yearly Meeting?

Friends on both sides of the Delaware River first came together for a General Meeting at Burlington, New Jersey, in 1681. For a few years two General Meetings were held each year, one at Burlington and the other at Philadelphia, both embracing the same membership. In 1685 it was decided to have but one annual General Meeting to be held alternately at the two places. The meeting now assumed the title of "The General Yearly Meeting for Friends of Pennsylvania, East and West Jersey and of the adjacent provinces." From 1760 on the sessions were held only at Philadelphia.

The separation of 1827 necessitated two Philadelphia Yearly Meetings, each covering the same geographical area but mutually exclusive in membership. With the passage of a century, however, a trend towards unity made itself felt on various levels of Yearly Meeting life. The Young Friends Movement, the American Friends Service Committee, and other organizations provided common participation in the concerns of all Friends. A number of Yearly Meeting committees merged their efforts in the interest of greater effectiveness. In 1933 changes were made in the Disciplines of both bodies to provide for the establishment of United Monthly Meetings. An even more decisive step towards closer unity was taken in 1945, when the two Philadelphia Yearly Meetings arranged for the establishment of the Philadelphia General Meeting of the Religious Society of Friends.

In 1954 the two Philadelphia Yearly Meetings united to form the Philadelphia Yearly Meeting of the Religious Society of Friends. The Monthly, Quarterly and Half-Yearly Meetings are constituent bodies of the Yearly Meeting.

Friends General Conference had its beginnings in 1868 and was organized in 1900 to be composed of six Yearly Meetings (Baltimore, New York, Indiana, Genesee, Illinois,

Philadelphia) and the Monthly Meeting of Cambridge, Massachusetts. It provides an opportunity for religious fellowship and education but has never exercised authority over Yearly Meetings.

What Is the Civil Liberties Committee?

In addition to Meetings for worship, Meetings for Business have been organized to provide for the orderly care of such matters as are essential to maintaining our Religious Society and carrying forward its concerns. These Meetings afford opportunity to appoint members to special service; to hear reports by members of committees thus appointed; to encourage Friends to plan together, under Divine guidance, for work which will assist in bringing about the Kingdom of God on earth.

The Civil Liberties Committee was appointed by the Philadelphia Yearly Meeting to nurture the regard which Friends have for the worth and dignity of individual human beings and their right to freedom, justice and equality regardless of their ancestry, creed, or political beliefs. The aim of the Committee was threefold:

- (1) To sensitize Friends to the place that civil liberties have occupied and should occupy in Friends religious testimonies and in the life of America;
- (2) To assist Friends in bearing witness to this concern of Friends in the wider community and particularly to those occupying positions of authority and responsibility; and
- (3) To share in and seek to alleviate the sufferings of victims of civil liberties infringements.

The Civil Liberties Committee seeks guidance from the Monthly Meetings. To that end this Query was circulated to foster thought and discussion:

A Query

Do Friends and Friends' Meetings seek faithfully to uphold our civil and religious liberties, not only for ourselves but for all men?

1. SENSITIVITY

(a) Do you recognize and welcome controversy as a creative means of discovering new truth?

(b) Do you actively oppose attempts to restrict the freedom to discuss controversial subjects?

(c) Do you resist attempts to silence opposition to present foreign, national, and local policies?

(d) Do you actively oppose measures designed to enforce a narrow orthodoxy of thought and expression?

(e) Do you uphold freedom of expression by making Meeting facilities available to groups who are restricted in their opportunities to hold public meetings and discussions?

2. WITNESSING

(a) Do you accept the responsibility of citizenship by keeping well-informed on current affairs?

(b) Do you express your opinions to those who represent you in Congress and other branches of the government? Do you take opportunities to visit them and to express your concerns personally?

(c) Do you actively support measures consistent with Friends' principles and oppose those which are not?

(d) Do your principles enter into your choice among candidates for public office?

(e) Are you sensitive to the action on civil liberties most appropriate to your own Meeting?

3. SUFFERINGS

(a) Do you seek to minister to the needs, economic and spiritual, of individuals rejected by society for holding unpopular opinions?

(b) Have you sought to give fellowship and understanding to such people?

(c) Have you sought to deal sympathetically with such people, being aware of their opinions, but not allowing them to color your feelings for the individual holding them?

(d) Do you affirm your faith in the power of truth to triumph over error by seeking out and extending friendship to persons suffering for principles contrary to basic Quaker beliefs?

(e) Have you appointed persons among you to visit those against whom public opinion has been expressed, and have you made provisions to alleviate the sufferings of those so rejected? What have you done to help their families?

Justices Douglas and Black dissenting . . .

The right to differ from the majority view is a cherished privilege of our democracy. Without it we would have no democracy.

Recently the Supreme Court of the United States upheld the constitutionality of some sections of the Smith Act by a 6-2 vote, Justices Black and Douglas dissenting.

Excerpts from the dissenting opinions appear below:

MR. JUSTICE DOUGLAS: If this were a case where those who claimed protection under the First Amendment were teaching the techniques of sabotage, the assassination of the President, the filching of documents from public files, the planting of bombs, the art of street warfare, and the like, I would have no doubts. The freedom to speak is not absolute; the teaching of methods of terror and other seditious conduct should be beyond the pale along with obscenity and immorality. This case was argued as if those were the facts. The argument imported much seditious conduct into the record. That is easy and it has popular appeal, for the activities of Communists in plotting and scheming against the free world are common knowledge. But the fact is that no such evidence was introduced at the trial. There is a statute which makes a seditious conspiracy unlawful. Petitioners, however, were not charged with a "conspiracy to overthrow" the Government. They were charged with a conspiracy to form a party and groups and assemblies of people who teach and advocate the overthrow of our Government by force or violence and with a conspiracy to advocate and teach its overthrow by force and violence. It may well be that indoctrination in the techniques of terror to destroy the Government would be indictable under either statute. But the teaching which is condemned here is of a different character.

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

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

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

MR. JUSTICE BLACK: Here again, as in *BREARD v. ALEXANDRIA*, decided this day, my basic disagreement with the Court is not as to how we should explain or reconcile what was said in prior decisions but springs from a fundamental difference in constitutional approach. Consequently, it would serve no useful purpose to state my position at length.

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

But let us assume, contrary to all constitutional ideas of fair criminal procedure, that petitioners although not indicted for the crime of actual advocacy, may be punished for it. Even on this radical assumption, the only way to affirm these convictions, as the dissent of Mr. Justice Douglas shows, is to qualify drastically or wholly repudiate the established "clear and present danger" rule. This the Court does in a way which greatly restricts the protections afforded by the First Amendment. The opinions for affirmance show that the chief reason for jettisoning the rule is the expressed fear that advocacy of Communist doctrine endangers the safety of the Republic. Undoubtedly, a governmental policy of unfettered communication of ideas does entail dangers. To the Founders of the Nation, however, the benefits derived from free expression were worth the risk. They embodied this philosophy in the First Amendment's command that Congress "shall make no law abridging . . . the freedom of speech, or of the press. . . ." I have always believed that the First Amendment is the keystone of our Government, that the freedoms it guarantees provide the best insurance against destruction of all freedom. At least as to speech in the realm of public matters, I believe that the "clear and present danger" test does not "mark the furthestmost constitutional boundaries of protected expression" but does "no more than recognize a minimum compulsion of the Bill of Rights." *Bridges v. California*, 314 U. S. 252, 263.

So long as this Court exercises the power of judicial review of legislation, I cannot agree that the First Amendment permits us to sustain laws suppressing freedom of speech and press on the basis of Congress' or our own notions of mere "reasonableness." Such a doctrine waters down the First Amendment so that it amounts to little more than an admonition to Congress. The Amendment as so construed is not likely to protect any but those "safe" or orthodox views which rarely need its protection. I must also express my objection to the holding because, as Mr. Justice Douglas' dissent shows, it sanctions the determination of a crucial issue of fact by the judge rather than by the jury. Nor can I let this opportunity pass without expressing my objection to the severely limited grant of certiorari in this case which precluded consideration here of at least two other reasons for reversing these convictions: (1) the record shows a discriminatory selection of the jury panel which prevented trial before a representative cross-section of the community; (2) the record shows that one member of the trial jury was violently hostile to petitioners before and during the trial.

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

This advertisement has been prepared and sponsored by the undersigned in the belief that more Americans should be aware of the above views, with which we are in agreement • ROGER BALDWIN • STRINGFELLOW BARR • ZECHARIAH CHAFEE • ALEXANDER MEIKLEJOHN • CLARENCE PICKETT

APPENDIX C

Because the Committee places high value on human motivation we give here an excerpt from a response received from Steve Nelson to an inquiry concerning "to what extent, if any, the actions with which you were charged in the indictment against you under the Pennsylvania Sedition Act of 1919, and concerning which evidence was offered at the trial on these charges, were actions which you took under command of your conscience." The views expressed are obviously those of Mr. Nelson and not of the Committee.

For a long time I have held the view that Socialism is the next stage in our social development, that it will follow Capitalism, that it is more efficient in the economic sense and that it is the most humanitarian system devised by humanity. I believe that Socialism would do away with war, provide security for the masses of the people and that it would develop a new relationship between people, do away with vicious race relations and establish a brotherhood of man. Because I believe in these views, the prosecution's contention was that I wanted to accomplish this by resorting to "force and violence". This I deny as I have denied in court. The Pennsylvania Supreme Court, in going over the sedition trial record, affirmed this contention of mine when they stated that I committed no crime whatever against the State of Pennsylvania. (The precise quotation is the opinion of the court on my case.)

While I believe in Socialism as I stated above, this is not a new pronouncement by me. My views have always been an open book on this matter. With me it is a deep seated conviction which motivates my entire being. While such is my view, I have always held that it is necessary to be tolerant of other people's views and work with them on varied questions of immediate importance . . . now, today, within the frame-work of

the Capitalist system. I believe it is possible to make gains for the benefit of the people today, I mean in the present period. One does not have to wait for the new society to solve all problems, nor am I an advocate of the philosophy of doom which holds that the worse the conditions, the better because then supposedly the people will fight for change. The best evidence that I believe in this is my activity during the depression of the early '30's as one of the leading members of Pennsylvania's Unemployed Council. This organization fought for relief of the unemployed, moratorium on taxes and mortgages for the unemployed and for unemployment insurance among other similar things.

In the same sense as described in the above paragraph, I have participated in many campaigns to build unions and to win gains for workers in strike struggles. Here again, I did this in the deep conviction that the economic status of the people ought to be improved and the hardships alleviated within our present economic and social system even though I believe in Socialism.

Likewise, I am deeply convinced that human beings, no matter their race or national origin, color or creed, ought not to be discriminated against. They should have equality of political, economic and social rights. This, too, is a dominant concept guiding my conscience and activity.

Although I have been born a Catholic, I do not belong to any church nor do I have any religious beliefs. I believe in a scientific concept of life. Every facet of my activity and thought is motivated by what I consider is a most rational view of life and its problems. While these are my views I respect other people's rights to believe in whatever religion they choose. I do oppose any state intervention in religious matters.