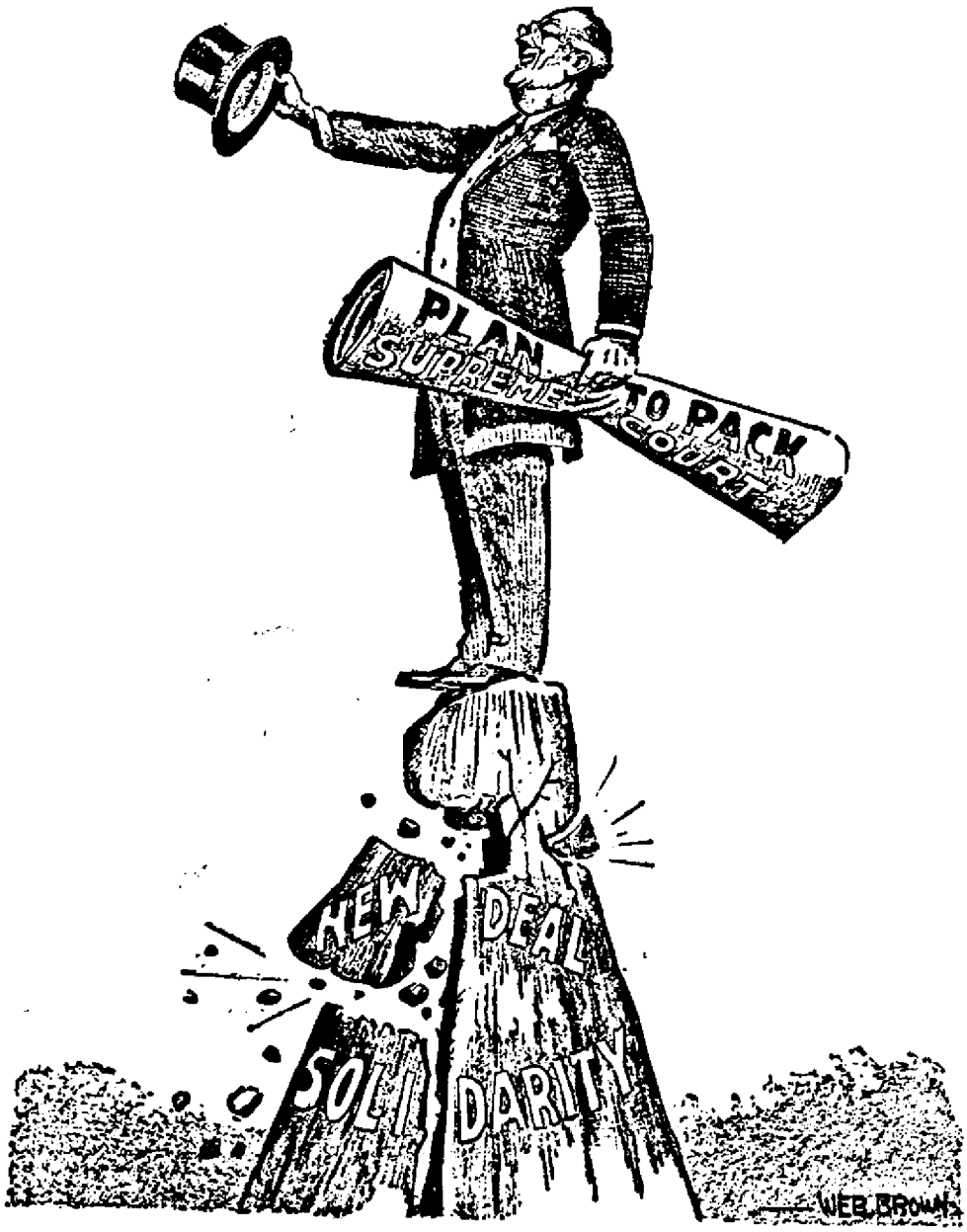
Why Lawyers Would Save OUR SUPREME COURT



F. H. STINCHFIELD OFFERS CONVINCING ANSWER.

"If Lawyers are sometimes wise, it must be when they defend their most cherished ideals."

President of the American Bar Association Speaks as an Individual

Address Delivered by F. H. Stinchfield, President of the American Bar Association, before The Civic and Commerce Association at Minneapolis, Minn., February 22, 1937, and Heard over the Columbia Broadcasting System

Ladies and Gentlemen,

Wherever you are, as you listen today, you are disturbed about the welfare of your country. It is understandable. But I can offer you no relief from worry.

Each one of you, as to your own self, knows what earthly institution you most revere; it may be your church, your family, or our democratic form of government. For whatever blessing you have this deepest reverence, you would be frantic if you heard it proposed, by the highest authority of the land, that such blessing be destroyed. You know, without my saying so, what are the highest ideals of most lawyers, those institutions for which they have a reverence close to worship: the Constitution of the United States and the Supreme Court which interprets that Constitution. Yet lawyers now hear the declaration that the Constitution and the Supreme Court will be fundamentally changed. We have been forced to listen to the demand that all we love and respect, written into the Constitution and sustained by the Supreme Court, be destroyed; that the complete independence of our highest court end. Remember all that, please. If we vigorously oppose, you will know that we speak from a deeper feeling than mere resentment; we see our gods of this earth about to be violated. Had we only the poor feeling of resentment, you could be careless of our words as but the product of a weak, human attribute. It isn't just resentment. As you listen, please remember that when men plead for their ideals, you are forced to the belief that what they say comes from a depth of sincerity. No feelings founded in worship can ever be lightly regarded. If lawyers are sometimes wise, it must be when they defend their most cherished ideals.

The proposal made by the President will destroy the Supreme Court. That statement is not made lightly. It will be destroyed. From that destruction, will come fundamental changes in the Constitution. If I am right in that deliberate statement, I shall be able to persuade you of its truth.

Other Changes Inconsequential

Many continue to remind you that there are other proposed changes than the one of which I speak; to these lesser changes I have not referred in speaking of destruction. They are inconsequential beside the main issue. Whether we agree with these incidental proposals, needn't claim any of our attention. Take them or leave them! Just as you wish. We may not agree with them entirely; but let's have no debate on them; they are but the camouflage that conceals the weapon. We can yield on all of them. For instance, we need offer no opposition to the proposal that cases be appealed directly to the Supreme Court; or that the government be notified when a constitutional question is raised, although in litigation between private citizens; or that the Supreme Court have a proctor. Let Congress have a proctor, too; let the Executive department have a dozen. Twelve won't be enough! Pardon me if I say about these collateral issues, "Forget it." It's the violation of the Supreme Court we speak of, those six new judges who are to ride herd on the present ones who won't be driven into the Executive corral. But the Supreme Court must not be destroyed, and the Constitution must stay—until that time when you, the people, in the manner you have provided in your Constitution, shall say otherwise. When you shall have so decreed by that method, lawyers will protest no longer. Your voice will be our voice. Seldom does a crisis arise when one can, with sincerity, refer to words of Lincoln when he spoke of another great crisis through which he labored. Lincoln's basic purpose was to save the Union. He didn't care about details. Today, without the slightest hesitancy, thinking of the Supreme Court and its proposed destruction and then of the lesser changes suggested, offered but to conceal the main attack, I revert to the words of Lincoln:

> "If I could save the Union without freeing any slave, I would do it; if I could save it by freeing all the slaves, I would do it; and if I could save it by freeing some and leaving others alone, I would also do that."

So it is today. As Lincoln would save the Union, lawyers would save the Supreme Court. Incidental changes are of no consequence.

Changing the Constitution

Let me state to you very briefly the proposal of the President. For every judge over 70 who won't resign, the President will appoint another judge, of his own choosing, an offset, as it were, to the man whose interpretation of the Constitution he doesn't like. If the President accomplishes his purpose, we shall have fifteen judges on the Supreme Court. Heretofore three of the present nine have often been sympathetic toward almost every law which Congress has passed. The six added will make nine, a majority of the fifteen. If, perchance, some of the present judges, heart-stricken by the proposal, should resign, the proportionate majority for the Administration would be even larger. It is as certain as anything mortal can be certain, that the men selected will be those whose views indicate, with utter directness, their intention to support the laws which Congress, under the instructions of the Administration, shall pass. The result is necessarily clear. In order to uphold these laws, the Constitution would then be so construed as to sustain all the legislation of the Administration. The Constitution would have been changed just as completely as if by amendment; except, however, that if amendment had been undertaken, you and your state could have a voice and the Supreme Court would not have been violated.

The Constitution has been amended 22 times, not, as now proposed, by increasing the Supreme Court by two-thirds of its membership, but in the way expressly provided in the Constitution. Consider this; if, on each of those 22 occasions, the amendment had been through a two-thirds increase in the membership of the Supreme Court, how many Supreme Court Justices should we now have? If you wish to do the example, commence with the figure six. I suspect you'll reach 500,000. Each of the 22 amendments was taken in accordance with the simple machinery of Article V of the Constitution. The average time for the adoption of each of the last three amendments has been less than a year! Prohibition, the 21st Amendment, was out of the way in less than ten months. Is it suggested by the President that these important

social changes are less dear to the people than the question of whether we may lawfully purchase liquor? Or, perchance, should we wonder whether the impatience of the President with the customary courses of law has grown out of all democratic bounds in the last four years? Consider that possibility!

To express ideas, our chief medium is words. Our ideas of liberty were expressed in words in the Constitution. Somebody must construe those words; we cannot have a score of conflicting interpretations of the same words by Presidents, Congress, Governors, State Legislatures. Words can hardly be used which do not require interpretation. From time immemorial, construction of written words, statutes, and constitutions has been the work of courts—of no one else, except that you can bear in mind the time when it used to be the privilege of kings and autocrats. The task, therefore, of interpretation under democratic rule, was for the Supreme Court alone. There it has rested for 150 years. What other task could belong to the Court if not to say what the people meant when they adopted the Constitution, and what Congress means when it passes statutes?

Not All Congressional Acts Valid

As you know, if a law does violate the Constitution, it is, in no sense, a law. It has no effect whatever. It is a declaration by Congress or the states which they had no right to make; the people had willed it otherwise. But you yourselves may amend the Constitution. It is so provided. Today an alternative to amendment is offered you. It is proposed that men, ready and willing to construe the Constitution as they are directed, be appointed to the Supreme Court; with the utter certainty, known in advance, that they will construe the Constitution in that elastic fashion which will mean that every law is valid. The Constitution by this method will have been changed just as exactly as if you had had a chance to express your opinions as to the wisdom of the change. Make no mistake about that.

Let us review what has happened since 1933—four years ago. Please remember the average time for the adoption of the last three amendments—less than a year. Much extreme legislation has been passed in those four years. It proposed extraordinary changes in the relationship between man and man, and between the states and the federal government. Some of those laws the Supreme Court has declared invalid. Why? Because the laws destroyed fundamental rights. Many more unusual statutes are now being considered by the Court. Others will soon be there. With the declaration by the Supreme Court of the invalidity of these laws, the President has been utterly dissatisfied. He has been angry that his will has been thwarted. Law followed law, forced by the Executive. Some men said that the plan was to so load the statute books with invalid laws, each, please note, pleasing to certain large groups of voters, that the Supreme Court would be so harassed that its sound judgment would be influenced. That hope has not been realized. But the determination to have all their laws approved has not lessened with the Administration. If you have any doubt that the President is aware that the Supreme Court changes now proposed by him will alter the Constitution, please recall his message. His words were:

> "If these measures achieve their aim, we may be relieved of the necessity of considering any fundamental changes in the powers of the courts or the Constitution of our government."

Who asked that you and I be relieved of having changes made in the Constitution in the way provided? It has always been anticipated that there might be changes in the Constitution with changed times. The manner of such change was set forth in the Constitution. General Hugh Johnson, who was ever ready, as you know, to crack down on citizens even when they believed their liberties threatened by the new laws, has confirmed the President's statement. In his army way, he said:

> **"The fear is that he (the President) will appoint judges who would probably believe in what the country has just voted for overwhelmingly. All that is unquestionably true. He will do exactly that."**

I know that already you haven't the slightest uncertainty but that it is intended, by the personal selection of new judges, to amend the Constitution by a re-interpretation of that document; that the views of the new judges will be known when they are chosen. Let's see, in an everyday way, what you think of such a proposal. You have been in court; you perhaps have been a juror. Do you remember some questions invariably asked jurors about to be chosen to determine facts? A few of the common questions will refresh your recollections. A lawyer asks a possible juror: "Have you talked with anyone about this litigation?" Or, "Have you formed any opinion on this case?" Or, "Have you read about this trouble, or this crime, in the newspapers?" Or, "Are you wholly free from any bias or prejudice in such a matter as the one before us? You know what always happens; unless the answer is unequivocally "No," the juror cannot sit. And you will agree that it would be wrong for him to serve. What do you say, then? Have you thought, in this crisis, that no man appointed to the Supreme Court, if this legislation passes, could qualify if those simple jury questions were asked him? And that judge is to pass upon laws and the Constitution! Will you allow that to happen without your vigorous protest? Is that what any court—most of all your Supreme Court—means to you?

Right Method Clear

You know the manner in which the Constitution ought to be changed. Article V declares the method. Is it fair or candid, to use no stronger words, that the change be made by indirection? Why should the Constitution be amended in an autocratic fashion? The way provided has been used 22 times; what is wrong with it? We are used to it; we know how it works. We prefer going at an amendment directly. We want to know exactly what the result will be. The people of this country may want changes in the Constitution. You may prefer to give up rights which have been reserved to you. But some of us want you, yourselves, to tell us that, rather than to have Congress and a hand-picked Supreme Court make the changes. The word of Congress about what you might think, if you were asked, doesn't satisfy us. Why aren't you consulted? Is it because you may say, "No"; that you believe that government is powerful enough already? Or is the spirit of autocracy in the land already so great as to irresistibly require autocratic action?

Please bear in mind, still, that amendment has been accomplished three times recently in less than a year. Are you willing that Congress, without consulting you or your state, and by a mere majority, bring about the same result that would happen if the Constitution were changed in the regular way? Do you want any man to talk for you on a matter that is your own personal business, perhaps involving your very liberty? You can, if you will, and whenever you will, change the Constitution so that hereafter Congress can speak for you in everything, absolutely everything. But if you are to do that, you ought to say so, not somebody for

you. All of us will take a chance with you when you have so declared your will. But we aren't satisfied to have anyone else speak for you.

This is the 22nd day of February. In his Farewell Address George Washington said to his people, your forebears:

> "If, in the opinion of the People, the distribution or modification of the Constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for, though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly over-balance in permanent evil any partial or transient benefit which the use can at any time yield."

Are these words outmoded, silly warnings of horse-and-buggy days?

Let me remind you of some similar situations. In each of them the Constitution was amended. An income tax law was held invalid. The Supreme Court was divided five to four. The country was filled with controversy. Only one more vote with the minority of the Supreme Court and it would have been a majority, to sustain the law. Two judges, if the present proposal is sound, could have been immediately provided by Congress with instructions from the President to put a different interpretation on the Constitution. It was not done that way. The matter was placed directly before the people by a proposed amendment. It passed.

The 19th Amendment came about in the same way; it gave to women the right to vote. Let me illustrate, in that connection, the insincerity of the method now proposed. Let's see if you would have liked it! Suppose it had been suggested that, instead of an amendment, new judges be appointed by the President to construe the 15th Amendment already in effect, to give women the vote. Do you recall the 15th Amendment? It provides that:

> "The right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of . . . previous condition of servitude."

Women said, often enough, in those days, that they were enslaved without the ballot. Would it have seemed sincere to you to hear a proposal that new men be appointed to the Supreme Court to construe the servitude phrase as including women, and so amend the Constitution? Tell me the difference in principle today.

One recalls that the President said to a Congressman:

> "Don't let any doubt, however reasonable, as to the constitutionality of this law prevent you from voting for it."

Will it be said to the new appointees to the Supreme Court:

> **"Don't let any doubt, however reasonable, prevent you from finding this legislation constitutional"?**

If you didn't like the remark to a Congressman, what do you say when you think of its being made or implied to the Supreme Court?

Do you recall the charge made against King George of England, our last autocrat? It was made in the Declaration of Independence and sets out one basic reason for the American Revolution. Listen to the charge made: "He has made judges dependent on his will alone for the tenure of their offices!"

The Way to Invite Tyranny

Perhaps it seems to you that there is no danger in this irregular method of changing the Constitution. Let us discuss it a moment. Our government was established on an utterly new theory of government; that all laws should be passed by but one branch of government, only one; that they should be prosecuted by an entirely separate set of men, only one set; and that the validity of laws be determined by a third branch wholly independent of the other two. We have always believed that no man can be wise or fair enough to write the laws, to say what they mean, and to prosecute offenders of those laws. For one man or one group of men to have all those three powers is tyranny. Now please remember: You know that each of these debatable laws was called a "must" law; that is, Congress was directed by the President to pass them. You know that they were prepared by the President's men under his instructions. Of course, the Executive prosecutes any violator under these laws. And, of course, when the Supreme Court is dominated by men of his own choosing, their views, known in advance, determine whether these laws invade the liberties of the people.

Please tell me what more power has ever been lodged in an autocrat. Is that what you want? It may be that you are satisfied that the present Administration is sincere; but if you are ready to surrender long-cherished rights, you ought, nevertheless, to consider the precedent established. What is done today can be done tomorrow. Perhaps, tomorrow, that Executive with whom you are now satisfied will not be in office (unless, perchance, the practice of only two terms is also to be soon changed), and that you may not be then satisfied with the new Executive. But power once obtained is seldom surrendered. If one President can change the Constitution, without consulting the people, another can do it. Does any of you believe that a later President will give over any powers which you now permit a President to seize? Shall we change utterly our theory of government? If this legislation becomes valid, we shall have come to the end of the road we have been traveling. We shall have said that democracy has failed; that the division of powers into legislative, executive, and judicial departments is no longer desirable; that government can succeed only if powers are concentrated in one department or in one man. That may be what you wish. But there are many of us who doubt that you wish it.

You will remember that growth of tyrannical power follows no set fashion. In times past it has come through control of the military, control of the navy, by foreign invasion, by loss of the spirit of liberty, and in other innumerable ways. It has also come by reason of inertia, an inexcusable sin; and if it comes today, it will be by virtue of that sin. If autocracy results, what difference the road travelled? **Concentration of power has always meant, in all ages, disaster to the common man—to you and to me. Why should we believe the result will be otherwise now? Autocracy today follows the old pattern throughout the world.**

(The above address was delivered by F. H. Stinchfield as an individual and not in his official capacity.)

You can help Keep The Supreme Court independent of Political influence by distributing this folder.
One to 100 copies free on request postpaid.—Larger quantities at cost.

Address New York Office

NATIONAL COMMITTEE TO UPHOLD CONSTITUTIONAL GOVERNMENT
205 East 42nd Street, New York City

ON D[illegible]ARDING THE DIC[illegible]IARY

By Booth Tarkington

My father, at the age of ninety-one, told me he didn't feel old enough to glory in it! It is only to the young that the old seem old. When we're ten, thirty seems pretty old, and when we're twenty we look upon people who get married after the age of forty as ludicrous and even rather scandalous. To the President's young middle-age and equipment of splendid vitality, which we hope will be the same forty years from now, the age of seventy seems superannuated. To the painter, Titian, working hard at ninety-nine and then cut off untimely by the bubonic plague, seventy didn't seem old at all. To Titian, seventy seemed the age at which he'd just begun really to know how to handle the tools of his trade.

Most of the disastrous mistakes recorded in history were made by men in middle-age, younger middle-age and youth. I pause to mention merely as an infinitesimal item of the prodigious list, Napoleon at Waterloo, Wilkes Booth and Pontius Pilate.

In the view of anybody who doesn't prefer dust in his eyes, there are very few living men who wouldn't *need* to be at least seventy to be qualified to sit on the bench of the Supreme Court of the United States.

However, after listening attentively to orations by advocates of the bill, and after reading reports of the many statements and arguments in favor of it, I find that what remains in my mind, as the boiled-down grist of what I have heard and read, may be expressed more simply as follows: "These judges are too old because we've got to get 'em out of the way in order to change the Constitution without changing it."

That is to say, the proponents of the bill do not only admit, they urge and *proclaim* that the present judges must be removed, or overwhelmed, because they stand in the way of certain policies. We may understand the matter better if we pause to inquire here: *How* do the judges stand in the way of those policies?

The first part of the answer to that question seems to rest upon the fact that we, the people, are not infallible. Political orators often tell us we are; but we know better. We often reverse our most passionate opinions. We threw out the Democratic party after Mr. Wilson. We threw out the Republican party after Mr. Hoover. We threw *in* Prohibition with great enthusiasm; we threw it out uproariously! Even our Presidents are not infallible; and we prove how thoroughly we believe this by the way we reverse ourselves and turn on them, bringing to mind an old aphorism, "Republics are ungrateful."

The framers of the Constitution understood our fallibility. They knew that they themselves, being human, needed to be protected from their own impulses. They knew that we, and our Presidents also, would need this same protection. That is why we have a Constitution and its careful provision for amendments. The founders of the country knew that neither one man nor men in the mass are to be trusted to think rightly, or for the general best interest, in a *hurry*. Moreover, as the Constitution is the charter of our liberty, and therefore it is vital to us all that the words of the document should never be misunderstood or misapplied, its framers provided us with a *dictionary*. In regard to the Constitution of the United States, that's what the Supreme Court is. In essence and reality it is a dictionary.

The judges do not *govern* the people; and, as for the policies in the way of which the present judges are alleged to stand as obstacles, the judges do not condemn those policies, nor praise them, nor in any manner criticize them. Some of the judges and possibly, so far as we know, *all* of them *may approve* of those policies; it is not their business to tell us whether they do or not. Their business is solely with the words and groups of words used in the Constitution of the United States and its Amendments. They are simply the highest authority we have on the meaning of those words and groups of words. All the judges can tell us is what those words *mean* and, by the Constitution itself, their majority opinion, no matter by how large or small a majority, *settles* the meaning of the word or groups of words in the Constitution. The judges do not say to all of us or to any one of us, "You shall do this thing or that thing!" or "You shall not do this thing or that thing!" They only say, "The word black means *black*: the word white means *white*."

Proponents of the bill declare that its real purpose is to replace the present judges with men who will have the present President's good purposes so much at heart that, in order to forward them, they will say to us, the people, "The word black means *white*; the word white means *black*."

That is to say, we shall henceforth have no dictionary. The words in our Constitution will henceforth mean whatever any President—good President or bad President, strong President or weak President, intelligent President or stupid President (and we have had all of these and shall again)—the words of which our Constitution is composed will henceforth mean what *any* President wants them to mean.

President Roosevelt knows his own good intentions and benevolent purpose; but we, the people—or at least many of us—are permitted to doubt if he *himself* would care to take this risk if he were one of *us*, a private citizen—and if Mr. Henry Ford, for instance, were President! We're pretty confident, in fact, that if this were the case, Mr. Roosevelt would prefer to keep the dictionary.

Mail This DAY and Indicate how will cooperate.

Address: Frank E. Gannett, temporary Chairman and Treasurer,
National Committee to Uphold Constitutional Government,
Rochester, N. Y.

Check here ☐ I will cooperate in organizing to defeat any legislation that will undermine the independence of the judiciary, and I will fight to preserve our constitutional system of free enterprise.

Check here ☐ **I will immediately telegraph or write** my protest to the Senators from my State, the Congressman from my district and others in the Congress whom I may be able to influence. **(Don't Delay—Express your own thought in your own words!)**

Check here ☐ I will cooperate in organizing local committees to encourage and coordinate protests by individuals, bar associations, civic, religious, commercial, fraternal and other organizations.

Check here ☐ I will distribute literature, encourage cooperation of local press, and aid in organizing protest meetings.

Check here ☐ **I herewith contribute toward necessary expenditures for this effort $**_____

Name_____

Business Connection
(or occupation) _____

Address _____

PLEASE MAIL CHECK TO FRANK E. GANNETT, TREASURER, ROCHESTER, N. Y.

Will You Use the Form Below to Enlist Another Supporter?

If this is not a people's fight—YOUR FIGHT—it is lost.

"I would rather be right than agree with the President."
—Senator BURKE (Dem. Neb.)

"A subservient judiciary is worse than no judiciary at all."
—Senator GEORGE (Dem. Ga.)

"It is changing the rules while the game is in progress."
—Senator CLARK (Dem. Mo.)

"Before the final pillage takes place, those who are most deeply concerned should be heard."
—Senator BORAH (Rep. Idaho)

Mail This TODAY and Indicate how you will cooperate.

Address: Frank E. Gannett, temporary Chairman and Treasurer,
National Committee to Uphold Constitutional Government,
Rochester, N. Y.

Check here ☐ I will cooperate in organizing to defeat any legislation that will undermine the independence of the judiciary, and I will fight to preserve our constitutional system of free enterprise.

Check here ☐ **I will immediately telegraph or write** my protest to the Senators from my State, the Congressman from my district and others in the Congress whom I may be able to influence. **(Don't Delay—Express your own thought in your own words!)**

Check here ☐ I will cooperate in organizing local committees to encourage and coordinate protests by individuals, bar associations, civic, religious, commercial, fraternal and other organizations.

Check here ☐ I will distribute literature, encourage cooperation of local press, and aid in organizing protest meetings.

Check here ☐ **I herewith contribute toward necessary expenditures for this effort $**_____

Name_____

Business Connection (or occupation) _____

Address _____

PLEASE MAIL CHECK TO FRANK E. GANNETT, TREASURER, ROCHESTER, N. Y.

94-8-237-1

Tolson
Nichols
Boardman
Belmont
Mason
Mohr
Parsons
Rosen
Tamm
Nease
Winterrowd
Tele. Room
Holloman
Gandy

DAVID LAWRENCE

Confusion in the Supreme Court

Red Victory Seen in 3 Jurists' Dissent Treating Communists as Political Party

The confusion inside the Supreme Court of the United States seems to grow with each week's decisions. This time the Communist Party can boast of its greatest victory. Three of the nine justices have accepted the persistently expressed alibi of the Communists in this country that they are "just another political party."

The Congress repeatedly has proclaimed by law that the Communist Party is not a political party but a conspiracy which waits for the opportune moment to overthrow the Government of the United States.

The three justices of the Supreme Court who have accepted the argument of the Communists that they are just a political party are Chief Justice Warren, Justice Douglas and Justice Black.

The opinion of the court in the case held that an employer in California was justified in discharging an employe because of membership in the Communist Party and that it was covered by the contract between the union and the employer. Justices Harlan, Reed, Burton, Clark, Minton and Frankfurter concurred in the ruling of the court.

But Justice Douglas, writing a dissenting opinion in behalf of Chief Justice Warren, Justice Black and himself, said it wasn't a matter of a local contract and that the doctrine expounded by the majority "violates First Amendment guarantees of citizens who are workers in our industrial plants." Then Justice Douglas writes:

"I can better illustrate my difficulty by a hypothetical case. A union enters into a collective-bargaining agreement with an employer that allows any employe who is a Republican to be discharged for 'just cause.' Employers can, of course, hire whom they choose, arranging for an all-Democratic labor force if they desire.

"A union has no such liberty if it operates with the sanction of the State or the Federal government behind it. It is then the agency by which governmental policy is expressed and may not make discriminations that the government may not make.

"But the courts may not be implicated in such a discriminatory scheme. Once the courts put their imprimatur on such a contract, government, speaking through the judicial branch, acts. And it is governmental action that the Constitution controls.

"Certainly neither a State nor the Federal Government could adopt a political test for workers in defense plants or other factories. It is elementary that freedom of political thought is protected by the Fourteenth Amendment against interference by the States, and against Federal regimentation by the First Amendment.

"Government may not favor one political group over another. Government may not disqualify one political group from employment. And if the courts lend their support to any such discriminatory program, Shelley vs. Kraemer teaches that the Government has thrown its weight behind an unconstitutional scheme to discriminate against citizens by reason of their political ideology. That cannot be done in America, unless we forsake our Bill of Rights. . . .

"The court today allows belief, not conduct, to be regulated."

This means that Robert Hutchins of the Fund for the Republic, who thinks the Communist Party is "just another political party" and who is spending Ford's millions to advocate that doctrine in America, has found staunch support in the views of three members of the Supreme Court.

It means also that these same justices reveal an inconsistency with their refusal last week to review a case in which two workers had appealed against a court decision compelling them to join a union, though it was against their religious beliefs as protected under the First Amendment of the Constitution.

Justice Douglas offered in support of his view in the California case just decided that Chief Justice Hughes in 1937 had ruled that a State couldn't punish Communists for holding a public meeting. But that was long before the true meaning of the Communist conspiracy was exposed, as it has been in the last 10 years, and safeguards written into law by Congress.

Justice Douglas says a defense plant may need to protect itself against sabotage but that the worker wasn't guilty of any acts of sabotage. This means that the doctrine of prevention is being discarded, and, if the argument is fully accepted, the Congress and the States must wait till bombs are thrown and complicity of an individual is actually proved before precautions can be taken against the hiring of agents of the Communist espionage and sabotage apparatus. It's all just a "political ideology" to Justices Warren, Douglas and Black.

Wash. Post and Times Herald
Wash. News
Wash. Star A-31
N. Y. Herald Tribune
N. Y. Mirror
N. Y. Daily News
Daily Worker
The Worker
New Leader

Date 6/6/56

JUN 15 1956

INDEXED-11 100-

NOT RECORDED
117 JUN 15 1956

EX-120

DAVID LAWRENCE

Supreme Court and Communism

Eastland's Charge of Pro-Communist Pattern in Rulings Is Reviewed

Congress is under heavy pressure from "left wingers" to kill all the legislation proposed at this session that is designed to overcome the ill effects of various decisions of the Supreme Court of the United States. Some of these decisions weakened the processes by which criminals can be effectively prosecuted. Some have been termed "pro-Communist" decisions because they aid the members of the Communist conspiracy in carrying out their subversive plots.

Senator James Eastland of Mississippi, chairman of the Senate Judiciary Committee, has come up with the "scores" of the individual justices of the Supreme Court on Communist issues. He says three justices of the high court have consistently ruled in a way that benefits the Communist side of the argument. He declares that Justice Black, for example, has participated in a total of 71 cases before the Supreme Court involving communism, and, as Senator Eastland says, his "batting average is an even 1,000." Senator Eastland recently said to the Senate:

"Seventy-one times he (Justice Hugo Black) voted to sustain the position advocated by the Communists, and not one vote or one case did he decide to the contrary. . . .

"It is hard for me to believe that the Government, or the States, the Department of Justice and the Federal Bureau of Investigation, the congressional committees and the district courts and circuit courts of appeal were always wrong."

Senator Eastland points out that the "batting average" of Justice Douglas was almost the same as that of Justice Black. The Senator says:

"Justice William Douglas participated in 69 cases. His batting average is slightly lower than Black's. Pro-Communist votes—66; anti-Communist—3. . . .

"Felix Frankfurter is the third member of the court who has served continuously throughout this period. He participated in 72 cases and his record shows pro-Communist votes—56; anti-Communist—16."

The Senate Judiciary Committee chairman has analyzed the decisions of the Supreme Court since 1919 on the subject of communism, and he says that, in the 24 years between 1919 and 1942, the Supreme Court decided only 11 cases involving Communist or subversive activities, and, of these 11, "the first seven were decided against the Communist positions and in favor of the Government." Since 1943, however, he points out that there have been 73 cases involving communism or subversion, only 34 of which were passed upon in the 10-year period between 1943 and 1953. In those, "A majority of the court voted in favor of the position advocated by the Communists in 15 cases and held contrary to what the Communists wanted in 19 cases."

Senator Eastland continues:

"Earl Warren took the oath of office as Chief Justice in October, 1953. In the four-and-a-half years since he has been Chief Justice, the court has consented to hear a fantastic total of 39 cases involving Communists or subversive activities in one form or another. Thirty of these decisions have sustained the position advocated by the Communists and only nine have been to the contrary."

The Mississippi Senator says he does "not argue that a judge was always wrong in each and every individual decision that might have a result favorable to the Communist position." He recognizes that technicalities of various kinds sometimes must result in a particular ruling. He adds:

"What concerns me and is of vast concern to the American people is the pattern that has been developed and made clear by these facts and figures. Also, since the great number of cases considered in the categories that I have here discussed arise by virtue of writs of certiorari where the court affirmatively decides what it shall consider and what it shall not consider, the startling increase in the number of decisions that favor the position of the Communists can be justifiably held to be most significant.

"Even more important than the high proportion of cases which have been decided favorably to the Communists' contention is the fact that increasingly, under Chief Justice Warren's regime, the court has been expanding its usurpation of the legislative field and purporting to make new law of general application which will be favorable to the Communist position, not only in the individual cases decided, but in innumerable other cases.

"The one area where there seems to be some predictability with respect to the Warren court's action is where cases involve the interests of the world Communist conspiracy and its arm in this country, the Communist Party, U.S.A."

This is the first time that any Senator has undertaken to go back over the record and make a statistical analysis of Supreme Court decisions in the category of communism. Maybe someone now will make such an analysis of the votes of members of Congress.

FILE

Tories Eye Supreme Court As Their Next Objective

By Rob F. Hall

WASHINGTON.—The bitter attack on Justice Hugo Black by Justice Robert H. Jackson in Nuernburg, Germany, last Monday is an ominous sign that reaction is "out to get" the liberal majority on the U.S. Supreme Court, according to a prominent lawyer who declined to permit use of his name.

He considered the unprecedented action of Jackson part of the reactionary drive against the New Deal and everything which FDR symbolized. This drive has been successful in destroying Big Three Unity. It has also been successful in wrecking price control, the defeat of social legislation and the veterans' housing program. FEPC has been killed and the anti-poll tax bill pigeonholed.

"So far, however, the Supreme Court has been more or less beyond their reach. As a result of appointments made by Roosevelt, the court has become a force for progress and for the protection of the rights of labor and the minorities.

HUGO BLACK

ROBERT JACKSON

RECENT DECISIONS

"There has been a series of decisions which ran counter to the wishes of Southern reaction and big business interests.

"For example, there have been a number of decisions upholding the National Labor Relations Board in litigation pressed by employers. There have been several decisions protecting the rights of the Negro people, such as the Texas white primary case, which established the right of Negroes to vote in primaries. A more recent example was the decision June 3 outlawing Jimcrow on busses in interstate travel.

"Other decisions have defended civil rights, such as the Schneiderman case, where the court ruled against an action to revoke the citizenship of a Communist. Another is the Bridges case which was decided against the red-baiters.

"In the liberal majority responsible for these far-reaching decisions, Hugo Black has played an important, sometimes a decisive role. Usually, the minority included Jackson, Frankfurter, Roberts and Stone. Although Jackson was named by Roosevelt, as Frankfurter was, he has been identified with reactionary trends within the court."

The method which Jackson has chosen to wage his fight was particularly shocking to a lawyer. "He has appealed to a reactionary Congress and, more than that, to the House and Senat judiciary committees in which Southern Democrats and Republicans constitute majorities. If he succeeds in his aims, he will be striking a blow at the independence of the judiciary, a fundamental principle of our government."

Asked to elaborate, the attorney pointed out that Sen. Jim Eastland (D-Miss), a member of the Senate Judiciary Committee can hardly be expected to examine the case on its merits. Eastland will judge Black on the basis of the Justice's Supreme Court decisions, which Eastland opposes bitterly.

The issue which Jackson has chosen for the fight is the fact that Black sat as a Justice in two labor

Communist Party-Pol

FI-42

INDEXED 353

NOT RECORDED

8 AUG 22 1946

This is a clipping from page 5 sec. _____ of THE WORKER

Date 6-16-46.

Clipped at the seat of Government

62 AUG 27 1946

100-3-72-A

cases in which Crampton Harris of Birmingham, his former law partner, appeared on behalf of the unions. These were the portal-to-portal cases involving the Mine, Mill and Smelter Workers and the United Mine Workers against the mine operators.

He pointed out that in 1943 Jackson had criticized Justice Frank Murphy for participation in the Schneiderman case because Murphy had previously had some connection with the case at Attorney General.

On the other hand, this attorney said, Jackson never protested when Justice Owen J. Roberts, a former corporation lawyer, participated in cases involving his old clients and big business friends.

Meanwhile Sen. Kenneth Wherry (R-Neb) has been actively pressing for hearings before the Senate Judiciary Committee on the charges cabled to it by Jackson. Chairman Pat McCarran (D-Nev) has been reluctant to agree, pointing out that Jackson's charges have nothing to do with the confirmation of Fred M. Vinson as Chief Justice, the real business before the committee.

Sen. Eastland, who hates Black's progressive ideas, threatened "to have something to say in the Senate." Sen. Clyde Hoey (D-NC), also a member of the Committee, said, "Naturally, I'd be disposed to favor Jackson over Black."

Sen. Scott Lucas (D-Ill), who has recently gone over completely to the camp of reaction, suggested a "solution." He would ask for the resignation of both Black and Jackson, which is like the old saying—throwing the baby out with the bath water.

There is widespread agreement even among friends of Jackson, that his disappointment at not being named Chief Justice was the immediate cause of his outburst. But behind that pique is the deep cleavage between reaction, which Jackson represents, and the defense of the constitutional rights of the people, for which Black stands. In this struggle, the protection of the independence and integrity of the judiciary present itself as a progressive objective.

'Un-Packing' the Court—A Move Toward Reaction

WHAT is behind the extraordinary outburst of Justice Jackson against Justice Black?

Clearly, far more than meets the eye in Jackson's statement. The circumstance that one of the lawyers appearing before the Supreme Court was a law partner of Justice Black before 1927, does not explain it.

Only the political line-up in the Court and the changing political line-up in the country offers a clue.

Justice Black was appointed by President Roosevelt as part of his plan to bring some breath of liberalism into the Court at a time when the nation was effecting important social changes.

The Supreme Court was viewed as the weapon with which the labor-hating reactionaries would use to knife the social reforms demanded by the country. Roosevelt had to do with the Court what Lincoln and Jackson before him had had to do—challenge its power to nullify the national will. In vain did the big corporations and their stooges cry out against "packing the Court." It was seen all too clearly that what they wanted was to have a Court packed with their own representatives, willing to scuttle the New Deal reforms.

Propagandized Against Black

The same kind of propaganda was launched against Judge Black at the time of his appointment. His subsequent opinions proved him to be a more consistent follower of President Roosevelt's New Deal views than the stories were willing to tolerate.

The growing "crisis" in the Court was aggravated, it seems, by the fact that it was split down the middle by so-called liberal and conservative wings. This came to a head in the decision giving the miners portal-to-portal pay. Judge Black's decision won the case for the miners in a 5-4 vote.

Judge Jackson, a man ambitious to be the Chief Justice, led the opposing view. Today, he leads the assault against Black.

Destroyed FDR Policies

It is no secret in the press that if Black goes, the so-called conservative wing—actually moving toward reaction—will once again dominate the Court. The work of Franklin Roosevelt will have been destroyed even as his labor and foreign policies have been destroyed by the Truman Administration, working ever closer to the line of the Hoover Republicans.

The present policies of the Government, in domestic and foreign policies, require a Court willing to approve measures that cannot but limit, curtail and finally destroy democratic liberties in the United States.

Is the present move aimed at achieving such a Court ready to approve the militarization of the nation and prepare it for world imperialist domination? It would seem that this is exactly what is brewing behind the scenes. This is how the country should understand these ominous moves which mean something quite different from what they seem to.

Re German American Bund

Unpredictable Court

WHEN the present term of the Supreme Court of the United States opened last October it was against a background of an amazing exhibition in the previous term of hairsplit reasoning, large-scale disregard of judicial precedents and frequent adjudication of important issues on a five-to-four division. These trends caused concern within as well as without the court. To quote Justice Roberts, "it was regrettable that in an era of doubt and uncertainty * * * this court should now itself become the breeder of fresh doubt and confusion."

It was hoped that widespread criticism might lead the jurists to attempt to reach fewer decisions resting on the tenuous base of one vote. The fact is, however, that with one more decision day remaining before the Summer recess, the ratio of such decisions this term—one in eight—has been greater than in any other term in the last two decades or longer. The climax was reached this week when in one session, out of a score of adjudications, five showed a five-to-four split.

Of these five cases the most public interest is in the finding ordering the release of the 24 former leaders of the German-American Bund. The bundists had been convicted of counseling members of the Bund to evade the Selective Service Act, but the majority opinion by Justice Roberts held that "to counsel merely refusal is not made criminal by the act." In contrast the minority opinion by Chief Justice Stone took the stand that the defendants "by counseling Bund members to refuse to do military duty, counseled evasion of military service."

The difference in the majority and minority reasoning in this case seems to have been as finely spun as that in the recent case of Anthony Cramer, whose conviction on a charge of treason was upset, also by a five-to-four division. Justice Jackson, who wrote the ruling opinion in the Cramer case, which presented the court for the first time with the application of the constitutional provision on treason, was with the minority in the Bund case. Justice Black, who was with the minority in the Cramer case, joined the majority in the Bund case.

Taking all the five-to-four decisions so far rendered this term one thing stands out as clearly as it has in other terms—there is evident no definite alignment of the jurists, although Justices Black, Douglas and Murphy generally will be found together. That holds mainly in certain classifications of cases as, for example, those relating to the Sherman Act, when these three will invariably be together on the anti-trust side. In consequence of this situation the court, except as to a few broad issues, remains as unpredictable as ever it has been under the congeries of New Deal appointees.

b7C

100-1-4
NOT RECORDED
87 JUN 20 1945

INDEXED

Boyd Talmy
Editor

NEWARK EVENING NEWS
6/17/45
SUBMITTED BY NEWARK

154

INVESTIGATION OF UN-AMERICAN PROPAGANDA ACTIVITIES IN THE UNITED STATES

HEARINGS

BEFORE A

SPECIAL

COMMITTEE ON UN-AMERICAN ACTIVITIES

HOUSE OF REPRESENTATIVES

SEVENTY-SIXTH CONGRESS

FIRST SESSION

ON

H. Res. 282

TO INVESTIGATE (1) THE EXTENT, CHARACTER, AND OBJECTS OF UN-AMERICAN PROPAGANDA ACTIVITIES IN THE UNITED STATES, (2) THE DIFFUSION WITHIN THE UNITED STATES OF SUBVERSIVE AND UN-AMERICAN PROPAGANDA THAT IS INSTIGATED FROM FOREIGN COUNTRIES OR OF A DOMESTIC ORIGIN AND ATTACKS THE PRINCIPLE OF THE FORM OF GOVERNMENT AS GUARANTEED BY OUR CONSTITUTION, AND (3) ALL OTHER QUESTIONS IN RELATION THERETO THAT WOULD AID CONGRESS IN ANY NECESSARY REMEDIAL LEGISLATION

VOLUME 10

OCTOBER 16, 17, 18, 19, 20, 21, 23, 24, 25, AND 28, 1939

AT WASHINGTON, D. C.

Printed for the use of the Special Committee on Un-American Activities

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON: 1940

94931

e campaigned against Mayor
the only connection was that
mers.
Communist?
as a candidate against Mayor

ket?
connection with Miss Poyntz.
with Carl Hacker, a former
Labor Defense?
ime I ever heard the name.
ther he was a member of the

ot know him and this is the
ned.
that William L. Patterson,
secretary, was a member of

utive secretary, Miss Damon,

ing up on the organization
onal chairman did you deter-
efense was ever, at any time,
nternational Red Aid, with

International Labor Defense
before, my real information
fense came to me as the or-
these particular cases which

other information on that

r to clear up the record——
t me ask you this question.
airman you did make some
t?
. You see, after I became
th the distinct understand-
anization and still is a non-

standing?
else.
take the chairmanship?
rstood.
d the governing board?

ing to have anything to do
nonpolitical?
nd nonpolitical and its one
vil rights wherever they are

Mr. THOMAS. What led you to make that request? There must have been some reason for it?

Mr. MARCANTONIO. It is natural, Congressman, in having read any charges against the International Labor Defense Council that may have been made, it was only natural, may I say to my colleague.

Mr. THOMAS. I am not referring to today, but as of the time you made the statement.

Mr. MARCANTONIO. Correct.

The CHAIRMAN. Something must have led you to make such a statement.

Mr. MARANTONIO. The reason I made the statement was simply because we defend the right of a Communist to be a Communist; we defend persons time and time again, charged with being Communists, but I never lost an opportunity to assert and to reassert that the organization was non-Communist.

Mr. THOMAS. Had you made any investigation as to whether it was Communist or not?

Mr. MARCANTONIO. My investigation is right there; I am the president; I run the organization.

The CHAIRMAN. You run the whole organization?

Mr. MARCANTONIO. In accordance with the rules and bylaws and in accordance with the constitution of the order. In other words, I run the organization in the same sense that Mr. Green runs the A. F. of L. and the President runs the United States, in accordance with the constitution and bylaws and regulations of the organization.

Mr. THOMAS. Who formulates the policies of the organization; the governing body?

Mr. MARCANTONIO. Let me say this about the policies: There are very few policies formulated, because, if we are convinced of a person being framed, it is simply a question of getting in touch with a good lawyer to defend him.

Mr. THOMAS. You just assume he has been framed up and go ahead and employ a lawyer?

Mr. MARCANTONIO. I said if we were convinced.

Mr. THOMAS. If you were convinced?

Mr. MARCANTONIO. If we were convinced; yes.

Mr. THOMAS. Did you defend this fellow Strecker?

Mr. MARCANTONIO. Strecker—the International Labor Defense defended Strecker.

Mr. THOMAS. Strecker was a Communist?

Mr. MARCANTONIO. Certainly; and the Supreme Court agreed with the position taken by the International Labor Defense; and if it is wrong, the Supreme Court is wrong; if we were un-American, the Supreme Court is un-American.

Mr. THOMAS. Of course, personally, I think it was the poorest decision the Supreme Court ever made.

The CHAIRMAN. Well, gentlemen, let us not try to settle that here.

Mr. MARCANTONIO. Well, if you think Chief Justice Hughes is in error, it is a question of which one you are to accept, Mr. Chairman.

Mr. WHITLEY. Mr. Chairman, there seems to be considerable question, in the mind of both Miss Damon, the executive secretary, and Congressman Marcantonio with reference to the subject of whether or not the International Labor Defense was ever affiliated with the International Red Aid. I think perhaps a few quotations from the

m a part of the labor struggle,

s not interested in the defense
regardless of their race, creed,

nocratic rights are deprived:

businessman if his democratic

Nazi if his democratic rights

ghts are involved, certainly;
atic activities, his democratic

n, then; you don't give a hoot
or how much he is punished,

y I say to my colleague from
ation of his democratic and

his correct: You regard nazi-

eason you provide that you

—the fact it is antidemocratic?
t a moment—it is not as gen-
at person's activity. Usually
from my experience, has been
the purview of the liberties
tution.
e are taking the phrase used

general phrase. That is why

am trying to get its applica-
Nazi in the United States en-
lt of that, he is arrested——
eech, let us say?
h."
is activities? If his activities
he is arrested, we would not

nd anybody?

resolution, did you just men-

is and Fascists, particularly
are activities that are along

when you said you would not
what in mind?

Mr. MARCANTONIO. We had this in mind, we had this concrete situation, in other words, of getting into airplane factories, and Nazis hanging around various places involving the national defense; in other words, where their activities were of an espionage character.

The CHAIRMAN. Would that be true of Communists?

Mr. MARCANTONIO. If the Communists were involved in espionage.

The CHAIRMAN. Why did you not say——

Mr. MARCANTONIO. If a Communist were involved in espionage, we would not defend him. We are not defending spies.

The CHAIRMAN. Then why did not you say in the resolution "Communists" along with "Nazis"?

Mr. MARCANTONIO. I have been trying to explain that. That question came up before the national board and came up in connection with a specific proposition of a Nazi activity, and we said that Nazi activity involved espionage and would not come within the purview of our activities. The I. L. D. will not undertake the defense of any Nazi, Fascist, or any other, under those circumstances. In other words, it will not defend them or any other persons or organizations whose aims and activities are antilabor and antidemocratic.

The CHAIRMAN. It looks to me like that means what it says.

Mr. MARCANTONIO. Exactly.

The CHAIRMAN. Anybody whose aims are antidemocratic or antilabor, regardless of what they engage in, you won't defend them?

Mr. MARCANTONIO. We won't defend them if their activities are such—I was present at the time that resolution took place——

The CHAIRMAN. All we have is what you say in the resolution.

Mr. MARCANTONIO. Many times we have lost these cases where we just have words and have the Supreme Court interpret them. I am telling you just what happened. We will not—I will say once again—we will not defend anybody involved in an antidemocratic activity. By that I mean anything which is unlawful. And why do we mention Nazis? Because the Nazi constitution and the Fascist constitution came up, and we passed a resolution on that. But I go further; if a Communist is involved in an espionage activity, the International Labor Defense will not defend him. We will not defend anybody.

Mr. STARNES. What about sabotage?

Mr. MARCANTONIO. Sabotage includes espionage. It would include sabotage, certainly.

Mr. STARNES. What about men who are guilty of murder?

Mr. MARCANTONIO. If a man is accused of murder, we will not defend murder cases.

Mr. STARNES. I said guilty of murder.

Mr. MARCANTONIO. Where are civil rights involved there?

Mr. STARNES. What about men who are guilty of arson and the destruction of property?

Mr. MARCANTONIO. We are not a public-defender outfit. There are no civil rights involved there. The answer is "No"; unless the man is framed and we are convinced that they charge the man with arson simply because he happens to be a labor leader. In other words, like the Mooney case.

Mr. STARNES. I said guilty of arson.

Mr. MARCANTONIO. Just a moment; I want to get down to cases. I say where a man is charged with murder, and we are convinced he

is innocent of that murder, we are convinced he is charged with murder because of his labor activities, certainly we would defend him.

Mr. STARNES. Now, who is the supreme court of the I. L. D.?

Mr. MARCANTONIO. We have no supreme court. We have a president.

Mr. STARNES. Well, who is the man, or group of men, or women, in the organization that lays down the yardstick and decides whether it is undemocratic or antilabor?

Mr. MARCANTONIO. If it is the usual run of case, it is usually decided by myself; if there is a real policy question involved, it comes up before the governing board. We have had no such case since I have been president.

Mr. STARNES. Is it not a fact in the I. L. D.—well, I cannot ask that question, because you have confined it to your knowledge since 1937, but I wanted to ask if it was not a fact that the I. L. D. had volunteered its services and stepped into cases and sought to interfere with the processes of the courts of this country, and if they had not attempted to influence, to browbeat, and intimidate the civil authorities of this country?

Mr. MARCANTONIO. My answer is "No."

Mr. STARNES. Never?

Mr. MARCANTONIO. Never; as far as I know; and, furthermore, as I said before, we came into the De Jonge case, and the Supreme Court agreed with us, and the Strecher case——

Mr. STARNES. Was De Jonge a member on your board of directors?

Mr. MARCANTONIO. I think he is. We came into the De Jonge case——

Mr. STARNES. Is not the fact of the business this: That the reason the denouncing of communism has never been embodied in the resolutions adopted by the I. L. D., the fact that a resolution to that effect has the same chance as the proverbial snowball in the lower regions of ever being considered and passed by the I. L. D.?

Mr. MARCANTONIO. As I say to you gentlemen, give us a case of one person deprived of democratic rights by the Communists, and I will give you my guaranty, if he comes to us, he will be defended.

Mr. STARNES. And, Mr. Marcantonio, since you have been a member, you have undertaken to defend the religious and political liberties of persons in the Soviet Union?

Mr. MARCANTONIO. In the Soviet Union, in Alabama, or anywhere else. We have only had one case, and that was an American citizen——

Mr. STARNES. I want to say I subscribe wholeheartedly to the doctrine of freedom of speech and freedom of the press, and that includes Communists, Fascists, Nazis, or whoever he is, if he is an American citizen; but I have an absolute aversion to some person who comes to this country as an agent of a foreign government and becomes a naturalized citizen in order to wrap himself in the Constitution and the Bill of Rights, to seek the destruction of this Government. And that is the reason I, and many other Americans, look with suspicion on these various organizations.

Mr. MARCANTONIO. And the gentleman's views on aliens and my views on aliens are not in accord.

The CHAIRMAN. Let us not get into that discussion.

Mr. STARNES. And we l
come before us, including
others, who are naturalize
ple of America, or to insti
tion and the Bill of Rig
heavens, as far as I am c

Mr. MARCANTONIO. May
people of immigrant stock
to American development

Mr. STARNES. Which w
I am the son of one mys

Mr. MARCANTONIO. And
have been allowed the priv

Mr. STARNES. That is ri
privilege of destroying th

The CHAIRMAN. Let us

Mr. WHITLEY. Congress
Daily Worker, official org
an article captioned "I. I
world's toilers"——

Mr. MARCANTONIO. Tha

Mr. WHITLEY. 1933; 4
ing to place the point at w
the International Red Ai

Mr. MARCANTONIO. Well.
not do it through me, beca
in June or July of 1937.

Mr. WHITLEY. I think i
anyway. We are also try

Mr. MARCANTONIO. I an

Mr. WHITLEY. Reading

A call to the toilers of the w
Scottsboro boys has just been
International Labor Defense
sections in 71 countries.

So it would appear fro
that at least as late as 1933

Mr. MARCANTONIO. No,
Communists have made a
Thomas has made an app
make the International
Thomas?

Mr. WHITLEY. Let me

A call to the toilers of the w
Scottsboro boys has just been
the International Labor Defen

Does that permit uncert

Mr. MARCANTONIO. Well
knows that the statement
person.

Mr. WHITLEY. I wanted

Mr. MARCANTONIO. But,
of a third party and is no

I understand it from the
he necessity of answering
: of the pendency in New
that correct?

stions or answers by you
n with your trial on those

s I understand it, and that
e to prepare your defense?
Secondly, that in addition
ar that it might prejudice
New York, you allege that
to prepare your defense,
you would be spending in
on of your defense: Is that

nection with that, that the
ly in executive session yes-
n on the part of the com-

finish my statement. The
ade by you in the course of
ileged, and they cannot be
it seems to be unquestionably
by any answer you make to
far as time in which to pre-
hrough with you shortly, so
The committee felt that it
erhaps, not hear you at all,
nesses. We have witnesses
every day. You were noti-
e committee wanted you to
hat it is not being unfair to
not required to answer the

a for 2 months, or since the
my trial, you call me down
k that is fair?
Kuhn——
you?
's attorneys. I want at this
mittee may reach some quick

y yourself for the purpose of

F. Sabbatino, attorney, and I
ession at 270 Broadway, Bor-
I represent Mr. Kuhn in the
in New York on October 30.
10. Prior to that time I was

not familiar as an attorney with the case. On October 10 I appeared in court on his behalf, and on that day Judge Collins limited him to the State of New York. He said that he could not go beyond the jurisdiction of the court unless he wanted to forfeit the $50,000 bail.

There are various fundamental questions of constitutional law that I think this committee should be interested in, and that I want to test in the courts of New York. I was to appear in court on two motions this morning. I was to appear on a motion this morning in the Supreme Court, but I thought that it was my duty to come here before the committee. We have a lot of work to do. The district attorney of New York County has a large staff of stenographers and assistants who have been devoting practically all their time exclusively to the preparation of this case. Since this committee is a committee on un-American activities, which, according to the booklet, or your documents, I understand is seeking to protect American traditions and the American Constitution, I ask this committee—and some of you are lawyers—to appreciate the importance of our situation. We have to go to trial on an indictment containing 12 counts, all of them serious. The district attorney has seized all of the documents which would help us in our preparation of the case. They have taken everything, including all of his books, and we must do what we can in this short time.

The New York constitution contains a provision which holds the home sacred, the person sacred, and property sacred at all times; yet they seized all of these documents from Mr. Kuhn's office. There is a new constitutional provision that was enacted in New York, at the last election, and I want to test that provision.

Mr. THOMAS. I do not think that this has anything to do with our proceeding here this morning.

Mr. SABBATINO. Every hour that is being spent down here, is an hour in which we are prevented from preparing this man's case for trial, and I hope that this committee, many of you being lawyers, will appreciate that.

The CHAIRMAN. Well, you have made your point.

Mr. SABBATINO. I ask that Mr. Kuhn be excused until November, when the trial is over.

The CHAIRMAN. The answer to that is that this committee will probably not be in session after the trial of the case, or we will probably not be in session here. We have many witnesses on the west coast that we want to hear, and we feel that it is necessary to hear Mr. Kuhn now. With reference to preparation for the trial, we will be through here very shortly, and I do not think you will be prejudiced in that respect. You are already here, and in a short time we will be through, and you can go back. With reference to the trial in New York, I understand that the matters he will be questioned about here do not involve any criminal charges pending against him in New York; so he will not be prejudiced on that account.

Mr. SABBATINO. It is not that matter that we are worried about. I have to prepare two motions today, and an hour here is an hour that we could use fruitfully in New York in the preparation of our case.

The CHAIRMAN. The committee has considered the request, and we will proceed.

Mr. KUHN. I can answer your question.

Mr. STARNES. All right.

Mr. KUHN. Do you have to be a Catholic to go into the Knights of Columbus?

Mr. STARNES. I do not know. I am neither a Knights of Columbus nor a Catholic.

Mr. KUHN. All right, that answers the question.

Mr. STARNES. Now, then, I want to know if this witness, who says that he is the head of a political organization in this country, can say whether it is true that his organization excludes from membership Negroes and Jews?

Mr. KUHN. We never exclude them——

Mr. STARNES. Do you exclude them?

Mr. KUHN. We do not take them in.

Mr. STARNES. You refuse to take them in?

Mr. KUHN. Right.

Mr. STARNES. Therefore, if the political philosophy of the bund became the dominant philosophy of the United States of America, Jews and Negroes would not have any right of representation in this country?

Mr. KEEGAN. I object to that question. I believe in a decision of the Supreme Court of the United States with respect to a colored citizen of the Southern States who tried to become a member of the Democratic Party, where he was excluded, and appealed his case, the Supreme Court upheld the exclusion. The Democrats have already done that.

Mr. STARNES. May I say that one of the members of that race is a Democratic Member of the House.

Mr. KEEGAN. I was just referring to the fact that that principle has already been upheld by the Supreme Court.

Mr. STARNES. I am merely trying to establish what the purpose of this organization is; I am trying to ascertain the true purpose of this organization, and I am trying to ascertain, through the leader of the organization, whether he says they have a right to become a political element in this country, organize a political party to exclude others.

The CHAIRMAN. All right; let us proceed.

Mr. STARNES. That is all for the time being.

The CHAIRMAN. Mr. Voorhis, you had some questions.

Mr. VOORHIS. This paper which counsel objected to contains notices to which I would like to call attention: It has two notices signed by Fritz Kuhn in it, and it was photostated by the Library of Congress, and that is the paper in which reference is made to taking over the leadership of the Germans in America appears.

Now I would like to ask you this question, Mr. Kuhn. Suppose the bund succeeded in organizing an effective political party, such as you had in mind here, what would be your answer to this question; would you, in connection with its work, use the same tactics that were used in other nations——

Mr. KUHN (interposing). Mr. Chairman, I think——

Mr. VOORHIS (continuing). By other German organizations?

Mr. KUHN. That question is very unfair.

Mr. VOORHIS. Well, you can answer it "Yes" or "No."

4-750 (Rev. 4-17-85)

XXXXXX
XXXXXX
XXXXXX

FEDERAL BUREAU OF INVESTIGATION
FOIPA DELETED PAGE INFORMATION SHEET

____ Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

☐ Deleted under exemption(s) _____ with no segregable material available for release to you.

☐ Information pertained only to a third party with no reference to you or the subject of your request.

☐ Information pertained only to a third party. Your name is listed in the title only.

☐ Documents originated with another Government agency(ies). These documents were referred to that agency(ies) for review and direct response to you.

____ Pages contain information furnished by another Government agency(ies). You will be advised by the FBI as to the releasability of this information following our consultation with the other agency(ies).

1 Page(s) withheld for the following reason(s):
This document was previously released to you regarding another subject — Earl Warren C. — 5/28/88

☐ For your information: _____

☒ The following number is to be used for reference regarding these pages:
Cross-Ref 87 (62-109090-2027)

XXXXXXXXXXXXXXXXXXX
X DELETED PAGE(S) X
X NO DUPLICATION FEE X
X FOR THIS PAGE X
XXXXXXXXXXXXXXXXXXX

XXXXXX
XXXXXX
XXXXXX

FBI/DOJ

9-30-64

REC- 57 ... 236

1- Mr. Mohr
1- Mr. Callahan (A.M. Newman)
1- Mr. Casper
1- Mr. Conrad
1- Mr. DeLoach
1- Mr. Evans
1- Mr. Gale
1- Mr. Sullivan
[redacted]
1- Mr. Tavel
1- Mr. Trotter
1- Mr. Belmont
1- Mr. Rose
[redacted]

EX 102

To: All SACs
All Legats

755

From: Director, FBI (62-109090)

THE PRESIDENT'S COMMISSION ON
THE ASSASSINATION OF
PRESIDENT KENNEDY

Under separate cover you will be receiving one copy of the above Commission's report. Dallas and New Orleans will receive three copies each.

Subsequent volumes of the Commission's report containing backup material, etc., will be furnished to you when available. You should not index the report or subsequent volumes as this will be done at the Bureau.

Inquiries received concerning the report should receive a "no comment" from you and referred to the Bureau. Those inquiries obviously not requiring a reply should be submitted with a recommendation that no further action will be taken UACB.

Those inquiries appearing to require a reply should be similarly sent; however, should include your specific recommendation as to how the particular inquiry should be answered and if readily available, reference should be made to the volume and page of the Commission's report relating to the inquiry in question.

You should be guided by the nature of the inquiry as to the means of referring it to the Bureau.

One copy of all inquiries should be sent to Dallas by ...inental field offices including Anchorage, Honolulu, and San Juan. ...al attache referrals should be prepared so that one copy can be disseminated to Dallas by the Bureau.

[redacted] (152)

NOTE: See Rosen to Belmont memo captioned as above, dated 9-29-64.
RDR:mmb.

1- 62-109060 Assassination of President Kennedy
1- 105-82555 Lee Harvey Oswald AKA
1- 44-24016 Jack Leon Ruby
1- Foreign Liaison

MAILED 25
OCT 1 1964
COMM-FBI

1964

...tor to All SACs, All Legats
Re: THE PRESIDENT'S COMMISSION
ON THE ASSASSINATION OF
PRESIDENT KENNEDY

44423

756

Dallas is instructed to open a new file if not already done under the above caption. Any additional action necessary for Dallas will be furnished by the Bureau. Dallas will be considered office of origin in all such inquiries.

4-750 (Rev. 4-17-85)

XXXXXX
XXXXXX
XXXXXX

FEDERAL BUREAU OF INVESTIGATION

FOIPA DELETED PAGE INFORMATION SHEET

_____ Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

☐ Deleted under exemption(s) _____ with *no* segregable material available for release to you.

☐ Information pertained only to a third party with no reference to you or the subject of your request.

☐ Information pertained only to a third party. Your name is listed in the title only.

☐ Documents originated with another Government agency(ies). These documents were referred to that agency(ies) for review and direct response to you.

_____ Pages contain information furnished by another Government agency(ies). You will be advised by the FBI as to the releasability of this information following our consultation with the other agency(ies).

_____ Page(s) withheld for the following reason(s):

_____

_____

☒ For your information: The enclosure to this serial has not been reproduced as it can be obtained at any public library.

☒ The following number is to be used for reference regarding these pages:
Cross Ref 88 (62-109060-236)

XXXXXXXXXXXXXXXXXXX
X DELETED PAGE(S) X
X NO DUPLICATION FEE X
X FOR THIS PAGE X
XXXXXXXXXXXXXXXXXXX

XXXXXX
XXXXXX
XXXXXX

FBI/DOJ

Federal Bureau of Investigation

United States Department of Justice
NEW YORK, N. Y.

April 17, 1939.

EJW:PB
32-00

Director,
Federal Bureau of Investigation,
New York, N. Y.

Re: COURT PROCEDURE IN PEOPLE VS. MacLEVY.
INTRODUCTION OF FINGERPRINTS IN
HABITUAL CRIMINAL CASE.

Dear Sir:

There is enclosed herewith as of possible interest to the Bureau, a clipping taken from the New York "Sun" of March 28, 1939, dealing with a new procedure of evidence adopted in the New York case of PEOPLE VS. MacLEVY.

It is pointed out that in this case fingerprints from states other than New York were introduced as evidence in a novel fashion for the purpose of proving previous felony convictions in order to establish basis for a habitual criminal charge against the defendant.

Very truly yours,

M. E. GURNEA,
Inspector.

Encl.-1

1 ENCL. T

RECORDED & INDEXED

62-30608-11

FEDERAL BUREAU OF INVESTIGATION
APR 18 1939
U. S. DEPARTMENT OF JUSTICE

Mr. Tolson
Mr. Nathan
Mr. E. A. Tamm
Mr. Clegg
Mr. Coffey
Mr. Crowl
Mr. Egan
Mr. Foxworth
Mr. Glavin
Mr. Harbo
Mr. Lester
Mr. McIntire
Mr. Nichols
Mr. Quinn Tamm
Mr. Tracy
Miss Gandy

RECORDED COPY FILED IN 62-2-30

New York Sun, 3/28/39

Foreign Fingerprints.

A unanimous decision of the Appellate Division of the Supreme Court, First Department, establishes a precedent which, if sustained by the Court of Appeals, may simplify the procedure of convicting fourth offenders through fingerprint records made outside New York State. Heretofore the rule, as laid down by the Court of Appeals in People vs. Reese (258 N. Y., 89), has been that Section 482-b of the Code of Criminal Procedure has no application to fingerprints taken in a foreign jurisdiction. This section provides that records of previous convictions of persons whose fingerprints are identical with those of a defendant shall be presumptive evidence of the fact of such previous convictions.

In the new case, People vs. MacLevy, the defendant was convicted as a fourth offender. Fingerprint evidence was offered to show two previous convictions in New York, one each in Oregon and Pennsylvania. Also in evidence was a "pedigree statement" of the accused taken when he was indicted once before and arraigned in the Court of General Sessions. In this he is alleged to have acknowledged two convictions in New York for grand larceny in the second degree, one in Oregon and one in Maryland for forgery.

In the face of this testimony, the defendant stood mute. The trial court ruled that Section 482-b was applicable to his case. The Appellate Division holds that this ruling was erroneous, in so far as the outside convictions were concerned; that the statute should not have been adverted to unless the charge was qualified. It also holds, however, that the error was harmless, saying that the mode of proof was proper and established the prior convictions without reasonable doubt. Arguing that the same result would necessarily be arrived at if the case were tried again, it sustained the conviction and a sentence of imprisonment for from fifteen years to life. This apparently means that fingerprint evidence, wherever obtained, if sustained by corroborative testimony, is sufficient to establish a presumption of guilt which a defendant is obliged to combat.

62-30608-11

JOHN EDGAR HOOVER
DIRECTOR

CC-28

Federal Bureau of Investigation
United States Department of Justice
Washington, D. C.

JKM:BK

March 6, 1943

Mr. Tol
Mr. E. A
Mr. Cle
Mr. Gla
Mr. Lad
Mr. Nic
Mr. Rose
Mr. Tra
Mr. Car
Mr. Ga
Mr. Hend
Mr. Kram
Mr. McGui
Mr. Harbo
Mr. Quinn
Tele. Roo
Mr. Nease
Miss Beahm
Miss Gandy

MEMORANDUM FOR THE DIRECTOR

Re: ADMISSIBILITY OF CONFESSIONS FROM SUBJECTS IN CUSTODY PRIOR TO COMMITMENT

I thought you would want to see Judge Holtzoff's opinions as to the procedures to be followed by the Bureau as a result of the McNabb and Anderson decisions in Supreme Court last Monday without delay, and they are accordingly attached.

He called Mr. Mumford to his office to hand it to him and at the time offered to be of any further assistance possible, such as helping revise the waiver of custody form if you desired to follow his suggestion as contained in the latter portion of his memorandum. Your deep appreciation for his expeditious study of this matter was, of course, conveyed to him.

The waiver of custody form is being studied along the lines Judge Holtzoff suggested and appropriate recommendations will be made to you in the immediate future concerning it and advice will be furnished the field.

Respectfully,

D. M. Ladd

1 ENCLO.

Attachment

RECORDED 62-73212-X
B
9 MAR 22 1943

EX-50

Jamm:
Portions of this particularly as to legality of waivers may be included in memo to A.G. H.

FOR VICTORY BUY UNITED STATES SAVINGS BONDS AND STAMPS

ADDRESS REPLY TO
"THE ATTORNEY GENERAL"
AND REFER TO
INITIALS AND NUMBER

DEPARTMENT OF JUSTICE

WASHINGTON, D.C.

March 5, 1943.

MEMORANDUM FOR HONORABLE J. EDGAR HOOVER
DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

Re: McNabb v. United States, and
Anderson v. United States.

In accordance with Mr. Mumford's request, I have closely examined the decisions handed down by the Supreme Court on March 1, 1943, in the cases of Benjamin McNabb and others v. United States, and M. C. Anderson and others v. United States.

In each case the opinion was written by Mr. Justice Frankfurter, while Mr. Justice Reed dissented. Mr. Justice Rutledge took no part in the decision of either case, while Mr. Justice Jackson took no part in the decision of the Anderson case. Consequently, the decision in the McNabb case was by a vote of 7 to 1, and in the Anderson case by a vote of 6 to 1.

1 ENCLO.

RECORDED
ENCLOSURE
62-73212-X5
9 MAR 26 1943

Each case involved the admissibility of confessions. In the McNabb case the defendants had been convicted of murder in the second degree in the United States District Court for the Eastern District of Tennessee, the victim of

the murder being an Agent of the Alcohol Tax Unit of the Treasury Department. The case was investigated by the Alcohol Tax Unit.

In the Anderson case the defendants were convicted of a conspiracy to damage property owned by the Tennessee Valley Authority, the specific offense being the dynamiting of power lines of the Tennessee Valley Authority. In the Anderson case the defendants were arrested by the local sheriff and made a confession to Agents of the Federal Bureau of Investigation while they were in the custody of the local sheriff and before they were arrested by the Agents and made Federal prisoners.

In each case one of the principal items of evidence was the confession of the defendants. In each instance the Supreme Court held that the confession was inadmissible and reversed the conviction. In each of the two cases the court called attention to the statutes which require a prisoner after his arrest to be brought before a committing magistrate (U. S. Code, Title 5, Section 300 (a); Title 18, Section 595). It should be observed in passing at this point that these statutes have always been construed as meaning that the prisoner must be brought before a committing magistrate within a reasonable time after arrest. The word "immediately"

used in the first of the above mentioned statutes is not to be applied in its literal sense, but is to be construed as meaning within a reasonable time or without unnecessary delay. This is a point that the court does not consider or discuss but assumes that under the circumstances of the cases before it, unreasonable delay in bringing the prisoners before a United States Commissioner in fact existed.

It appears that in the McNabb case the prisoners were detained by the Alcohol Tax Agents, first in a detention room in the Federal building in Chatttanooga, and then in the local jail, atleast two days before they were brought before a commissioner. They were arrested at 3:00 o'clock on a Thursday morning and were in custody all of that day and all day Friday. It does not appear when they were taken before a commissioner, but apparently their appearance before the commissioner did not take place before Saturday morning at the earliest.

In the Anderson case the defendants were arrested by the sheriff on April 24, and were confined by him in the local Y.M.C.A. for about six days before they were taken before a United States Commissioner.

In its opinion in the McNabb case, the court emphasized the fact at two different points in the opinion that the

defendants were kept in the detention room for about fourteen hours where there was nothing they could sit or lie down on except the floor. The court also emphasized the fact that the defendants were men of little education and had never been far away from home.

In the Anderson case, the Court called attention to the fact that the prisoners were unlawfully held, some for days, and subjected to long questioning in the hostile atmosphere of a small company-dominated mining town.

While on first reading the cases seem to hold that a confession is not admissible in evidence, if obtained from a defendant after his arrest and before he is brought before a committing magistrate, and if the interval between his arrest and his appearance before the magistrate is longer than it should have been under the circumstances, a more intensive study of the two opinions, however, casts considerable doubt on this conclusion. It can hardly be said that the Court in a clear cut fashion goes as far as that because it calls attention to the fact in the McNabb case that the defendants were not properly treated by the officers, in that they were held for fourteen hours in a room in which they could neither sit down or lie down except on the floor; and in the Anderson case the Court called attention to the

fact that the defendants were confined and questioned in a hostile atmosphere. There must have been some purpose in the court's calling attention to these circumstances. If they were absolutely irrelevant to its decision the Court either would not have brought them out, or else would have indicated that they were not pertinent to the result.

The decisions may be construed, therefore, as holding that if a defendant is held too long before being brought before a commissioner under harsh and hostile circumstances and subjected to what may be considered as ill-treatment, then a confession obtained during such an interval will be inadmissible in evidence, even without proof of actual duress. It seems to me that it is impossible to determine actually what the court decided in these cases, - whether it intended to enunciate the general broad proposition suggested above, or whether its decision is the more narrow one as just indicated. The opinions are somewhat ambiguous on that point.

It does not seem to me that as a practical matter the Federal Bureau of Investigation is called upon to change its practice on the basis of these decisions. My understanding is that the Bureau always brings its prisoners before a commissioner within a reasonable time, unless the prisoner in writing waives such appearance.

If a defendant is arrested on a Saturday afternoon or Saturday evening, obviously it is sufficient compliance with the requirement to bring him before a commissioner on Monday morning. If a person is arrested on the afternoon or evening of any other day of the week, it would be sufficient to bring him before a commissioner on the morning following his arrest. If a person is arrested early in the morning, he would have a right to be brought before a commissioner the same day, unless the arrest takes place at some point that is far distant from the nearest magistrate or for some other reason no magistrate is available that day.

An additional question propounded to me by Mr. Mumford was whether a prisoner could waive the right to be brought before a commissioner and whether under such circumstances a confession made by him would be admissible in evidence. In my opinion this question should be answered in the affirmative. Every constitutional and legal right may be waived by the person to whom such right is accorded. For example, the Supreme Court has held that a defendant in a criminal case may waive the right of counsel; that he may waive the right to a trial by jury; that he may waive the privilege against self-incrimination; that he may waive the privilege against an unreasonable search and seizure, etc. It would

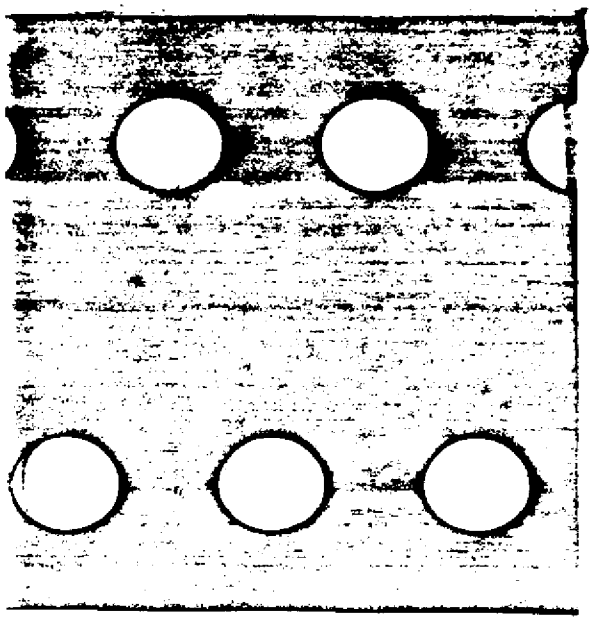
seem necessarily to follow that by the same token a defendant under arrest may waive his legal right to be taken promptly before a committing magistrate. Consequently, the practice of the Bureau of accepting written waivers from defendants in cases where such course appears desirable of his right to be taken promptly before a United States commissioner, is entirely legal, ethical, and proper and is not inconsistent with anything stated by the Supreme Court in the McNabb and Anderson cases. In my opinion there is no reason why the use of such waivers should not be continued whenever the Bureau desires to use them and the defendant is desirous of signing one.

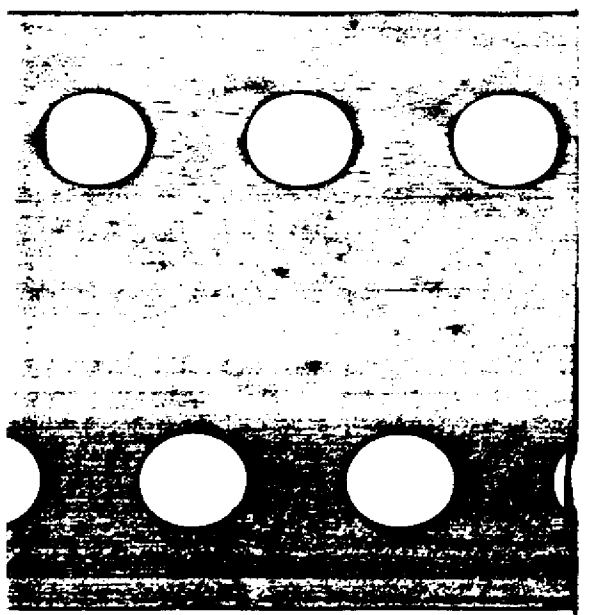
I suggest, however, that the form of the waiver be revised and enlarged so as to provide in effect not only that the defendant submits to detention and is willing to remain in the custody of the Bureau, but also that he has been expressly informed of his right to be taken promptly before a United States commissioner and that he expressly and with knowledge of such right, waives it. There is, of course, a danger that some may claim that the defendant may have been over-awed into signing such a waiver. I suggest, therefore, that for the Bureau's protection, whenever it is feasible, the waiver should be witnessed by some person other than a Bureau agent.

Manifestly, this will not always be practicable, but in any case in which it can be done without detriment to the case involved, it may prove helpful. It occurs to me, for example, that a physician who is used by the Bureau in such cases, might well act and sign as a witness to the waiver.

Alexander Holtzoff

Alexander Holtzoff.





FROM -

DO-7

OFFICE OF DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

TO
OFFICIAL INDICATED BELOW BY CHECK MARK

Mr. Tolson	( )
Mr. E. A. Tamm	( )
Mr. Clegg	( )
Mr. Coffey	( )
Mr. Glavin	( )
Mr. Ladd	( )
Mr. Nichols	( )
Mr. Rosen	( )
Mr. Tracy	( )
Mr. Carson	( )
Mr. Hendon	( )
Mr. McGuire	( )
Mr. Mumford	( )
Mr. Piper	( )
Mr. Quinn Tamm	( )
Mr. Nease	( )
Miss Gandy	( )
	( )

See Me	( )
Note and Return	( )

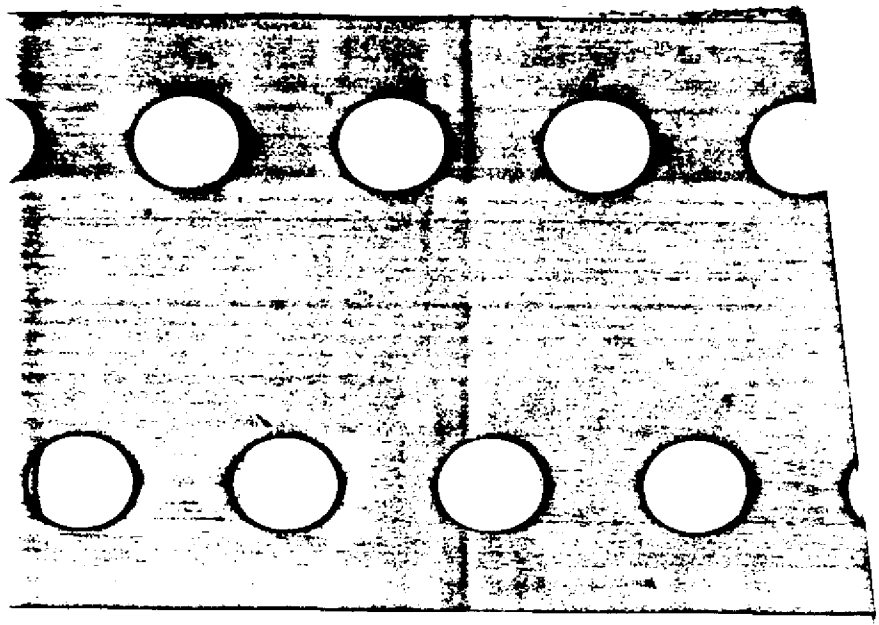
Remarks:

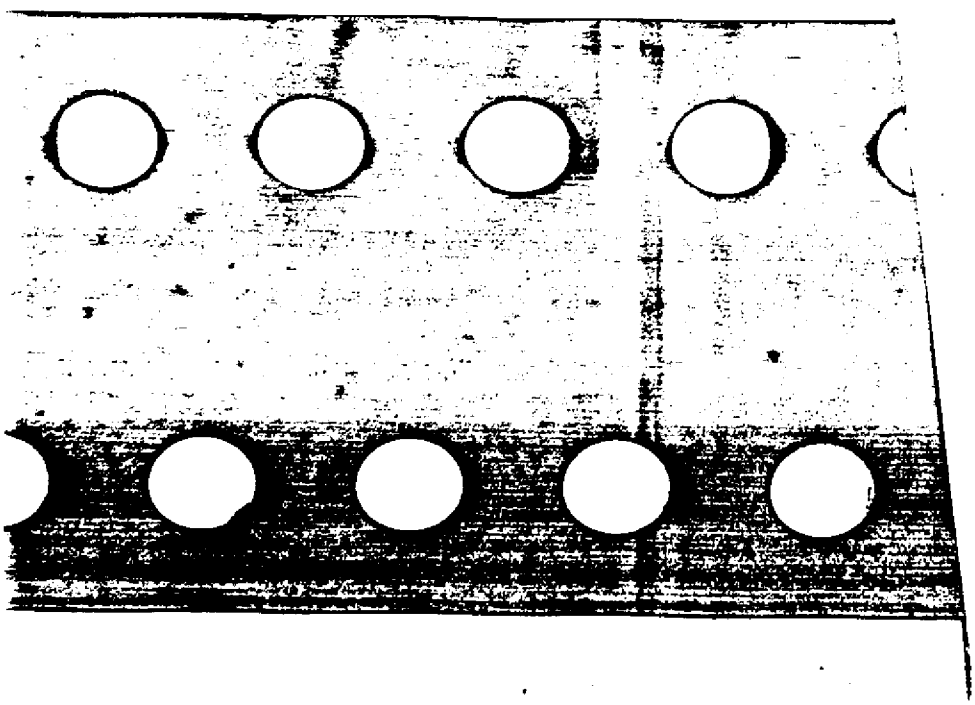
Prepare memo for A.G. re our procedure of arrest waivers etc + attach proposed new waiver. Also cite court cases to support our use of waivers.

H.

66-1973-67

ENCLOSURE





FEDERAL BUREAU OF INVESTIGATION

4-9 1943

Room 5744
Extension 351

To:
- Director
- Mr. Tolson
- Mr. Edward [illegible]
- Mr. Clegg
- Mr. Coffey
- Mr. Glavin
- Mr. Ladd
- Mr. Nichols
- Mr. Rosen
- Mr. Tracy
- Mr. Carson
- Mr. Laughlin
- Mr. McGuire
- Mr. Nease
- Miss Gandy
- Personnel Files Section
- Files Section
- Mrs. Skillman
- Mrs. Brown
- Miss Weber

CARLSON

See Me — For Appropriate Action

Send File — Note and Return

If not previously do
suggest bring to attenti
of Gous men who ha
an arrest.

R. C. Hendo

March 10, 1943

Re: Arrest, Detention and Interrogation
of Persons in Cases Handled by the
Federal Bureau of Investigation

The purpose of this memorandum is to set forth the rules, regulations and practices of the Federal Bureau of Investigation in the arrest, detention and interrogation of persons involved in criminal investigations.

ARREST

1. With warrants outstanding.

Special Agents of the Federal Bureau of Investigation are empowered by Section 300A, Title 5, United States Code, to serve warrants of arrest issued under the authority of the United States. Sections 2A and 2B of the Official Manual of Instructions of the Federal Bureau of Investigation, in the possession of all Special Agents, quote the above mentioned statute and provide by way of policy that in ordinary cases the warrants of arrest are actually served by the United States Marshal after the subject has been located by FBI Agents. In some situations where a representative of the United States Marshal is not readily available Special Agents of the FBI actually arrest the subjects under the power granted in the above mentioned statute. In other instances local police authorities place the persons for whom warrants of arrest in FBI cases have been issued in State custody until a United States Marshal is available.

2. Without warrants

Special Agents of the Federal Bureau of Investigation are empowered by Section 300A, Title 5, United States Code, to make arrests without warrants for Federal felonies in cases where the Agent has reasonable ground to believe the person arrested is guilty and where there is a likelihood of his escaping before a warrant can be obtained.

The policy and practice of the FBI in securing the custody of persons against whom no warrant has been issued when the requirements of Section 300A, Title 5, United States Code, are met demand that where local authorities are requested to make the actual apprehension Federal prosecution must have been previously authorized by the United States Attorney. If a Special Agent is to make the actual apprehension himself he must obtain prior authority from Bureau headquarters unless an emergency situation exists requiring instantaneous action.

The above requirements are set forth in Section 2C of the Official Manual of Instructions.

 62-72312-X5

QUESTIONING OF PERSONS

When it is desired to question a person in a case at a Federal Bureau of Investigation Field Office, that person is invited to the Field Office. This questioning is based on his voluntary presence. Where he is to be questioned more than a reasonable length of time he is requested to sign a written consent to remain in the field office or the place of questioning. Since this is a purely voluntary arrangement on the part of the person questioned and the circumstances vary in almost every situation, the form of consent varies. In all instances, however, the form of consent includes a statement that it is voluntarily given without threats, promises or duress of any kind. If the person being questioned voluntarily agrees to remain in a Bureau Field Office while outside investigation is being conducted as a result of information obtained from him, there is no general limitation of the length of time he may agree to remain.

PROCEDURE FOLLOWED WHERE PRISONER IS UNDER ARREST IN FBI CUSTODY

1. Universal Rule

The prisoner is always immediately taken before the nearest United States Commissioner for arraignment. Immediately, according to Departmental interpretation transmitted to this Bureau, means the earliest practicable time when a United States Commissioner is available. For example, if a prisoner is arrested after the nearest office of the United States Commissioner is closed for the day or the weekend, immediately is taken to mean during the morning of the next business day.

2. Exception

The only exception to taking a prisoner before a United States Commissioner immediately, which is allowed by the rules of the FBI, is when a waiver of his right to immediate arraignment has been voluntarily given in writing. The rules of the FBI require prior approval from headquarters in Washington before a Special Agent may invoke this exception.

There are two situations when such a waiver may be obtained. One is where the prisoner is to be removed to another judicial district. The other is where the prisoner waives immediate arraignment in the district of prosecution.

(a) Approved Waiver Forms for Removal

There are two waiver forms officially issued by the FBI headquarters for use in the field when it is desired to defer the arraignment of a prisoner subject to removal. These two forms have been approved by the Department and will be briefly discussed and attached hereto as exhibits.

(1) Waiver of Removal Form No. FD-44

This form covers the situation where the United States Marshal is to effect the physical removal of the prisoner and after execution it is given to the United States Commissioner to use in lieu of a removal hearing. In it the prisoner is informed of the charge against him and he voluntarily waives a hearing before any court, Judge, Commissioner or Magistrate in connection with removal and agrees to be removed to the district of prosecution without further objection. The prisoner states he signed this waiver without fear and without any favor or promise of reward.

EXHIBIT NO. 1 - Waiver of Removal Form No. FD-44.

(2) Waiver of Removal Form No. FD-8

This form covers the situation where Bureau Agents desire to physically remove the prisoner and it is retained by the FBI. In this form the prisoner states he has been informed he has the right not to be removed from the judicial district in which he is taken into custody without first being arraigned and he waives that right. He freely consents and agrees to be removed by representatives of the Department of Justice in their discretion to any judicial district of the United States, either for the purpose of questioning or for the purpose of being held to answer any criminal charge. The prisoner states he executes the waiver without any pressure, compulsion or coercion of any kind having been used.

EXHIBIT NO. 2 - Waiver of Removal Form No. FD-8.

(b) Waiver Form for Delayed Arraignment in the District of Prosecution

The waiver form executed in situations where the prisoner is taken into custody in the district of prosecution has in the past included a statement that the prisoner has been advised of his right to be taken before a Commissioner but waives that right and consents to remain in the continuous custody of the FBI while outside investigation is being conducted. The prisoner states this waiver is given voluntarily and not because of any threat, promise or duress of any kind and that such consent to delayed arraignment is not to be construed as an admission of guilt. This form contains the date and time signed. It has been generally witnessed by two witnesses.

There is attached a copy of a typical waiver of arraignment form referred to above which contains the limitation of seventy-two hours, no longer than which the prisoner will be held without arraignment. It is recognized that some limit should be placed in a waiver of this kind and seventy-two hours has been arrived at as a reasonable length of time with Departmental approval.

As previously stated the arraignment of a prisoner in the custody of the FBI is not delayed beyond the statutory requirement except in unusual cases where prior Bureau headquarters' approval has been obtained. It is generally used in situations where the subject taken into custody is the first of a group of subjects from whom valuable information is obtained leading to establishing the identity, whereabouts, and complicity of others in the same crime. The publicity attendant on the arraignment of such a person would militate strongly against the early successful termination of the investigation in question.

EXHIBIT NO. 3 - Typical Waiver of Arraignment Form.

JUDICIAL INTERPRETATION OF LEGALITY OF WAIVERS

The FBI is not aware of any instances where a case has turned on a judicial interpretation that any of the waiver forms mentioned above or used in Bureau cases are illegal. Searches have been made of the authorities without revealing any decided case which interprets any of the waivers used.

With regard to the question of whether a person can waive Constitutional rights afforded him, the cases hold that he can. The waiver, of course, must be voluntary and of extreme importance is the proposition that the person must know the right he has in order to legally waive it.

There follow a few citations on the general question that Constitutional rights may be waived.

The case of Ralston v. Cox, 123 Fed. (2nd) 196, Fifth Circuit Court of Appeals, 1941, 315 U.S. 796 (certiorari denied) holds "If Constitutional rights may be waived, as is well settled, they are also subject to the legal principles of Estoppel. There are cited in this case the following three Supreme Court cases.

The case of Johnson vs. Zerbst, 304 U.S. 458, holds that accused has the right to waive the assistance of counsel.

The case of Patton v. U.S. 281, U.S. 276, holds that the accused may waive the right of trial by jury even though the Sixth Amendment to the Constitution guarantees the right of trial by jury.

The case of Mangum v. Frank, 237 U.S. 309, holds that the accused may waive his right to be brought before the jury when a verdict is rendered in a criminal case.

The case of U.S. v. Senft, 272 Fed. 134, a district court case, holds that a waiver of preliminary examination before a United States Commissioner by an accused with full knowledge and appreciation of his right to have a preliminary hearing, will not be set aside by the court and a hearing ordered.

Corpus Juris, at Volume 16, Section 565 (9) states "a preliminary examination is a personal right or privilege and accused may waive it.....although cases are not wanting in which the practice of permitting a waiver has been discontinued and even considered altogether improper."

With regard to the legality of a prisoner waiving his right to an immediate arraignment before a committing magistrate, the case of Bishop v. Lucy, et al, Court of Civil Appeals of Texas (1899), 50 Southwestern Reporter 1029, holds that a prisoner may waive his statutory right to be promptly taken before a magistrate after his arrest by consent to confinement pending an investigation by police authorities. In this case, a city marshal, after having been called to the scene of a burglary, arrested a suspect within two blocks who answered the general description of the burglar. This was at 4:00 A.M. He was placed in the local jail. Before 9:00 A.M. the same morning, February 12, 1898, the city marshal gave the defendant the option of being immediately carried before a magistrate or of remaining in the city prison until an investigation could be made by the city marshal and police officers to determine whether they would file a charge of burglary against the defendant. The defendant expressed his preference to remain and not to be arraigned.

The case of Cannon v. American Indemnity Company, Court of Civil Appeals of Texas, 1934, Southwestern Reporter, Second Series 815, which was a suit for false imprisonment, held that a prisoner could waive his right to an early trial and cited the Bishop v. Lucy case supra and several other Texas decisions.

By memorandum dated March 5, 1943, Mr. Alexander Holtzoff interpreted the decisions of the United States Supreme Court in the cases of Benjamin McNabb and others v. United States, and M. C. Anderson and others v. United States.

Mr. Holtzoff stated the court in each case called attention to the statutes which require a prisoner after his arrest to be brought before a committing magistrate. (Section 300A, Title 5, United States Code). Mr. Holtzoff stated that as a practical matter the FBI is not called upon to change its practices on the basis of these decisions. His understanding, which is correct, is that the FBI always brings its prisoners before a Commissioner within a reasonable time unless the prisoner in writing waives such appearance.

Mr. Holtzoff stated he believes the prisoner can legally waive his right to be brought before a Commissioner immediately and a confession taken in the interim to be admissible. He states every Constitutional and legal right may be waived by the person to whom such a right is accorded and mentions that a defendant in a criminal case may waive the right of counsel, the right to a trial by jury and other rights. He says it would necessarily follow that by the same token a defendant under arrest may waive his legal right to be taken promptly before a committing magistrate. Consequently, the practice of the FBI of accepting written waivers from defendants, in cases where such course appears desirable, of his right to be taken promptly before a Commissioner is entirely legal, ethical and proper and is not inconsistent with anything stated by the Supreme Court in the McNabb and Anderson cases. In Mr. Holtzoff's opinion there is no reason why the use of such waivers should not be continued if the defendant is desirous of signing one.

Mr. Holtzoff suggested that the waiver provide in addition to other things that the prisoner be expressly informed of his right to be taken before a United States Commissioner and that he expressly and with knowledge of such right, waives it.

[redacted]

1. All Prisoners

The Bureau has long recognized the possibility of false allegations of duress or improper conduct by its Agents when interrogating prisoners in its custody. It has developed and enforced numerous rules to assure the courts and juries that all statements or confessions made by prisoners or subjects to its Agents were obtained purely voluntarily without any promises or threats whatever. It has long been a strict rule that any Agent who obtains a confession by the use of duress or third degree tactics whatever shall be summarily dismissed with prejudice.

Some of the rules of the Bureau regarding this matter are that the prisoner shall be promptly examined by a physician to determine that he is in good health and to treat any minor ailment; that he shall be made comfortable; that he shall be offered meals at least three times daily with food of his choice, interspersed with inquiries as to whether he desires food between meals; that he shall be supplied with tobacco if requested; that water shall be offered the prisoner frequently; that the facilities of a rest room are available wherever desired; that he is advised if he desires to rest during the day; that he is afforded the opportunity for ample sleep at night; that at any time he states he is tired and wants to cease answering questions he is permitted to rest. The detailed rules covering the detention of prisoners are set out in Section 2-3 of the official FBI Manual of Instructions. Precautions are also taken to assure that the prisoner will not be able to inflict injury either upon himself or upon others with whom he comes in contact.

The Field Offices of the FBI are provided with detention rooms to safeguard the custody of the prisoners. These detention rooms are equipped with comfortable beds and appropriate linen and blankets. The detailed rules covering the detention room facilities are set out in Section 2[illegible] of the official FBI Manual of Instructions.

2. Female Prisoners

When a female prisoner is in custody it is required that a matron be in attendance at all times and the rules regarding the matron's duties are set out in detail in Section 2[illegible] of the official FBI Manual of Instructions. If a matron is not immediately available a competent female Bureau employee is in attendance at all times until her arrival.

3. Maintenance of Log

In order to nullify any subsequent claim that a prisoner in the custody of the FBI has received improper treatment it is required that a minute and detailed log be maintained for each prisoner recording all of the events occurring during his detention. This log records such things as the

time the prisoner is first taken into custody, the time he is examined by a physician, the time he is offered food, the time he is offered rest, the time he is allowed access to the rest room, and the time his custody is surrendered and to whom. As a matter of fact it covers practically every thing which happens while a prisoner is in custody. The detailed rules regarding the keeping of the log are set forth in Section 2K of the official FBI Manual of Instructions.

[redacted] VISITORS TO PRISONERS IN FBI CUSTODY

Section 2U of the official FBI Manual of Instructions provides that absolutely no one outside the Bureau is permitted to interview prisoners in its custody except upon prior authorization from Bureau headquarters in Washington.

CONFESSIONS

The FBI has always insisted that its Agents carefully abide by more than the minimum legal requirements against duress when interrogating subjects or prisoners. Special Agents are assiduously instructed in their original training which teachings are consistently reiterated, that every effort must be made to avoid any justifiable claim by any defendant that improper, illegal or unethical tactics have been used to obtain a confession. Section 2B (6) of the official FBI Manual of Rules and Regulations provides dismissal with prejudice for any employee who engages in such practices, and this section is set out verbatim:

> "Improper conduct of employees of the Bureau by the exercise of brutality, physical violence of any kind, duress, or intimidation toward subjects of investigations or any persons connected therewith other than the exercise of such force as may be necessary to properly defend the person of Bureau representatives from violence, will be punished by the dismissal with prejudice of the employee guilty of such conduct. Resignations will not be accepted."

[redacted] BULLETIN TO ALL INVESTIGATIVE EMPLOYEES

There has been prepared, approved, and is in the process of being distributed to all investigative employees, a bulletin calling attention to the recent decisions of the United States Supreme Court in the case entitled "McNabb et al vs. the United States" and the case entitled "Mitchell Clifton Anderson et al vs. the United States." This bulletin reiterates the absolute necessity of strict compliance with previous instructions requiring Special Agents to immediately take all persons arrested by them before a committing officer.

EXHIBIT NO. 4 - Bureau Bulletin to all investigative employees reiterating Bureau policy regarding immediate arraignment.

UNITED STATES OF AMERICA)
)
vs.)
)
_____)

In the District Court of the
United States

For the _____ District of

_____

I, the undersigned, charged with violating Sec. ____, Title _____, U.S.C.A., do hereby waive hearing before any court, judge, commissioner or magistrate in this district and all other proceedings for removal therefrom, and agree that the judge of this district may forthwith issue, and the marshal execute, a warrant for my removal therefrom to the _____ District of _____ to answer there any proceedings begun in, or processes issuing from, the District Court of the United States of the said district against me.

I make this waiver voluntarily and not through fear or because of any favor or promise of reward.

Signed at _____, _____, 194_.

_____

_____
Witness

EXHIBIT NO. 1 - Waiver of Removal Form No. FI-44

(Date)

I, _____, having been first fully informed by _____, Special Agent of the Federal Bureau of Investigation of the Department of Justice, that I have the right not to be removed from the Judicial District in which I was taken into custody without being first arraigned before a duly authorized judicial officer or magistrate and except by virtue of a warrant of removal issued for that purpose, do hereby waive my right to be arraigned before a duly authorized judicial officer or magistrate and my right not to be removed from the said judicial district except by virtue of a warrant of removal issued for that purpose, and do hereby freely consent and agree that I may be forthwith removed by representatives of the Department of Justice in their discretion to any judicial district of the United States, either for the purpose of questioning or for the purpose of being held to answer any criminal charge.

I am executing this waiver and consent of my own free will, and without any pressure, compulsion or coercion of any kind whatsoever.

The foregoing document was read to me before I signed it, and I fully understand its meaning and purport.

_____

Witnesses:

EXHIBIT NO. 2 - Waiver of Removal Form No. FD-8.

I, _____, having been fully advised of my right to be taken before a Commissioner, Judge or other committing magistrate immediately for arraignment, do hereby consent to waive that right and to remain in the continuous custody of the Special Agents of the Federal Bureau of Investigation, U. S. Department of Justice, while information furnished or to be furnished by me regarding any alleged violation of the laws of the United States is being verified but in no event longer than 72 hours from the time noted hereon. I give this consent of my own free will and accord, not because of any threat or promise made to me, and such consent on my part is not to be construed as an admission of guilt in any manner whatsoever.

This paper has been read to me and the rights referred to have been explained to me. I affix my signature below to evidence my agreement as set forth above.

_____ _____

WITNESS:

_____
Special Agent, FBI
U. S. Dept. of Justice

_____

EXHIBIT NO. 3 - Typical Waiver of Arraignment Form.

3/10/43

STRICTLY CONFIDENTIAL

BUREAU BULLETIN NO.
First Series 1943

TO ALL INVESTIGATIVE EMPLOYEES:

The following observations, suggestions, and instructions are submitted:

THE ADMISSIBILITY OF STATEMENTS TAKEN BEFORE COMMITMENT

Because of the extreme importance to the Bureau's investigative operations, your attention is called to the opinion of the Supreme Court on March 1, 1943, in the case entitled "McNABB et al vs. THE UNITED STATES."

In this case, the Court ruled that confessions which had been taken from defendants held in custody a period of 48 hours without having been delivered before a committing officer were, therefore, inadmissible in evidence. In support of this decision, the Court cited the empowering statutes which limit the functions of federal officers to make arrests and thereafter immediately taking the prisoner before the committing magistrate. It was indicated that a statement taken from the defendant during the period when the arresting officers were exceeding their authority by holding them without legal commitment was improper.

The above case was cited as authority in the case entitled "MITCHELL CHARLES ANDERSON et al vs. THE UNITED STATES," decided the same day in which the defendants were held in custody six days by state authorities, but, during that period, were questioned by federal officers, resulting in the execution of statements against interest.

In reaching its decision, the Court specifically overruled the Government's contention that the statements should be admissible because they were voluntary.

In view of these decisions, I cannot impress upon you too strongly the necessity for strict compliance with the requirements of the act of June 18, 1934, authorizing Agents of this Bureau to make arrests that "persons arrested shall be immediately taken before a committing officer."

Very truly yours,

John Edgar Hoover
Director

ENCLOSURE No. 4 - Bureau Bulletin to all Investigative Employees reiterating Bureau policy regarding immediate arraignment.

EDGAR HOOVER
DIRECTOR

CC-287

Mr. Tolson
Mr. E. A. Tamm
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Carson
Mr. Coffey
Mr. Hendon
Mr. Kramer
Mr. McGuire
Mr. Harbo
Mr. Quinn Tamm
Tele. Room
Mr. Nease
Miss Beahm
Miss Gandy

Federal Bureau of Investigation
United States Department of Justice
Washington, D. C.

CAG:lg

March 16, 1943

MEMORANDUM FOR MR. ROSEN

RE: CONFERENCE HELD IN OFFICE OF HENRY SWEINHAUT REGARDING THE McNABB AND ANDERSON DECISIONS BY THE SUPREME COURT

I attended a conference in Henry Sweinhaut's Office today relative to the effect of the McNabb and Anderson decisions on Federal criminal procedure. In addition to Sweinhaut and myself, there were present [redacted], Louis B. Schwartz, George Dession, and Irvin Goldstein. The last three mentioned men are from the Criminal Division. The following matters were discussed.

1. POSSIBLE LEGISLATION

This idea was brought up by Schwartz, but it was pointed out that it would be almost impossible to design legislation to cover all the possibilities of arrest, detention and arraignment by the FBI or any other Federal investigative agency, and also that the Constitutional difficulties would be tremendous.

2. THE CREATION OF SOME AGENCY IN THE DEPARTMENT TO PASS UPON EACH CASE

Dession made this suggestion. [redacted] was against it on the ground that it would throw too much of a burden on the Department. It was also pointed out that the administrative detail involved would be tremendous due to the volume of arrests, and it was the general concensus of opinion that such a plan would not be workable. The suggestion was then made that United States Attorneys or their Assistants attend the questioning of suspects and prisoners. I pointed out that this would be physically impossible in view of the fact that many times individuals are questioned at places where no United States Attorney is available.

3. INSTRUCTIONS TO UNITED STATES ATTORNEYS

Schwartz stated that the Attorney General had issued an order that instructions must go out promptly to all United States Attorneys relative to the future handling of confessions. There

62-32212-X7

RECORDED 17 MAR 17 1943

INDEXED

FOR VICTORY BUY UNITED STATES SAVINGS BONDS AND STAMPS

COPIES DESTROYED
11 NOV 6 1964

EX-58

was a great deal of discussion on this point, particularly as to what instructions could be issued. It was generaly agreed that it would be impossible to attempt to define when a confession should be used and when not, and that the only safe procedure for the time being would be for the Department to issue instructions in very general terms cautioning United States Attorneys to examine confessions with great care before attempting to use them in evidence. Sweinhaut stated that he would get in touch with Mr. Tamm when the first draft of this circular was ready.

4. INSTRUCTIONS TO FBI

Sweinhaut asked specifically what our problems were in connection with these decisions. I pointed out that as to arraignments we have been following the dictates of the Statute and taking individuals in custody before the committing officer immediately--and also following the Department's interpretation that the word immediately means as soon as is practical, depending upon the availability of a committing officer. Sweinhaut was of the opinion that the right of arraignment was merely a personal privilege which could be waived by the accused. He did not think that these decisions went so far as to hold that arraignment is a duty on the part of the law enforcement officer which cannot be waived by a subject.

Sweinhaut inquired as to the percentage of cases in which we secure confessions. I told him that in the great majority of our cases we secure voluntary statements which are of value not only to furnish leads in the case, but also as evidence in court. For this reason and also due to the problem presented relative to questioning suspects and subjects prior to arraignment, I told Sweinhaut that the Bureau is desirous of securing an early expression of the views of the Department as to the effect of these decisions on our procedure. At his request I also pointed out generally the content of the memorandum we sent the Attorney General, and he again requested that he be furnished with a copy of the same. If you agree, I will have a copy prepared for him.

Sweinhaut said that he would have to give the matter considerable more thought before attempting to issue any instructions for the Bureau's assistance, and indicated that in the meantime the Bureau will have to carry on with the already established procedures. He also indicated that it would probably be necessary to have additional conferences on this subject in the future.

Respectfully,

[redacted] b6

JOHN EDGAR HOOVER
DIRECTOR

CC-287

Federal Bureau of Investigation
United States Department of Justice
Washington, D. C.

March 16, 1943

EAT:JDR
Call 10:30 AM
Typed 12:00 M

Mr. Tolson
Mr. E. A. Tamm
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Carson
Mr. Coffey
Mr. Hendon
Mr. Kramer
Mr. McGuire
Mr. Harbo
Mr. Quinn Tamm
Tele. Room
Mr. Nease
Miss Beahm
Miss Gandy

MEMORANDUM FOR Mr. Rosen

Mr. Henry Schweinhaut of the Department called to inquire if the Bureau would not want to have a representative present at a meeting to be held at 2:30 PM today in his office for the purpose of discussing the violent impact on criminal law enforcement the decisions in the McNabb and Anderson cases.

In reply to my inquiry, Mr. Schweinhaut said he is working independently of Oscar Cox's people and those of the Solicitor General's office, that, as he sees it, the problem is one for his office to think about. I remarked that the Attorney General told the other two offices to go into the matter, and that we sent to the Attorney General a four or five page memorandum of our views. Mr. Schweinhaut said he would like to have a copy of this memorandum for his people. He added he does not know what will emerge from this matter, but he feels he cannot sit idly by and have the business of his office transacted by someone else.

I advised Mr. Schweinhaut that somebody from the Bureau would come to the meeting in his office this afternoon at 2:30 PM.

Very truly yours,

Edward A. Tamm

FOR VICTORY BUY UNITED STATES DEFENSE BONDS AND STAMPS

Memo Mr. Rosen 3-16-43 CL

COPIES DESTROYED [redacted]
11 NOV 6 1964

RECORDED 62-73212-17
F B I
17 MAR 17 1943

EX-84

HIGH COURT OKs SENTENCE OF YAMASHITA, 6-2 VOTE

WASHINGTON, Feb. 4 (UP).—The Supreme Court today refused to stay the hanging of Japanese Gen. Tomoyuki Yamashita as a war criminal.

It ruled that the doomed "Tiger of Malaya" received a legal trial from the U. S. Military Commission which sentenced him at Manila last Dec. 7 and therefore refused to intervene in the case.

Gen. Douglas MacArthur, as theater commander, will have the last say on the death sentence.

Yamashita was convicted of condoning some 60,000 atrocities by his troops during the conquest of the Philippines.

The court, in a 6 to 2 opinion, written by Chief Justice Harlan F. Stone, endorsed the theory that the laws of war make a military commander responsible for atrocities committed by his troops. Justices Frank Murphy, former U. S. High Commissioner to the Philippines, and Wiley B. Rutledge dissented.

[redacted]

This is a clipping from page ____ of the DAILY WORKER

Date 2-5-46

Clipped at the Seat of Government.

NOT RECORDED
87 FEB 15 1946

REJ:LL

January 25, 1935

MEMORANDUM FOR MR. TAUM

Attached hereto is a copy of that portion of the Congressional Record dated January 24, 1935, that pertains to the Frederick case (War Risk Insurance). It will be noted that the legislation has now passed both Houses of Congress by unanimous vote.

You will recall this is the case that Mr. Beardsley advised the Division that the Supreme Court of the United States was withholding its decision in order that legislation might be put through Congress to keep on the docket a number of War Risk Insurance cases which otherwise would be dismissed because of a lack of a legal disagreement which is provided for in the World War Veterans' Act.

By this legislation, the Division will be called upon to investigate additional War Risk Insurance cases. The ultimate number may run to considerable, inasmuch as cases already dismissed for a lack of a legal disagreement, may be refiled within ninety days from the passage of this act, and if the legislation had not been passed, at least several thousand suits would have been dismissed without prejudice, as being prematurely brought because no valid disagreement had been entered. If this had resulted, it is believed fully fifty per-cent of them would not have been refiled.

Respectfully,

R. E. Joseph.

82-1-299

JAN 30 1935

Inclosure No. 839167 RECORDED & INDEXED

JAN 30 1935

1 yellow

EXCERPT FROM THE CONGRESSIONAL RECORD
DATED JANUARY 24, 1935, PERTAINING TO
THE FREDERICK CASE (WAR RISK INSURANCE)

"MR. HARRISON. Mr. President, I desire to bring to the attention of the Senate a joint resolution reported unanimously yesterday by the Finance Committee and which is now on the calendar. The joint resolution passed the House unanimously. It is with reference to clarifying the definition of disagreement in section 19, World War Veterans' Act, 1924, as amended. It affects a great number of service men in the presentation of their claims. It would permit the claims to go to trial, and the matters involved to be cleared up. A case went to the Supreme Court and the Veterans' Administration and the Solicitor General of the Department of Justice thought the matter so important that an arrangement was made in the Supreme Court for the postponement of the case until legislation could be enacted by Congress clarifying the particular point involved.

"MR. JOHNSON. Mr. President, can the Senator state in just a few sentences the difficulty which has arisen and which is sought to be corrected by the joint resolution?

"MR. HARRISON. Before I ask unanimous consent for the immediate consideration of the joint resolution, I will make a brief statement as to its purposes.

Suit on a contract of war-risk insurance may be filed under the act of July 3, 1930, only after a disagreement exists between the claimant and the Veterans' Administration. The Administrator of Veterans' Affairs, in conformity with an opinion of the Acting Attorney General of September 14, 1931, delegated authority to finally deny claims so as to create the required disagreement to what is called the 'Insurance Claims Council of the Veterans' Administration.' When that council denied a claim the claimant was notified of the denial and definitely told that that was sufficient disagreement on which to file suit. Hundreds of cases went to suit and judgment on this kind of denial and where the judgments were against the Government these judgments have been paid. There are now pending in the courts about 8,000 suits on war-risk insurance and about 90 percent have this same kind of denial.

In a case which arose in the district court in Arkansas the question of the sufficiency of this kind of a disagreement was raised and the court held that there was no disagreement. Appeal to the Circuit Court of Appeals of the Eighth Circuit was taken and that court certified the question to the Supreme Court of the United States. That case, John H. Frederick against the United States, is now pending in the Supreme Court. Motion to defer decision was filed by the Government with the promise to the Supreme Court that legislation would be sought to enact into law the practice and procedure followed by the Veterans' Administration. This resolution will make good the promises which were made to these veterans and on which the veterans acted. In addition, it will permit reinstatement of similar cases which were dismissed and in which the judgments of dismissal have become final. There are about 100 such cases. Further, since it settles by law the practice followed by the Veterans' Administration, it will permit the Veterans' Administration to proceed in its adjudication of approximately 20,000 cases in which insurance is being claimed.

While the joint resolution will protect the cases in court and will permit men to accept as final the denial of their claims by the Insurance Claims Council of the Veterans' Administration, which is delegated authority to so act by the Administrator, it will in no way deprive the veteran of the right of appeal to the Administrator if he does not care to accept the subordinate denial as final.

In other words, this is a measure which the Veterans' Administration favors in order to remove the ambiguity now existing. It will help a great number of World War veterans and ex-service men.

"MR. JOHNSON. As I understand the Senator, the whole design of the measure is to eliminate a technicality which has wrought injustices in veterans' cases?

"MR. HARRISON. The Senator is absolutely right.

"MR. JOHNSON. I have no objection.

"MR. HARRISON. I ask unanimous consent for the immediate consideration of the joint resolution.

"There being no objection, the Senate proceeded to consider the resolution (H. J. Res. 112) to clarify the definition of di-

in section 19, World War Veterans' Act, 1924, as amended, which had been reported without amendment from the Committee on Finance, and which was read as follows:

> Resolved, etc., That a denial of a claim for insurance by the Administrator of Veterans' Affairs or any employee or agency of the Veterans' Administration heretofore or hereafter designated therefor by the Administrator shall constitute a disagreement for the purposes of section 19 of the World War Veterans' Act, 1924, as amended (U. S. C., Supp. VII, title 38, sec. 445). This resolution is made effective as of July 3, 1930, and shall apply to all suits now pending against the United States under the provisions of section 19 of the World War Veterans' Act, 1924, as amended, and any suit which has been dismissed solely on the ground that a denial as described in this resolution did not constitute a disagreement as defined by section 19 may be reinstated within 3 months from the date of enactment of this resolution.

"MR. McNARY. Mr. President, may I ask the Senator from Mississippi if the committee was unanimous in its report?

"MR. HARRISON. It was unanimous. Furthermore, the joint resolution was passed unanimously by the House of Representatives.

"MR. ROBINSON. I understood the Senator to say the measure is recommended by the Veterans' Administration?

"MR. HARRISON. Yes; and action ought to be taken speedily because of the large number of cases which are being held up.

"THE PRESIDING OFFICER. The joint resolution is open to amendment. If there be no amendments, the question is on the third reading of the joint resolution.

"The joint resolution was ordered to a third reading, read the third time, and passed."

OCT 17 1939

THE SUPREME COURT GRANTED THE FEDERAL GOVERNMENT'S PETITION FOR A REVIEW OF THE FIFTH CIRCUIT COURT OF APPEALS DECISION HOLDING THAT MEMBERSHIP IN THE COMMUNIST PARTY IS NOT, IN ITSELF, GROUNDS FOR DEPORTING AN ALIEN FROM THE UNITED STATES.

10/17--R1208P

ADD COMMUNIST CASE

THE CIRCUIT COURT RENDERED ITS DECISION IN RELEASING JOSEPH GEORGE STRECKER, HOT SPRINGS, ARK., FROM THREATENED DEPORTATION, ON A WRIT OF HABEAS CORPUS. DEPORTATION WAS ORDERED FOR STRECKER, BORN IN AUSTRIA, ON THE BASIS OF ADMITTED MEMBERSHIP IN THE COMMUNIST PARTY IN 1932 AND 1933.

10/17--R1209P

INDEXED

COPIES DESTROYED
335 AUG 18 1960

NOT RECORDED
61-7559-3217X10

[redacted]

[redacted]

ATTORNEYS AT LAW
1501-1502 TELEPHONE BLDG.
SAINT LOUIS

August 12, 1933.

Hon. J. B. Keenan,
Ass't. Atty. General,
Washington, D.C.

Dear sir:

I have felt a keen interest in the efforts that are being made to suppress the criminal of the interstate type, and I am enclosing copy of a letter written to Professor Moley, Assistant Secretary of State, which gives the results of my study of the Extradition Clause of the Constitution as the basis of a national agency with power to apprehend and deliver up fugitives from justice, with incidental power to arrest Federal offenders and share with local authorities the work of crime detection.

The letter contains my suggestions at length and I shall not repeat them. Because of your connection with the work and my interest in it, I am sending the copy to you. I do not assume the attitude of knowing it all, and do not speak with authority on the subject, but wanted to bring the proposals before you for your consideration. If there is anything I could do to aid, I should be pleased to have the opportunity of service.

Very truly yours,

[redacted]

b6.

[redacted]

nes v Tobin, 240 U.S.127, 60 L.ed.562:

In the a ove case a person was extradited from one State to other, and after his release in the latter State, a demand for his tradition to the former State was made, to answer to another charge erein. He contested the requisition demand upon the ground that he i not leave the first State voluntarily, and therefore did not flee om justice; but the Court held him to be a fugitive from justice, and dered him extradited. The case is important because of its discussion congressional powers. I quote from page 564, 60 L.ed:

.564: "For the purpose of the solution of the inquiry under this heading, we treat the following propositions as beyond question:

(a) That prior to the adoption of the Constitution, fugitives from justice were surrendered between the States conformably to what were deemed to be the controlling principles of comity. (Kentucky v. Dennison, 24 How. 66, 101, 102, 16 L.ed. 717, 727; 2 Moore, Extradition and Interstate Rendition, pp 820, et seq).

(b) That it was intended by the provision of the Constitution to fully embrace, or rather to confer authority upon Congress to deal with the subject. Prigg v Pennsylvania, 16 Pet. 539, 10 L.ed. 1060; Kentucky v Dennison, supra; Taylor v Taintor, 16 Wall 366, 21 L.ed. 287; Appleyard v Massachusetts, 203 US 222, 51 L.ed. 161, 27 Sup.Ct.Rep. 122, 7 Am.Cas. 1073.

(c) That the Act of 1793 (now Revised Statutes, sec. 5278, Comp. Stat. 1913, sec. 10,126) was enacted for the purpose of controlling the subject in so far as it was deemed wise to do so, and that its provisions were intended to be dominant, and, so far as they operated, controlling and exclusive of State authority. Prigg v. Pennsylvania, 16 Pet. 539, 10 L.ed. 1060; Kentucky v. Dennison, 24 How. 105, 106, 16 L.ed. 728; Mahan v. Justice, 127 US 709, 32 L.ed. 283, 8 Sup.Ct.Rep. 1204; Lascelles v. Georgia, 148 U 537, 37 L.ed. 549, 13 Sup.Ct.Rep. 687.

.565: (Continuing) "We are thus brought to the remaining heading which is: Second. Although the order for rendition was not in conflict, either expressly or by necessary implication, with any of the provisions of the Constitution or statute, was it nevertheless void under the circumstances because it dealt with a subject with which it was beyond the power of the State to deal, and which was therefore brought, as the result of the adoption of the statute, within exclusive Federal control, although no provision dealing with subb subject is found in the statute? To appreciate this question, the proposition relied upon needs to be accurately stated. It is this:

"The Constitution provides for the rendition to a State of a person who shall have fled from justice and be found in another State; that is, for the surrender by the State in which the fugitive is found. This, it is conceded, would cover the case and sustain the authority exercised, as the accused was a fugitive from the justice of Georgia, and was found in Texas. But

the proposition insists that the statute is not as broad as the Constitution, since it provides not for the surrender of the fugitive by the State in which he is found, but only for his surrender by the State into which he has fled, thus leaving unprovided for the case of a fugitive who is found in a State, but who has not fled into such State, because brought into such State involuntarily by a requisition from another. And the argument is supported by the contention that, as the statute exercises the power conferred by the Constitution and is exclusive, it occupies the whole field and prohibits all State action even upon a subject for which the Statute has not provided, and which therefore in no manner comes within its express terms.

But we are of the opinion that the contention rests upon a mistaken premise and unwarrantedly extends the scope of the decided cases upon which it relies. The first, because it erroneously assumes that although the statute leaves a subject with which there was power to deal unprovided for, it therefore took all matters within such unprovided area out of any possible State action. And the second because, while it is undoubtedly true that in the cases relied upon (Kentucky v Dennison, supra, Roberts v Reilly, 116 US 80, 29 L.ed.544, 6 Sup.Ct.Rep. 291; Hyatt v New York, 188 US 691, 47 L.ed.657, 23 Sup.Ct.Rep.456, 12 Am.Crim.Rep.311) the exclusive character of the legislation embodied in the statute was recognized, those cases, when rightly construed, go no further than to establish the exclusion by the statute of all State action from the matters for which the statute expressly or by necessary implication provided.

Pg.566: (Continuing) "No reason is suggested, nor have we been able to discover any, to sustain the assumption that the framers of the statute in not making its provisions coterminous with the power granted by the Constitution, did so for the purpose of leaving the subject, so far as unprovided for, beyond the operation of any legal authority whatever, State or National. On the contrary, when the situation with which the Statute dealt is contemplated, the reasonable assumption is that by the omission to extend the statute to the full limits of constitutional power, it must have been intended to leave the subjects unprovided for not beyond the pale of all law, but subject to the power which then controlled them - State authority - until it was deemed essential by further legislation to govern them exclusively by national authority."

Roberts v. Reilly, 116 U.S.94, 29 L.ed.544, l.c.548:

Pg.548: "That constitutional provision declares that 'a person charged in any State with treason, felony or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up to the State having jurisdiction of the crime". Art. IV., sec.2, clause 2. There is no express grant to Congress of legislative power to execute this provision; and it is not in its nature self-executing; but a contemporary construction,

tained in the Act of 1793, 1 Stat.at L.302, ever since continued in force,and now embodied in sections 5278 and 5279 of the Revised Statutes, has established the validity of its legislation on the subject. "This duty of providing by law", said Chief Justice Taney, delivering the opinion of the Court in Kentucky v Dennison, 24 How.104 (65 U.S., bk, 16 L.ed.717,728), "the regulations necessary to carry this compact into execution, from the nature of the duty and the object in view, was manifestly devolved upon Congress, for if it was left to the States,each State might require different proof to authenticate the judicial proceedings upon which the demand was founded, and as the duty of the Governor of the State where the fugitive was found is, in such cases, merely ministerial, without the right to exercise either executive or judicial discretion, he could not lawfully issue a warrant to arrest an individual without a law of the State or of Congress to authorize it".

Appleyard v Massachusetts, 203 U.S.222, 51 L.ed.161, l.c.163:

Pg.163: "A person charged by indictment or by affidavit before a magistrate with the commission within a State of a crime covered by its laws, and who, after the date of the commission of such crime, leaves the State-no matter for what purpose or motive-nor under what belief-becomes,from the time of such leaving, and within the meaning of the Constitution and the laws of the UnitedStates, a fugitive from justice,and if found in another State must be delivered up by the Governor of such State to the State whose laws are alleged to have been violated,on the production of such indictment or affidavit,certified as authentic by the Governor of the State from which the accused departed. Such is the command of the supreme law of the land, which may not be disregarded by any State.

"The constitutional provision relating to fugitives from justice,as the history of its adoption will show, is in the nature of a treaty stipulation entered into for the purpose of securing a prompt and efficient administration of the criminal laws of the several states, an object of the first concern to the people of the entire country, and which each State is bound in fidelity to the Constitution to recognize. A faithful, vigorous enforcement of that stipulation is vital to the harmony and welfare of the States,and while a State should take care,within the limits of the law,that the rights of its people are protected against illegal action,the judicial authorities of the Union should equally take care that the provisions of the Constitution be not so narrowly interpreted as to enable offenders against the laws of a State to find a permanent asylum in the territory of another State.

"In Roberts v.Reilly,116 U.S.80, 95,97, 29 L.ed.544,549, 6 Sup.Ct.Rep.291, this Court said that the Act of Congress,sec. 5278 of the Revised Statutes,made it the duty of the executive authority of the State in which is found a person charged with crime against the laws of another State,and who has fled from

its justice,to cause the arrest of the alleged fugitive from justice whenever the executive authority of any State demands such person as a fugitive from justice,and produces a copy of an indictment found, or affidavit made before a magistrate of any State,charging the person demanded with having committed a crime therein,certified as authentic by the Governor or chief magistrate of the State from whence the person so charged has fled. It must appear,therefore,to the Governor of the State to whom such a demand is presented, before he can lawfully comply with it,first,that the person demand is substantially charged with a crime against the laws of the State from whose justice he is alleged to have fled,by an indictment or an affidavit certified as authentic by the Governor of the State making the demand,and,second, that the person demanded isa fugitive from the justice of the State,the executive authority of which makes the demand. The first of these pre-requisites is a question of law,and is always open upon the face of the papers to judicial inquiry,on application for a discharge under a writ of habeas corpus. The second is a question of fact which the Governor of the State upon whom the demand is made must decide,upon such evidence as he may deem satisfactory".

Illinois, ex rel.McNichols v.Pease, 207 U.S.100,52 L.ed.121,l.c.125:

Pg.125: "One arrested and held as a fugitive from justice is entitled, of right,upon habeas corpus, to question the lawfullness of his arrest and imprisonment, showing by competent evidence, as a ground for his release,that he was not,within the meaning of the Constutition and laws of the United States, a fugitive from the justice of the demanding State,and thereby overcome the presumption to the contrary arising from the face of the extradition warrant.*******

"Whether the alleged criminal is or is not such fugitive from justice may, so far as the Constitution and laws of the United States are concerned, be determined by the executive upon whom the demand is made in such way as he deems satisfactory, and he is not obliged to demand proof apart from requisition papers from the demanding State,that the accused is a fugitive from justice".

Lascelles v Georgia,148 U.S.541, 37 L.ed.549, l.c.551:

Pg.551:"The sole object of the provision of the Constitution and the Act of Congress to carry it into effect is to secure the surrender of persons accused of crime, who have fled from the justice of a State, whose laws they are charged with violating. Neither the Constitution, nor the Act of Congress providing for the rendition of fugitives upon proper requisitions being made, confers,either expressly or by implication,any right or privilege upon such fugitives under and by virtue of which they can assert, in the State to which they are returned, exemption from

trial for any criminal act done therein. No purpose or intention is manifested to afford them any immunity or protection from trial and punishment for any offenses committed in the State from which they flee. On the contary, the provisions of both the Constitution and the statute extends to all crimes and offenses punishable by the laws of the State where the act is done". (Kentucky v Dennison, 65 US 24 How.66, 101, 102, 16 L.ed.717, 7271 Ex parte Reggee, 114 U.S.642, 29 L.ed.250).

AUTHORITY TO ENFORCE CONGRESSIONAL POWERS BY CRIMINAL ENFORCEMENT ACTS AND PENALTIES.

U.S. v Fox, 95 U.S.672, 24 L.ed.538, l.c.540:

Pg.540: "Any act committed with a view of evading the legislation of Congress passed in the execution of any of its powers, or of fraudulently securing the benefits of such legislation, may properly be made an offense against the United States. But an act committed within a State, whether for a good or a bad purpose, or whether with an honest or a criminal intent, cannot be made an offense against the United States, unless it have some relation to the execution of a power of Congress or to some matter within the jurisdiction of the United States. An act not having any such relation is one in respect to which the State alone can legislate."

See, also U.S v. Hall, 98 U.S.343, 25 L.ed.180, where the power of Congress to make embezzlement of pension money a Federal offense is sustained.

COPY

[redacted] b6

ATTORNEYS AT LAW

1501-02 TELEPHONE BLDG.

SAINT LOUIS

August 9, 1933.

Hon. Raymond E. Moley,
Assistant Secretary of State,
Washington, D.C.

Dear Prof. Moley:

A little more than a year ago my attention was directed to the peculiar phraseology of the constitutional provision concerning extradition, and it occurred to me that it might be used as the foundation for national legislation to suppress the interstate criminal. At that time I was an aspirant for congressional honors in the Democratic primary and intended to give some publicity to the idea, but finding the columns of the metropolitan press closed to me, except at the minimum cost of 9 cents per word, the old adage that "silence is golden" appeared to me in a new light and I was forced to forego the discussion of a subject so far-reaching in its economic and social consequences. The press, however, carries the news of your conference with the President for the purpose of mapping out a national program, both legislative and administrative, to make war on the racketeer, kidnaper and other violent criminals who escape detection by fleeing from the scene of their crimes into other States and remote communities. The determination of the President to end the reign of organized crime is indeed gratifying to law-abiding citizens everywhere and affords another illustration of his fidelity to public duty. I am, therefore, induced by my interest in the subject to give you the results of my investigation of the question of Federal authority under the extradition clause.

I shall not occupy your time with a discussion of the economic losses or social menace of the crime wave. I am concerned only with the question of legal remedy. In my judgment that remedy does not involve the surrender of any power by the States, but consists in the enlargement of Federal power under existing constitutional authority, through enforcement statutes. The present crime situation was not anticipated by the makers of the Constitution, or we should probably have had a more ample and specific grant of congressional power to meet it. Modern invention has literally given the criminal wings. The bank-robber, highwayman and other types of thief flee with their booty into another State or remote community with only a slight chance of being identified. There is no practical coordination or cooperation of the police agencies of the various States and cities. The task of disseminating information concerning the numerous crimes committed and personal descriptions of suspects is too gigantic for local officials. As a result, the chances are at least 9 to 1 in the criminal's favor that he will escape, at any rate until after the physical evidences of the crime have been disposed of. The break-down in law enforcement is primarily due to lack of ability and lack of facilities to locate and apprehend the guilty. I believe this is due to the fact that we begin work at the wrong end of the prob-

1-62-1784-11

lem. Crime is fairly well organized. In all large cities and in many smaller ones,there are criminal groups or gangs, and above them the criminal leader. Many of themare ex-convicts. Most of them are known to the local authorities,and their habitations and hang-outs are known. I haven't time to discuss methods of crime detection, nor do I possess any special knowledge on the subject, but I believe a census of the criminal element could be taken, and a record of their places of abode and usual haunts could be made and placed in the hands of a centralized secret police agency,under the direction of Federal men, with the aid of local police and detective forces, so that the movements of these men could be checked and watched immediately after the commission of a crime of the character mentioned, and their presence or absence from their usual haunts would furnish a key in many cases to the solution of the crime by narrowing down the number of suspects. If criminal gangs are to be broken up, some plan must be zdopted under which each gang will be under the constant surveilance of some secret police agency. This proposal does not contemplate the the exercise of ordinary police duties by Federal men, but is made upon the assumption that a limited number of Federal detectives with the aid of local police forces will be able to do such work without intruding upon the ordinary functions of the local police.

At the time of my investigation of the subject,I did not anticipate the additional powers that might accrue to the Federal Government under the recently enacted emergency measures,such as the NIRA and the various industrial codes, which have undoubtedly enlagged the scope of Federal police supervision.I did,however, consider the revenue laws and postal regulations as the basis of a limited Federal police authority, but doubted theavailability to reach the vast majority of offenses arising solely under State laws. I was looking for some provision that would confer authority to cover the entire field of interstate criminal activities, and I believe I have found it in the extradition clause. I do not wish to leave the impression of cocksureness in my conclusions, which may be challenged on constitutional grounds, but in view of previous constructions placed on the extradition clause by the Supreme Court and the serious nature of the present crime situation, I am of the opinion that the Supreme Court would sustain the creation of a Federal police agency whose functions would not supersede State authority. Recognizing the superior learning of the President's legal advisers,I know they can separate the wheat from the chaff in my ideas, and if there is any merit in them, they will be able to utilize that which may be practical.

Before submitting my own personal conclusions,I want to quote the Constitution and the Extradition Statute,and exserpts from Supreme Court decisions construing the same. This will add to the length of my letter,but will save time for you,for, if the matters quoted do not convince you that the question is worthy of consideration,I do not think it would pay you to go further into it. I do not mean that my study is exhaustive, but it is sufficient to afford a starting place--or a stopping place. The extradition clause is found in Section 2, Article IV. of the Constitution ,and reads as follows:

> "A person charged in any State with treason,felony or other crime,who shall flee from justice and be found in another

> State, shall, on demand of the executive authority of the State from which he fled be delivered up to be removed to the State having jurisdiction of the crime."

Obviously, the foregoing provision applies to offenses against the laws of a State. It requires that the person to be extradited be "charged" with the commission of a crime, but the manner of presenting the charge, and what constitutes a charge are matters for congressional definition. You will note that the foregoing provision names "the executive authority of the State from which he fled" as the one to make the demand, but fails to designate the authorities who may apprehend and deliver up the fugitive. This omission may be important, for, unless the power of a State to arrest and deliver up the fugitive is, by necessary implication, exclusive of Federal power, there would seem to be room for a separate or coordinate Federal agency to work in cooperation with State authorities. The courts have construed the provision to be in the nature of a treaty stipulation between the States. This, I assume, is because it took the place of mutual arrangements between the States that governed the surrender of fugitives prior to the adoption of the Constitution. (See Appleyard v Massachusetts, 203 U.S. 222, 51 L.ed. 161). From such interpretation the power of a State to apprehend and deliver up a fugitive is clearly implied, but it does not follow that such power is exclusive. The Supreme Court has held that the provision of the Constitution is not self-executing, but that the power to enforce it is vested in Congress. (See Roberts v Reilly, 116 U.S. 94, 29 L.ed. 544). And, in Innes v Tobin, 240 U.S. 127, 60 L.ed. 562, it was held that congressional action is exclusive of action by the States upon all matters covered by the Act of Congress, but to the extent that Congress may fail to exercise its full powers, such powers may be exercised by the States.

Up to the present time Congress has concerned itself only with the regulations under which extradition may be made by the States. It has prescribed the manner in which the charge shall be presented and has provided that the executive authority of the State to which the fugitive has fled shall cause him to be arrested and delivered up to the agent of the demanding State. In construing that Statute, the Supreme Court has held that the Governor, of whom the demand is made, "is not obliged to demand proof apart from the requisition papers from the demanding State that the accused is a fugitive from justice". (See Illinois ex rel. McNichols v Pease, 207 U.S. 100, 52 L.ed. 121). Now, it should be obvious that if a Governor, in his discretion, may ignore the issue of fact as to the commission of a crime, including the issue of the fugitive's presence in the State at the time of its commission, Congress would have unquestionable power to provide that all issues of fact shall be eliminated from extradition proceedings, and limit the issue solely to the legal sufficiency of the indictment or affidavit in charging a crime, which would be determinable by the laws of the State whence the accused has fled.

There are cases which hold that "one arrested and held as a fugitive from justice is entitled of right, upon habeas corpus, to question the lawfulness of his arrest and imprisonment, showing by competent evidence, as a ground for his release, that he was not, within

the meaning of the Constitution and laws of the United States,a fugitive from the justice of the demanding State". That language was used in Illinois ex rel. McNichols v Pease, supra, but loses much force because, in that case, the Supreme Court sustained the right of the Governor to grant extradition upon the proof contained in the extradition papers alone. Certainly, the discretionary powers of a Governor do not exceed the legislative powers of Congress, and if the Governor of a State may ignore the issues of fact in an extradition hearing,Congress would have the power to limit it to an inquiry into the sufficiency of the criminal charge or indictment.

It will be observed that the extradition clause of the Constitution makes no provision for any hearing within the State where the fugitive is found,but provides only for his arrest and delivery to the agent of the State where the crime was committed; so, if the right to a hearing within the State of the fugitive's arrest may be said to exist as "of right", it is due to the failure of the Extradition Statute to make other provision. Following the rule in Innes v Tobin, supra, "the reasonable assumption is that by the omission to extend the statute to the full limits of constitutional power, it must have been intended to leave the subjects unprovided for not beyond the pale of all law,but subject to the power which then controlled them— State authority— until it was deemed essential by further legislation to govern them exclusively by national authority". That rule would give local courts the power to hear and determine complaints in regard to the validity of the arrest and imprisonment, but upon the enactment of national legislation, the procedure prescribed by Congress would be exclusive. Therefore, if Congress has plenary power over the subject, it has the power to fix the venue of any hearing to which the alleged fugitive may be entitled.Of course the Governor of the State where the fugitive is found, in passing upon the demand for extradition,would necessarily consider the sufficiency of the criminal charge,but that is a legal question,and Congress would,in my opinion,have power to eliminate all issues of fact from such inquiry at a place remote from the scene of the crime, where the State is handicapped by inability to present counter evidence.One of the great deterrents to the enforcement of criminal law has been the facility with which extradition has been avoided by raising issues of fact in such proceedings.Many escape prosecution because of the lack of public funds for the transportation of witnesses, and knowledge of this fact encourages criminals to seek shelter or asylum in foreign States.

The right of extradition has been recognized by the Supreme Court as vitally important,not only to the vigorous enforcement of the criminal law, but also to the harmony and welfare of the States. In Appleyard v Massachusetts, supra, the Court said: " The judicial authorities of the Union should equally take care that the provisions of the Constitution be not so narrowly interpreted as to enable offenders against the laws of a State to find a permanent asylum in the territory of another State". The purpose of the extradition clause was not to protect or extend immunity to those accused of crime. It recognizes no right of the accused other than that to which he is entitled under the laws of the State under which he is charged. Its sole purpose is to enable each State to maintain law enforcement,and it was not intended to set up or substitute any foreign proceeding in lieu of its own tribunals. The purpose of this clause was forcefully stated in Lascelles v Georgia,148 U.S.541,37 L.ed.549, in which

the Court said:

> "The sole object of the provision of the Constitution and the Act of Congress to carry it into effect is to secure the surrender of persons accused of crime, who have fled from the justice of a State whose laws they are charged with violating. Neither the Constitution nor the Act of Congress providing for the rendition of fugitives upon proper requisitions being made confers, either expressly or by implication, any right or privilege upon such fugitives under and by virtue of which they can assert, in the State to which they are returned, exemption from trial for any criminal act done therein. No purpose or intention is manifested to afford them any immunity or protection from trial and punishment for any offense committed in the State from which they flee. On the contrary, the provision of both the Constitution and the statute extends to all crimes and offenses punishable by the laws of the State where the act is done." (Kentucky v Dennison, 65 US. ___, 24 How. 66, 101, 102, 16 L.ed.717, 727; Ex parte Reggee, 114 U.S.642, 29 L. ed.250).

Taking the declared purpose of the provision, as set forth in the preceding paragraph, and the rule of construction announced in Appleyard v Massachusetts, supra, we have reason to anticipate a liberal interpretation of any statutory changes made by Congress that are intended to make the apprehension of fugitives more effective. Of course such changes must be within the express or implied authority of the constitutional provision, but it is my opinion that Congress has not acted to the full extent of its constitutional powers. As previously stated, the constitutional provision does not limit or specify the authorities who may apprehend and deliver up the fugitive, but the Extradition Statute does limit such action to the executive authority of the State where the fugitive is found. The term "executive authority", I assume, includes its peace officers whose duties are generally defined in the various State acts relating to fugitives from justice. For your convenience I will set forth the Extradition Statute, or Congressional Act, which now governs extradition between the States. It is found in Section 662, Title 18, of the United States Code Annotated, and reads as follows:

> Section 662.- Fugitives from State or Territory. "Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the Governor or Chief Magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled, to cause him to be arrested and secured, and to cause notice of the arrest ~~xxx~~ to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered upt to such agent when he shall appear. Etc., etc."

I am enclosing a separate memorandum containing excerpts from cases under the extradition clause, which you may read if you desire. Although the question of Federal authority to apprehend and deliver up fugitives was not directly involved in any of them,they support,at least in a general way,the theories I have advanced.Summarized briefly,they hold:

1st.-That the constitutional provision is not self-executing, but depends upon congressional enactments:

2nd.- That the power of Congress to enforce such provision is exclusive of State action,to the extent that the subject is covered by congressional legislation:

3rd.- That any omission of Congress to exercise its full constitutional powers leaves the matters unprovided for subject to State authority:

4th.- That Congress may,by further legislation, bring the entire subject matter exclusively under national authority:

5th.- That the sole object of the provision is to secure the surrender of persons accused of crime,and the courts of the Union should liberally construe the provision to the end of preventing fugitives from finding immunity from prosecution by seeking shelter in another State.

Upon the foregoing principles,I believe the Federal Government has authority under the Constitution to set up and maintain a police agency in all of the States for the purpose of apprehending and delivering up fugitives from justice without intruding upon the ordinary police powers of the States.Such agency would also have jurisdiction to make arrests for violations of Federal laws,but would lack authority to make arrests under the laws of the States.However, I see no reason why it could be coordinated with State agencies in the work of crime detection,so as to render both more effective.I have noted the proposal of Senator Copeland for cooperative action between State and Federal authorities,which is said to have the approval of our Attorney General and his able assistant, Mr. Keenan,under which the Governor of each State would recommend for appointment to the Federal Bureau a representative for his State,who would be paid by the Federal Government, but who,as a "dollar-a-year"man for the State, would be able to utilize local police officers to work with the Federal Bureau in crime detection.The merit of this plan is obvious and I most heartily favor it, unless a firmer basis can be found for the national agency.The weakness of the plan,as I see it,lies in the assumption that a Federal agency of that character can exist only by consent of the States, and its success would be dependent upon the degree of cooperation received from the various State authorities.Indeed, I am inclined to believe that State legislation might be required to validate the acts of a volunteer organization of that character.On the other hand,if the extradition clause gives Congress authority to establish a national agency to apprehend and deliver up fugitives, Congress, or the administrative bureau,could make all cooperative arrangements with local police officials that could be realized under the Copeland plan,and then,if any State should lag behind or fail to cooperate,

an increased Federal force could take its place.I am convinced that a bold announcement by the Administration of its intention to establish a nation-wide police agency,under constitutional authority, to traila and apprehend the interstate criminal,would strike terror into the hearts of the criminal gangs and inspire public support in a degree that would lead to greater cooperation and effectiveness than could be anticipated under a mere provisional agreement between State and Federal authorities.

I do not profess to be an expert upon Constitutional Law,althoug the investigation of constitutional questions has been a pleasant feature of my practice. Hence, I would not set up my opinion against that of the learned Attorney General and his able assistants,if they should deem my suggestions illusory.I would defer also to the conclusions of Senator Copeland,whose thoughtful study and courageous leadership of the war against crime has added to the esteem in which he is held throughout the nation. I merely want to invoke their judgment upon the merits of my suggestions.

The assumption that a Federal agency with power to arrest and deliver up fugitives would be created in derogation of the police power of the States,in my opinion, rests upon a misconception of the nature of the Constitutional provision. This provision,as I read it, is not a grant of power to the States,nor is it a reservation of power unto them.On the contrary,it is a delegation of grant of power to the Federal Government, one which, according to the Supreme Court,may be made exclusive of State authority.

In one particular,the extradition clause is unique;it is the only provision in the Constitution which expressly authorizes the performance of a specific duty under the Federal Constitution by a State official.By its terms,the executives authority of the State where the crime was committed is the one to demand extradition, but there is no such limitation as to those who may be authorized to arrest and deliver up the fugitive.The limitation of such power to the executive authority of the State where the fugitive is found is wholly statutory and is subject to change.Now,if the framers of the Constitution had intended to make extradition a prerogative of the States only, it is a reasonable inference that they would have specifically designated the executive authority of the State where the fugitive is found as the one to arrest and deliver him up, and such omission may indicate that they foresaw the possibility of non-cooperation between the States, or other conditions that might arise to make the remedy inadequate if its enforcement were restricted solely to State authorities,and,therefore, plenary powers were given Congress to designate the arresting and delivering authorities,and to prescribe the procedure necessary to the rendition of the prisoners.Whether or not such a situation was within their contemplation, the language of the provision contains no restriction upon the powers of Congress to name the authorities who shall enforce such provision,or to determine the manner of its enforcement.

Reverting to the subject of State police power, I think it will be conceded that the delegation of a power to the Federal Government carries with it the power to enact enforcing statutes,and operates as a limitation upon,or withdrawal of,such power from the body of the law known as the police power of the State, a term which embraces the

system of internal regulation adopted by a State to preserve public order,and to afford protection to its citizens in the enjoyment of their rights as members of society. Although the Federal Government is said to possess no general or inherent police powers, it may and does exercise powers which correspond to the ordinary police powers of the States in carrying out its delegated authorities.It may prescribe and enforce penalties for violations of its laws, but that does not represent a usurpation or invasion of the power of the States. Therefore, if Congress has authority to create a Federal agency with power to arrest and deliver up fugitives,the exercise of that power would not conflict with any reserved power of the States,unless Congress should attempt to authorize the Federal agents to make local arrests for purely local offenses. That situation,however, can be avoided through a cooperative understanding between State and Federal authorities, under which arrests for local offenses would be made by local officials.

I believe the above plan has this advantage over the cooperative plan suggested by Senator Copeland,viz: That if Congress has authority to designate those who may arrest and deliver up the fugitive,it could confer that power upon members of the various State and municipal police forces affiliated with the Federal Bureau, and thus increase the number of authorized arresting officers. This power,if it exists, is derived solely from the extradition clause,and in my judgment would apply only to fugitives from justice. Others wanted by the Federal Government would have to be arrested by Federal agents, in the absence of any constitutional provision authorizing the exercise of such power by State police officials, but the increased number of officers elegible to arrest fugitives ought to reduce the expense of the national government and at the same time multiply the effectiveness of crime detection.

Without attempting to state the details of legislative remedies, I believe the extradition clause of the Constitution would authorize the exercise of the following powers:

1st.- That Congress may create a Federal police agency with authority to arrest and deliver up fugitives from justice to the executive authority of the demanding State,upon the proof contained in the requisition papers,and that such delivery could be made by the Federal agents without the assent of the authorities of the State where the fugitive is found. The purpose of extradition is to enable the demanding State to enforce its laws,and its rights are paramount to those of the State where the accused is found.

2nd.- If the assent of the executive authority of the State into which the fugitive has fled should be deemed essential or advisable,Congress could restrict the extradition proceedings to the determination solely of the legal sufficiency of the indictment or affidavit in charging a crime,and could eliminate therefrom all issues of fact.

3rd.- Congress may,if it desires, preserve unto the States their present power to grant requisitions in proceedings that arise within the duties of their local officials,and may limit the Federal agents to the arrest and delivery of the fugitives to the State authorities,subject to their action upon the requisition demand:

4th.- If a hearing upon the application should be deemed neces-

sary or expedient,Congress would have the power to fix the venue of such hearings,and could provide for them to be held within the State where the offense is charged,so that the witnesses would be available. I realize that in a clear case of mistaken identity,or where the proof is positive that the accused was not within the demanding State at the time of the crime, extradition works a grievous wrong to the accused, but Congress could provide for the restoration of such a party to his former status and place of abode in the event of a decision in his favor on the right to extradite, and thus minimize the actual damage. In my judgment,the possibility of occasional injustice to an innocent party should not be allowed to prevent changes in procedure that are necessary to check the crime menace. If hearings should be authorized in the State where the alleged fugitive is found,Congress would have the right to designate the tribunals to hear the same,and could limit the issues to be determined therein,so as not to invade the right of the accusing State to have the facts determined therein.

5th.- Congress could authorize the Bureau of Investigation,or other enforcement agency,to enter into arrangements with the local police in the various States and cities, under which each would share in the work of crime detection,and each would derive the full benefits thereof. Thus,those suspected of racketeering,kidnaping,bank robbery and other violent crimes,would be brought under the surveilance of the Federal agents, and this I consider justifiable upon the theory that they comprise the criminal types that are most actively engaged in interstate criminal activities. Federal agents, although nominally searching for fugitives and Federal offenders, could impart valuable information to local authorities that would lead to more effective law enforcement.

6th.- Some special provision should be made for the arrest and detention of suspects pending identification. The names of many of them are unknown,so that they cannot be specifically named in a formal charge, and the facility with which they escape from the scene of the crime has rendered personal identification more difficult.The comparison of finger prints, chemical analyses,and other scientific methods of crime detection often afford the only means of identification,and they require time.Consequently,a more liberal period for the detention of suspects should be provided.

7th.- Upon the question of bail,I believe Congress should provide that where the defense is an alibi,the accused shall not be admitted to bail if there is any substantial evidence of his presence at the scene of the crime.

8th.- The Federal agency should be limited to the more violent crimes against persons and property,such as kidnaping,racketeering,bank robbery, highway robbery, murder, etc.

I realize that objections will be made to a Federal agency upon the theory that it might be used to intervene in purely local controversies in the States.This, I think, can be obviated by specifically limiting their activities to certain offenses and by forbidding their use otherwise.

A great deal, if not all, of the foregoing may be impractical. I do not insist upon the wisdom of the details suggested, but have mentioned them only from the standpoint of legislative power. I might change my mind as to the expediency and legality of some of them. My purpose has been to present the theory that the extradition clause of the Constitution confers a power on Congress, around which there may be built up a Federal crime detecting agency that could be made effective against the criminal class. Out of my suggestions you may be able to carve some workable idea that would give the national agency more stability than it would have as a mere volunteer organization, or even as an adjunct of an agency for the apprehension of Federal offenders. I am firmly convinced that we need an American "Scotland Yard", if the gangster and interstate criminal are to be curbed. America is with the President in his determination to "make Democracy safe for the World". I am following him, and my suggestions are made through a desire to aid in the restoration of law and order under his great moral leadership.

I come now to a question that is more novel than my previous suggestions. I am going to present it to you, although it prolongs my letter beyond the limits of ordinary propriety, because it offers an alternative which, if legal, would dispense with the red-tape and cumbersome machinery of extradition proceedings. Briefly, the question is whether Congress, under its power to enforce the extradition clause, could make it a Federal offense for a person who commits a crime in one State to flee into another for the purpose of avoiding arrest and prosecution. My first impression of the subject was unfavorable, but further thought has convinced me that it is not without merit. I have discussed the matter with other members of the bar, who have had the same reactions, so I desire to submit it to you for your consideration.

I frankly concede that the Federal Government has no direct grant of power to punish any person for leaving one State and entering another, but the purpose of an act that is innocent, of itself, may taint the act with illegality. As an illustration, I cite the Mann Act. No legal wrong is committed if a man transports a woman across a State line, but if he does so for purposes of concubinage, it becomes a punishable offense, not upon the theory that Congress may regulate the moral behavior of the citizens, but because the particular act bears a relation to the power of Congress to regulate interstate commerce. I do not say that the power to punish the flight of a criminal exists under the interstate commerce clause, although the courts have gone the limit in extending the scope of that provision. If Congress has the power to punish the flight of a criminal from one State into another, such power exists, not through express grant, but as an incident to its power to enforce the extradition clause. The rule governing such matter is laid down in U.S. v Fox, 95 U.S.672, 24 L.ed.538, l.c.540, and reads as follows:

> "Any act committed with a view of evading the legislation of Congress passed in the execution of any of its powers, or of fraudulently securing the benefits of such legislation, may properly be made an offense against the United States. But an act committed within a State, whether for a good or a bad purpose, or whether with an honest or a criminal intent, cannot be made an offense against the United States, <u>unless it have some relation to the execution of a power of Congress or to some matter within the jurisdiction of the United States</u>. An act not having any such relation is one in respect to which the State alone can legislate."

The test of Federal authority to punish an act that is also
nishable by the State is the relationship of such act to some Federal
wer.Thus,embezzlement is an offense that falls within the police power
the States;nevertheless,the Supreme Court has sustained the right of
ngress to make embezzlement of pension money a Federal offense, because
its relation to congressional power over the subject of pensions.(See
.S. v Hall,98 U.S.346,25 L.ed.180). The Mann Act affords an example in
ich the motive of the act determines Federal jurisdiction, for it is
t the act of transportation, but the motive of the transporter,that
ves Congress power to impose the penalty. So, in the case of fugitives,
would not be the act of leaving the State of the crime,but the purpose
the flight that would give Congress the right to penalize such conduct.
occurs to me that a law intended to prevent the delay and obstruction
justice by imposing a penalty on those who flee from the justice of a
ate in order to avoid arrest and prosecution is more closely related to
e power of Congress over the return of fugitives than is the relation
tween immoral sexual purposes and the power of Congress over commerce
tween the States. At any rate, the relation between such law and the
wer of Congress should be sufficient to sustain the imposition of the
nalty as a reasonable enforcement act.

The courts have recognized the paramount right and interest of
e demanding State in the enforcement of its laws against all violators,
d the vital importance of extradition to harmonious relations between
e States; they have also recognized the superior and exclusive authori-
of Congress to provide for the enforcement of the constitutional pro-
sion; and the public is aware that our present inadequate procedure in
tradition is largely responsible for the growth of crime. In short,the
derworld is on top,and even dictates to lawful business the payment of
ibute.Surely, this establishes the public interest and the relation of
e penalty to the enforcement powers of Congress.

The advantage of such a law would be that the tedious process
extradition could be dispensed with.The accused could be apprehended
d returned by Federal agents to answer to the Federal charge,in the State
ere the offense was committed. At the election of the Federal authori-
es,the accused could be turned over to the State,to answer to the charge
erein, without resorting to extradition.This would not violate any right
the accused, for the fugitive acquires no right through flight. The
fficacy of the remedy would discourage crime by making detection and pros-
ution more certain. If any injustice might result therefrom in any case,
ngress could make provision for its correction or avoidance. I shall not
tempt to specify details that might be embraced in the legislation.I
fer this additional suggestion as a basis upon which a Federal police
ency might be founded,and as a measure that would lead to more effective
d speedier justice.

Assuring you of my personal interest in the work, I am

Very sincerely yours,

[redacted]

b6

:P

President Roosevelt
Assistant Atty. General, J.B.Keenan
Senator Royal S. Copeland
Senator Bennett Champ Clark
Senator George W. Norris
Mr. Walter R. Mayne,Pres. St.Louis Bar Ass'n.

McNabb Ruling Frees 5 in 'Plot' to Harbor Sedition Fugitive

By the Associated Press.

PITTSBURGH, Feb. 24.—A recent Sureme Court decision holding statements made by defendants prior to arraignment before a United States commissioner are inadmissible as evidence in Federal courts led to dismissal of conspiracy indictments yesterday against five persons, one the daughter of William Dudley Pelley, former Silver Shirt leader.

After United States Attorney Charles F. Uhl moved to drop the charges that the five had conspired to "harbor and conceal a fugitive from justice"—Howard Victor Broenstrupp, who is under indictment in Washington with Pelley and 28 others on sedition charges—Assistant United States Attorney George Mashank explained:

"The case is closed as far as we here are concerned because the evidence became inadmissible by reason of a recent Supreme Court decision.

"That decision, by Justice Felix Frankfurter in the United States vs. McNabb, held that all statements obtained from defendants prior to arraignment before a United States Commissioner are inadmissible."

The McNabb decision was handed down, Mr. Mashank said, after FBI agents here had obtained statements from the five defendants.

The five dismissed here are: Adelaide Marion Pelley, Noblesville, Ind.; Marguerite Marie Carmichael, Indianapolis; Frank W. Mariner, Poland, Ohio; Victor Warren Hoye, New Castle, Pa., and Henry Herman Meine, New Galilee, Pa.

FBI agents arrested them in 1942, soon after apprehending Broenstrupp in Meine's Beaver County (Pa.) cottage. They were indicted on a charge of "conspiracy to harbor and conceal a fugitive from justice." This charge was later dropped and they were reindicted on the second conspiracy charge.

Pelley, Broenstrupp and the 28 others under indictment in Washington are accused of conspiring with agents of the German government to set up a Nazi form of government in the United States.

Mr. Tolson
Mr. E. A. Tamm
Mr. Clegg
Mr. Coffey
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Acers
Mr. Carson
Mr. Hendon
Mr. Mumford
Mr. Starke
Mr. Quinn Tamm
Mr. Nease
Miss Gandy

[redacted]

re: Howard Victor Broenstrupp

94-16711-A
NOT RECORDED
87 FEB 28 1944

61 MAR 3 1944

This is a clipping from page A-3 of the Washington Star for 2-24-44
Clipped at the Seat of Government.

Life
Sept. 22, 1958

D

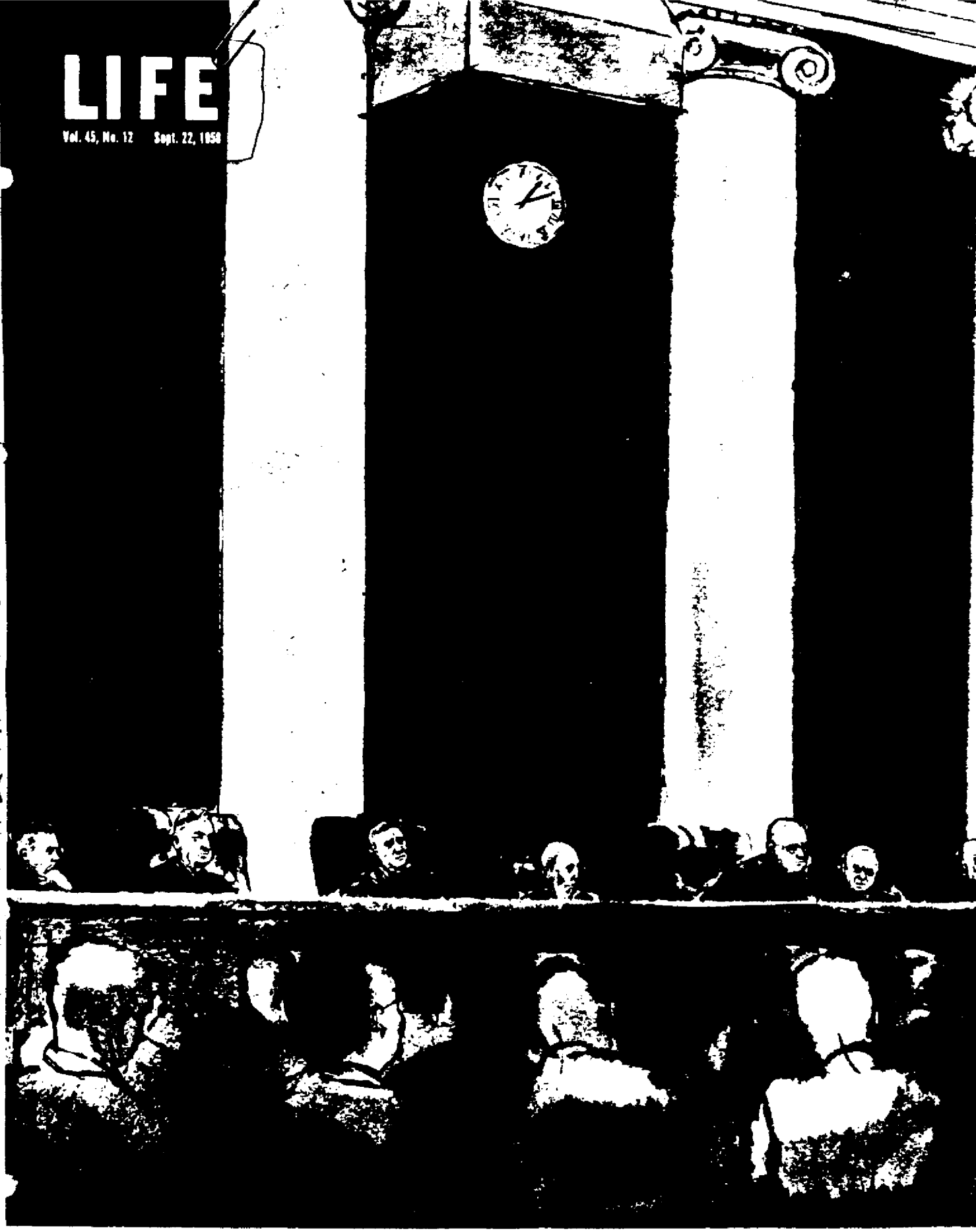
Segregation - Gen 7

62-101087-A
NOT RECORDED
133 OCT 17 1958

REC- 61

5 OCT 20 1958

LIFE
Vol. 45, No. 12 Sept. 22, 1958



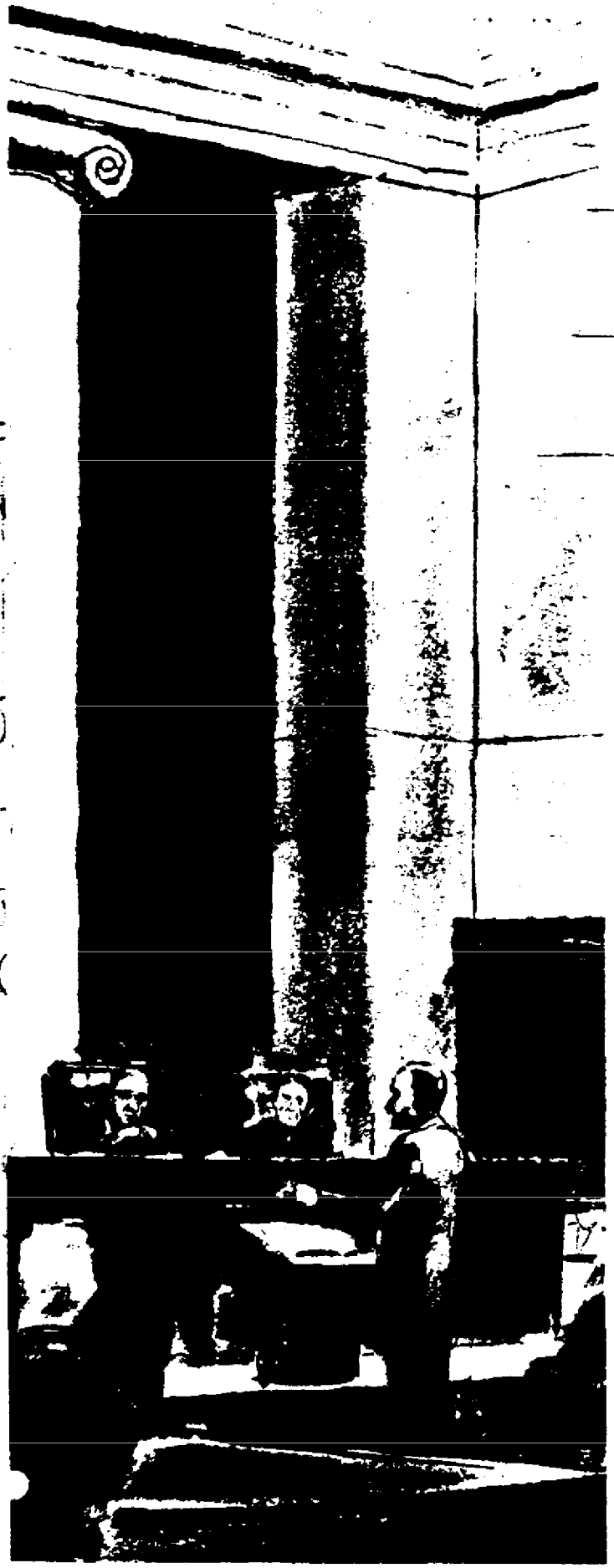
COURT'S HISTORIC SESSION, sketched for LIFE by Arthur Shilstone, nears its end as the justices hear arguments for delay from Richard Butler, attorney for Little Rock's school board. From left, each sitting in his own personally selected chair, are Justices William J. Brennan Jr., Tom Clark, William O. Douglas,

'INTEGRATE'! THE JUSTICES STAND FIRM

Out of the lofty, columned chamber of the U.S. Supreme Court came a terse and forceful statement. Desegregation of public schools had, since the Court's 1954 ruling, become the gravest, most divisive issue to confront the nation in a century. Now the Court, in special session, was deciding whether integration of Little Rock's Central High School should continue at once or whether, after last year's violence and the threat of more to come, integration should be delayed for 30 months. The verdict was tensely awaited not only in Little Rock but over the entire South, for it would reveal whether or not the Court had yielded in the face of the mounting resistance to integration that has developed in four years. The verdict took just four minutes to read; by unanimous vote, said Chief Justice Earl Warren, the Court denied the Little Rock school board's plea for a delay. Integration must proceed immediately.

So the Court ruled. Thus battle was joined on the momentous underlying conflict exposed by the school question: states' rights vs. federal sovereignty. Invoking sweeping powers just voted him by the Arkansas legislature, Governor Orval Faubus proclaimed the closing of all four Little Rock high schools to prevent "impending violence and disorder." Virginia, too, counterattacked. There, immediately after the Court decision, Governor J. Lindsay Almond Jr. used his powers under a program of legal "massive resistance" to thwart an integration order (*next pages*).

The Supreme Court, by its unwavering stand for equal educational rights under the Constitution, and the two states, by their bold defiance, had now struck a grim impasse. The question was, what next? There were small, new signs in Arkansas of resentment against segregationists' intransigence (*pp. 26-27*). The issue would, hopefully, be fought out in the federal courts. But the due process of law will take a long, long time.



Hugo L. Black, Chief Justice Earl Warren (leaning forward to question Butler), Felix Frankfurter, Harold H. Burton, John M. Harlan and Charles E. Whittaker.

PAWNS IN BATTLE. 12 Negroes hoping to enter white schools, visit Mrs. Daisy Bates (right), Arkansas N.A.A.C.P. leader. Window was broken by harassers.

A historic state now making more history

The struggle to preserve school segregation in Virginia took on added significance from her long, unique role in U.S. history. Her role today is shaped by the facts of population as shown on map. Overall, Negroes compose a quarter of the state's population. Counties shown in dark red have over 50%. Negro population; those in medium red have over 25%; those in light red under 25%.

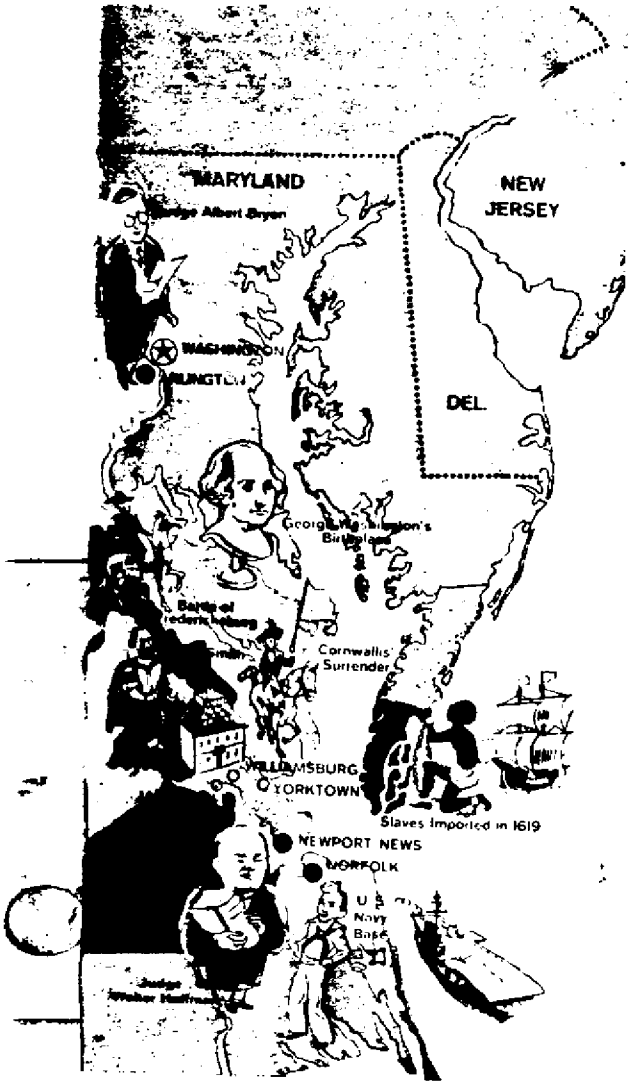
Jamestown, first permanent English settlement in America, was only 12 years old when the first Negro slaves were imported from Africa. No state did more to shape the new nation, and at Yorktown came the Revolution's climactic battle, the defeat of Cornwallis. Four of the first five presidents were Virginians.

But in the first great test of states' rights, Virginia became the nucleus and Richmond the capital of the Confederacy. Now Virginia is again a battleground for states' rights. Prime movers are Senator Harry Byrd, a prosperous apple grower, and Governor J. Lindsay Almond.

Until the recent stiffening against integration, some changes had been made in Virginia: buses in major cities are not segregated; the University of Virginia began admitting Negroes in 1950. But no public secondary school has been integrated.

At issue are attempts to enter Negroes in white schools in eight localities. Federal district judges have heard the cases. Judge John Paul is ruling in Warren County (Front Royal) and in Charlottesville; Judge Albert Bryan in Arlington and Alexandria; Judge Walter Hoffman in Norfolk, Newport News; Judge Sterling Hutcheson in Richmond and Prince Edward County.

AT FRONT ROYAL SCHOOL, WHICH CLOSED AND WAS TAKEN OVER BY GOVERNOR ALMOND, STUDENTS HEAD HOME WITH FESTIVE AIR, ARMFULS OF BOOKS



VIRGINIA'S ANSWER: MASSIVE DEFIANCE

Within hours of the Supreme Court ruling, Virginia (*see map*) moved into the battle for states' rights by posing a momentous challenge to federal rule.

The move came in Warren County. Four days before the Court's decision Federal District Judge John Paul had ordered the county school board to admit 22 Negroes to the all-white county high school. The board closed the school. Then, after the Supreme Court ruling, Governor Almond announced he was assuming "all power" over the school, removing it from local control and keeping it closed.

Almond was acting for the first time under one of Virginia's "massive resistance" laws, empowering him to close any school about to integrate. The massive resistance program was conceived and is masterminded by Senator Harry Byrd (*right*), whose powerful political machine—of which Governor Almond is part—rigidly controls the state. On pages 51-56, a distinguished Virginia editor explains why the state supports Byrd's position. Almond will almost certainly reopen the Warren County school on a segregated basis and thus directly interpose his power as head of a sovereign state against the sovereignty of the federal government. Then the U.S. courts will have to rule on the constitutionality of Almond's move and Virginia's massive-resistance laws.

WORDS FROM THE LEADER are heard as Senator Harry Byrd, surrounded by cans of applesauce, addresses annual picnic at his Berryville orchards. "Suption" on the poster means, roughly, flavor.

CONTINUED

DEFENDER OF ORDER, U.S. Marshal Beal Kidd headed 150 U.S. marshals and deputies brought to Little Rock from all over the state to enforce court orders.

AT FOOTBALL GAME PLAYED BEFORE SCHOOL WAS TO OPEN, LITTLE ROCK

ARKANSAS' REPLY: OFFICIAL

When news of the Supreme Court ruling reached Arkansas, everyone concerned was ready. In Little Rock, Governor Faubus signed 12 hastily enacted laws empowering him to oppose integration and issued a proclamation closing the city's high schools. The U.S. Justice Department had already moved in with attorneys and FBI agents and 150 U.S. marshals and deputies, a force strong enough to back up federal court orders with arrests if necessary. Perhaps to give Faubus a ready out, a prosegregationist housewife filed for an injunction to keep the schools open. While Little Rock braced itself for trouble, its Central High football

AT SCHOOL BOARD MEETING IN VAN BUREN HIGH SCHOOL, ANGIE EVANS, 15, RAISES HAND TO SPEAK AGAINST SEGREGATIONISTS. AS PRESIDENT OF STUDENT

STUDENTS CHEER THEIR TEAM TO VICTORY OVER A LOUISIANA HIGH SCHOOL

'NO,' A BRAVE GIRL'S 'YES'

team went out and won a game, even though it had no school to play for.

In Van Buren, Ark., 140 miles away, the crisis took a different turn. A brave young girl named Angeline ("Angie") Evans (*below*) stood up against the people in her town who wanted to stop the integration which their school board had begun. Though a gang of white kids had frightened Negro pupils into staying home from school, Angie announced that a poll of 160 fellow students showed the majority to be in favor of admitting Negroes. "Their arguments are so ridiculous," she said of the segregationists. "They've been nothing but troublemakers. Someone had to speak up."

DEFIANT GOVERNOR. Orval Faubus hears news of Supreme Court ruling. Seven hours later he signed proclamation ordering Little Rock schools to close.

BODY SHE WAS BACKED UP BY FELLOW STUDENTS, INCLUDING BEVERLY BERRY (LEFT, STANDING). THE BEARDED MAN IS SEGREGATIONIST LEADER SAM COX JR.

XEROXED ORIGINAL-RETAIN

Office Memorandum • UNITED STATES GOVERNMENT

TO : THE DIRECTOR

DATE: April 24, 1950

FROM : D. M. LADD

SUBJECT: INSTITUTE OF PACIFIC RELATIONS
ESPIONAGE - R

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5-9-80 BY SP-5 [illegible]

PURPOSE:

The purpose of this memorandum is to show the scope of the attached memoranda on the Institute of Pacific Relations, the materials utilized in their preparation, and the status of the investigation.

Summary

DETAILS:

There are attached for your information: (1) A memorandum on the Institute of Pacific Relations consisting of 289 pages with an index and exhibit showing the IPR Research Program for 1949. (2) A summary of the above-mentioned memorandum consisting of 30 pages.

These were prepared on the basis of a review of the main file on the IPR and of all "see references" on the IPR and the various National Councils of which it is composed. Also, more than 3500 photographic prints of documents furnished to the Boston Field Division by Confidential Informant [redacted] were reviewed for pertinent data. You will recall that [redacted] made available [redacted]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 3/23/83 BY SP2 BFA/ds

57D

It should be noted that no investigation has ever been conducted by this Bureau on the various National Councils of the Institute of Pacific Relations with the exception of the American. The American Council, which is known as the American Institute of Pacific Relations, Inc., has not been the subject of an intensive espionage type investigation in past years. An intensive investigation is now under way and the field has been instructed to obtain copies of all regular publications of the subject organization, to make a thorough study of its funds and to determine the identities of all officers, staff members, and employees since its inception.

The investigation is pointed toward determining whether the Institute of Pacific Relations in the United States has acted as a cover for Soviet military intelligence, or has been in violation of the Foreign Agents Registration Act, or any other statute of the United States.

100-64700-22

Supreme Court not mentioned on this page

APR 27 1971

XEROXED ORIGINAL-RETAIN

In all instances in the attached memoranda an effort has been made to attribute information to an original source. There are approximately 200 individuals who have been associated with the Institute of Pacific Relations from time to time in a policy making capacity, a research capacity, or an editorial capacity. Their names are being checked in the Bureau files to determine the possible extent of Communist infiltration or influence over the program and publications of the Institute. A supplement to the attached memoranda is being prepared which will set forth pertinent data regarding such persons, attributing such data to original sources.

Investigative reports are now being received from the field in this case and the attached memoranda will be brought up-to-date regularly.

ACTION:

This matter is being followed closely and you will be kept advised of all pertinent developments.

Attachments

Removed by Commission

b7D- does not pertain to the Supreme Court

b7D- does not pertain to the Supreme Court

b7D- does not pertain to the Supreme Court

SECRET

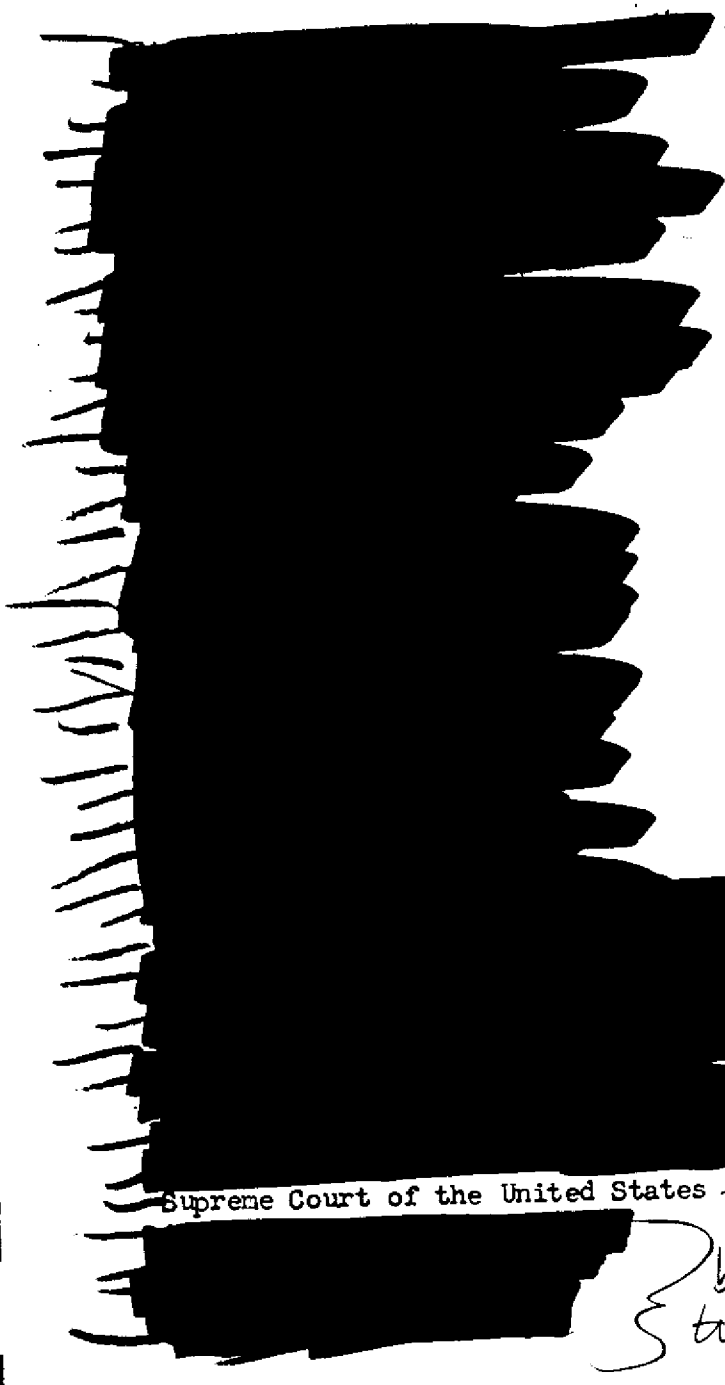
Supreme Court of the United States

In connection with the documents furnished by
(confidential informant) to the Boston Office on

[redacted]

b7D

SECRET



b7D- does not pertain to the Supreme Court

Supreme Court of the United States —

b7D- does not pertain to the Supreme Court

CITY OF TUCSON

ARIZONA

DEPARTMENT OF POLICE

[redacted]

P. O. BOX 2608

August 9, 1939.

Mr. John Edgar Hoover, Director
Federal Bureau of Investigation
Washington D. C.

Dear Sir:

The enclosed clipping prompts me to write and inquire if you have available decisions of the U. S. Supreme Court that might be of value to us in meeting the questions that are being asked since the enclosed article appeared in our local paper.

We are only interested in those decisions that concern themselves directly with the question of right to fingerprint.

Thanking you in advance,

Yours very truly
Don J. Hays,
Chief of Police.

RECORDED & INDEXED 62-12350-278

FEDERAL BUREAU OF INVESTIGATION
AUG 15 1939
U. S. DEPARTMENT OF JUSTICE

RICHARDS
CHF. CLK.
IDENT. UNIT

1 ENCL. C

Ack. 8-17-39 mme

Bars Forced Fingerprinting

LOS ANGELES, Aug. 7.—(UP)—The compulsory fingerprinting and photographing of citizens arrested for minor offenses by police Saturday were declared to be an invasion of personal liberty in a ruling handed down by Municipal Judge Alfred H. Paonessa.

The ruling was made by the judge in denying a demurrer filed by former acting Police Chief David A. Davidson and two officers in a $200 damage suit brought against them by Frank Walsh.

Walsh in his suit contended he was fingerprinted and photographed against his will after having been arrested last May 23 for loitering in a park after hours. Walsh subsequently was acquitted of the charges and filed his damage suit.

In his ruling, Judge Paonessa said that there was no legal precedent or constitutional warrant for compulsory fingerprinting, photographing and measuring a person arrested for a minor offense and not wanted for a serious crime.

62-12330-27

JOHN EDGAR HOOVER
DIRECTOR

Federal Bureau of Investigation

U. S. Department of Justice

Washington, D. C.

February 27, 1936.

MEMORANDUM

Mr. Tamm advised of his conversation with Frank Waldrop yesterday and of the article appearing in the morning Herald on the editorial page relative to retirement; that Mr. Waldrop stated that he would take care of the Copeland Bill. Mr. Hoover requested Mr. Tamm to have a copy of the aforementioned editorial on his desk in order that he may write Mr. Waldrop a note and also Mr. Corby in New York.

Mr. Tamm advised of the article in the Washington Post relative to reorganization in the Government in the interest of economy and efficiency.

Mr. Tamm advised of the article appearing in the New York Daily News relative to the arrest of two prostitutes by Mr. Dewey. Mr. Tamm advised of the publicity given the Bureau in this article. Mr. Tamm advised that he is obtaining some of the Miami clippings from the Division of Press Intelligence concerning the Director.

RECORDED & INDEXED

- 51

MAR 5 1936

Mr. Tamm advised of the articles in the morning papers relative to the Lindbergh case.

b7C Mr. Tamm advised of the incident in [redacted] last night relative to [redacted] and [redacted]

b7C With reference to the Ballston Bank Robbery, Mr. Tamm advised that a break is expected sometime around 2 or 3 o'clock. Mr. Tamm advised of the arrangements made by [redacted]. Mr. Tamm inquired concerning the release and Mr. Hoover stated that everything should be ready; that he could be held in the basement. Mr. Hoover stated that he thought the morning paper would be the best means of getting the story out. Mr. Hoover requested Mr. Tamm to prepare a detailed story and then contact [redacted] Mr. Hoover stated that he is leaving Florida on Saturday, arriving in Washington on Sunday noon. Mr. Hoover stated that it would be all right to hold one of the robbers until the other one is taken into custody.

b7C Mr. Tamm told Mr. Hoover that he now has the second report of Agents [redacted] and [redacted] in the Puerto Rfo matter. Mr. Tamm advised of the letter in the report containing the letter written by [redacted] Mr. Tamm read the letter to the Director. Mr. Hoover stated that this letter should be contained in the Bureau report; that a copy of the report should be sent to the Attorney General and to the Criminal Division.

COPIES DESTROYED
540 FEB 1 1965

Supreme Court
Not mentioned on
this Page

b7c

Mr. Tamm advised that he took the report of Agents [redacted] and [redacted] on the Justice of the Supreme Court matter around to [redacted] late yesterday afternoon and advised [redacted] that he would have [redacted] stand by here. Mr. Hoover stated that if word is not received to send [redacted] back and that Mr. Nathan should return to Washington around Saturday if everything is all right at New York.

b7c

Mr. Tamm advised of [redacted] Mr. Hoover stated that the Bureau would not be a party to this.

Mr. Tamm advised of the parole violator, [redacted], who was picked up by Agent [redacted] Mr. Hoover stated that a release should be given out.

Mr. Tamm advised of the teletype from SAC Hanson at Los Angeles relative to the assignment of an accountant at the request of the Committee investigating reorganizations and bond issues.

Mr. Tamm advised of the teletype from [redacted] relative to the man who was picked in Oklahoma and who the Post Office Inspectors think is a contact of Carpis. Mr. Tamm stated that he was going to wire Mr. [redacted] not to try to see this man while he is in the custody of the Post Office Inspectors.

Mr. Tamm advised that [redacted] Mr. Tamm advised that Mr. Connelley is in Los Angeles going over the situation with Mr. Hanson relative to that case and the [redacted] case.

Mr. Tamm inquired of the Director what he thought about having [redacted], the woman who wrote the letters relative to the Chief Justice, fired. Mr. Hoover instructed Mr. Tamm to write a memorandum to the Attorney General suggesting that he may wish to take this up with the organization by which she is employed as a matter of administrative procedure as to whether she should be retained in the government service.

Mr. Tamm advised of the White Slave case of which a thirteen year old girl is the victim. Mr. Hoover stated that it would be all right for him to give a brief statement to the press.

Mr. Tamm advised of the memorandum from Mr. Egan relative to the Aluminum case and the insistence for further work by [redacted]

Mr. Tamm advised of the inter-office memorandum prepared putting Agent [redacted] on White Slave cases replacing [redacted] with [redacted]

With reference to the Situation in Virginia, Mr. Tamm stated that Judge Holtzoff thinks that [redacted] should be permitted to testify for the defense in this particular situation inview of the fact that we have almost been coerced into it by the way the report was handled. Mr. Hoover stated that this would be all right.

Mr. Hoover inquired of Mr. Tamm if he remembered the [redacted] Extortion case in Miami. Mr. Tamm stated that he did and supplied Mr. Hoover with the facts.

File # 56-485

Ballot Box Stuffing Ruled Federal Crime

In a split 6—3 decision, the Supreme Court held yesterday that ballot-box stuffing is a Federal crime.

The minority, composed of Justices Douglas, Black, and Reed, vehemently dissented, asserting that the court was now writing into the law what Congress struck out 50 years ago when it repealed in 1894 the notorious "reconstruction legislation" of 1870 which established Federal controls over state elections.

Justice Roberts read the majority opinion which was concurred in by Justices Stone, Frankfurter, Murphy, Jackson and Rutledge, over-ruling a lower court which sustained demurrers to indictments of eight Harlan county, Ky., election officials for conspiracy in the November 3, 1943, senatorial election.

The defendants were accused of marking blank ballots and inserting them in ballot boxes. The high court majority held that Federal law protected personal rights of a citizen to cast a ballot and to have it counted; that ballot box stuffing falsified the count of votes legally cast and thus infringed these personal rights.

THE TIMES HERALD
WASHINGTON, D. C.
MAY 23, 1944

INDEXED

56-485-A
NOT RECORDED
87 MAY 25 1944

A-2 X THE EVENING STAR, Washington, D.C.
MONDAY, APRIL 10, 1944.

High Court Rules Against Lens Firm In Antitrust Suit

By the Associated Press.

The Supreme Court today upheld Justice Department contentions that the Soft-Lite Lens Co., Inc., New York, violated the Sherman Anti-Trust Act by selling pink-tinted eye-glass lenses only to wholesalers who would resell at fixed prices to "licensed" retailers.

Justice Reed delivered the 8-0 opinion. Justice Jackson did not participate.

In a separate case, the tribunal, by an evenly divided vote, sustained a lower court opinion dismissing the Justice Department's charges that the Bausch & Lomb Optical Co., New York, violated the Sherman Act by agreeing to sell only to the Soft-Lite Co. the pink-tinted lenses it made.

The court denied the Government's request for a permanent instead of a six-month injunction against Soft-Lite enjoining it from "systematically suggesting" wholesale and retail resale prices for its lenses, and from executing "fair trade" resale price maintenance contracts.

A decree of the Federal District Court in New York provided that after the six-month period, Soft-Lite must comply with the Miller-Tydings Act permitting minimum prices for resale of a commodity which bears the trade mark of the distributor, in States where contracts of that description are legal for intrastate transactions.

"Of approximately 14,000 optometric retailers in the United States, the Justice Department said 7,000 to 8,000 are Soft-Lite licensees. The Soft-Lite Co., the department added, "realizes a gross profit on its sales of more than 100 per cent."

Bureau has conducted some investigation on Bausch & Lomb for antitrust violations.

EX - 56

INDEXED
174 SE 16

87 APR 13 1944

MAY 9 1944

HN EDGAR HOOVER
DIRECTOR

[redacted] b7c

U. S. Department of Justice
Bureau of Investigation
Washington, D. C.
January 6, 1932.

MEMORANDUM FOR THE DIRECTOR.

[redacted] Marshal of the United States Supreme Court, on the telephone, to inquire if any arrangements had been made to have Special Agents present at the Supreme Court on January 7th., such as were made at the time of the hunger marchers' arrival in Washington sometime past. I advised the Marshal that while I was not in immediate touch with that situation I felt satisfied that no such arrangements had been made or would be made in the absence of a specific request. [redacted] stated that they would feel quite a bit better satisfied if there were several Agents present when the hunger marchers arrive tomorrow and he made the specific request that if possible at least two or three Agents be assigned to this duty. The Local Office was instructed to have two Special Agents report to the Marshal of the Supreme Court at 11:00 A. M. January 7, 1932, but that the Agents should not arrange to stay there more than one day in the absence of specific instructions.

Respectfully,

[redacted] b7c

61-6697

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 9-16-79 BY 2333 Sp/cH

61-6699-97

JAN 6

JAN 7 - 1932

Approved.
1/6/32 J. E. H.

4-750 (Rev. 4-17-85)

XXXXXX
XXXXXX
XXXXXX

FEDERAL BUREAU OF INVESTIGATION
FOIPA DELETED PAGE INFORMATION SHEET

16 Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

☐ Deleted under exemption(s) _____ with no segregable material available for release to you.

☐ Information pertained only to a third party with no reference to you or the subject of your request.

☐ Information pertained only to a third party. Your name is listed in the title only.

☒ Documents originated with another Government agency(ies). These documents were referred to that agency(ies) for review and direct response to you.

_____ Pages contain information furnished by another Government agency(ies). You will be advised by the FBI as to the releasability of this information following our consultation with the other agency(ies).

_____ Page(s) withheld for the following reason(s):

_____

_____

☐ For your information: _____

_____

☐ The following number is to be used for reference regarding these pages:

Cross Reference 104

(65-61542-12)

XXXXXXXXXXXXXXXXXXX
X DELETED PAGE(S) X
X NO DUPLICATION FEE X
X FOR THIS PAGE X
XXXXXXXXXXXXXXXXXXX

XXXXXX
XXXXXX
XXXXXX

FBI/DOJ

4-750 (Rev. 4-17-85)

XXXXXX
XXXXXX
XXXXXX

FEDERAL BUREAU OF INVESTIGATION
FOIPA DELETED PAGE INFORMATION SHEET

_____ Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

☐ Deleted under exemption(s) _____ with no segregable material available for release to you.

☐ Information pertained only to a third party with no reference to you or the subject of your request.

☐ Information pertained only to a third party. Your name is listed in the title only.

☐ Documents originated with another Government agency(ies). These documents were referred to that agency(ies) for review and direct response to you.

_____ Pages contain information furnished by another Government agency(ies). You will be advised by the FBI as to the releasability of this information following our consultation with the other agency(ies).

1 Page(s) withheld for the following reason(s):
This document is a copy of
62-27585-34 which was
released to you on 7/25/68 in the
main file captioned
"Supreme Court."

☐ For your information:

☒ The following number is to be used for reference regarding these pages:
CROSS REF 105 (62-60527-3734)

XXXXXX
XXXXXX
XXXXXX

XXXXXXXXXXXXXXXXXXX
X DELETED PAGE(S) X
X NO DUPLICATION FEE X
X FOR THIS PAGE X
XXXXXXXXXXXXXXXXXXX

FBI/DOJ

OFFICE OF DIRECTOR
FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE

July 5, 1949

Fifth Report on Un-American Activities in California 1949.

To Jenner Committee

Mr. Tolson
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Jones
Mr. Mohr
Mr. Pennington
Tele. Room
Mr. Nease
Miss Holmes
Miss Gandy

Please return to Mr. Boardman

INDEXED 100-15252-44
RECORDED 103

3 AUG 22 1949

FBI AUG 8 1949

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE [redacted]

LIFORNIA LEGISLATURE

Fifth Report of the
nate Fact-Finding Com
On Un-American Activ

1949

MEMBERS OF THE COMMITTEE

OR NELSON S. DILWORTH — SENATOR LOU
OR FRED H. KRAFT — SENATOR CLYD
SENATOR HUGH M. BURNS, *Vice Chairman*
SENATOR JACK B. TENNEY, *Chairman*
NNIE TENNEY, *Secretary* — MURRAY STRAVERS, *Executiv*
R. E. COMBS, *Chief Co*nsel

NATOR HAROLD J. POWERS
*dent Pro Tem*core of the Senate

Secretary of the Senate

om the Fifth to the Sixth Congress state

the following campaigns have been carried out wi
artment:

uary Revolution.

e October Revolution.

e Red Army.
or and the execution of Sacco and Vanzetti (p. 4

s of the Communist International givi
given period were published over a peri
s of the *Daily Worker*: May 1, 1930; Apr
ril 30, 1933; April 27, 1935; May 1, 193
May 1, 1940.

ssued between the 5th and the 6th Co
fact that—

ican Parties have also held central schools w
Sub-Department of the ECCI by the drawing u
sphere of Leninism, and by instructions on orga

Union consider American Communists a
fled to the Soviet Union or received shelt
cted for the violation of the laws of th
cal work entitled "Proletarian Journey,"
and six others convicted in the famou
d fled to the Soviet Union to be warml
ian section of the International Labo
osts under the Soviet Government. Othe
ee who received a Soviet welcome wer
ywood, Louis Bebritz, and many others
ing that the American Communist Part
s from international Communist head
ly and wittingly acted in every sense a
et principal an obligation which in turn
ıber of the American party.

HE UNITED STATES IS AN ADVOCATE OF
MENT BY FORCE AND VIOLENCE

RODUCTION

he United States of America advocate
t by force and violence. As documentary
n Un-American Activities submits th

his report will dispel any confusion
y exist in the mind of the Americ
need for adopting and enforcing leg
st Party, and illustrate the voluminou
ation and its enforcement.

This report establishes conclusively that:

(1) The teachings of Marx, Engels, Lenin, and Stalin constitute the credo of the Communist Party, U. S. A.—in fact of the communist movement throughout the world. The doctrine of forceful and violent overthrow of anti-Communist governments is a basic premise of these teachings.

(2) The model party of the American Communist is the Communist Party of the Soviet Union, whose history forms a basic "guide" or textbook for American Communists on the practice of force and violence.

(3) The American Party is now and always has been under the direction of an international Communist organization dominated by the leaders of the Communist Party of the Soviet Union, which is established and documented on the preceding pages ?? to ?? of this report. This was true under the Communist International and now under the Communist Information Bureau. This world movement has consistently advocated forceful and violent measures against anti-Communist governments. It is no mere coincidence that in every one of the countries recently overthrown by such Communist violence, leaders of the Communist International have seized positions of power.

(4) The Communist Party, U. S. A., and its leaders, both present and past, are on public record as advocates of the forceful and violent overthrow of the American Government, despite their recent disavowals. *Many of these leaders have received training in Moscow on the practical application of such methods.*

(5) The Communist Party, U. S. A., has encouraged, supported, and defended, without a single deviation, the ruthless measures of foreign Communist parties to overthrow their legally constituted governments by force and violence. *In other words, what the Chinese or Greek Communists are doing today is what the American Communists plan to do tomorrow under similar circumstances.*

(6) While the United States Supreme Court has not yet made a judicial determination on the question, numerous lower federal courts have, with unusual consistency, handed down decisions which characterize the Communist Party, U. S. A., as an advocate of overthrowing our government by force and violence.

The threat offered to our national security by the continued, almost unrestricted operation of such a movement within our own borders should be obvious to everyone.

Communism today, far from being the weak, isolated movement it once was, is a powerful force for evil whose influence is being exercised in virtually every country in the world.

Under the leadership, support, and inspiration of the Soviet Union, communistic dictatorship has been forced upon one nation after another in Europe by the ruthless use of force and violence. These outbursts of Communist violence—all obviously aimed at paving the way for eventual subversion of the entire world to Moscow dictation—have also occurred in Asia and in our own hemisphere.

No better case in point could be cited than the evidence ... in the documents on Nazi-Soviet Relations, 1939-41, publishe... State Department. In other words duplicity is innate in the Co... movement which was advised by Lenin to "resort to all sorts of ... maneuvers, and illegal methods, to evasion and subterfuge," in ... accomplish its purpose. It is in this light that the following Co... denials regarding the use of force and violence must be considered.

(Statement of William Z. Foster, chairman of the Communis... U. S. A.:)

Question. Does the Communist Party advocate the overthrow of the Unit... Government by force and violence or by any other unconstitutional means?

Answer. We'll let the Supreme Court of the United States answer th... tion for us. In its decision in the Schneiderman case, June, 1943, after exa... exhaustively, on the one hand, the charges that the Communist Party ad... violent seizure of power and on the other hand, the practices and doctrine... party, including the writings of Marx, Lenin, and Stalin, the Court said:

"A tenable conclusion from the foregoing is that the party in 1927 d... achieve its purpose by peaceful and democratic means, and as a theoretic... justified the use of force and violence only as a method of preventing an ... forcible counteroverthrow once the party had obtained control in a peaceful ... or as a method of last resort to enforce the majority will if at some indefi... in the future because of peculiar circumstances constitutional or peaceful ... were no longer open."

We Communists accept this formulation as a fair statement of our ... toward the question of political violence. American Communists have alway... nized the historical fact that parties with advanced social programs cannot ... governmental power by conspirational methods or by minority coups d'etat. The danger of violence in such situations always comes from the reactionary ... who refuse to bow to the democratic majority will. (New York *Herald T...* January 11, 1948, p. 38.)

Foster did not state that the majority opinion in the Schneider... case also declared that "This court has never passed upon the ques... of whether the party does so advocate, and it is unnecessary for ... do so now." (*Schneiderman* v. *United States*, 320 U. S. 118, at p. ...

It is generally conceded by legal authorities at the present ... that the fact that Russia was an ally at the time of the decision a... pressing need of national and international unity for the task of d... ing the Axis Powers, created an atmosphere conducive to a favo... decision in this precedent-making case, of which the court coul... have been unmindful. There is good ground for the belief that a f... test case before the United States Supreme Court will result in a dec... opinion regarding the party's advocacy of overthrow of government ... force and violence. *In publishing this report, your committee s... aid in clarifying this issue.*

In his pamphlet entitled "*Is Communism Un-American?*" Eu... Dennis, general secretary of the Communist Party of the United St... has voiced a similar denial of advocacy of force and violence:

Question. The party's aim is the violent overthrow of the American syste...

Answer. The position of the Communist Party on this question is defi... embodied in the constitution of the Communist Party which states:

"Adherence to or participation in the activities of any clique, group or or... faction or party, which conspires or acts to subvert, undermine, weaken or overth... any or all institutions of American democracy, whereby the majority of the Amer... people can maintain their right to determine their destinies in any degree, shall ... punished by immediate expulsion * * *."

Force and violence—resistance to the process of basic social change—h... always been initiated and exercised by reactionary classes bent on maintaining th... power and privileges against the will of the overwhelming majority.

COMMUNIST DECEPTI...

There are a number of cleverly con... Whether it be in a strike against... or against a weaker nation, the force... resorted to Hitler's technique of ... the victim of the attack.

... May 30, 1937, the Communists ... Republic Steel plant in Chicago in ... and 10 were killed. A coroner's ... had been carefully prepared b... provision for Red Cross suppl... Communist press then proce... Steel Corporation and the Ch...

Speaking on November 29, 1939, a... invasion of little Finland, V. M. ... Affairs, brazenly declared:

Men and women, citizens of the Soviet Un... government of Finland toward our co... to insure the external security of our ... negotiations have been initiated by the ... the Soviet Union and Finland. * * * (... Molotoff (Coward-McCann, Inc., New Yo...

This policy of blaming the victim ... violence, drew forth the followin... Harlan Stone in the Schneiderma...

We need not stop to consider the much-di... that force was to be used if established go... refuse to make themselves over into proleta... governmental structures, or should have ... lawless or subversive attacks. For in any ... of government, and the measures (*Schneiderman* v. *United States*, 320 U. S. 118, a...

Another loophole it should be no... Constitution prohibits action against "an ... democracy, whereby the majority ... retain their right to determine their ...

Subversion is not prohibited against ... American Government. Thus the Comm... declares that such institutions are not o... which the American people can maintain ... decisions," or decide that a majority i... toward the institutions of Americ... is immediately loses its validity.

Those who remember the facility wit... changed their conception of the United S... party into one of warmongering imperiali... of the Stalin-Hitler pact in August, ... upon this obvious, face-saving, legalistic ...

The sincerity and reliability of Mr. ... advocacy of overthrow of our Governme... seriously impugned by his avowed host... as expressed as recently as March, 1948 i... organ, *Political Affairs*. Here he refers ... one of two "hostile camps," that of "im...

necessarily advocate the overthrow of the government by force and violence, but that he was in reality cooperating with the Communist Party only in wholly legitimate measures and, therefore, was not so affiliated therewith, in the sense intended by the statute, as to warrant his deportation; and (2) that evidence of affiliation employed to find that [illegible] was a member of the Communist Party was improperly admitted. *Nowhere did the court suggest that the Communist Party did not advocate the overthrow of the government by force and violence, since the question was not in issue.*

FEDERAL COURT DECISIONS

Opposed to this refusal on the part of the Supreme Court of the United States to make a judicial determination as to whether the Communist Party advocates the overthrow of the government by force and violence we have the decision of many lower federal courts that the party does so advocate.

Kenmotsu v. *Nagle* (44 F. 2d 953, 954-955 (C. C. A. 9)); certiorari denied (283 U. S. 832); *Saksagansky* v. *Weedin* (53 F. 2d 13, 16 (C. C. A. 9)); *Wolck* v. *Weedin* (58 F. 2d 928, 929 (C. C. A. 9)); *Sormunen* v. *Nagle* (59 F. 2d 398, 399 (C. C. A. 9)); *Branch* v. *Cahill* (88 F. 2d 546 (C. C. A. 9)); *Berkman* v. *Tillinghast* (58 F. 2d 621; 622-623 (C. C. A. 1)); *In re Saderquist* (11 F. Supp. 525, 526-527 (D. Me.)); aff. sub nom., *Sorquist* v. *Ward* (83 F. 2d 890 (C. C. A. 1)); *United States* v. *Curran* (11 F. 2d 683, 685 (C. C. A. 2)); certiorari denied sub nom. *Vojnovic* v. *Curran* (271 U. S. 683); *United States* v. *Smith* (2 F. 2d 91 (W. D. N. Y.)); *Re Worozcyt et al.* (58 Can. Cr. Cas. 161 (Sup. Ct. Nova Scotia, 1932)). Of the three cases mentioned in the opinion in *Schneiderman* v. *United States* (320 U. S. 118, at 148, fn. 30) as holding to the contrary, one—*Colyer* v. *Skeffington* (265, Fed. 17 (D. Mass.)) was, as there noted, reversed on appeal (sub nom. *Skeffington* v. *Katzeff* 277 Fed. 129 (C. C. A. 1)); and one—*Strecker* v. *Kessler* (95 F. 2d 976 (C. C. A. 5))—was affirmed by this court, with modification, on other grounds, and without consideration of this point (307 U. S. 22). In the third, *Ex parte Fierstein* (41 F. 2d 53 (C. C. A. 9)), the only evidence adduced in support of the finding was the bare statement of the arresting detective that the party did so advocate.

These courts have uniformly sustained, when based on comparable records, administrative findings to the effect that the Communist Party from its inception in 1919 has believed in, advised, advocated, and taught the overthrow by force and violence of the Government of the United States. Other courts have gone to the extent of holding that the Communist Party, as a matter of law, will be presumed to advocate force and violence even in the absence of specific evidence.

Murdock v. *Clark* (53 F. 2d 155, 157 (C. C. A. 1)); *United States ex. rel. Yokinen* v. *Commissioner* (57 F. 2d 707 (C. C. A. 2)); certiorari denied (287 U. S. 607); *United States ex. rel. Fernandas* v. *Commissioner of Immigration* (65 F. 2d 593 (C. C. A. 2)); *United States* v. *Perkins* (79 F. 2d 533 (C. C. A. 2)); *United States* v. *Reimer* (79 F. 2d 315, 316 (C. C. A. 2)); *United States ex. Fortmueller* v. *Commissioner of Immigration* (14 F. Supp. 484, 487 (S. D. N. Y.)); *Ungar* v. *Seaman* (4 F. 2d

[illegible] (C. C. A. 8)); *Ex parte Jurgans* (1[illegible] 25 F. 2d 35 (C. C. A. 8)).

The following are excerpts from opin[illegible] on the advocacy by the Communist P[illegible] government by force and violence:

Antolish v. *Paul et al.* (283 F. 957 at pp. [illegible]

"(3) When, therefore, purposes and methods [illegible] of society and government as now organiz[illegible] in language such as "by direct action," by [illegible] action," suggesting "the army of the proletari[illegible] final guard," the use of all means of "battle," d[illegible] sary in open combat, and the like, the query at c[illegible] is [illegible] susceptible of a meaning which necessaril[illegible] means and necessarily suggests repugna[illegible] a [illegible] any idea except a change so peaceable, yet [illegible] the old to the new era will come about with a [illegible] willingly receding before the new. It suffice[illegible] upon argument, that it is hardly fair to a [illegible] exceedingly mild. In other words, the concessi[illegible] means to be used, if success is to be achieved, i[illegible] other means prove unavailing.

Skeffington v. *Katzeff* (277 F. 129, at pp.

"We have carefully examined these exhibits fo[illegible] whether they contain statements which, giving to t[illegible] would warrant any reasonable mind in reaching the [illegible] party teaches or advocates the overthrow by force a[illegible] now constituted.

"Following are some of the declarations of purpo[illegible] found in the manifesto of the Communist Internation[illegible] action of the Communist Party of America, are bindin[illegible] on the application for membership the applicant [illegible] principles and tactics of the party and the Communist I[illegible]

"'Communism does not propose to 'capture' the [illegible] but to conquer and destroy it. As long as the bourgeo[illegible] state can baffle the will of the proletariat. * * *

"'The state is an organ of coercion. * * *

"'Therefore it is necessary that the proletariat [illegible] coercion and suppression of the bourgeoisie. Proletarian [illegible] of that fact; it is equally a recognition of the fact that [illegible] of society the proletariat alone counts as a class. *

"'The proletarian class struggle is essentially a pol[illegible] struggle in the sense that its objective is political—overt[illegible] those upon which capitalist exploitation depends, and th[illegible] state power. The object is the conquest by the pro[illegible] * * *

"'The organized power of the bourgeoisie is in the c[illegible] army under control of bourgeoise-junker officers, its poli[illegible] officers, its priests, government officials, etc. Conquest [illegible] merely a change in the personnel of ministries, bu[illegible] apparatus of government; disarmament of the bourgeois[illegible] officers, of the white guard; arming of the proletariat, t[illegible] red guard of workingmen. * * *

"'The revolutionary era compels the proletariat to [illegible] battle which will concentrate its entire energies; namely, [illegible] violent, direct conflict with the governmental machine [illegible] methods, such as revolutionary use of bourgeoise parli[illegible] are secondary significance. * * *

"'Civil war is forced upon the laboring classes by t[illegible] ruling class must answer blow for blow if it will not renoun[illegible] future, which is at the same time the future of all humani[illegible]

"'The Communist Parties, far from conjuring up [illegible] strive to shorten its duration as much as possible—in

ndix with texts of some of the constitutional
ed or discussed.

AL CONSTITUTIONAL LIMITATIONS

s legislative powers in its legislature, to be
limitations expressed in the constitution of

ch we are principally confronted, in consid-
of state statutory regulations concerning
y common to all of the states.
pressed in the form of guaranties of funda-
immunities, generally referred to as the

e, Article I of the Constitution guarantees
gion (Sec. 4), freedom of speech (Sec. 9),
c. 10), coupled with the reservation that
shall not be construed to impair or deny
ople" (Sec. 23). (For text, see appendix.)
nited States furnishes similar guarantees
press, and of assembly (Amendt. I)),
at "the enumeration in the Constitution
construed to deny or disparage others
mendt. IX), as limitations upon Cal-
process clause of the Fourteenth Amend-
legislative action (*Gitlow* v. *New York*
innesota (1931), 283 U. S. 697; *DeJonge*
3; *Cantwell* v. *Connecticut* (1940), 310
k is discussed on page 570. *Near* v. *Min-*
atute providing for the abatement of a
amatory newspaper, magazine or other
en violated by the appellant who pub-
neapolis enforcing officers and agencies
uties energetically. The court held the
nfringement of the liberty of the press
mendment. *DeJonge* v. *Oregon* in the
antwell v. *Connecticut* held that a Con-
ciation of funds for religious purposes
the Witnesses who solicited contribu-
r pamphlets, was unconstitutional as
freedom of religion) without dis-

ation to the requirements of the Con-
limitations imposed by the several
pressed in the federal constitution and
tates.
Constitution of the United States has
rued and applied in judicial decisions
to prevent subversive activities. The

cting an establishment of religion, or
ging the freedom of speech, or of the
emble and to petition the government for a

These rights are not absolute. As stated by the United States Supreme Court in *Whitney* v. *California* (1927), 274 U. S. 357:

"That the freedom of speech which is secured by the Constitution does not confer absolute right to speak, without responsibility, whatever one may choose, or an unrestricted and unbridled license giving immunity for every possible use of language 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." (p. 371.)

Thus, in effect, the question before us is: Where does the individual's freedom end and the state's police powers begin?

II. THESE LIMITATIONS IMPOSE THREE BASIC STANDARDS

These constitutional limitations impose three major requirements, or basic standards, for statutory regulation of subversive activities.

(1) The due process clause requires that such a statute be sufficiently explicit to inform those who are subject to it, what conduct on their part will render them liable to its penalties, and be couched in terms that are not so vague that men of common intelligence must necessarily guess its meaning and differ as to its application (*Whitney* v. *California*, 274 U. S. at p. 368).

(2) Such a statute must bear an appropriate relation to the safety of the state (*Near* v. *Minnesota*, 283 U. S. at p. 707).

While these two standards may give rise to some difficulties as to sufficiency of proof, they present no insurmountable obstacle to the enactment and enforcement of effective curbs upon subversive activities. The third standard, however, presents difficult problems. That standard, resulting from the preferred position of the freedoms secured by the First Amendment, is:

"CLEAR AND PRESENT DANGER"

(3) Any statute restricting those liberties must be justified by some clear public interest, threatened not doubtfully or remotely but by *clear and present danger* (*Thomas* v. *Collins* (1945), 323 U. S. 516).

The *Thomas* case involved a Texas statute that required a labor union organizer to apply for an organizer's card before soliciting any members for his organization. The court held that statute unconstitutional as applied to the president of the International Union U. A. W. (United Automobile, Aircraft and Agricultural Implement Workers), who closed an address with a general invitation asking persons present to be members of a labor union to support a certain local union. In holding that the statutory restriction of the liberties guaranteed by the First Amendment, as applied to the facts, was not justified, the court stated:

"The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundation. Accordingly, whatever restriction would restrain orderly discussion and persuasion, at appropriate time and place, must have clear support in public danger, actual or impending. Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation. It is therefore in our tradition to allow the widest room for discussion, the narrowest range for its restriction, particularly when this right is exercised in conjunction with peaceable assembly." (p. 530.)

Although the "clear and present danger" standard (applied in *Schenck* v. *United States* (1919), 249 U. S. 47) was given a somewhat restricted scope in *Gitlow* v. *New York* (1925), 268 U. S. 652, which upheld the New York Anarchy Act, the more recent decisions in *Thomas* v. *Collins* (1945), 323 U. S. 516; *Thornhill* v. *Alabama* (1940), 310 U. S. 88; *Schneiderman* v. *United States* (1943), 320 U. S. 118, and *Bridges* v. *California* (1941), 314 U. S. 252, indicate that the "clear and present danger" standard must be met in formulating a measure that in any way restricts or hampers the freedom of religion, speech, press or peaceful assembly.

In the case of *Schenck* v. *United States*, the defendant was convicted of violating the Espionage Act of 1917 by attempting to cause insubordination in the armed forces of the United States and to obstruct the recruiting and enlistment service of the United States while it was at war with Germany. The defendant had published a document circulated to men who had been called to service and allegedly calculated to cause insubordination and obstruction. The court affirmed the conviction of the defendant and stated that "The question in every case [involving freedom of speech] is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has the right to prevent." (p. 52.)

The *Thomas* case involved a Texas statute which sought to regulate labor union organizers. In the *Thornhill* case, the court found that an Alabama statute prohibiting picketing was unconstitutional.

In the *Schneiderman* case, the court reversed a lower court decision canceling the citizenship of Schneiderman on the grounds that he had illegally procured citizenship. It was alleged that Schneiderman at the time of his naturalization had fraudulently concealed his membership in certain Communist organizations which were opposed to the principles of the Constitution.

In the *Bridges* case, the court reversed the conviction of a labor leader who had been held in contempt of a state court, for causing the publication of a telegram from himself to the Secretary of Labor, on the ground that the telegram constituted an attempt to influence the court's decision since it contained a threat to strike.

The determination of what constitutes a "clear and present danger" presents the problem most difficult of solution. For, as stated by the Supreme Court in *Bridges* v. *California* (cited above):

> "In *Schenck* v. *United States*, however, this court said that there must be a determination of whether or not 'the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils.' We recognize that this statement, however helpful, does not comprehend the whole problem. As Mr. Justice Brandeis said in his concurring opinion in *Whitney* v. *California*, 274 U. S. 357, 374: 'This court has not yet fixed the standard by which to determine when a danger shall be deemed clear; how remote the danger may be and yet be deemed present.' * * * (p. 261.)
>
> "What finally emerges from the 'clear and present danger' cases is a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished. Those cases do not purport to mark the furthermost constitutional boundaries of protected expression, nor do we here." (p. 263.)

III. STATUTORY AND JU

In view of the difficulties inheren
and present danger" test, we believe th
extent of the power of the Legislature
is to examine some of the more significar
construing and applying those statutes.
of the statutes discussed will be found in
at Page 581.

We have not included considerati
such a time, the clear and present dan
than in the case of statutory regulatic
of peace.

Regulations concerning subversive
pal forms: First, statutes that directly
statutes that directly affect organizati
of organizations.

A. STATUTORY REGULATIONS THAT D

1. *Treason.* Treason against the
State, adhering to its enemies, or giving
and punished by Section 37, California
dix), the definition being derived fro
State Constitution. (For text, see Appe

Misprision of treason, consisting
treason without otherwise assenting to
punishable under Section 38, Californ
Appendix.)

2. *Insurrection and Rebellion.* I
of active and open resistance to the au
ment. Section 143 of the California Mi
izes the Governor to declare a state of in
fied "that the execution of civil or cr
resisted by bodies of men, or that any co
resist by force the execution of such p
county or city are unable or have fail
laws" and he may order into the serv
text, see Appendix.) Section 145 of the
Code provides for punishment of anyo
the Governor's proclamation. (For tex

3. *Sedition.* Sedition may be gen
of mouth, publication or otherwise, di
ment or the advocacy of its overthrow
statute which prohibits sedition as su
includes criminal anarchy, display of
ment, and criminal syndicalism.

a. *Criminal Anarchy.* Statutes
hibit the forceful and violent overthro
Usually such statutes also prohibit the
organized government.

The New York Anarchy Act (for
Law, Secs. 160-166) provides, in part,
advise or teach by word of mouth or

issue or knowingly circulate, sell, distribute or publicly display any book, paper, document or written or printed matter in any form containing or advocating, advising or teaching such a doctrine; or to organize or help organize or become a member of or voluntarily assemble with a group of persons found to teach or advocate such a doctrine.

The New York act was upheld by the Supreme Court in *Gitlow v. New York*, 268 U. S. 652, decided in 1925, where the defendant was found to be responsible for a manifesto advocating overthrow of the government by violence and unlawful means.

The court in the *Gitlow* case did not apply the "clear and present danger" standard, holding that the test applied only to actions of the class involving the Espionage Act. The court held the criminal anarchy statute in question valid, observing that a state, in the exercise of its police power, may punish those who abuse the freedom of speech by utterances inimical to the public welfare, tending to corrupt public morals and inciting to crime. The court recognized the legislative determination of the danger of substantive evil arising from utterances of a specified character. Justice Holmes dissented to the majority opinion, adhering to the "clear and present danger" test, which, if applied, might have rendered the statute unconstitutional.

The *Gitlow* case has not been overruled. However, later decisions tend to indicate that the "clear and present danger" standard applies to all state legislative action that encroaches upon the liberties guaranteed by the Bill of Rights. We cannot say with assurance that this standard does not now apply to such statutes as the New York Anarchy Act.

We are not aware of any California statute that expressly prohibits criminal anarchy. However, that offense would appear to fall within the scope of the criminal syndicalism laws of California, discussed below.

b. *Display of Emblems of Opposition to Government.* Section 616 of the California Military and Veterans Code prohibits the display of any flag, banner or badge in any public place or in any meeting place or public assembly or on or from any house, building or window, as a sign, symbol or emblem of "forceful or violent" opposition to organized government, or stimulus to anarchistic action, or aid to propaganda advocating overthrow of government by force. (For text, see Appendix.) That section, enacted in 1935, is based upon former Section 403a of the California Penal Code one of the clauses of which (prohibiting the display of a flag "as a sign, symbol or emblem of opposition to organized government") had been held unconstitutional in *Stromberg v. California* (1931), 283 U. S. 359.

In the *Stromberg* case the defendant, a member of an organization affiliated with the Communist Party, was supervising a Youth Camp in San Bernardino. Each day she directed a ceremony at which a camp-made reproduction of the flag of Soviet Russia was raised while the children saluted and pledged allegiance to the flag "and to the cause for which it stands, one aim throughout our lives, freedom for the working class." The Supreme Court held the clause in question was void for vagueness and indefiniteness, stating that its terms might include peaceful and orderly opposition to a government, organized and controlled by a political party, as well as a Communist organization.

The present section was re-enacted, limiting the prohibition of that clause to "forceful or violent" opposition to organized government, to

uniform with the law established in the *St*
stitutionality of the present section has n
c. *Criminal Syndicalism.* Criminal
dvocacy of industrial or political change t
rce and violence or unlawful methods
tatute prohibiting criminal syndicalism
eering's California General Laws, Act 84
hich was upheld by the Supreme Court in
74 U. S. 357, when it affirmed the conv
ngly and actively participated as an org
f the Communist Labor Party of Califo
ary to have been organized to advocat
yndicalism as defined by that statute.

It should be noted that in *DeJonge* v.
he Oregon criminal syndicalism statute
akes it a crime to preside at, conduct,
eeting of an organization or group whic
yndicalism or sabotage) was held uncon
he particular set of facts presented by

The defendant had been a speaker at
ored by the Communist Party. The meeti
urpose of protesting the activities of t
trike by the coast longshoremen. It was
advocacy of criminal syndicalism or any u

The court held that, notwithstandin
ist Party, the defendant still enjoyed h
to take part in peaceful assembly. Portio
the court in the *DeJonge* case appear to
discussion. The court stated:

"* * * His sole offense as charged, and
tenced to imprisonment for seven years, was th
ublic meeting, albeit otherwise lawful, which
Communist Party." (p. 362.)

"The broad reach of the statute as thus ap
member of the Communist Party, that member
on such a charge. A like fate might have attend
er, who 'assisted in the conduct' of the meeting
meeting, however lawful the subjects and tenor
and timely the discussion, all those assisting in
subject to imprisonment as felons if the me
Party * * *" (p. 362.)

"While the states are entitled to protec
privileges of our institutions through an attemp
in the place of peaceful political action in orc
government, none of our decisions go to the le
of the right of free speech and assembly as the
application. * * *" (p. 363.)

"It follows from these considerations th
stitution, peaceable assembly for lawful discu
If the persons assembling have committed crin
are engaged in a conspiracy against the public p
for their conspiracy or other violation of valid
the state, instead of prosecuting them for such
in a peaceable assembly and a lawful public
charge." (p. 365.)

4. *Sabotage.* Sabotage statutes generally contemplate wilful destruction, injury or diminution of value of physical property belonging to another. The crime of sabotage has been incorporated in the California statute relating to criminal syndicalism (cited above) and is therein defined as meaning "wilful and malicious physical damage or injury to physical property." (For text, see Appendix.)

The Supreme Court upheld the validity of the sabotage provisions of the California statute in *Burns* v. *United States* (1927), 274 U. S. 328, affirming the conviction of the defendant for organizing, assisting in organizing, and becoming a member of an organization (the Industrial Workers of the World) which was found to have been organized to advocate and teach acts of industrial sabotage.

5. *Masks and Disguises.* Many states have enacted laws controlling the wearing of masks and disguises to conceal identity. A California statute prohibits the wearing of masks (Ch. 153, Calif. Stats. 1923, Deering General Laws, Act 4707). (For text, see Appendix.) We are unaware of any reported decision involving that statute.

6. *Criminal Conspiracy and Unlawful Assembly.* Most states, including California, have statutes prohibiting conspiracy to commit a crime (California Penal Code, Section 182. For text, see Appendix.) and unlawful assembly. (California Penal Code, Sections 407, 408, and 416. For text, see Appendix.) However, these statutes are of general application and do not relate particularly to criminal subversive activities.

7. *Public Employment.*

(a) *Federal Employment.* The President by his executive order of March 21, 1947 (Exec. Order No. 9835, 12 Fed. Reg. 1935), has directed that inquiry be made into the loyalty of all persons in federal service, and established procedures for the discharge of employees as to whom reasonable grounds exist for belief that they are disloyal to the government.

We are not aware of any judicial decision in which the constitutionality of this order has been considered.

It is noteworthy that in *Friedman* v. *Schwellenbach* (1946), 159 Fed. 2d 22, the United States Court of Appeals, District of Columbia, upheld a war service regulation permitting the removal from federal service of a person concerning whose loyalty to the government the Civil Service Commission entertained a reasonable doubt.

The defendant in that case had been conditionally transferred from a government position not under the Classified Civil Service to a place in the Division of Central Administrative Services, Office for Emergency Management, a position requiring civil service status. The transfer was made expressly "subject to character investigation."

The court held that the United States has the right to employ such persons as it deems necessary to aid in carrying on the public business and to prescribe qualifications and to attach conditions to their employment, ruling that it was beyond the province of the court to review the finding of the Civil Service Commission as to the existence of a reasonable doubt of Friedman's loyalty. The Supreme Court denied a writ of certiorari in the matter (330 U. S. 838).

The *Friedman* case involved a wa
not be considered as determinative
tions and procedure for the deter
servants.

With respect to peacetime re
employees, the Supreme Court in *L*
1947), 330 U. S. 75, upheld the pro
Act (18 U.S.C. Supp. V, Sec. 61h)
the government from undertaking "
ment or in political campaigns."

The court, in affirming the lo
brought by certain members of the
Government and a union of such er
the Civil Service Commission from er
in question and for a declaratory j
utional, stated:

"We have said that Congress may re
employees 'within reasonable limits,' even
extent upon unfettered political action (p. 1
n the judgment of Congress menace the in
egislation to forestall such danger and adeq
p. 103.)

The court, in the *Mitchell* cas
private, on public affairs, personali
not an objective of party action, ar
long as the government employee d
party success.

Another Supreme Court decisio
v *Lovett* (1946), 328 U. S. 303, whic
sional appropriation measure that
three named employees, who were f
Committee to be unfit for governm
subversive activities.

The court held that the provisio
I, Section 3, Clause 9 of the Feder
no bill of attainder or ex post facto
had the effect of accomplishing the p
without a judicial trial.

(b) *State Employment.* The
state employees to take an oath to su
States and the Constitution of Cal
for text, see Appendix), and prohi
who advocates, teaches, justifies, ai
force and violence, sedition or treas
State of California, and requires in
committing such an act during his e
see Appendix.)

The California Government Co
by oath to support, maintain or furt
or policies of any foreign governmer
zation thereof or to obey the orders
ment or official thereof is ineligible

kind under the State or any of its political subdivisions (Sec. 1023). (For text, see Appendix.)

The California Government Code further provides that advocacy or membership in an organization which advocates the overthrow of the United States Government by force, violence or other unlawful means, is sufficient cause for dismissal of public employees (Sec. 1028). (For text, see Appendix.)

The California Education Code provides that certified public school employees may be dismissed for the commission, aiding or advocating the commission, of acts of criminal syndicalism (Sec. 13521). (For text, see Appendix.) It also provides for an oath or affirmation as a prerequisite for certification of teaching credentials (Sec. 12100). (For text, see Appendix.)

We are not aware of any court proceeding in which the constitutionality of these provisions has been presented for consideration.

However, the District Court of Appeals in *Board of Education* v. *Jewett* (1937), 21 Cal. App. 2d 64, 68 Pac. 2d 404, affirmed the judgment of a lower court which sanctioned the dismissal of a teacher who was found guilty of unprofessional conduct in violation of Section 5.650 of the former California School Code, the origin of the present Section 13521 of the California Education Code.

In that case, the defendant attempted to enlist from his pupils support for his anti-American pro-Russian views. Among other things, he distributed communistic pamphlets to his pupils in the classroom.

8. *Flag Saluting.* In *West Virginia State Board of Education* v. *Barnette* (1943), 319 U. S. 624, the Supreme Court had under consideration the expulsion from school of students who were members of Jehovah's Witnesses.

The students had refused to execute the flag salute as required by the local board of education. They refused to salute the Flag on the ground that to do so would be in conflict with their religious belief that they should not bow down or serve any graven image. The Jehovah's Witnesses considered the Flag an image.

The court, in stating that the flag salute requirement violated the First and Fourteenth Amendments, stated that it "transcends constitutional limitations on their power and invades the sphere of intellect and spirit which is the purpose of the First Amendment to our Constitution to reserve from all official control." (p. 642.)

9. *Alien Registration.* In *Hines* v. *Davidowitz* (1941), 312 U. S. 52, the Supreme Court found that the Federal Alien Registration Act of 1940 forms, with the Immigration and Naturalization Laws, a comprehensive and integrated scheme for the registration of aliens, which precludes the enforcement of state alien laws such as the one adopted by the State of Pennsylvania in 1931, then under consideration.

The Pennsylvania law required all aliens eighteen years or over, with certain exceptions, to register once each year.

The Federal Alien Registration Act provides for a single registration of aliens fourteen years of age or over. The national power is supreme over that of the state in the field of foreign affairs, including power over immigration, naturalization and deportation.

Where the Federal Government h
egulation in this field and therein prov
on of aliens, a state cannot, inconsisten
nflict or interfere with, curtail or
nforce additional or auxiliary regulat

The decision in the *Hines* case se
ongress (inferred from the scope of th
ccupy the field and thereby preclude
ield. Had Congress indicated a contrar
ylvania statute would have continued

10. *Oath Requirements.* The Nat
. S. C. Sec. 159 (h)) provides that, t
ach officer of a petitioning labor org
ffidavit that he is not a member of, o
Party and that he does not believe in, a
ot support any organization that beli
f the United States Government by fo

This provision was upheld in *Oil*
Elliott (1947), 73 Fed. Sup. 942. T
enied a petition for a mandatory in
irector of the National Labor Relatio
labor election to determine whether
Union should represent the employees

The plaintiff was an affiliate of an
affidavits as required by the National

The court, in considering Section 4
stitution, which provides that the nati
ach state a republican form of gover
ized that the Communist form of gov
orm of government." (p. 944.)

In this field, as in the field of alien
cted, the question frequently arises wh
o occupy the field and thereby preclud

Thus, to the extent that state statu
mployer-employee relations conflict wi
Labor Relations Act, they must yield to
Florida (1945), 325 U. S. 538). A
abor union activities, established stand
f union bargaining representatives
National Labor Relations Act. Hill had
from acting as a bargaining agent of a
ecure a license under the Florida statu

The majority opinion in the *Hill*
sider a mere conflict between specific pr
statutes; found that the Florida statu
accomplishment and execution of the
Congress," apparently inferring that
o preclude state action. Had Congress
Florida statute might have been effecti
visions that were not in direct conflic
federal statute might have been operat

AIRMAN CANWELL

vou, Senator Bienz and Senator Tenney.

what Senator Tenney has said. I am most
are traveling in the right direction when
st the common enemy. We are very much
ıization in the several states through the
oppose Communism, to effectively defeat
ey that this is a very technical field. It is
t to legislate. I do feel convinced that this
ınism can be defeated in America. I think
can way to defeat this sort of thing is
; is difficult to legislate in this field. As
cult to draft straight-jacket laws fencing
epping on the toes of other citizens. We
our investigations to expose Communists
ıe of the accomplishments of un-American
veral states. What may be necessary in
lem we hope to partially solve here. And,
quainted with each one of you while we
greatest help to us in our operation has
f men who are working in the same field
e have called on such men as Harper
now, Karl Baarslag, Tom Sawyer and
s help that was immediate and necessary
tain in any other way. We drew heavily
lifornia committee in drafting a resolu-
l steps we had to take in charting a new
n, we were able to turn to those who had
ink that that is what each one of you

your time. As I said, I hope to become
one of you and get your counsel and
o you and I think that this meeting will
is a step in the right direction, and I
ou as it goes along.
ou, Chairman Albert Canwell of the
ate of Washington.
peaker, I might say that we are going
the next day and a half and the last
question period, reports probably on
Part of the most important part will
everyone will continue to attend every

ve have what we call a lawyers com-
. There are five lawyers there and I
l advise members of the committee on
onstitutionality of bills to be presented

e of California that one man does all
n figure. He is especially well-known

re in this State. He is Fred B. Wood, the next speaker, and he is
islative counsel for the State of California. It is my pleasure to present
ou Fred B. Wood at this time.

I. Fred B. Wood—Legislation

Mr. Wood: Chairman Bienz, Senators and Representatives of the
ious states, Ladies and Gentlemen:

May I make an amendment to the portion of the introductory
arks. The rumor is exaggerated that one man performs all those
vices in California. I have 18 deputies. Even then we think that we are
overworked. I have been given the subject, "The Constitutional Power
a State Legislature to Enact Statutes Dealing with Secret and Sub-
ive Activities and a Brief Resume of Present California Statutes
This Subject."

We have to consider on a state level primarily first, the Bill of
ts of the State and of the United States. In addition, on the state
l as distinguished from the federal level, if a particular proposed
of legislation deals with aliens or in some other way deals rather
tly with international relations, it comes into the question of the
nt of state power and also whether or not Congress has occupied
ield. As concerns standards and requirements imposed by the state
s employees, there is a bit greater latitude because the state, as
oyer, has admittedly a good deal to say as to the standards and
irements that it will demand of its employees which is quite a bit
rent from the state in dealing with the average citizen or any
n not in the status of an employee of the state within its territorial
laries.

*For Mr. Woods' revised, annotated and complete analysis of the
of antisubversive legislation, please turn to pages 564-588, in Part
of this Report.)*

I see my time is running pretty close. I might summarize that any
measure must be couched in explicit and clear terms. This means
it must not only meet the standards of a criminal statute, but it
clearly define the subversive activities prohibited. It seems clear
the courts will not accept a legislative determination that any
ular named organization is engaged in subversive activities.

I will say now that I do not read in any of the decisions of the
preme Court of the United States or any of the states, any disavowel
power of the United States or of the states to adopt appropriate
ation to protect its very existence. The question always is, under
particular statute that meets the subject of evil, is it too sweeping
it narrowly and appropriately directed to the evil to be prevented?
ms clear that the courts will not necessarily accept the legislative
mination that any particular organization is engaged in subversive
ties. Such measures must be necessitated by a clear and present
er to the public peace.

The courts will not sanction prohibition—when I say the courts, I
the Constitution, because the courts only interpret the Constitu-
as I say, will not sanction prohibition of peaceful and lawful
ties of a subversive organization in the absence of proof of its

eans and other foreigners, but sir, it is
ever make the slightest impression on
tic Americans." And our own trained
our own modern day Washingtons and
id scurvily treated by our present day
nericans by the over-confident English

r strata of society is or can be immune
anadian spy disclosures of two years
ons of our own House Un-American
d those of the Washington and Cali-
his home to all of us, I most sincerely
oubt propagated by Communists and
thed pseudo-liberals and alleged intel-
s from and is bred only in poverty,
ow been fairly well blown up and
en of the House Committee expressed
d at the fact that nearly all of those
lf-implicated themselves by refusing
ame from so-called better class fami-
high in scholarship, had never toiled
nger or undergone any of the abuses
social systems which are supposed
onvicted Canadian spies were from
l educated and well off.
lian who was a professor and turned
Soviet agents, a man of wealth and
ly regarded. He was not a member
with his hands, never had been to
id not have a Russian background.
om that step by step went into the
nmunism is bred in the lower ele-
sed, and the discriminated-against

FALLACY

t to warn you against what I call
of you here today in your public
ntinuously to ridicule and destroy
y Way to Destroy Communism is
racy by Removing Communism's
this fallacy is that it is of course
a one-tenth truth. Its foremost
elt, a wise and learned lady, but
nservatives, and even anti-Com-
s utterly preposterous sophistry.
s of logic as are available even
examine the Insidious Fallacy.
Communism is to strengthen
ittle adverb "only." In other
economic, and political systems
h.

Step No. 2. Note carefully that there is no criticism direct or implied
f Communism. By tacit inference at least it is either above criticism or
mmune to attack. Only Democracy as we know it has failed and been
ound wanting. We are at fault; not the Communists.

Third deadly step. All that western civilization implies, the majesty
f Roman law, the imperishable tenets of Christ, one thousand years of
itter human struggle for freedom and liberty, human dignity of man
ersus the state—all these priceless heritages acquired only by terrible
acrifices by countless martyrs down through the centuries are neatly
quated in one clever dialectical swoop with Asiatic totalitarian autoc-
acy. In other words, by the simple process of sophistry two totally
nequal, opposite, and irreconcilable ways of life are tossed on the
cales to be "impartially weighed against each other." Could anything
e more fantastic?

Now, note most carefully the next deadly step in this incredible
xercise in human befuddlement and chicanery. Democracy and all that
uman liberty and freedom embodies are brazenly likened to the com-
nodities of the market place. What these pernicious peddlers of the
nsidious Fallacy say in effect is this: "Our line of goods is not selling
ell in competition with the Communists. They are crowding us out of
he market. We must improve our produce or we shall lose out." In short,
Democracy and human liberty are saleable commodities like auto tires,
oap, cosmetics, or canned pork and beans which, unless they are speedily
mproved will otherwise be forced to give way to a more aggressive and
ynamic ideology.

I submit to you, can the human brain evolve anything more utterly
bsurd, fallacious, and self-degrading? Yet we have the spectacle of
earned Justices of the United States Supreme Court, U. S. delegates
o the United Nations, and other profound pundits of the non sequitur
idanly going up and down the land offering this priceless pearl of
ophistry as the last words of human wisdom. Nothing that I can think
f so pointedly and devastatingly exposes the utter mental fatuity and
ooselike "thinking" of some of our present-day "intellectuals" as does
his preposterous and fraudulent exercise in "social thinking." You
ave to be a Phi Beta Kappa to cook up such an insidious farrago of
heerest nonsense.

Let us have no more of this nonsense, but let all of us knock it on its
retinous cranium wherever and whenever it raises its idiotic head. If
ou ever hear anyone broadcasting the Insidious Fallacy ask him or
er quickly, before they make further fools of themselves, whether they
now anything about Switzerland, Iceland, Denmark, and Sweden.
Icelanders and Swiss have enjoyed almost one thousand years of a far
purer and simpler form of Democracy than we have ever dreamt of in
his Country. Neither country has a Negro question, sharecroppers, great
extremes of poverty and wealth, "Wall Street monopoly capital," slums,
mistreated or exploited minorities, colonies, or "war-mongering imperial-
sm." Yet both have troublesome and numerous Communist parties.
Sweden and Denmark are even more advanced socially and economically.
Labor in these two countries is practically 100 percent organized and
ontrols the government. Cooperatives are extensive among producers
as well as consumers and largely control the economies of these two