



# THE COURT *Legacy*

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## *Special Annual Meeting Issue*

### **The Smith Act and the Trial of the Michigan Six**

By David G. Chardavoyne

In February 1954, in the United States District Court for the Eastern District of Michigan, a jury convicted six officials of the Communist Party of the USA (“CPUSA”) of violating the Alien Registration Act of 1940, popularly known as the Smith Act, by conspiring to teach and advocate the overthrow of the government of the United States by force or violence. On February 19, District Judge Frank A. Picard, Jr., sentenced each of the six defendants to a term of imprisonment of between four and five years and imposed on each, as well, a fine of \$10,000. The U.S. Court of Appeals affirmed the convictions and sentences in November 1955, but, in June 1957, the United States Supreme Court vacated the judgment and remanded the case to the Court of Appeals which subsequently remanded to the District Court for a new trial. The Department of Justice, at the urging of the Eastern District’s United States Attorney, Frederick W. Kaess, decided not to retry the defendants. In September 1958, almost exactly six years after the six defendants were arrested, all charges against them were dismissed.

This trial, known as the Little Smith Act Trial, was one of a series of prosecutions of leaders of the CPUSA conducted in federal courts across the country which so disrupted the party’s leadership and finances that it could not operate effectively. For the most part, prosecutors in all of those cases did not try to prove that the defendants themselves advocated the violent overthrow of the government. Instead, they tried to connect the defendants with positions taken by the Party decades earlier, using

documents from the earlier era and the testimony of former Party members who, to the defendants’ consternation, were revealed as paid informants for the F.B.I. Whether because of those trials or because of other factors, such as the Cold War and the Party’s own blunders, the CPUSA was reduced to impotence by the time rulings by the U.S. Supreme Court effectively halted the Smith Act prosecutions in the late 1950s.

### **The Smith Act**

The Smith Act was the product of decades of worldwide political turmoil. Events such as World War I, the violent overthrow of Russia’s democratic Kerensky government by the Bolshevik Revolution, the Great Depression, battles between labor and capital, and the defeat of democracy in Germany by the National Socialist Party of Adolph Hitler left many people believing that democracy was a spent force and that the future belonged to the winner of the contest between Communism and National Socialism, exemplified by their involvement in the Spanish Civil War. By the autumn of 1939, that calculus was further complicated by the Nazi-Soviet Non-Aggression Pact, followed two weeks later by Germany’s invasion of Poland and the beginning of World War II.

In the United States, these developments added energy to longstanding pressure to do something to prevent the rise of radical groups and ideas that were generally seen as “foreign” and anti-American. During the first three decades of the twentieth century, public anxiety had been directed at the left: Marxists, anarchists, and, through guilt by association, organized labor. States and local jurisdictions enacted legislation, or adopted existing laws, to prohibit or limit the activities of

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such organizations by characterizing those activities as “criminal syndicalism” or other labels. State and local laws could not, though, have a lasting effect on their targets: “only a federal criminal statute effective wherever Communists became active could seriously endanger the Party.”<sup>1</sup>

Nevertheless, Congressional attempts, in 1930 and 1934, to pass a federal anti-sedition law failed despite the resurgence of domestic Communism during the Great Depression. Only in 1940, with Europe at war, did the political environment allow for serious consideration of such a law. House of Representatives Bill 5158, sponsored by Representative Howard Worth Smith, a Democrat from Virginia, was one of a hundred anti-alien/anti-sedition bills introduced in the 76th Congress. Smith offered nothing new – instead he cherry-picked from “most of the anti-alien and anti-radical legislation offered in Congress in the last twenty years.”<sup>2</sup>

As enacted in 1940, Title I, section 2(a)(1) of the Smith Act, the “advocating charge,” made it a felony “to knowingly or willfully advocate, abet, advise, or teach the duty, necessity, desirability, or propriety of overthrowing or destroying any government of the United States by force.” Section 2(a)(3), the “organizing charge,” similarly made it a felony “to organize or help to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any government in the United States by force or violence.”<sup>3</sup> Congress passed the Smith Act with near unanimity<sup>4</sup>, and President Franklin D. Roosevelt signed it into law on June 28, 1940, a week after France surrendered to Germany and two weeks after the British Army evacuated France at Dunkirk. Democratic governments in Holland, Belgium, Poland, and Czechoslovakia had long since fallen to the Nazi *Blitzkrieg*.

## **The First Smith Act Prosecutions**

Ironically, although the CPUSA was likely one of the intended targets of the Smith Act, and the Party mounted protests against its passage, the Party enthusiastically supported the first two Smith Act prosecutions. The reason for this reversal of position was the CPUSA’s greatest weakness – its complete and abject allegiance to the Soviet Union.

During the 1920s and early 30s, the CPUSA followed directions from Moscow to work for a revolution and a new society based on the model of Soviet Russia. In 1935, the CPUSA obeyed orders to work with democratic governments to achieve a united front against Fascism. Then, abruptly, upon the signing of the Nazi-Soviet Non-Aggression Pact, the CPUSA changed tack again and urged Americans not to aid “imperialist” Britain and France which, the Party argued, were the aggressors in their war with Germany.

Then, on June 22, 1941, the German Army invaded the Soviet Union, and the CPUSA did another about-face, not only demanding that the United States join the Allies but also advocating prosecution of anything that might hinder the nation’s war effort, including strikes. Conversely, President Roosevelt, recognizing that the Soviets would soon be allies of the United States, let it be known that the CPUSA was immune from harassment.

Not so the Socialist Workers’ Party (“SWP”), a splinter Trotskyist organization which opposed U.S. involvement in the war. In 1941, officers of the Milwaukee Local of the Teamsters Union, who were also members of the SWP, were indicted and convicted of violating the Smith Act, a conviction affirmed on appeal.<sup>5</sup> The CPUSA supported the indictments, and the constitutionality of the Smith Act, arguing that the SWP was a “fifth column” intent on blocking U.S. entry into the war. The Stalinist CPUSA was also motivated by its bitter enmity towards the Trotskyist SWP. Indeed, according to SWP lore, the CPUSA not only cheered on the government’s prosecution of the SWP, it also provided the FBI with evidence that helped convict the SWP and its officials.<sup>6</sup>

The CPUSA also supported the second Smith Act prosecution, begun in 1942, against 31 American neo-Fascists who were vocal critics of the President and who were accused of conspiring with Germany to cause subordination in the American armed forces. Their trial, which did not begin until April 1944, “quickly degenerated into one of the most bizarre spectacles in the history of American law.”<sup>7</sup> The defendants and their counsel berated the judge, challenged every exhibit, and kept the courtroom in chaos. The prosecution had not finished presenting its case in November when the trial judge,

Edward C. Eicher, exhausted by the tumult, died, resulting in a mistrial. The prosecutor delayed the retrial, and in January 1946, the war and any Nazi threat over, the court granted defendants’ motion to dismiss for violating their right to a speedy trial.<sup>8</sup>

## The Battle of Foley Square

As American concern with Fascism ended, an old fear reappeared: Communism. Post-war activities of their erstwhile Soviet ally – Communist overthrow of democratic governments in eastern Europe, the Berlin Airlift, support for the Chinese Communists – convinced Americans of the danger of Soviet expansionism, and that fear was projected on the CPUSA as well despite the thousands of Party members who fought in the American Armed Forces during the war. Again, this was partly due to the CPUSA’s subservience to Moscow which, after the war, ordered the CPUSA to adopt a more confrontational posture. During the 1946 Congressional election campaign, the Republican Party achieved success in claiming that the Democratic Party was “soft on communism,” a charge that it repeated during the 1948 Presidential campaign. President Truman felt compelled to respond with action against the CPUSA, a safer target than the Soviet Union, first by deporting foreign-born leaders and then by initiating criminal charges against the remaining Party officials.

On July 20, 1948, a grand jury in the Southern District of New York indicted the CPUSA and twelve of its national leaders under the Smith Act. After a series of delays, trial began in the U.S. District Court in its Foley Square Courthouse, on January 17, 1949. District Judge Harry Medina, an aggressive and somewhat rigid jurist, presided. The government relied on excerpts from classic, decades old, Marxist writings as well as the testimony of paid informers to prove that the Party and each individual defendant knowingly supported the use of violence to overthrow the government. In fact, though, the evidence showed little about any preponderance towards violence on the part of the individual defendants.

The defense conducted a “Dimitrov” strategy. Georgi Dimitrov, a Bulgarian Communist on trial in Nazi Germany in the 1930s for setting fire to the Reichstag, went over the head of the court to address the people and prove that the Nazis themselves had

likely set the fire. Trying to repeat Dimitrov's coup, the defendants did not directly contest the prosecution's evidence but, instead, focused on offering a long defense of their political philosophy, intending to demonstrate they could not get a fair trial in a capitalist court. Indeed, for a Dimitrov strategy to work, defendants had to make sure that the trial appeared to be unfair. These tactics, among other things, led to frequent confrontations between the defendants, their counsel, and Judge Medina, resulting in all of the defense counsel being jailed for contempt at some point in the trial.

On October 12, 1948, ten months after the trial began, Judge Medina instructed the jury, telling them that the defendants had a right to advocate peaceful change in the government or laws but that they could not conspire to advocate its violent overthrow. The next day, the jury returned a guilty verdict against all of the defendants. Judge Medina sentenced all but one of the defendants to the maximum sentence, five years and a \$10,000 fine; one defendant, a decorated veteran, received three years instead. The defendants appealed their convictions, but the U.S. Court of Appeals for the Second Circuit affirmed the verdicts.<sup>9</sup> The court, in an opinion by Judge Learned Hand, held that there was sufficient evidence to support the charges under the Smith Act, that the charged conspiracy created a clear and present danger, and that the Smith Act, as applied to that conspiracy, was not unconstitutional. The U.S. Supreme Court granted certiorari on the issue of whether the Smith Act, as applied, violated the First Amendment,<sup>10</sup> but, on June 4, 1951, the Supreme Court affirmed the convictions and held that the relevant sections of the Smith Act were constitutional.<sup>11</sup>

## The Trial of the Michigan Six

The success of the Foley Square case led to indictments against officials of the CPUSA across the country. On September 17, 1952, Saul Wellman, Nathan Kaplan (a/k/a Nat Ganley), Thomas De Witt Dennis Jr., Phillip Schatz, William Allan and Helen M. Winter, all leaders of the Michigan District and



Saul Wellman

members of the National Committee of the CPUSA, were arrested and charged with violating the Smith Act. Saul Wellman had been a commissar in the International Brigades during the Spanish Civil War and a U.S. paratrooper at the siege of Bastogne. William Allan was a correspondent for the Daily Worker and the Michigan Worker. Thomas Dennis was the organizational secretary of the Communist Party of Michigan. Nat Ganley was the editor of the Michigan Worker; Philip Schatz organized the Communist Party at Ford Motor Company; and Helen Winter was a member of the Michigan State Committee of the Party. Five days later, on September 22, the six were indicted in terms virtually identical to those used in New York.



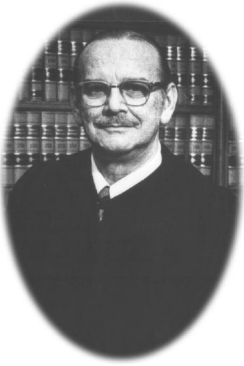
Judge Frank A. Picard

The case was assigned to U.S. District Judge Frank A. Picard, Jr. Born in Saginaw, Michigan, in 1889, Judge Picard was a 1912 graduate of the University of Michigan Law School.

He then returned to Saginaw where, over

the next two decades, he engaged in private practice interrupted by service as a Captain in the U.S. Army in World War I, as assistant county prosecutor, and as city attorney. Judge Picard was nominated to the court by President Franklin Roosevelt in 1939. Although he had no sympathy for the defendants' politics, he was determined to conduct a fair trial and to avoid the circus atmosphere that marred the trial in the Foley Square Courthouse.

When trial began on October 29, 1953, the prosecution was led by the recently appointed U.S. Attorney for the Eastern District of Michigan, Frederick W. Kaess. Then 43 years old, Kaess had graduated from the Detroit College of Law in 1932. After a term as a municipal judge in St. Clair Shores, Michigan, he practiced law, both in private practice and as attorney for the Michigan Mutual Liability Company, until 1953 when he was appointed United States Attorney for the Eastern District of Michigan. He continued in that position until June 1960 when President Dwight D. Eisenhower nominated him to become a judge of the U.S. District Court for the Eastern District of Michigan. In the Smith Act trial,



Frederick W. Kaess

Kaess was assisted by a young Justice Department attorney, William G. Hundley, who had helped obtain convictions in a Smith Act case in Pittsburgh.

Ernest Goodman, a well-known Detroit labor attorney and civil libertarian, initially agreed to represent all of the defendants. When they advised him, however, that they intended

to replicate the New York defendants' Dimitrov defense, he refused to continue as counsel. Finally, it was agreed that Goodman would represent three of the defendants, leaving the other three free to represent themselves. Goodman was born in Hemlock, Michigan, in 1906, and he graduated from Wayne State University Law School in 1928. He defended sit-down strikers at the Ford Motor Company in the 1930s, served as associate general counsel for the United Automobile Workers union in the 1940s, and argued labor and civil rights cases before the U.S. Supreme Court. Another prominent Detroit attorney, George W. Crockett, Jr., who had been on the defense team in the New York case, provided some help, but Goodman bore the brunt of the day-to-day defense through the long months of preparation and trial.

Although Judge Picard instructed the jurors that the case was not about the defendants' political beliefs, only Goodman seems to have taken him seriously. As in the Foley Square trial, the prosecution attacked the CPUSA and its politics instead of any violation of the Smith Act by the defendants. The defendants who represented themselves, for their part, used the trial as a vehicle to defend the Party and Communism. Only Goodman addressed the serious questions of whether the defendants were guilty of advocating violence and whether the Smith Act, as written or as applied, violated the First Amendment and endangered the civil liberties of all Americans.

The government's case was much the same as that presented in New York. First the prosecution presented a Communist documents from the 1930s or earlier, then an expert witness, usually a former Party member, testified what the document meant to Communists. Then the prosecution presented former party members, FBI plants and paid informers,

who testified that the present CPUSA advocated the same views set out in the documents. As in New York, the identity of the prosecution witnesses, people whom the defendants knew and trusted, including the Michigan chapter's former membership secretary, Berenice Baldwin, was a demoralizing shock.

Goodman tried to convince the jury of the weakness of the prosecution's case. He pointed out the antiquity of the documents and the fact that none of them implicated any defendant during the period charged in the indictment. He also attacked the government's reliance on informants. In a startling move, Goodman was able to prove that two of those informers, former Party members Milton Santwire and Steve Schemanske, had, in addition to receiving money from the government to spy on the CPUSA, also been paid by the Ford Motor Company to spy on its employees, a violation of the National Labor Relations Act. Goodman established that, in total, the United States and Ford had paid the prosecution's witnesses \$172,650. Those payments, Goodman argued, showed where the informers' loyalty lay: "They are not in court primarily to give facts but rather to reveal or conceal them as they think will be most helpful to their employer and most harmful to the persons against whom they are paid to inform."

Despite Goodman's best efforts, the jury, as he expected, convicted all six defendants on both counts: advocating the violent overthrow of the government and organizing an organization that so advocated. On February 19, 1954, Judge Picard fined each of them \$10,000 and sentenced them to prison terms: Nat Ganley, five years (the maximum); Saul Wellman, four years and eight months; William Allen and Thomas De Witt Dennis, Jr., four years and six months; Phillip Schatz, four years and four months; and Helen Mary Winter, four years. In addition to pronouncing sentence, Judge Picard gave a lengthy sentencing speech addressed to the defendants, later published in *U.S. News & World Report* (See Sidebar), indicating that he felt pity for them, not anger or hate. He admired the defendants' abilities, but he could not understand the mental processes that had brought them to Communism. He also compared them favorably to the prosecution's witnesses, noting that the defendants had no divorces among them while the informers had eleven.

What did clearly arouse Judge Picard's ire was the defendants' complete subjugation to the Soviet Union. He simply could not understand, or forgive, their willingness to do whatever they could to support the Soviet Union and to take whatever twists and turns shifting Soviet policy mandated. His disgust led him to offer to suspend the sentence and provide transportation for any defendant who preferred to live in the Soviet Union rather than serve his or her sentence. None of the defendants took him up on his offer.

What was missing from Judge Picard's comments was any reference to even the slightest evidence that these defendants, or even the CPUSA, did indeed advocate the violent overthrow of the government. An uninformed observer present in the judge's courtroom that day might easily have concluded from the judge's comments that the defendants were, as they alleged, being jailed merely for their belief in a "foreign" political philosophy.



Ernest Goodman

Ernest Goodman appealed the verdicts for the defendants, but, in November 1955, the U.S. Court of Appeals for the Sixth Circuit affirmed, holding that the evidence was sufficient to sustain the jury's conclusion that defendants were members of a conspiracy to teach and advocate violent overthrow of government.<sup>12</sup>

The appellate court also held that the Smith Act was constitutional and that the three-years statute of limitations did not bar their conviction for having helped organized the CPUSA, which even the government admitted had been created no later than 1945, because, under the Smith Act, every step taken in furtherance of the conspiracy constituting a new act of "organizing."

## The Twilight of the Smith Act and of the CPUSA

By 1956, the political climate began to change regarding domestic Communists. The Korean War was over, Josef Stalin was dead, the excesses of his regime had been exposed by his successors, and their own excesses were exposed by the manner in which they crushed popular uprisings in Hungary

and other satellite nations. Being an American Communist was no more acceptable to the majority of people than it had been for the last decade, but it had become hard to believe that the pitifully reduced CPUSA was a danger to the United States, no matter what its program. The Party, whose candidates drew 103,000 votes in the 1932 Presidential election and which claimed 100,000 members in 1939 and 60,000 in 1948, was, by the summer of 1958, reduced to "a nearly dead party of only 3,000 to 6,000 members."<sup>13</sup>

Because of the changed perception of the Party, or for some other reason, the government's unbroken string of Smith Act convictions began to come apart. In October 1956, the U.S. Supreme Court vacated the conviction of several Communists tried in Pittsburgh because of perjured testimony.<sup>14</sup> Then, in June 1957, the Supreme Court dealt the prosecutions a crippling blow by vacating a conviction for reasons generally applicable to most of the Smith Act cases. In *Yates v. United States*, the Court first interpreted "organize," as used in the Smith Act, to mean "acts entering into the creation of a new organization, and not to acts thereafter performed in carrying on its activities." Because the CPUSA came into existence no later than 1945, the three-year statute of limitations on "organizing" charges expired in 1948. The Court also held that the Smith Act cannot, constitutionally, prohibit "advocacy and teaching of forcible overthrow as an abstract principle, divorced from any effort to instigate action to that end." Because the trial court in *Yates* did not make that distinction, the Court reversed the judgment of the Court of Appeals and remanded the case to the District Court for a new trial.

A week after its decision in *Yates* the Supreme Court granted the petition for certiorari filed by Ernest Goodman for the Michigan defendants, vacated the judgment of the Sixth Circuit and remanded the case to the Sixth Circuit.<sup>15</sup> In March 1958, the Sixth Circuit dismissed the organizing charge as untimely but found there was enough evidence on the advocating charge to warrant a new trial and, so, remanded the case to the District Court for that purpose.<sup>16</sup> The Justice Department considered proceeding, but prosecutors Kaess and Hundley advised against it, noting that, under the

new rules, the evidence available was insufficient to obtain an “advocating” conviction. In September 1958, Judge Picard granted Kaess’s motion to dismiss the remaining counts of the indictment. Six years after they were arrested, the defendants were free, but not without irreparable damage to their lives and their finances. Prosecutor Hundley later admitted that he took no pride in his part of the case which, he joked, he never included on his resume.

For practical purposes, the Supreme Court’s decision in *Yates* ended the use of the Smith Act against the CPUSA (or anybody else). By that time, though, the damage to the Party, like the damage to the defendants, was complete. In his study of the Smith Act prosecutions, *Cold War Political Justice*, Professor Michal Belknap listed several factors that combined to reduce the CPUSA to impotence by 1960. Certainly the use of the Smith Act in a deliberate campaign to disrupt the Party’s leadership and exhaust its resources was a major factor. On the other hand, the Party’s umbilical connection to the Soviet Union probably hurt its public acceptance more, as did the Party’s instinct to isolate itself and turn inward in the face of attack, resulting in a contracting and aging membership with stagnant ideas. Many members, including Saul Wellman, the leader of the Michigan Six, left the Party. Although he remained active in social reform for the rest of his long life, Wellman quit the Party because he felt that it had lost touch with reality. By the time left-wing activism gained popularity again in the 1960s, the CPUSA found itself out of the action, an irrelevant club for old men.

A harder question to answer is what the American public, and American courts, learned from all of this. Were the fear, the assaults on the First Amendment, and the legal gymnastics involved in the Smith Act cases worth the result? Speculation about what might have happened in an alternative history are, historians agree, fruitless. In the post-9/11 era, though, the question is well worth asking. ■

## End Notes

1. Michal R. Belknap, *Cold War Political Justice: The Smith Act, the Communist Party, and American Civil Liberties* (Westport, CT: Greenwood Press 1977).
2. New York Times, 13 April, 1939, p. 9.
3. U.S. Statutes at Large, 54:670 (June 28, 1940), codified at 18 U.S.C. §§10, 11, 13. In 1948, Congress reworded and recodified the relevant parts of the Smith Act at 18 U.S.C. §2385 but did not change its substance.
4. 86 Cong. Rec. 9036 (June 22, 1940).
5. *Dunne v. United States*, 138 F.2d 152 (8th Cir.), cert. den’d, 320 U.S. 790 (1943).
6. *The Militant*, May 23, 2005.
7. Belknap, p. 40.
8. *United States v. McWilliams*, 69 F. Supp. 812 (D.D.C. 1946), aff’d, 163 F.2d 695 (D.C. Cir. 1947).
9. *United States v. Dennis*, 183 F.2d 201 (2d Cir. 1950).
10. *United States v. Dennis*, 340 U.S. 863 (1950).
11. *United States v. Dennis*, 341 U.S. 494 (1951).
12. *United States v. Wellman*, 227 F.2d 757 (6th Cir. 1955).
13. Marc Rohr, “Communists and the First Amendment: The Shaping of Freedom of Advocacy in the Cold War Era,” *San Diego Law Review*, 28:1 (1999), at 5, 29.
14. *Mesarosh v. United States*, 352 U.S. 862 (1956).
15. *Wellman v. United States*, 354 U.S. 931 (1957).
16. *Wellman v. United States*, 253 F.2d 601 (6th Cir. 1958).

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## Authors’ Note

Mr. Chardavoyne is an attorney in private practice in Farmington Hills, Michigan, and a member of the Board of Trustees of the Historical Society for the United States District Court for the Eastern District of Michigan. Mr. Chardavoyne’s book, *A Hanging in Detroit: Stephen Gifford Simmons and the Last Execution Under Michigan Law*, was published in the summer of 2003 by Wayne State University Press.

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## Judge Picard's Sentencing Speech to the Michigan Six

*As reported in U.S. News & World Report, March 19, 1954, p. 89*

Well, it is not my desire to prolong the embarrassment this morning or abuse you as some people might desire. There is no satisfaction and seldom anything accomplished by kicking a man when he's down, and you people are down. You have been convicted of one of the gravest offenses of which a citizen may be guilty – a plot – a conspiracy – to overthrow your Government by force and violence – a plot that has been in existence a number of years but which I believe and hope is gradually being eradicated or at least made less dangerous.

That's akin to treason.

So my remarks this morning will not be in the nature of a lecture although you may take them as such.

You are not ignorant people at all. You are far from stupid. You are self-educated, intelligent, and God has been good to you in many ways, particularly in giving you the ability to express yourselves.

I have been trying to analyze just how exactly your minds work. I think you are sincere in that you really believe in Communism and that you want to better the lot of the so-called proletariat or the people who have been, as you claim, exploited. The only problem with you is that in addition to your own extremely liberal ideas that put every capitalist in the role of a villain, you have been attacked by a virus known as "Russianitis" and you really are gullible enough to think if you could get control – with the help of Russia – of this country you would be able to shrug off Russia and then enjoy the millennium or paradise that you envision. Either that or you believe you would be big shots in this country as part of a world organization independent to some extent of Russia.

But, if you would give one tenth of your thoughts to what would happen if your group did get control of these United States through force and violence and the help of Russia—just one tenth of your time instead of expounding your theories and working for the party – you ought to know that, once Russia gets in, liberty and freedom go out the door.

Once Communism gets in, it can't stay in without dictatorship and tyranny. That's what happened in Poland, Czechoslovakia, and I can prophesy – yes, guarantee – that if ever you were successful that within five years you would be the first to get kicked out by the Kremlin powers. The local commissars always get the worst of it. They are getting the worst of it in Poland; they are getting the worst of it in Germany. There's only one ruler.

Then would come a tyranny that you would shrink from inflicting and you wouldn't be going to jail and you wouldn't be standing in a court where you had a fair trial. There would come a knock at your door some night; you wouldn't be able to say good-bye to your wife and children. You'd be on the way to some concentration camp in Siberia where men are lost forever.

You say that this talk about Russia is all bunk – that Russia hasn't any control over you. Well, hasn't it? Let's see.

I think it was in 1940, after Germany attacked Poland, that Russia and Germany were walking hand in hand down the street while England and France were doing their best to stave off defeat and Mussolini was about to get into the fray. It was then that the Communist Party of the United States, of which most of you were members, said the United States should keep out of that fight because Germany, England, France, Holland, and Belgium were engaged in an "unjust" war. They were those terrible "imperialistic" nations and there wasn't any talk then among you that Germans, with Italy, were fascists nations and should be destroyed.

Many efforts were being then made by the United States, through President Roosevelt, to prevent fascism and Communism from overthrowing France, England, and the other countries—all of which you condemned – you Communists in America – and you were doing everything you could to foment strikes and to sabotage and discourage the efforts of the United States because you said that we should just keep out of those European affairs. It was an "unjust" war.

But suddenly there came a change in your attitude. The Damon and Pythius act between Hitler and Stalin ran aground and when that day came and



Mr. Hitler invaded Russia what happened to the Communist Party in America? You people changed completely over. When Russia and France and England were all fighting on the same side, France and England were not imperialistic countries any more and then you Communists advocated that the United States get into the war because those fascist countries were going to destroy the world. England and France were then engaged in a “just” war. Your changed position was so ridiculous that people didn’t realize how insidious and wrong it actually was.

Before that time in the Spanish war the Communist Party of the United States, including you, found yourselves on the same side that Russia was on. Oh, of course, that was also a coincidence, but nevertheless, it’s true.

Today you are in favor of the Russian interpretation of Teheran, Yalta, and the North Atlantic pacts – not the United States interpretation. You used to be on the side of Tito. Now you don’t like him any more. Neither does Russia. You were against the participation of the United States or the United Nations in the Korean War. So was Russia. You were against little Finland. So was Russia. You are in favor of admitting Communist China into the United Nations. So is Russia.

You are against everything that the United States is trying to accomplish this very day in Berlin [at the Big Four conference of Foreign Ministers]. So is Russia. In your minds, this country is right only when it believes as Russia believes. The only time you have been with the United States was when Russia and the United States happened to be fighting on the same side and yet you told this court that you didn’t want Russian Communism in this country. You have a new kind of American communism or socialism. Oh, how, how simple and naive can you be, can you people get even after they see what has happened in those countries that have been engulfed by Russia.

There are over 160 million people in the United States. Is it possible they are all wrong but you?

Your admiration for Russia is so great that there isn’t any doubt in my mind, and there wasn’t any doubt in the jury’s mind, that there is nothing you wouldn’t do lie, cheat, or even worse in order to obtain your objectives. That you know you are part of an international conspiracy to rule the world by Communism.

Now, I’ll tell you this. I have the power to change my sentence, any sentence I give today, within 60 days, and if any of you would like to go to Russia to live and I can arrange it, I’ll be inclined to change your sentence to make that possible.

**(Whereupon there was the beginning of applause but court was immediately restored to order.)**

Now, of course, during this trial many talked to me. “What kind of people are they?” they asked.

“Well,” I said, “you’d be surprised. They don’t have horns. They are sincere in a way. In fact their sincerity is the thing that ruins them because it has led them beyond the law.”

As I remember, there hasn’t been a divorce among the whole six of you. None of you make any money on this. You’re not mercenary so far as the FBI and other authorities have been able to learn and tell me. You have wives and children who are devoted, and that means something, but you have that quirk in your thinking – that lack of balance – and you don’t seem to consider the future or welfare of your own loved ones.

Let me take Mr. Ganley. Any lawyer would have been proud to have been able to present your position as well as you did, but you have been against the Government all your life and you were at New York when this started. You are the most dangerous man in the group. There isn’t any question in my mind about that. That won’t please Mr. Wellman.

You, Mr. Wellman, are a veteran. You fought on the Republican Army’s side in Spain. I think that was it. You didn’t fight for Spain at all. You fought because Russia and the Communists were fighting Franco. When you tried to tell the jury you were fighting to keep fascism from spreading to America, I don’t know whom you thought you were hoodwinking. Certainly not this court and I know you didn’t fool the jury either.

When you fought for America in the Second World War, you fought because Russia and America were allies – not for America. Even in your talk to the jury you said you were fighting for “my country” and then you added “the United States of America,” because you were afraid that the jury wouldn’t know whether you were talking about the United States or Russia when you said “my country.” Your enthusiasm for Russia is unbounded and your scorn

and disdain for anything American is apparent. Yet you did get a pension and you are getting a pension today from this very Government you are seeking to tear down.

Mr. Dennis, you are exploiting your own people. Every chance you got you brought into this trial the fact that the Communist Party was trying to do something for the Negroes, hoping that because we had two Negroes on the jury you would get a disagreement. But you miscalculated those Negroes as Americans. As a matter of fact you told your story about the Southeastern black-belt quarter of the United States where they should have a right to secede from the Union because they were a nation, then it suddenly dawned on you that those were the wrong tactics and you came back the next day and said, "Of course, this wouldn't apply to the North." You didn't fool those Negroes on the jury. They are Americans.

Mr. Schatz, you deny, but I understand you have been trying to convert some of the people at the jail and one boy in particular. It's tough enough for that fellow to know that his brother has become a traitor to his own country without your making it worse for him.

You, Mr. Allan, are a rather likable person both in looks and manners and would make a good newspaperman but you have those ideas too, and because you are such a likable person you are as dangerous, almost, as Ganley. Yet you came to this country from Scotland to seek freedom and justice. Today you are a part of a group trying to tear down that flag and put this country under the bonds of slavery – because that is what happens in every country that Russia controls or gets into. But you were also in the service. Yet I don't think any one of the three who were in the service would have been fighting for America except through the draft if Russia hadn't been on the same side.

You, Mrs. Winter, are a woman who in appearance could take your place anywhere. I know that you are living with your mother and I know that your mother lives with her sister, all part of one house, and the child would be in the care of the mother and sister. And I know that your husband is in jail and expects to be out in 1955. I know that.

I have tried to be as sympathetic as I could. But I used to be a practicing lawyer, unfortunately, and I know that when a client says he is sick he is not always that sick. Sometimes it is a sickness of convenience. Now, you are sick, but I took the word of your doctors you were able to participate, and you participated. I was not going to be misled.

You are a woman. I will say I was hopeful when I looked up your background that you had been led into this thing by your husband and that might have been a cause for probation but, as I got the story, when you were Helen Mary Allison you were a Communist and it was in the Communist Party that you met your husband who is now serving time as a result of the New York case. So I cannot put you on probation either. You are, however, the only defendant who didn't take the stand and perjure yourself.

There are two controlling objectives which a judge must take into consideration in the sentencing of any person.

First, he must do justice to the public not only as a means of correcting any wrong social tendency which the defendant may have but also to deter others who might be prone to engage in a similar violation;

Second, he must be fair to the individual.

But bear in mind always our duty to society is the greater of the two.

I don't hope to succeed by these remarks in converting any of you where others who are more persuasive have failed. There were times during this trial when I felt you just despised capitalists and brass hats because you weren't one of them. I have discarded that thought. This morning I'm giving you the benefit of saying you believe in your cause but whether you do or not is immaterial for that cause has so engulfed your thinking, so dominated your every move to the extent that five of you took the stand and lied about what you believe because you thought the end justified the means in your opinion. You really think you are martyrs. But you're not going to jail for your belief. Nor for any books. You can read them all. You're going to jail because you want to force those beliefs on others.

Not because you can't have them. As I said to you in the charge, you can believe anything – even that we ought to have a monarchy in this country – but you can't force those beliefs on others by force and violence. So you're not martyrs – you're goats – and Russian goats at that.

You've criticized the Government witnesses. Well, I can understand that, as there were eleven divorces among those witnesses and one separation. They had those divorces, however, when you thought they were bona fide Communists. They were good enough for you then. But the Government couldn't go to some religious gathering to get witnesses against you. The men and women the Government brought in here as witnesses against you had to be people who had in some way shown their discontent with life and had troubles. They could be of help to the Communist Party. You were wise enough for that. That's what you thrive on – discontent and despair.

But, when Mr. Goodman referred to the amount that it had cost the Government to keep these witnesses available under Government pay so they could testify not only in this case but in other cases, he asked, "What price patriotism?"

I say to you this morning that it isn't the question of "What price patriotism?" but "What price security?" for this country to have people like you driven into the open top discourage others from doing likewise. It cost \$150,000 you say. What's \$150,000 when you remember what it would cost if we were challenged or had to fight some Communist country?

I am sorry for you people. There's a lot of ability going to waste among you. There must be some good in you someplace, otherwise your families wouldn't stick the way they have.

Ordinarily where persons without any previous conviction stand before this court for sentence I make it a point to put them on probation if possible, but the nature of the offense in this case precludes the possibility of probationary consideration and the nature of the offense also convinces this court that the maximum penalty is not great. Therefore there can be no big difference between what one defendant gets and the others, regardless of the fact

that there are some of you whom I believe are ringleaders of the ringleaders; in addition, three are veterans, one is a woman. I have tried to take everything into consideration, realizing that when Congress put the penalty it must have had in mind that one sentence might be the maximum for some defendants and less for others.

The sentence of the court in this case is that each of you be confined in an institution or institutions selected by the Attorney General of the United States for the following periods:

Nat Ganley for a period of five years;

Saul Wellman for a period of four years and eight months;

William Allan and Thomas DeWitt Dennis, Jr., for a period of four years and six months;

Philip Schatz for a period of four years and four months;

Helen Mary Winter for a period of four years; plus a fine for each of you of the maximum allowed by the statute of \$10,000, and these are committed fines. ■

## WANTED

The Society is endeavoring to acquire artifacts, memorabilia, photographs, literature or any other materials related to the history of the Court and its members. If any of our members, or others, have anything they would care to share with us, please contact the Acquisitions Committee at (313) 234-5049.

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