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CONTROL OF SUBVERSIVE ACTIVITIES

1949. Committee on the Judiciary

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

EIGHTY-FIRST CONGRESS

FIRST SESSION

ON

S. 1194 and S. 1196

BILLS TO PROTECT THE UNITED STATES
AGAINST CERTAIN UN-AMERICAN
AND SUBVERSIVE ACTIVITIES

APRIL 29, MAY 4, 6, 18, 19, AND 20,
AND JUNE 10, 1949

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CONTROL OF SUBVERSIVE ACTIVITIES

FRIDAY, APRIL 29, 1949

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to call, at 10:50 a. m., in room 424, Senate Office Building, Senator James O. Eastland (chairman of the subcommittee) presiding.

Present: Senators Eastland, Miller, O'Connor, Ferguson, and Donnell.

Also present: Robert Barnes Young and John Mathews, professional staff members.

Senator EASTLAND. The committee will come to order.

We have this morning met to begin hearings on S. 1194 and S. 1196, entitled bills "To protect the United States against un-American and subversive activities." Those bills will be placed in the record at this point.

(The bills referred to follow:)

[S. 1194, 81st Cong., 1st sess.]

A BILL To protect the United States against certain un-American and subversive activities

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Subversive Activities Control Act, 1949."

NECESSITY FOR LEGISLATION

SEC. 2. As a result of evidence adduced before various committees of the Senate and House of Representatives, Congress hereby finds that—

(1) There exists a world Communist movement which, in its origins, its development, and its present practice, is a world-wide revolutionary political movement whose purpose it is, by treachery, deceit, infiltration into other groups (governmental and otherwise), espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship in all the countries of the world through the medium of a single world-wide Communist political organization.

(2) The establishment of a totalitarian dictatorship in any country results in the ruthless suppression of all opposition to the party in power, the complete subordination of the rights of individuals to the state, the denial of fundamental rights and liberties which are characteristic of a representative form of government, such as freedom of speech, of the press, of assembly, and of religious worship, and results in the maintenance of control over the people through fear, terrorism, and brutality.

(3) The system of government known as a totalitarian dictatorship is characterized by the existence of a single political party, organized on a dictatorial basis, and by an identity between such party and its policies and the government and governmental policies of the country in which it exists, such identity being so close that the party and the government itself are for all practical purposes indistinguishable.

(4) The direction and control of the world Communist movement is vested in and exercised by the Communist dictatorship of a foreign country.

(5) The Communist dictatorship of such foreign country, in exercising such direction and control and in furthering the purposes of the world Communist movement, establishes or causes the establishment of, and utilizes, in various countries, political organizations which are acknowledged by such Communist dictatorship as being constituent elements of the world Communist movement; and such political organizations are not free and independent organizations, but are mere sections of a single world-wide Communist organization and are controlled, directed, and subject to the discipline of the Communist dictatorship of such foreign country.

(6) The political organizations so established and utilized in various countries, acting under such control, direction, and discipline, endeavor to carry out the objectives of the world Communist movement by bringing about the overthrow of existing governments and setting up Communist totalitarian dictatorships which will be subservient to the most powerful existing Communist totalitarian dictatorship. Although such Communist political organizations usually designate themselves as political parties, they are in fact constituent elements of the world-wide Communist movement and promote the objectives of such movement by conspiratorial and coercive tactics, instead of through the democratic processes of a free elective system or through the freedom-preserving means employed by a political party which operates as an agency by which people govern themselves.

(7) In carrying on the activities referred to in paragraph (6), such Communist organizations in various countries are organized on a secret, conspiratorial basis and operate to a substantial extent through organizations, commonly known as "Communist fronts", which in most instances are created and maintained, or used, in such manner as to conceal the facts as to their true character and purposes and their membership. One result of this method of operation is that such affiliated organizations are able to obtain financial and other support from persons who would not extend such support if they knew the true purposes of, and the actual nature of the control and influence exerted upon, such "Communist fronts."

(8) Due to the nature and scope of the world Communist movement, with the existence of affiliated constituent elements working toward common objectives in various countries of the world, travel of members, representatives, and agents from country to country is essential for purposes of communication and for the carrying on of activities to further the purposes of the movement.

(9) In the United States those individuals who knowingly and willfully participate in the world Communist movement, when they so participate, in effect repudiate their allegiance to the United States and in effect transfer their allegiance to the foreign country in which is vested the direction and control of the world Communist movement; and, in countries other than the United States, those individuals who knowingly and willfully participate in such Communist movement similarly repudiate their allegiance to the countries of which they are nationals in favor of such foreign Communist country.

(10) In pursuance of communism's stated objectives, the most powerful existing Communist dictatorship has, by the traditional Communist methods referred to above, and in accordance with carefully conceived plans, already caused the establishment in numerous foreign countries, against the will of the people of those countries, of ruthless Communist totalitarian dictatorships, and threatens to establish similar dictatorships in still other countries.

(11) The recent successes of Communist methods in other countries and the nature and control of the world Communist movement itself present a clear and present danger to the security of the United States and to the existence of free American institutions, and make it necessary that Congress, in order to provide for the common defense, to preserve the sovereignty of the United States as an independent nation, and to guarantee to each State a republican form of government, enact appropriate legislation recognizing the existence of such world-wide conspiracy and designed to prevent it from accomplishing its purpose in the United States.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) The term "person" means an individual or an organization.

(2) The term "organization" means an organization, corporation, company, partnership, association, trust, foundation, or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together for joint action on any subject or subjects.

(3) The term "Communist political organization" means any organization in the United States having some, but not necessarily all, of the ordinary and usual characteristics of a political party, which (A) is dominated or controlled by the foreign government or foreign governmental or political organization controlling the world Communist movement referred to in section 2, and (B) operates primarily to advance the objectives of such world Communist movement, as set forth in section 2 of this Act.

(4) The term "Communist-front organization" means any organization in the United States (other than a Communist political organization and other than a lawfully organized political party which is not a Communist political organization) which (A) is under the control of a Communist political organization, or (B) is primarily operated for the purpose of giving aid and support to a Communist political organization, a Communist foreign government, or the world Communist movement referred to in section 2.

(5) The term "Communist organization" means a Communist political organization or a Communist-front organization.

(6) The term "publication" means any circular, newspaper, periodical, pamphlet, book, letter, post card, leaflet, or other publication.

(7) The term "United States", when used in a geographical sense, includes the several States, Territories, and possessions of the United States, the District of Columbia, and the Canal Zone.

(8) The term "interstate or foreign commerce" means trade, traffic, commerce, transportation, or communication (A) between any State, Territory, or possession of the United States (including the Canal Zone), or the District of Columbia, and any place outside thereof, or (B) within any Territory or possession of the United States (including the Canal Zone) or within the District of Columbia.

(9) The term "Commission" means the Subversive Activities Commission created by section 13 of this Act.

(10) The term "final order of the Commission" means an order issued by the Commission under section 14 of this Act, which has become final as provided in section 15 of this Act.

CERTAIN PROHIBITED ACTS

SEC. 4. (a) It shall be unlawful for any person knowingly to combine, conspire, or agree with any other person to perform any act which would substantially facilitate or aid in the establishment within the United States of a totalitarian dictatorship the direction and control of which is to be vested in, or exercised by or under the domination or control of, any foreign government, foreign organization, or foreign individual. For purposes of this subsection, the term "totalitarian dictatorship" means a form of government, not representative in form, characterized by (1) the existence of a single political party, (2) such identity between such party and its policies and the government and governmental policies of the country in which it exists as to render such party and the government itself indistinguishable for all practical purposes, and (3) the abolition or prohibition of all other political parties.

(b) It shall be unlawful for any officer or employee of the United States or of any department or agency thereof, or of any corporation the stock of which is owned in whole or in part by the United States or any department or agency thereof, to communicate in any manner or by any means, to any other person whom such officer or employee knows or has reason to believe to be an agent or representative of any foreign government or an officer or member of any Communist organization as defined in paragraph (5) of section 3 of this Act, any information obtained in the course of his official duties or employment of a kind which shall have been classified by the President (or by the head of any such department, agency, or corporation with the approval of the President) as affecting the security of the United States, unless such officer or employee shall have been specially authorized by the head of such department, agency, or corporation to make such disclosure of such information.

(c) Any person who violates any provision of this section shall, upon conviction thereof, be punished by a fine of not more than \$10,000, or imprisonment for not more than ten years, or by both such fine and such imprisonment, and shall, moreover, be thereafter ineligible to hold any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.

(d) Any offense punishable under this section may be prosecuted at any time without regard to any statute of limitations.

EMPLOYMENT OF MEMBERS OF COMMUNIST POLITICAL ORGANIZATIONS

SEC. 5. (a) When there is in effect a final order of the Commission requiring an organization to register as a Communist political organization, it shall be unlawful for any members of such organization, with knowledge that such order has become final—

(1) in seeking or accepting any office or employment under the United States, to conceal the fact that he is a member of such organization; or

(2) to hold any nonelective office or employment under the United States.

(b) When there is in effect a final order of the Commission requiring an organization to register as a Communist political organization, it shall be unlawful for any officer or employee of the United States to appoint or employ any individual as an officer or employee of the United States, knowing that such individual is a member of such an organization.

(c) As used in this section, the term "member" shall not include any individual whose name has not been made public because of the prohibition contained in section 9 (b) of this Act.

DENIAL OF PASSPORTS TO MEMBERS OF COMMUNIST POLITICAL ORGANIZATIONS

SEC. 6. (a) When there is in effect a final order of the Commission requiring an organization to register as a Communist political organization, it shall be unlawful for any member of such organization, with knowledge that such order has become final—

(1) to make application for a passport, or the renewal of a passport, to be issued or renewed by or under the authority of the United States; or

(2) to use or attempt to use any such passport.

(b) When there is in effect a final order of the Commission requiring an organization to register as a Communist political organization, it shall be unlawful for any officer or employee of the United States to issue a passport to, or renew the passport of, any individual knowing that such individual is a member of such organization.

(c) As used in this section, the term "member" shall not include any individual whose name has not been made public because of the prohibition contained in section 9 (b) of this Act.

REGISTRATION AND ANNUAL REPORTS OF COMMUNIST ORGANIZATIONS

SEC. 7. (a) Each Communist political organization (including any organization required, by a final order of the Commission, to register as a Communist political organization) shall, within the time specified in subsection (c) of this section, register with the Attorney General, on a form prescribed by him by regulations, as a Communist political organization.

(b) Each Communist-front organization (including any organization required, by a final order of the Commission, to register as a Communist-front organization) shall, within the time specified in subsection (c) of this section, register with the Attorney General, on a form prescribed by him by regulations, as a Communist-front organization.

(c) The registration required by subsection (a) or (b) shall be made—

(1) in the case of an organization which is a Communist political organization or a Communist-front organization on the date of the enactment of this Act, within thirty days after such date;

(2) in the case of an organization becoming a Communist political organization or a Communist-front organization after the date of the enactment of this Act, within thirty days after such organization becomes a Communist political organization or a Communist-front organization, as the case may be; and

(3) in the case of an organization which by a final order of the Commission is required to register, within thirty days after such order becomes final.

(d) The registration made under subsection (a) or (b) shall be accompanied by a registration statement, to be prepared and filed in such manner and form as the Attorney General shall by regulations prescribe, containing the following information:

(1) The name of the organization.

(2) The name and last-known address of each individual who is at the time of the filing of such registration statement, and of each individual who was at any time during the period of twelve full calendar months preceding the filing of such statement an officer of the organization, with the designation or title of the office

so held, and with a brief statement of the duties and functions of such individual as such officer.

(3) An accounting, in such form and detail as the Attorney General shall by regulations prescribe, of all moneys received and expended (including the sources from which received and the purposes for which expended) by the organization during the period of twelve full calendar months preceding the filing of such statement.

(4) In the case of a Communist political organization, the name and last-known address of each individual who was a member of the organization at any time during the period of twelve full calendar months preceding the filing of such statement.

(5) In the case of any officer or member whose name is required to be shown in such statement, and who uses or has used or who is or has been known by more than one name, each name which such officer or member uses or has used or by which he is known or has been known.

(e) It shall be the duty of each organization registered under this section to file with the Attorney General on or before February 1 of the year following the year in which it registers, and on or before February 1 of each succeeding year, an annual report, prepared and filed in such manner and form as the Attorney General shall by regulations prescribe, containing the same information which by subsection (d) is required to be included in a registration statement, except that the information required with respect to the twelve-month period referred to in paragraph (2), (3), or (4) of such subsection shall, in such annual report, be given with respect to the calendar year preceding the February 1 on or before which such annual report must be filed.

(f) (1) It shall be the duty of each organization registered under this section to keep, in such manner and form as the Attorney General shall by regulations prescribe, accurate records and accounts of moneys received and expended (including the sources from which received and purposes for which expended) by such organization.

(2) It shall be the duty of each Communist political organization registered under this section to keep, in such manner and form as the Attorney General shall by regulations prescribe, accurate records of the names and addresses of the members of such organization and of persons who actively participate in the activities of such organization.

(g) It shall be the duty of the Attorney General to send to each individual listed in any registration statement or annual report, filed under this section, as an officer or member of the organization in respect of which such registration statement or annual report was filed, a notification in writing that such individual is so listed; and such notification shall be sent at the earliest practicable time after the filing of such registration statement or annual report. Upon written request of any individual so notified who denies that he holds any office or membership (as the case may be) in such organization, the Attorney General shall forthwith initiate and conclude at the earliest practicable time an appropriate investigation to determine the truth or falsity of such denial, and, if the Attorney General shall be satisfied that such denial is correct, he shall thereupon strike from such registration statement or annual report the name of such individual. If the Attorney General shall decline or fail to strike the name of such individual from such registration statement or annual report within six months after receipt of such written request, such individual may file with the Commission a petition for relief pursuant to section 14 (b) of this Act.

(h) In the case of failure on the part of any organization to register or to file any registration statement or annual report as required by this section, it shall be the duty of the executive officer (or individual performing the ordinary and usual duties of an executive officer) and of the secretary (or individual performing the ordinary and usual duties of a secretary) of such organization, and of such officer or officers of such organization as the Attorney General shall by regulations prescribe, to register for such organization, to file such registration statement, or to file such annual report, as the case may be.

REGISTRATION OF MEMBERS OF COMMUNIST POLITICAL ORGANIZATIONS

SEC. 8. Each individual who is a member of any organization which he knows to be registered as a Communist political organization under section 7 (a) of this Act, but which has failed to include his name upon the list of members thereof filed with the Attorney General, shall within sixty days after he shall have obtained such knowledge register with the Attorney General as a member of such organization. The registration made by such individual shall be accompanied by a regi-

tration statement, to be prepared and filed in such manner and form, and containing such information, as the Attorney General shall by regulations prescribe.

KEEPING OF REGISTERS; PUBLIC INSPECTION; REPORTS TO PRESIDENT AND CONGRESS

SEC. 9. (a) The Attorney General shall keep and maintain in the Department of Justice—

(1) a "Register of Communist Political Organization," which shall include (A) the names and addresses of all Communist political organizations registered under section 7, (B) the registration statements and annual reports filed by such organizations thereunder, and (C) the registration statements filed by individuals under section 8; and

(2) a "Register of Communist-Front Organizations," which shall include (A) the names and addresses of all Communist-front organizations registered under section 7, and (B) the registration statements and annual reports filed by such organizations thereunder.

(b) Such registers shall be kept and maintained in such manner as to be open for public inspection: *Provided*, That the Attorney General shall not make public the name of any individual listed in either such register as an officer or member of any Communist organization until thirty days shall have elapsed after the transmittal of the notification required by section 7 (g) to be sent to such individual, and if prior to the end of such period such individual shall make written request to the Attorney General for the removal of his name from any such list, the Attorney General shall not make public the name of such individual until six months shall have elapsed after receipt of such request by the Attorney General, or until such time as the Attorney General shall have denied such request and shall have transmitted to such individual notice of such denial, whichever is earlier.

(c) The Attorney General shall submit to the President and to the Congress on or before May 1 of each year (and at any other time when requested by either House by resolution) a report with respect to the carrying out of the provisions of this Act, including the names and addresses of the organizations listed in such registers and (except to the extent prohibited by subsection (b) of this section) the names and addresses of the individuals listed as members of such organizations.

MEMBERSHIP IN CERTAIN COMMUNIST POLITICAL ORGANIZATIONS

SEC. 10. It shall be unlawful for any individual to become or remain a member of any organization if he knows that (1) there is in effect a final order of the Commission requiring such organization to register under section 7 of this Act as a Communist political organization, (2) more than thirty days have elapsed since such order became final, and (3) such organization is not registered under section 7 of this Act as a Communist political organization.

USE OF THE MAILS AND INSTRUMENTALITIES OF INTERSTATE OR FOREIGN COMMERCE

SEC. 11. It shall be unlawful for any organization which is registered under section 7, or for any organization with respect to which there is in effect a final order of the Commission requiring it to register under section 7, or for any person acting for or on behalf of any such organization—

(1) to transmit or cause to be transmitted, through the United States mails or by any means or instrumentalities of interstate or foreign commerce, any publication which is intended to be, or which it is reasonable to believe is intended to be, circulated or disseminated among two or more persons, unless such publication, and any envelope, wrapper, or other container in which it is mailed or otherwise circulated or transmitted, bears the following, printed in such manner as may be provided in regulations prescribed by the Attorney General, with the name of the organization appearing in lieu of the blank: "Disseminated by -----, a Communist organization";

or

(2) to broadcast or cause to be broadcast any matter over any radio station in the United States, unless such matter is preceded by the following statement, with the name of the organization being stated in place of the blank: "The following program is sponsored by -----, a Communist organization".

DENIAL OF TAX DEDUCTIONS AND EXEMPTION

SEC. 12. (a) Notwithstanding any other provision of law, no deduction for Federal income-tax purposes shall be allowed in the case of a contribution to or for the use of any organization if at the time of the making of such contribution (1) such organization is registered under section 7, or (2) there is in effect a final order of the Commission requiring such organization to register under section 7.

(b) No organization shall be entitled to exemption from Federal income tax, under section 101 of the Internal Revenue Code, for any taxable year if at any time during such taxable year (1) such organization is registered under section 7, or (2) there is in effect a final order of the Commission requiring such organization to register under section 7.

SUBVERSIVE ACTIVITIES COMMISSION

SEC. 13. (a) There is hereby established the Subversive Activities Commission, which shall be composed of three members designated by the President, one from the Department of State, one from the Department of Commerce, and one from the National Military Establishment. Members of the Commission shall serve as such without additional compensation. It shall be the duty of the Commission—

(1) upon application made by the Attorney General under section 14 (a) of this Act, or by any organization under section 14 (b) of this Act, to determine whether any organization is a "Communist political organization" within the meaning of paragraph (3) of section 3 of this Act, or a "Communist-front organization" within the meaning of paragraph (4) of section 3 of this Act; and

(2) upon application made by the Attorney General under section 14 (a) of this Act, or by any individual under section 14 (b) of this Act, to determine whether any individual is a member of any Communist political organization registered, or by final order of the Commission required to be registered, under section 7 (a) of this Act.

(b) Subject to the civil-service laws and Classification Act of 1923, as amended, the Commission may appoint and fix the compensation of such personnel as may be necessary for the performance of its functions.

(c) The Commission may make such rules and regulations, not inconsistent with the provisions of this Act, as may be necessary for the performance of its duties.

(d) There are hereby authorized to be appropriated to the Commission such sums as may be necessary and appropriate to carry out its functions.

PROCEEDINGS BEFORE COMMISSION

SEC. 14. (a) Whenever the Attorney General shall have reason to believe that any organization which has not registered under subsection (a) or subsection (b) of section 7 of this Act is in fact an organization of a kind required to be registered under such subsection, or that any individual who has not registered under section 8 of this Act is in fact required to register under such section, he shall file with the Commission and serve upon such organization or individual a petition for an order requiring such organization or individual to register pursuant to such subsection or section, as the case may be.

(b) Any organization registered under subsection (a) or subsection (b) of section 7 of this Act, and any individual registered under section 8 of this Act, may, not oftener than once in each calendar year, make application to the Attorney General for the cancellation of such registration and (in the case of such organization) for relief from obligation to make further annual reports. Within sixty days after the denial of any such application by the Attorney General, the organization or individual concerned may file with the Commission and serve upon the Attorney General a petition for an order requiring the cancellation of such registration and (in the case of such organization) relieving such organization of obligation to make further annual reports. Any individual authorized by section 7 (g) of this Act to file a petition for relief may file with the Commission and serve upon the Attorney General a petition for an order requiring the Attorney General to strike his name from the registration statement or annual report upon which it appears.

(c) Upon the filing of any petition pursuant to subsection (a) or subsection (b) of this section, the Commission (or any member thereof or any examiner designated thereby) may hold hearings, administer oaths and affirmations, may examine witnesses and receive evidence at any place in the United States, and may require by subpoena the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed relevant to the matter under inquiry. Subpoenas may be signed and issued by any member of the Commission or any duly authorized examiner. Subpoenas shall be issued on behalf of the organization or the individual who is a party to the proceeding upon request and upon a statement or showing of general relevance and reasonable scope of the evidence sought. Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States at any designated place of hearing. Witnesses summoned shall be paid the same fees and mileage paid witnesses in the district courts of the United States. In case of disobedience to a subpoena the Commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring such person to appear (and to produce documentary evidence if so ordered) and give evidence relating to the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found.

(d) All hearings conducted under this section shall be public. Each party to such proceeding shall have the right to present its case by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The testimony in any hearing conducted under this section shall be reduced to writing and filed in the office of the Commission.

(e) In determining whether any organization is a "Communist political organization", the Commission shall take into consideration—

(1) the extent to which its policies are formulated and carried out and its activities performed, pursuant to directives or to effectuate the policies of the foreign government or foreign governmental or political organization in which is vested, or under the domination or control of which is exercised, the direction and control of the world Communist movement referred to in section 2 of this Act;

(2) the extent to which its views and policies do not deviate from those of such foreign government or foreign organization;

(3) the extent to which it receives financial or other aid, directly or indirectly, from or at the direction of such foreign government or foreign organization;

(4) the extent to which it sends members or representatives to any foreign country for instruction or training in the principles, policies, strategy, or tactics of such world Communist movement;

(5) the extent to which it reports to such foreign government or foreign organization or to its representatives;

(6) the extent to which its principal leaders or a substantial number of its members are subject to or recognize the disciplinary power of such foreign government or foreign organization or its representatives;

(7) the extent to which (i) it fails to disclose, or resists efforts to obtain information as to, its membership (by keeping membership lists in code, by instructing members to refuse to acknowledge membership, or by any other method); (ii) its members refuse to acknowledge membership therein; (iii) it fails to disclose, or resists efforts to obtain information as to, records other than membership lists; (iv) its meetings are secret; and (v) it otherwise operates on a secret basis; and

(8) the extent to which its principal leaders or a substantial number of its members consider the allegiance they owe to the United States as subordinate to their obligations to such foreign government or foreign organization.

(f) In determining whether any organization is a "Communist-front organization," the Commission shall take into consideration—

(1) the identity of the persons who are active in its management, direction, or supervision, whether or not holding office therein;

(2) the sources from which an important part of its support, financial or otherwise, is derived;

(3) the use made by it of its funds, resources, or personnel; and

(4) the extent to which the position taken or advanced by it from time to time on matters of policy does not deviate from the position taken by any Communist political organization.

(g) If, after hearing upon a petition filed under subsection (a) of this section, the Commission determines—

(1) that an organization is a Communist political organization or a Communist-front organization, as the case may be, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such organization an order requiring such organization to register as such under section 7 of this Act; or

(2) that an individual is a member of a Communist political organization (including an organization required by final order of the Commission to register under section 7 (a)), it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such individual an order requiring him to register as such under section 8 of this Act.

(h) If, after hearing upon a petition filed under subsection (a) of this section, the Commission determines—

(1) that an organization is not a Communist political organization or a Communist-front organization, as the case may be, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served upon the Attorney General an order denying his petition for an order requiring such organization to register as such under section 7 of this Act; or

(2) that an individual is not a member of any Communist political organization, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served upon the Attorney General an order denying his petition for an order requiring such individual to register as such member under section 8 of this Act.

(i) If, after hearing upon a petition filed under subsection (b) of this section, the Commission determines—

(1) that an organization is not a Communist political organization or a Communist-front organization, as the case may be, it shall make a report in writing in which it shall state its findings as to the facts; issue and cause to be served upon the Attorney General an order requiring him to cancel the registration of such organization and relieve it from the requirement of further annual reports; and send to such organization a copy of such order; or

(2) that an individual is not a member of any Communist political organization, or (in the case of an individual listed as an officer of a Communist-front organization) that an individual is not an officer of a Communist-front organization, it shall make a report in writing in which it shall state its findings as to the facts; issue and cause to be served upon the Attorney General an order requiring him to (A) strike the name of such individual from the registration statement or annual report upon which it appears or, (B) cancel the registration of such individual under section 8, as may be appropriate; and send to such individual a copy of such order.

(j) If, after hearing upon a petition filed under subsection (b) of this section, the Commission determines—

(1) that an organization is a Communist political organization or a Communist-front organization, as the case may be, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such organization an order denying its petition for the cancellation of its registration and for relief from the requirement of further annual reports; or

(2) that an individual is a member of a Communist political organization, or (in the case of an individual listed as an officer of a Communist-front organization) that an individual is an officer of a Communist-front organization, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such individual an order denying his petition for an order requiring the Attorney General (A) to strike his name from any registration statement or annual report on which it appears, or (B) to cancel the registration of such individual under section 8, as the case may be.

JUDICIAL REVIEW

SEC. 15. (a) The party aggrieved by any order entered by the Commission under subsection (g), (h), (i), or (j) of section 14 may obtain a review of such order in the United States Court of Appeals for the District of Columbia by filing in the court, within sixty days from the date of service upon it of such order, a written petition praying that the order of the Commission be set aside. A copy of such petition shall be forthwith served upon the Commission, and thereupon the Commission shall certify and file in the court a transcript of the entire record in the proceeding, including all evidence taken and the report and order of the Commission. Thereupon the court shall have jurisdiction of the proceeding and shall have power to affirm or set aside the order of the Commission. The findings of the Commission as to the facts, if supported by the preponderance of the evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material, the court may order such additional evidence to be taken before the Commission and to be adduced upon the proceeding in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by the preponderance of the evidence, shall be conclusive, and its recommendations, if any, with respect to action in the matter under consideration. If the court shall set aside an order issued under subsection (j) of section 14 it may, in the case of an organization, enter a judgment cancelling the registration of such organization and relieving it from the requirement of further annual reports, or in the case of an individual, enter a judgment requiring the Attorney General (A) to strike the name of such individual from the registration statement or annual report on which it appears, or (B) cancel the registration of such individual under section 8, as may be appropriate. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in title 28, United States Code, section 1254.

(b) Any order of the Commission issued under section 14 shall become final—

(1) upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; or

(2) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed or the petition for review dismissed by the United States Court of Appeals for the District of Columbia, and no petition for certiorari has been duly filed; or

(3) upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review dismissed by the United States Court of Appeals for the District of Columbia; or

(4) upon the expiration of ten days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the order of the Commission be affirmed or the petition for review dismissed.

PENALTIES

SEC. 16. (a) If there is in effect with respect to any organization or individual a final order of the Commission requiring registration under section 7 or section 8 of this Act—

(1) such organization shall, upon conviction of failure to register, to file any registration statement or annual report, or to keep records as required by section 7, be punished for each such offense by a fine of not less than \$2,000 and not more than \$5,000; and

(2) each individual having a duty under subsection (h) of section 7 to register or to file any registration statement or annual report on behalf of such organization, and each individual having a duty to register under section 8, shall, upon conviction of failure to so register or to file any such registration statement or annual report, be punished for each such offense by a fine of not less than \$2,000 and not more than \$5,000, or imprisonment for not less than two years and not more than five years, or by both such fine and imprisonment.

For the purposes of this subsection, each day of failure to register, whether on the part of the organization or any individual, shall constitute a separate offense.

(b) Any individual who, in a registration statement or annual report filed under section 7 or section 8, willfully makes any false statement or willfully omits to state any fact which is required to be stated, or which is necessary to make the

statements made or information given not misleading, shall upon conviction thereof be punished for each such offense by a fine of not less than \$2,000 and not more than \$5,000, or by imprisonment for not less than two years and not more than five years, or by both such fine and imprisonment. For the purposes of this subsection—

(1) each false statement willfully made, and each willful omission to state any fact which is required to be stated, or which is necessary to make the statements made or information given not misleading, shall constitute a separate offense; and

(2) each listing of the name or address of any one individual shall be deemed a separate statement.

(c) Any organization which violates any provision of section 11 of this Act shall, upon conviction thereof, be punished for each such violation by a fine of not less than \$2,000 and not more than \$5,000. Any individual who violates any provision of sections 5, 6, 10, or 11 of this Act shall, upon conviction thereof, be punished for each such violation by a fine of not less than \$2,000 and not more than \$5,000, or by imprisonment for not less than two years and not more than five years, or by both such fine and imprisonment.

APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT

SEC. 17. Nothing in this Act shall be held to make the provisions of the Administrative Procedure Act inapplicable to the exercise of functions, or the conduct of proceedings, by the Commission under this Act, except to the extent that this Act affords additional procedural safeguards for organizations and individuals.

SEPARABILITY OF PROVISIONS

SEC. 18. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remaining provisions of this Act, or the application of such provision to other persons or circumstances, shall not be affected thereby.

[S. 1196, 81st Cong., 1st sess.]

A BILL To protect the United States against un-American and subversive activities

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Subversive Activities Act, 1949."

NECESSITY FOR LEGISLATION

SEC. 2. As a result of evidence adduced before various committees of the Senate and House of Representatives, Congress hereby finds that—

(1) The system of government known as totalitarian dictatorship is characterized by the existence of a single political party, organized on a dictatorial basis, and by an identity between such party and its policies and the government and governmental policies of the country in which it exists, such identity being so close that the party and the government itself are for all practical purposes indistinguishable.

(2) The establishment of a totalitarian dictatorship in any country results in the ruthless suppression of all opposition to the party in power, the complete subordination of the rights of individuals to the state, the denial of fundamental rights and liberties which are characteristic of a representative form of government, such as freedom of speech, of the press, of assembly, and of religious worship, and results in the maintenance of control over the people through fear, terrorism, and brutality.

(3) There exists a world Communist movement which, in its origins, its development, and its present practice, is a world-wide revolutionary political movement whose purpose it is, by treachery, deceit, infiltration into other groups (governmental and otherwise), espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship in all the countries of the world through the medium of a single world-wide Communist political organization.

(4) The direction and control of the world Communist movement is vested in and exercised by the Communist dictatorship of a foreign country.

(5) The Communist dictatorship of such foreign country, in exercising such direction and control and in furthering the purposes of the world Communist movement, establishes or causes the establishment of, and utilizes, in various countries, political organizations which are acknowledged by such Communist dictatorship as being constituent elements of the world Communist movement; and such political organizations are not free and independent organizations, but are mere sections of a single world-wide Communist organization and are controlled, directed, and subject to the discipline of the Communist dictatorship of such foreign country.

(6) The political organizations so established and utilized in various countries, acting under such control, direction, and discipline, endeavor to carry out the objectives of the world Communist movement by bringing about the overthrow of existing governments and setting up Communist totalitarian dictatorships which will be subservient to the most powerful existing Communist totalitarian dictatorship.

(7) In carrying on the activities referred to in paragraph (6), such political organizations in various countries are organized on a secret, conspiratorial basis and operate to a substantial extent through organizations, commonly known as "Communist fronts," which in most instances are created and maintained, or used, in such manner as to conceal the facts as to their true character and purposes and their membership. One result of this method of operation is that such political organizations are able to obtain financial and other support from persons who would not extend such support if they knew the true purposes of, and the actual nature of the control and influence exerted upon, such "Communist fronts."

(8) Due to the nature and scope of the world Communist movement, with the existence of affiliated constituent elements working toward common objectives in various countries of the world, travel of members, representatives, and agents from country to country is essential for purposes of communication and for the carrying on of activities to further the purposes of the movement.

(9) In the United States those individuals who knowingly and willfully participate in the world Communist movement, when they so participate, in effect repudiate their allegiance to the United States and in effect transfer their allegiance to the foreign country in which is vested the direction and control of the world Communist movement; and, in countries other than the United States, those individuals who knowingly and willfully participate in such Communist movement similarly repudiate their allegiance to the countries of which they are nationals in favor of such foreign Communist country.

(10) In pursuance of communism's stated objectives, the most powerful existing Communist dictatorship has, by the traditional Communist methods referred to above, and in accordance with carefully conceived plans, already caused the establishment in numerous foreign countries, against the will of the people of those countries, of ruthless Communist totalitarian dictatorships, and threatens to establish similar dictatorships in still other countries.

(11) The recent demonstrations of Communist objectives and methods throughout the world and the nature and control of the world Communist movement itself present a clear and present danger to the security of the United States and to the existence of free American institutions, and make it necessary that Congress, in order to provide for the common defense, to preserve the sovereignty of the United States as an independent nation, and to guarantee to each State a republican form of government, enact appropriate legislation recognizing the existence of such world-wide conspiracy and designed to prevent it from accomplishing its purpose in the United States.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) The term "person" means an individual or an organization.

(2) The term "organization" means an organization, corporation, company, partnership, association, trust, foundation, or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together for joint action on, or advancement of views on, any subject or subjects.

(3) The term "Communist political organization" means any organization in the United States having some, but not necessarily all, of the ordinary and usual characteristics of a political party, which (A) is substantially dominated or controlled by the foreign government or foreign governmental or political organi-

zation controlling the world Communist movement referred to in section 2, and (B) operates primarily to advance the political objectives of such world Communist movement.

(4) The term "Communist-front organization" means any organization in the United States (other than a Communist political organization and other than a lawfully organized political party which is not a Communist political organization) which (A) is under the control of a Communist political organization, or (B) is operated primarily for the purpose of giving aid and support to a Communist political organization, a Communist foreign government, or the world Communist movement referred to in section 2.

(5) The term "Communist organization" means a Communist political organization or a Communist-front organization.

(6) The term "publication" means any circular, newspaper, periodical, pamphlet, book, letter, post card, leaflet, or other publication.

(7) The term "United States", when used in a geographical sense, includes the several States, Territories, and possessions of the United States, the District of Columbia, and the Canal Zone.

(8) The term "interstate or foreign commerce" means trade, traffic, commerce, transportation, or communication (A) between any State, Territory, or possession of the United States (including the Canal Zone), or the District of Columbia, and any place outside thereof, or (B) within any Territory or possession of the United States (including the Canal Zone) or within the District of Columbia.

(9) The term "Board" means the Subversive Activities Board established by section 12 of this Act.

(10) The term "final order of the Board" means an order issued by the Board under section 13 of this Act, which has become final as provided in section 14 of this Act, requiring an organization to register under section 7 of this Act as a Communist political organization or a Communist-front organization.

CERTAIN PROHIBITED ACTS

SEC. 4. (a) It shall be unlawful for any person to combine or conspire with any other person to perform any act which would substantially contribute to the establishment within the United States of a totalitarian dictatorship the direction and control of which is to be vested in, or exercised by or under the domination or control of, any foreign government, foreign organization, or foreign individual, with intent to assist in the establishment within the United States of such totalitarian dictatorship. For purposes of this subsection, the term "totalitarian dictatorship" means a government, not representative in form, characterized by (1) the dominance of a single political party to such an extent that such party and its policies are indistinguishable for all practical purposes from the government and governmental policies of the country in which such party exists, and (2) the suppression of opposition to such party, and (3) the denial of those fundamental rights and liberties of individuals which are characteristic of a representative form of government, such as freedom of speech, of the press, of assembly, and of religious worship.

(b) Any person who violates subsection (a) of this section shall, upon conviction thereof, be punished by a fine of not more than \$10,000, or imprisonment for not more than ten years, or by both such fine and such imprisonment, and shall, moreover, be thereafter ineligible to hold any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.

EMPLOYMENT OF MEMBERS OF COMMUNIST POLITICAL ORGANIZATIONS

SEC. 5. (a) When there is in effect a final order of the Board requiring an organization to register as a Communist political organization, it shall be unlawful for any member of such organization, with knowledge that such order has become final—

(1) In seeking or accepting any office or employment under the United States, to conceal the fact that he is a member of such organization; or

(2) to hold any nonelective office or employment under the United States.

(b) When there is in effect a final order of the Board requiring an organization to register as a Communist political organization, it shall be unlawful for any officer or employee of the United States to appoint or employ any individual as an officer or employee of the United States, knowing that such individual is a member of such an organization.

DENIAL OF PASSPORTS TO MEMBERS OF COMMUNIST POLITICAL ORGANIZATIONS

SEC. 6. (a) When there is in effect a final order of the Board requiring an organization to register as a Communist political organization, it shall be unlawful for any member of such organization, with knowledge that such order has become final—

(1) to make application for a passport, or the renewal of a passport, to be issued or renewed by or under the authority of the United States; or

(2) to use or attempt to use any such passport.

(b) When there is in effect a final order of the Board requiring an organization to register as a Communist political organization, it shall be unlawful for any officer or employee of the United States to issue a passport to, or renew the passport of, any individual knowing that such individual is a member of such organization.

REGISTRATION AND ANNUAL REPORTS OF COMMUNIST ORGANIZATIONS

SEC. 7. (a) Each Communist political organization (including any organization required, by a final order of the Board, to register as a Communist political organization) shall, within the time specified in subsection (c) of this section, register with the Attorney General, on a form prescribed by him by regulations, as a Communist political organization.

(b) Each Communist-front organization (including any organization required, by a final order of the Board, to register as a Communist-front organization) shall, within the time specified in subsection (c) of this section, register with the Attorney General, on a form prescribed by him by regulations, as a Communist-front organization.

(c) The registration required by subsection (a) or (b) shall be made—

(1) in the case of an organization which is a Communist political organization or a Communist-front organization on the date of the enactment of this Act, within thirty days after such date;

(2) in the case of an organization becoming a Communist political organization or a Communist-front organization after the date of the enactment of this Act, within thirty days after such organization becomes a Communist political organization or a Communist-front organization, as the case may be; and

(3) in the case of an organization which by a final order of the Board is required to register, within thirty days after such order becomes final.

(d) The registration made under subsection (a) or (b) shall be accompanied by a registration statement, to be prepared and filed in such manner and form as the Attorney General shall by regulations prescribe, containing the following information:

(1) The name of the organization and the address of its principal office.

(2) The name and last-known address of each individual who is at the time of the filing of such registration statement, and of each individual who was at any time during the period of twelve full calendar months preceding the filing of such statement, an officer of the organization, with the designation or title of the office so held, and with a brief statement of the duties and functions of such individual as such officer.

(3) An accounting, in such form and detail as the Attorney General shall by regulations prescribe, of all moneys received and expended (including the sources from which received and the purposes for which expended) by the organization during the period of twelve full calendar months preceding the filing of such statement.

(4) In the case of a Communist political organization, the name and last-known address of each individual who was a member of the organization at any time during the period of twelve full calendar months preceding the filing of such statement.

(e) It shall be the duty of each organization registered under this section to file with the Attorney General on or before February 1 of the year following the year in which it registers, and on or before February 1 of each succeeding year, an annual report, prepared and filed in such manner and form as the Attorney General shall by regulations prescribe, containing the same information which by subsection (d) is required to be included in a registration statement, except that the information required with respect to the twelve-month period referred to in paragraph (2), (3), or (4) of such subsection shall, in such annual report, be given with respect to the calendar year preceding the February 1 on or before which such annual report must be filed.

(f) (1) It shall be the duty of each organization registered under this section to keep, in such manner and form as the Attorney General shall by regulations prescribe, accurate records and accounts of moneys received and expended (including the sources from which received and purposes for which expended) by such organization.

(2) It shall be the duty of each Communist political organization registered under this section to keep, in such manner and form as the Attorney General shall by regulations prescribe, accurate records of the names and addresses of the members of such organization and of persons who actively participate in the activities of such organization.

(g) It shall be the duty of the Attorney General to send to each individual listed in any registration statement or annual report, filed under this section, as a member or as an officer of the organization in respect of which such registration statement or annual report was filed, a notification in writing that such individual is so listed; and such notification shall be sent at the earliest practicable time after the filing of such registration statement or annual report. In the event that the individual so notified shall disclaim the accuracy of such listing, he may by written communication so advise the Attorney General, who shall thereupon enter the fact and date of such disclaimer upon the registration statement or annual report upon which such individual is so listed.

(h) In the case of failure on the part of any organization to register or to file any registration statement or annual report as required by this section, it shall be the duty of the executive officer (or individual performing the ordinary and usual duties of an executive officer) and of the secretary (or individual performing the ordinary and usual duties of a secretary) of such organization, and of such officer or officers of such organization as the Attorney General shall by regulations prescribe, to register for such organization, to file such registration statement, or to file such annual report, as the case may be.

(i) If there is in effect with respect to an organization a final order of the Board requiring it to register under this section—

(1) such organization shall, upon conviction of failure to register, to file any registration statement or annual report, or to keep records, as required by this section, be punished for each such offense, by a fine of not less than \$2,000 and not more than \$5,000; and

(2) each individual having a duty under subsection (h) of this section to register or to file any registration statement or annual report on behalf of such organization, shall, upon conviction of failure to so register or to file any such registration statement or annual report, be punished for each such offense by a fine of not less than \$2,000 and not more than \$5,000, or imprisonment for not less than two years and not more than five years, or by both such fine and imprisonment.

For the purposes of this subsection, each day of failure to register, whether on the part of the organization or any individual, shall constitute a separate offense.

(j) Any individual who, in a registration statement or annual report filed under this section, willfully makes any false statement or willfully omits to state any fact which is required to be stated, or which is necessary to make the statements made or information given not misleading, shall upon conviction thereof, be punished for each such offense by a fine of not less than \$2,000 and not more than \$5,000, or by imprisonment for not less than two years and not more than five years, or by both such fine and imprisonment.

KEEPING OF REGISTER; PUBLIC INSPECTION; REPORTS TO PRESIDENT AND CONGRESS

SEC. 8. (a) The Attorney General shall keep and maintain in the Department of Justice a register of all organizations which are registered under section 7, and such register shall be known as the "Register of Communist Organizations". Communist political organizations and Communist-front organizations shall be listed separately in such register.

(b) Such register, together with the registration statements and annual reports filed under section 7, shall be kept and maintained in such manner as to be open for public inspection.

(c) The Attorney General shall submit to the President and to the Congress annually (and at any time when requested by either House by resolution) a report with respect to the carrying out of the provisions of this Act, including the names of the organizations listed in such register and of the data (including

the names and addresses of the individuals listed as members of such organizations) contained in registration statements and annual reports filed under section 7.

MEMBERSHIP IN CERTAIN COMMUNIST POLITICAL ORGANIZATIONS

SEC. 9. It shall be unlawful for any individual to become or remain a member of any organization if he knows that (1) there is in effect a final order of the Board requiring such organization to register under section 7 of this Act as a Communist political organization, (2) more than thirty days have elapsed since such order became final, and (3) such organization is not registered under section 7 of this Act as a Communist political organization.

USE OF THE MAILS AND INSTRUMENTALITIES OF INTERSTATE OF FOREIGN COMMERCE

SEC. 10. It shall be unlawful for any organization which is registered under section 7, or for any organization with respect to which there is in effect a final order of the Board requiring it to register under section 7, or for any person acting for or on behalf of such organization with knowledge of such registration or order—

(1) to transmit or cause to be transmitted, through the United States mails or by any means or instrumentality of interstate or foreign commerce, any publication which is intended to be, or which it is reasonable to believe is intended to be, circulated or disseminated among two or more persons, unless such publication and any envelope, wrapper, or other container in which it is mailed or otherwise circulated or transmitted bears the following, printed in such manner as may be provided in regulations prescribed by the Attorney General, with the name of the organization appearing in lieu of the blank: "Disseminated by _____, a Communist organization"; or

(2) to broadcast or cause to be broadcast any matter over any radio or television station in the United States, unless such matter is preceded by the following statement, with the name of the organization being stated in place of the blank: "The following program is sponsored by _____, a Communist organization".

DENIAL OF TAX DEDUCTIONS AND EXEMPTION

SEC. 11. (a) Notwithstanding any other provision of law, no deduction for Federal income-tax purposes shall be allowed in the case of a contribution to or for the use of any organization if at the time of the making of such contribution (1) such organization is registered under section 7, or (2) there is in effect a final order of the Board requiring such organization to register under section 7.

(b) No organization shall be entitled to exemption from Federal income tax, under section 101 of the Internal Revenue Code, for any taxable year if at any time during such taxable year (1) such organization is registered under section 7, or (2) there is in effect a final order of the Board requiring such organization to register under section 7.

SUBVERSIVE ACTIVITIES BOARD

SEC. 12. (a) There is hereby established a Board, to be known as the Subversive Activities Board, which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of two years, and one for a term of three years, but their successors shall be appointed for terms of three years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to the Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees of the Board, and an account of all moneys it has disbursed.

(d) Each member of the Board shall receive a salary of \$12,500 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment.

(e) Upon application made by the Attorney General under subsection (a) of section 13 of this Act or by any organization under subsection (b) of section 13 of this Act, the Board shall determine whether any organization is a "Communist political organization" within the meaning of paragraph (3) of section 3 of this Act, or a "Communist-front organization" within the meaning of paragraph (4) of section 3 of this Act, as the case may be.

(f) Subject to the civil-service laws and the Classification Act of 1923, as amended, the Board may appoint and fix the compensation of a clerk and such examiners and other personnel as may be necessary for the performance of its functions.

(g) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual designated by it for that purpose.

(h) The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place.

(i) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary for the performance of its functions.

(j) There are hereby authorized to be appropriated to the Board such sums as may be necessary for the performance of its functions.

PROCEEDINGS BEFORE BOARD

SEC. 13. (a) Whenever the Attorney General shall have reason to believe that any organization which has not registered under subsection (a) or subsection (b) of section 7 of this Act is in fact an organization of a kind required to be registered under such subsection, he shall file with the Board and serve upon such organization a petition for an order requiring such organization to register pursuant to such subsection.

(b) Any organization registered under subsection (a) or subsection (b) of section 7 of this Act may, not oftener than once in each calendar year, make application to the Attorney General for the cancellation of its registration and for relief from obligation to make further annual reports. Within sixty days after the denial of any such application by the Attorney General, the organization concerned may file with the Board and serve upon the Attorney General a petition for an order requiring the cancellation of such registration and relieving such organization of obligation to make further annual reports.

(c) Upon the filing of any petition pursuant to subsection (a) or subsection (b) of this section, the Board (or any member thereof or any examiner designated thereby) may hold hearings, administer oaths and affirmations, may examine witnesses and receive evidence at any place in the United States, and may require by subpoena the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed relevant to the matter under inquiry. Subpenas may be signed and issued by any member of the Board or any duly authorized examiner. Subpenas shall be issued on behalf of the organization which is a party to the proceeding upon request and upon a statement or showing of general relevance and reasonable scope of the evidence sought. Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States at any designated place of hearing. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. In case of disobedience to a subpoena the Board may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring such person to appear (and to produce documentary evidence if so ordered) and give evidence relating to the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found.

(d) All hearings conducted under this section shall be public. Each party to such proceeding shall have the right to present its case with the assistance of counsel, to offer oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. An accurate stenographic record shall be taken of the testimony of each witness, and a transcript of such testimony shall be filed in the office of the Board.

(e) In determining whether any organization is a "Communist political organization", there shall be taken into consideration—

(1) the extent to which its policies are formulated and carried out and its activities performed, pursuant to directives or to effectuate the policies, of the foreign government or foreign governmental or political organization in which is vested, or under the domination or control of which is exercised, the direction and control of the world Communist movement referred to in section 2 of this Act; and

(2) the extent to which its views and policies do not deviate from those of such foreign government or foreign organization; and

(3) the extent to which it receives financial or other aid, directly or indirectly from or at the direction of such foreign government or foreign organization; and

(4) the extent to which it sends members or representatives to any foreign country for instruction or training in the principles, policies, strategy, or tactics of such world Communist movement; and

(5) the extent to which it reports to such foreign government or foreign organization or to its representatives; and

(6) the extent to which its principal leaders or a substantial number of its members are subject to or recognize the disciplinary power of such foreign government or foreign organization or its representatives; and

(7) the extent to which in order to conceal its foreign connections (i) it fails to disclose, or resists efforts to obtain information as to, its membership (by keeping membership lists in code, by instructing members to refuse to acknowledge membership, or by any other method); (ii) its members refuse to acknowledge membership therein; (iii) it fails to disclose, or resists efforts to obtain information as to, records other than membership lists; (iv) its meetings are secret; and (v) it otherwise operates on a secret basis; and

(8) the extent to which its principal leaders or a substantial number of its members consider the allegiance they owe to the United States as subordinate to their obligations to such foreign government or foreign organization.

(f) In determining whether any organization is a "Communist-front organization", there shall be taken into consideration—

(1) the relationship of persons who are active in its management, direction, or supervision, whether or not holding office therein, to any Communist political organization, Communist foreign government, or the world Communist movement referred to in section 2; and

(2) the extent to which its support, financial or otherwise, is derived from any Communist political organization, Communist foreign government, or the world Communist movement referred to in section 2; and

(3) the extent to which its funds, resources, or personnel are used to further or promote the political objectives of any Communist political organization, Communist foreign government or the world Communist movement referred to in section 2; and

(4) the extent to which the positions taken or advanced by it from time to time on matters of policy do not deviate from those of any Communist political organization, Communist foreign government, or the world Communist movement referred to in section 2.

(g) If, after hearing upon a petition filed under subsection (a) of this section, the Board determines that the organization is a Communist political organization or a Communist-front organization, as the case may be, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such organization an order requiring such organization to register as such under section 7 of this Act.

(h) If, after hearing upon a petition filed under subsection (a) of this section, the Board determines that the organization is not a Communist political organization or a Communist-front organization, as the case may be, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served upon the Attorney General an order denying his petition for an order requiring such organization to register as such under section 7 of this Act. A copy of such order shall be sent to such organization.

(i) If, after hearing upon a petition filed under subsection (b) of this section, the Board determines that the organization is not a Communist political organization or a Communist-front organization, as the case may be, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served upon the Attorney General an order requiring him to cancel the registration of such organization and relieve it from the requirement of further annual reports. A copy of such order shall be sent to such organization.

(j) If, after hearing upon a petition filed under subsection (b) of this section, the Board determines that the organization is a Communist political organization or a Communist-front organization, as the case may be, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such organization an order refusing to cancel the registration of such organization and to relieve it from the requirement of further annual reports.

JUDICIAL REVIEW

SEC. 14. (a) The party aggrieved by any order entered by the Board under subsection (g), (h), (i), or (j) of section 13 may obtain a review of such order in the United States Court of Appeals for the District of Columbia by filing in the court, within sixty days from the date of service upon it of such order, a written petition praying that the order of the Board be set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the Board shall certify and file in the court a transcript of the entire record in the proceeding, including all evidence taken and the report and order of the Board. Thereupon the court shall have jurisdiction to review the proceedings of the Board. In such review, the court shall review the evidence contained in the record as certified, make its findings of fact and conclusions of law thereon, and enter an order affirming or setting aside the order of the Board. If the court sets aside an order issued under subsection (j) of section 13 it may enter a judgment canceling the registration of the organization and relieving it from the requirement of further annual reports. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in title 28, United States Code, section 1254.

(b) Any order of the Board issued under section 13 shall become final—

(1) upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; or

(2) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Board has been affirmed or the petition for review dismissed by the United States Court of Appeals for the District of Columbia, and no petition for certiorari has been duly filed; or

(3) upon the denial of a petition for certiorari, if the order of the Board has been affirmed or the petition for review dismissed by the United States Court of Appeals for the District of Columbia; or

(4) upon the expiration of ten days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the order of the Board be affirmed or that the petition for review be dismissed.

PENALTIES

SEC. 15. Any organization which violates any provision of section 10 of this Act shall, upon conviction thereof, be punished for each such violation by a fine of not less than \$2,000 and not more than \$5,000. Any individual who violates any provision of sections 5, 6, 9, or 10 of this Act shall, upon conviction thereof, be punished for each such violation by a fine of not less than \$2,000 and not more than \$5,000, or by imprisonment for not less than two years and not more than five years, or by both such fine and imprisonment.

APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT

SEC. 16. Nothing in this Act shall be held to make the provisions of the Administrative Procedure Act inapplicable to the exercise of functions, or the conduct of proceedings, under this Act, except to the extent that this Act affords additional procedural safeguards for organizations and individuals.

SEPARABILITY OF PROVISIONS

SEC. 17. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remaining provisions of this Act, or the applica-

tion of such provision to other persons or circumstances, shall not be affected thereby.

Senator EASTLAND. The Chair desires to make a statement on the procedure that has been decided on in executive session for the benefit of the representatives of the organizations who are present and of the press.

The committee expects to hold rather extensive hearings. We expect to give, if possible, every one a chance to be heard. I am sure that no member of the committee desires to report out any bill that would interfere with the liberties of the American people. We certainly do not want to dam the stream of liberty in this country. The object in the whole thing is legislation that will prevent others from depriving the people of this country of their liberty.

The committee has determined that whether or not a person is a member of the Communist Party now, or has been a member of the Communist Party, is a relevant question. It is something that we should know to be able to evaluate the testimony before the committee. It is a material question. We expect to ask the witnesses whether or not they are members of the Communist Party, whether or not they have been members of the Communist Party, and if any witness should refuse to answer that question, then the committee will not be interested in any testimony from that witness. We don't think that it is right for a witness to come before the committee, refuse to give us his background, and select which questions he shall answer and which questions he shall not answer. So that will be the rule in the conduct of the hearings.

At the hearings last year there was conduct here which certainly impugned the dignity and the authority of the United States Senate. The committee has ordered its staff to work on the law of contempt, to report back, and in case the conduct of a witness or the refusal of a witness to answer questions would constitute contempt or not will be decided at the time in the light of the law and in the light of the judgment of the committee. We do not want to persecute anybody. We simply seek light. We shall attempt to report out sound legislation, provided legislation of this kind is reported out. But the rule now is that if a witness refuses to tell whether or not he is a Communist and whether or not he has been a member of the Communist Party, he will not be permitted to testify.

The first witness is the Senator from South Dakota, Mr. Mundt.

STATEMENT OF HON. KARL E. MUNDT, UNITED STATES SENATOR FROM THE STATE OF SOUTH DAKOTA

Senator MUNDT. Mr. Chairman, it occurs to me that in hearings of this type you probably will want to swear witnesses.

Senator EASTLAND. By the way, we waive the Communist requirement for a Member of Congress.

Senator MUNDT. It appears to me that at hearings of this type you might want to establish the precedent of swearing in your witnesses. If so, I am perfectly willing to be sworn.

Senator EASTLAND. Senator, as far as the Chair is concerned, that will be waived in the case of a Member of Congress.

Senator Ferguson. But might we have the rule, then, that outside of Congress, Members of either branch of the Congress, the witnesses will be sworn?

Senator EASTLAND. I think we ought to wait for Senator Donnell to get here.

Senator MUNDT. It is acceptable to me to be sworn.

Senator EASTLAND. That is agreeable to me, but I think we should wait.

Senator FERGUSON. I want to make a statement and I am perfectly willing to be sworn. I am perfectly willing to answer the question, also.

Senator EASTLAND. Certainly, but I think we ought to wait. The Senator from Missouri is gone now.

Senator FERGUSON. On the question of swearing the witness?

Senator EASTLAND. Yes.

Senator MUNDT. Whatever the committee desires.

Senator EASTLAND. Go ahead, Senator.

Senator MUNDT. I shall begin at least by answering the question that I am not now and never have been a member of the Communist Party. I want to say that I echo heartily the very commendable statement of the chairman in stating that the Congress of the United States does not want to do anything which would dam the stream of liberty in this country. This legislation which we have before us, which I am testifying in support of, S. 1194, it seems to me very definitely tends to guarantee the fact that the American stream of liberty can continue to flow, that it can flow down the traditional channel of freedom which has meant so much to every American in this country.

I would like to give just a word or two of background about this legislation.

S. 1194, as it is now called, in which the Senator from South Carolina has joined me, is very similar in many aspects to the so-called Mundt-Nixon bill which passed the House of Representatives in the Eightieth Congress by a vote of 319 to 56. That legislation in turn was a direct outgrowth of 10 years of hearings, testimony, investigation, and study on the part of the House Committee on Un-American Activities. It was the first legislation ever brought out by that Committee. It grew out of a great abundance of experience as to the actual nature of communism.

It happens, Mr. Chairman, that the first Communist meeting that I ever attended was in 1928 in Denver, Colo., where because of a unique set of circumstances I was privileged, if you can call it that, to attend a Communist cell meeting. It made a tremendous impression on me. From that time since, both before I came to Congress and afterward, I have been interested in helping the American public generally to understand the true nature of communism. I have attended other Communist meetings since. It occurs to me that we cannot approach legislation of this type until we get thoroughly in mind the nature of the particular movement that this legislation is designed primarily to control.

If we start on the assumption that communism is an economic theory, we find that we are discussing a question beyond the normal purview of legislative attention. It can be demonstrated by complete documentary evidence, gentlemen, as I am sure you well know, that communism is not an economic theory. It has long since abandoned its original economic formula as written by Karl Marx and Dr. Engels in the first instance or as reinterpreted by Lenin at the time it became the basis of the Russian experiment. It does not now oper-

ate and has never operated any place in the world in conformity with its early concept of taking from those who have too much to share with those who have too little. It has become something completely and utterly different in Russia and in each of the captive countries that Russia has since subdued.

I think in the second place we have to approach this legislation with the clear-cut understanding that we are not dealing with another political party. We found a great amount of confusion developing in the debate over in the House in the last session on the Mundt-Nixon bill because some well-intentioned patriotic Americans were confused in their thinking because they considered the Communist Party a political party solely on the basis that it so calls itself. It can be completely demonstrated with documentation that communism does not in any area of the world exemplify the characteristics which we all recognize as being part of a political party. A political party has definite characteristics the same as other organizations and other institutions.

I think it is sufficient to prove this point to point out that neither in Russia nor in any of the countries which Russia has since indoctrinated and subdued through communism is there any such thing as an election in which the people have a right to elect between candidates, to make a choice between parties. A political party has as its chief characteristic the fact that decisions are made at the polling places and at the ballot box or on the voting machine. The Communist Party, so called, does not even pretend to achieve its objective in that manner. It achieves it in some instances through revolution, in other instances through intrigue, through aggression, through a number of other well-recognized means of controlling populations, but in no area has it ever secured control of a country by operating like a political party, by having a vote through which the people have voted communism into power.

Senator EASTLAND. Senator, it is not an arm of Russian foreign policy?

Senator MUNDT. It is completely, sir. We can define communism accurately by saying it is an international conspiracy. I want to give to begin with what I consider to be a more complete and adequate definition of communism.

Senator FERGUSON. You mean conspiracy against other governments?

Senator MUNDT. An international conspiracy against any non-Communist country in the world.

Senator EASTLAND. Is it not an international conspiracy for control of the world by the Soviet Union?

Senator MUNDT. Correct. Here is a rule-of-thumb definition of communism which I believe cannot be successfully refuted: Communism is a way of life which holds that all of the means of production and all of the means of distribution and the complete control of capital shall be directed from the capital city of the land under the domination of one group that permits no organized opposition, and which in addition holds that members of the Communist group anywhere in the world must subscribe to the program and promote policies which have the objective of creating a world-wide dictatorship under the control of the leadership of the Soviet Russian Republic. I think the longer one studies this question, the more he is convinced that that definition will stand up and hold true.

Senator O'CONNOR. If I may interrupt your thought right there, in connection with that attempt and that avowed purpose, is it also one of the elements that they advocate violence in order to accomplish their purpose?

Senator MUNDT. The Communist policy is one which constantly changes and adapts itself to circumstances of the local situation. Where violence is required, they advocate it and they practice it. Where they can do it by intrigue and coup d'etat as they did in Czechoslovakia, they do it without violence or with the minimum of violence. But nothing, no tactic, no technique, no matter how cruel or violent, stands in the way of the Communist trying to achieve the objective set forth in that definition.

I think that is one reason that J. Edgar Hoover has been so correctly advising America that there is very little distinction or difference, if any, between the basic practices and concepts of communism as it functions in the Communist countries of the world, fascism as it functioned in Italy, and nazism as it functioned under Hitler in Germany. They all have basically and fundamentally the same tactics, the same techniques, the same devices, the same totalitarian goals. Communism has spread out further over the world than either of the other isms. It has developed a more intricate espionage apparatus. It has representatives scattered in higher spots of influence in more countries. But in the final analysis each proceeds on the theory that it must dominate the world in order to succeed. It has that as its goal.

Mr. Chairman, I don't think it is necessary to go into very much detail with this committee as to the extent to which communism today endangers our freedoms in America. You have had before another Senator committee during the Eightieth Congress some of the leaders of the American Communist Party who have testified openly and under oath that in the unfortunate event of war between Russia and the United States, they would be on the side of Russia because Russia would be espousing communism and they believe communism is be right. Since that time, under orders of Moscow, acting in unison, we have had Communist leaders in all of the foreign capitals of the world where communism is today a vigorous influence announcing boldly and blatantly that in the event of war between Russia and their country, they too would be on the side of Russia because they, too, would be on the side of communism.

We have had before us an abundance of testimony since the Mundt-Nixon bill passed the House to demonstrate the degree to which espionage has been practiced in high places of Government in our own country. At the time we are opening these epochal hearings in the Senate, 11 Communists are being tried in a court in New York under allegations that they seek to overthrow this Government by force and violence. At the same time Judith Coplon is being tried in a court here in the District under charges that she was conducting an espionage apparatus in the Attorney General's Office of the Department of Justice itself. We have had the confessions of people like Miss Elizabeth Bentley and Whittaker Chambers that they themselves were engaged in conducting a Communist espionage apparatus here in Washington.

It seems to me that nothing could dramatize the need for new legislation on communism any more vividly than this fact: After the

House had concluded its investigation of the so-called Chambers-Hiss affair, a grand jury in New York indicted Alger Hiss on two counts, one of which was concealing from the grand jury the fact that he was engaged in an espionage apparatus. In spite of that fact, the grand jury indicted him only on the matter of perjury, because there is no law at the present time which deals specifically with this matter of peacetime espionage. I think that that certainly underscores the fact that we need some legislation so that when a man is considered by a grand jury to be engaging in perjury because of concealment of espionage activity, it could always turn to a Federal statute and indict him for his espionage activities themselves.

In this testimony I am not trying to prejudice the trial of Alger Hiss, which I think should come off speedily now. It has already been too long delayed in my opinion. I am quoting that incident to underscore the fact that we lack sufficient legislation on the Federal statute books today to deal with peacetime espionage.

Senator EASTLAND. Why has his trial been delayed?

Senator FERGUSON. I was wondering just what you had on that, what knowledge you have as to why it was delayed.

Senator MUNDT. I don't want to try to read into the thoughts of the Justice Department why it has so frequently deferred these trials. Its reasons, as it announced it publicly, is that it prefers to delay opening those trials until it concludes the trial of the 11 Communists who are now being tried in New York City.

Senator FERGUSON. Are they in any way tied together?

Senator MUNDT. They are in no way tied together insofar as the perjury indictment is concerned, and it is a little bit hard for me to comprehend the logic of an argument which would indicate that the Justice Department does not have sufficient attorneys to try the two trials at the same time.

Senator EASTLAND. Is that the reason, that there is some attorney engaged in the prosecution of Communists in New York whom they want to prosecute Hiss?

Senator MUNDT. They have not put it quite that way, but they have simply said that they prefer to wait until after the other trial has been held. As I say, I do not think the argument is sound, but I do not want to try to read the minds of the Attorney General and his assistants.

Senator EASTLAND. Continuances on the part of the Government would give Hiss a moral right to ask for some continuances, would it not?

Senator MUNDT. He requested the first continuance, he may have requested the others, but having been continued that long, it seems to me now the time has come to hold a trial. I point out in that connection that in the case of the Canadian espionage agent, Carp, he was arrested in this country several months after Alger Hiss was indicted. He was taken to Canada, he was tried, and he has been sentenced and convicted. Still, we have not even begun the trial of Mr. Hiss. Certainly that is a commerdation of the speed with which the Canadian Government justice operates as contrasted with our own, and I can only reaffirm my hope that they will not again defer the trial of Alger Hiss.

Senator EASTLAND. What you say is true, unless there is some good reason that the Department has decided that public interest is served by the delay. What that reason, if any, is, we do not know.

Senator MUNDT. I do not know, and if there is such reason I believe the American public is entitled to have it told to them. It does not look well to have this trial so long deferred.

I would like to discuss the provisions of this bill primarily in the manner in which it differs from the Mundt-Nixon bill as it passed the House or in the form in which it was left after the subcommittee of the Judiciary in the Senate, in cooperation with a conference committee of the House, made some rather important and helpful amendments in the closing days of the Eightieth Congress.

I would like to say, first of all, that the United States Senate is confronted with three choices today insofar as communism is concerned in this country. We can follow the suggestion of a great many fine American organizations and some very good students of communism, that we outlaw the party. Personally, I have not been in favor of that. I helped sign the committee report in the House which disapproved of that. I believe that the FBI believes there are better ways in which the matter can be handled. It occurs to me that to outlaw the party, among other things, would destroy a very effective technique which the FBI has been using and which has been demonstrated in the current trial of the 11 Communists in New York City, and that is the fact that it is comparatively easy today to do counterespionage work in Communist cells and Communist organizations and Communist meetings. If we outlaw them we necessarily tighten the situation in which operating underground, as they then will, will make it more difficult for FBI agents to masquerade themselves as Communists and to do counterespionage work.

However, if that is the only approach, if it is a question of doing nothing or outlawing the Communist Party, certainly I would stand with those then who would prefer to outlaw it as contrasted with doing nothing.

Doing nothing, of course, is a second alternative. It is an alternative it seems to me that we have altogether too long followed through now. We have been impressed by the seriousness of the situation. We are struggling with a \$42,000,000,000 Federal budget, \$21,000,000,000 of which directly or indirectly is labeled to fight communism in this world. One-half the Federal budget is directly or indirectly used for that specific purpose.

Senator FERGUSON. Would you be a little more specific on that, because that may be a little difficult to understand unless you tie it up with the whole question of peace and the idea of a future war.

Senator MUNDT. That is a very good point, Senator Ferguson. Any realist in this country knows that the one real threat to world peace is the fact that there is this cleavage in ideology and cleavage in interest between the Communist part of the world and the non-Communist part of the world. Our defense budget alone runs to the tune of \$15,000,000,000 to prepare ourselves for the possible eventualities that this wicked situation might produce. In addition to that, we have over \$5,000,000,000 allocated for rehabilitation of countries in order to strengthen them against the perils and the hazards of communism. In addition to that, we have over a billion dollars we are being asked to appropriate for arms for the Atlantic Pact which is drawn up and entered into specifically to try to give the free portions of the world a working organization with which collectively they can oppose further aggressions on the part of the Communist Party. That in itself adds

up to the \$21,000,000,000, if we did not include the extra appropriations we are compelled to make for such State Department policies as the "Voice of America" program, strengthening the FBI to give us additional security against communism, and other miscellaneous items which would add up to well over another billion and a half dollars.

Senator FERGUSON. Have you the cost that we might be expending directly through the FBI and the Department of Justice and State agencies on this question of protection against Communists right here in America?

Senator MUNDT. It is pretty hard, Senator, to break down the FBI expenditures in terms of the portions which they require because of counterespionage and countermeasures against communism and those which they need for the other enforcement features of their work. It is a safe and honest deduction to make that the vast percentage of their efforts and their expenditures these days are no longer on kidnapping and the movement of automobiles across boundary lines, but in protecting and securing this country against espionage stemming from communism.

Senator FERGUSON. The entire cost of the loyalty checks could be attributed to this question of communism right here in America.

Senator MUNDT. Correct, which alone is \$25,000,000.

There is a third approach. I have mentioned outlawing, I have mentioned doing nothing. The third approach is the approach incorporated in S. 1194, which involves the techniques of exposure, identification, registration, and notification. In that we have continued to permit communism to have freedom to meet, freedom to assemble, freedom of the press, freedom of the use of mail, freedom of the ballot, freedom to elect public officials to office. In no way circumscribed and in no way are any restrictions built against those freedoms of the Communist Party, but we dip away back down into an accepted American procedure starting early in 1900 when in the matter of food and drugs we passed a Pure Food and Drug Act which operated on the theory that the buyer should beware, that the public should know what is in the patent medicine bottle, that people should not unknowingly be expected to consume something thinking it was something else. So this legislation operates on the theory that Communists in this country should operate as such. It compels them to replace their conspiratorial espionage tactics with tactics more closely resembling those of an honest political party.

So, proceeding to point out how S. 1194 conforms with those principles that I have set out as a third approach to this program of communism which is neither outlawing the party nor ignoring the menace, let us look at the detailed functions of S. 1194.

The first important feature of the bill, it seems to me, is section 2, subparagraph (1), which gives a working, understandable, and accurate definition of communism, presented as a legislative interpretation in one single paragraph. Once this bill is enacted into law, any private organization that wants to, for example, as the motion picture has indicated it desires to do, can incorporate in its contracts the fact that they can be abrogated if a person belongs to a Communist Party. They have a working, legal, understandable definition on which to work.

We witnessed a rather unfortunate situation in this country in the course of the last year when one of the members of the Hollywood

group who came down here to testify about communism declined to answer the §64 question whether he was, or had ever been, a member of the Communist Party. He declined to answer it, I might add, because we had, at the same time we asked the question, his Communist Party card in our file which we had secured from the FBI.

Senator EASTLAND. Who was that witness?

Senator MUNDT. I will have to check that to be sure I have the right name. I will supply that for the record. [The witness was Lester Cole.]

After he had done that, the motion picture industry canceled his contract. He took the case up in court in California and the court compelled them to reinstate the contract and to reimburse him for all his back pay on the theory that there was nothing in the contract which he held which gave them the right to abrogate it simply because he was a member of the Communist Party.

Senator FERGUSON. Has that case been appealed, do you know?

Senator MUNDT. I do not think it has.

Senator FERGUSON. Would you check on that, Mr. Young?

Senator MUNDT. I have never seen a notice in the paper that it has.

Mr. YOUNG. Do you have the citation of the case?

Senator MUNDT. I will supply it for you.

Senator FERGUSON. Will you check that so the record might show it, Mr. Chairman? [Citation: *Cole v. Loews Inc., et al.* (76 Fed. Supp. 872.)]

Senator EASTLAND. You are not surprised at the California court, are you, Senator?

Senator MUNDT. No; but I was badly disappointed. I was badly disappointed that an American judge would so rule and so hold and make it increasingly difficult for an honest effort to succeed which attempts to protect the motion-picture-going public against the scripts, the actions, the activities, and the propaganda devices of Communists. That underscores once more the need of some Federal law.

I conferred at great length with Eric Johnston and with Joyce O'Hara of the Motion Picture Association both before and after that trial. They pointed out, and I am sure their intentions are sincere and their efforts were vigorous, that without some kind of law they are virtually helpless today to eradicate communism from Hollywood, which is one of the power spots toward which Communist leaders direct their functionaries because they realize the tremendous public opinion molding possibilities of the motion-picture industry.

Senator FERGUSON. I want to say that I think probably the court could be excused on the ground that it did not take judicial knowledge as to what communism is in the world and in America today. This is something new in the development of the world.

Senator EASTLAND. If I remember the case, that was proved.

Senator FERGUSON. Yes; but it lacked proof. They did not try it on the theory of trying to show what communism really was. If they had offered direct evidence, I think your answer would have been different as to what communism was. Not offering direct evidence and proving that part of the case, how detrimental it was, how subversive it was, the court not being in a position to take judicial notice, leaves it so that, as you say, probably contracts in the future will have to provide for cancellation.

Senator MUNDT. That would seem to indicate, then, Senator, that there was either ignorance or ineptitude on the part of the attorneys presenting the case. They did not present communism in its true light if they let them get by with the shibboleth that it was an economic theory or political party instead of a world-wide conspiracy operating at an international level according to a demonstrable pattern.

Senator EASTLAND. Was that not proved? If I remember the case, was it not proved that communism was a conspiracy to overthrow this Government?

Senator FERGUSON. Then of course I agree with the chairman, there is no excuse for the decision.

Senator MUNDT. If it was not proved there is no excuse for the failure not to prove it. I have not read the whole transcript of the case, so I cannot speak with authority as to what was and was not approved. I read the verdict with tears in my eyes.

Senator MILLER. After all, the decision was based upon the theory that there was nothing contained in the contract that stated that if it was established that this particular contract holder was a Communist, that would be sufficient to cancel the contract.

Senator MUNDT. That is the basis of the verdict, that is correct. That was what I mentioned in my original statement.

Senator MILLER. Yes; I think you did.

Senator MUNDT. That is the first great contribution which it seems to me this legislation would make. There are several paragraphs there pointing out collateral arguments as to just what the Communist Party is and how it operates, but the essence of it is incorporated in that single sentence, one paragraph definition found in subparagraph (1) of section 2.

Having established what the Communist Party is, we can go to page 8 of the bill, section 4. Section 4, when the legislation was before you a year ago, when the Mundt-Nixon bill passed the House, and during our hearings in the House Committee on un-American activities, was the most controversial feature of the bill. It was not only misrepresented skillfully—

Senator EASTLAND. What did it provide, Senator?

Senator MUNDT. I am coming to that. It was not only misrepresented skillfully by Communist propagandists, but casual and cursory readers of the propaganda and the publicity and the testimony arrived at a completely inaccurate conclusion. So, with the very definite aid of Senator Ferguson and Senator Donnell—and I think Senator Wiley was the third member of that subcommittee last year, was he not?

Senator FERGUSON. Yes.

Senator MUNDT. Congressman Nixon and I worked with the Senators over a period of weeks, redefining the prohibited acts in section 4 so that there could be no possible misconception of what it actually did. I want to read it to you now and then carefully go into exactly what it proposes to do.

Section 4 says:

It shall be unlawful for any person knowingly—

We put in the word "knowingly" because some people said a man might be innocent about what he was doing. So that word is put in with deliberation.

knowingly to combine, conspire, or agree with any other person to perform any act which would substantially facilitate or aid in the establishment within the United States of a totalitarian dictatorship * * *.

Let us pause there a moment to point out that this does not mean, it very definitely does not mean that this prohibits a person writing an editorial or prohibits a person making a speech, because this goes to the act, and it has to be the performance of an act which would substantially facilitate or aid in the establishment within the United States of a totalitarian dictatorship, and it does not end there.

* * * a totalitarian dictatorship, the direction and control of which is to be vested in, or exercised by or under the domination or control of, any foreign government, foreign organization, or foreign individual.

Senator O'CONNOR. Could I ask you a question right there because of your long familiarity with it? In any sense does this provision or any other provision of the bill affect thought control?

Senator MUNDT. Not in the slightest, because it goes to the act.

Senator O'CONNOR. I understand. Do you in any sense attempt to control thought?

Senator MUNDT. We not only do not attempt to control thought, we oppose any attempt to control thought. We oppose any attempt to control speech. We oppose any attempt to control freedom of the press. Those are permitted to continue to function under the terms of this bill.

Senator O'CONNOR. Does it prescribe any penalties for or attempt to interfere with political opinions as such?

Senator MUNDT. No; it does not prescribe a penalty for them; it does not make them guilty. I am glad you raised those questions because that helps tremendously to clarify this issue.

Senator O'CONNOR. I assume, if I may just go one step further, that it does not in any sense interfere with criticism of governmental operations as such, based on an attempt to point out shortcomings or possible betterments of any governmental operation?

Senator MUNDT. You are exactly correct. It even would not make it illegal for a man to get up on a speaker's rostrum and advocate that we should have communism in this country instead of the system that we have.

Now may I point this out further, because you are going to hear some of the Communist witnesses and some of their fellow travelers who are communists in disguise coming before this committee, who will say, "This is legislation which is aimed particularly at us." It is aimed at communism, because communism today is the great internal movement which is attempting to overthrow our Government and make us subservient to a totalitarian power. May I call to your specific attention that at no place at all in the sentence that I have read in this prohibited act does it mention anything about communism. This act would be just as much directed against the activities of the German-American Bund as it is against communism. Had we had this act in 1940, 1938, and 1939, it would certainly have provided for the arrest and the conviction of members of the German-American Bund in this country, and it would have provided for the arrest and conviction of members of the Black Dragon Society of Japan in this country, because those organizations at that time, as communism today, were advocating and conspiring to perform actions to bring

about the domination of America by a foreign government, a foreign organization, or a foreign individual. I think that we should keep that clearly in mind when people come up and say, "We feel it is specifically against communism."

This bill fits the shoe, and the shoe fits the Communist foot today, but if they can disprove the fact that the shoe fits the foot, they can walk with all the freedom that they now have.

Senator FERGUSON. Is it not true that this merely goes to totalitarian dictatorship, whether it be of the proletariat or anyone else?

Senator MUNDT. Yes, and it goes only to that form of totalitarian dictatorship which is controlled from abroad.

Senator FERGUSON. That is true.

Senator MUNDT. If we have in our midst some crackpot that wants to advocate that he become a dictator in this country on his own, he can still do that.

Senator FERGUSON. But it is a totalitarian dictatorship dominated or sponsored by those in foreign lands.

Senator MUNDT. Absolutely right. [Reading:]

For purposes of this subsection the term "totalitarian dictatorship" means a form of government not representative in form, characterized by (1) the existence of a single political party * * *.

That would hold for the Nazis or the Fascists or the Communists. [Reading:]

(2) such identity between such party and its policies and the government and governmental policies, of the country in which it exists as to render such party and the government itself indistinguishable for all practical purposes.

That holds equal already for fascism, and communism, and nazism, and I think you will quickly discover the mental trickery of the Communists when they come before you trying to say that this discriminates against them and that they in turn are against fascism and nazism, because as a matter of fact, it is a quick and easy change from a Communist to a Nazi or from a Nazi to a Communist. When I was in Budapest, Hungary, with Senator Barkley a little over a year ago, we met a number of Hungarian doctors who told us that they were presently treating patients who were at that time the Communist commissars of Budapest, but they had treated the same patients a number of years ago when they were the Nazi gauleiters of the same place. There is little distinction between a gauleiter or a Communist abroad, and many of them are exactly the same. May I point out that the judge who presided in the Hungarian trials of the cardinal was a former Nazi judge. It was quick and easy for him to change. It is quick and easy for these American fakers to do the same thing. [Reading:]

* * * for purposes of this subsection, the term "totalitarian dictatorship" means a form of government not representative in form, characterized by—

I have given you (1) and (2). [Reading:]

(3) the abolition or prohibition of all other political parties.

The first thing that the Nazis did was to try to exterminate the other parties. The Fascists followed the same form, and the Communists have carried it to the *n*th degree. We have in our country today a host of political refugees, such as Mikolajczyk of Poland, who are here because they belong to a party which was non-Communist, and they were driven from their country, put in concentration camps, and some

of them executed only because they dared to voice an opinion and a political belief contrary with that held by the Communists in control of the Government.

The second part of section 4 is completely new. It does not appear in the Mundt-Nixon bill. It does not appear in any of the other legislation before you dealing with this subject, because it grows directly out of the experience we had in the House Committee on Un-American Activities last fall in investigation of the so-called pumpkin papers case, the espionage activities of the Chambers-Hiss case, the Bentley case, and others. So (b) attempts to define peacetime espionage.

Senator FERGUSON. Is the Senator familiar with the bill that is before us, S. 595, the internal-security bill?

Senator MUNDT. The one Attorney General Clark has been testifying on?

Senator FERGUSON. Yes. There have been certain alterations in the bill.

Senator MUNDT. I am not familiar with the alterations.

Senator FERGUSON. I am inclined to think that the pumpkin case would be covered by one section of that act, and that is the reason I call it to the Senator's attention.

Senator MUNDT. At all events, we can certainly agree that any overall legislation dealing with the Communist problem should cover pumpkin paper cases.

Senator FERGUSON. I agree with you; yes.

Senator MUNDT. We have put this in and perhaps the other approach would be equally good or better.

Subsection (b) says this:

It shall be unlawful for any officer or employee of the United States or of any department or agency thereof, or of any corporation the stock of which is owned in whole or in part by the United States or any department or agency thereof, to communicate in any manner or by any means, to any other person whom such officer or employee knows or has reason to believe to be an agent or representative of any foreign government or an officer or member of any Communist organization as defined in paragraph (5) of section 3 of this Act, any information obtained in the course of his official duties or employment of a kind which shall have been classified by the President (or by the head of any such department, agency, or corporation with the approval of the President) as affecting the security of the United States, unless such officer or employee shall have been specially authorized by the head of such department, agency, or corporation to make such disclosure of such information.

Had this law been in operation at the time the grand jury in New York indicted Alger Hiss for perjury on the grounds he concealed from them the fact that he was engaging in espionage activities, it would have been bound by his oath of good performance and citizenship also to have indicted him for peacetime espionage. Is it important, I think, that we face up to the fact that today our Government boards and bureaus and corporations have become a field place for the Communists to function because they can do so almost with complete immunity.

Senator EASTLAND. The Hiss case, Senator, would be covered in the internal security bill which we reported out to the full committee.

Senator MUNDT. That is the one the Senator referred to?

Mr. YOUNG. Yes; S. 595.

Senator MUNDT. Probably so. I am talking about existing legislation. I certainly hope so. There is a great big opening in the security defense line of America, and certainly the Communists have been

pouring a whole stream of spies into the Government as a consequence of that.

The penalty it establishes for those prohibited acts which I have already mentioned are that—

Any person who violates any provision of this section shall, upon conviction thereof, be punished by a fine of not more than \$10,000 or imprisonment for not more than 10 years. . . .

So we differentiate between peacetime and wartime espionage. Wartime espionage is a punishable crime by death, by life imprisonment. This is punishable with a maximum penalty of 10 years and \$10,000 which is a definite penalty.

Senator FERGUSON. Does the Senator distinguish in his particular bill, defining what is wartime and what is peacetime? You see, we get a situation which we have today, that we are neither at war nor at peace, as some people may think.

Senator MUNDT. We distinguish in this way. This is over-all legislation operative equally in peace or war. When we know we are at war we have legislation which now covers espionage, but in this twilight area, as you have apparently described it, we have no knowledge at the moment covering the situation.

Senator FERGUSON. But does the wording of yours indicate that it applies only in what you call peacetime?

Senator MUNDT. No. This covers all kinds of conveyance of materials to foreign governments.

Senator FERGUSON. No matter what the time is?

Senator MUNDT. For this reason, this would also make it illegal for some well-intentioned individual having security secrets at his command to peddle them without authority to an ally. This, you see, is to an ally or anyone. He has to have authority to do it. We should not, I think we must agree, permit individual Americans in relatively obscure positions, even out of the best of motives, to give our security secrets away to the closest of allies.

Senator FERGUSON. What kind of papers do you have in mind that it would be a crime to deliver to allies?

Senator MUNDT. That is spelled out in definition. It is any paper which has been—

Senator O'CONNOR. Classified.

Senator MUNDT. Yes; classified as affecting the security of the United States, all classified information.

As the Senator understands, one time a thing is classified and at another time it is not.

Senator FERGUSON. I understand that, but the word "classified" is not always under a directive of the President.

Senator MUNDT. By the President or by somebody acting for him.

Senator O'CONNOR. The head of any department, agency, or corporation.

Senator FERGUSON. Then this goes so far as to allow an administrative officer to classify anything, and the transfer of that would be criminal under your act.

Senator MUNDT. It permits him to transfer anything provided he has the approval of the President so to do, but it keeps the responsibility on the President. It says with the approval of the President.

Senator FERGUSON. Does the Senator know whether or not that has been the practice in the past, marking things "Secret" or "Top

secret"? We have so many definitions and so many stamps in these departments.

Senator MUNDT. The difficulty in the past has conspicuously been not one of classifying too much and keeping too much from the enemy, but permitting too much to leak out to the enemy, the failure to protect the papers.

Senator FERGUSON. Has this anything to do with the national defense?

Senator MUNDT. This is very definitely a part of the national defense.

Senator FERGUSON. I mean the papers we are talking about. If it is marked "Secret" because it is for the national defense, that is one thing, but suppose it is just marked "Secret" and it has nothing to do with the national defense.

Senator MUNDT. That is covered in the definition as affecting the security of the United States. It is spelled out.

Senator O'CONNOR. In line 12 of the bill the requirement is that the classification would be of those papers which affect the security of the United States.

Senator FERGUSON. That was what I wanted to get at.

Senator MUNDT. That is right. That is definite.

Senator FERGUSON. What about the person knowing, or believing or having reason to believe that it would affect the security?

Senator MUNDT. From the standpoint of the person against whom the statute runs he can determine that by whether it is marked "Classified" or not. The man who does the classifying acts in his responsible capacity as the representative of the President.

Senator FERGUSON. All right. What you do, then, is to use the word "classified" to be the determining feature. Suppose it is not marked?

Senator MUNDT. If it is classified it is marked or it is supposed to be marked.

Senator FERGUSON. Suppose he gets the knowledge from a classified paper and then gives it orally?

Senator MUNDT. If he knows or has reason to believe that it is classified, he is guilty.

Senator FERGUSON. Is that the language you use, "knows or has reason to believe"?

Senator MUNDT. If he does not know it, of course he is not held responsible for an inadvertence.

Senator FERGUSON. I wish you would take the law that I gave you the number of, S. 595, and go over that in relation to this particular section.

Senator MUNDT. I will be very happy to do that.

Senator FERGUSON. Perhaps you will discuss it with the Senator off the record rather than to interrupt what you have to say here today.

Senator MUNDT. Yes, I will be glad to.

Now we come to subparagraph (d) of section 4, which is also new legislation growing out of the same hearings and the same espionage difficulties.

Any offense publishable under this section may be prosecuted at any time without regard to any statute of limitations.

We have this unique situation as the basis for that section. Miss Elizabeth Bentley and Whittaker Chambers both admitted their guilt

as espionage agents, and their guilt as espionage agents apparently took place at such a time that present laws cannot operate against them.

Senator EASTLAND. You mean the statute of limitations?

Senator MUNDT. The statute of limitations has run. It has been shown to be a continued conspiracy down to the present.

Senator FERGUSON. Does the Senator realize that Mrs. Bentley gave her testimony to the FBI so they knew it before the statute of limitations had run?

Senator MUNDT. The Senator also realizes that Whittaker Chambers—

Senator FERGUSON. Gave the same testimony to the State Department at that time.

Senator MUNDT. That is right.

Senator FERGUSON. So we cannot blame the statute of limitations for the fact that the Bentley and Chambers cases were not prosecuted.

Senator MUNDT. That is right, but the statute of limitations did prevent the House Committee on Un-American Activities from building a case on which we could get a conviction of either of those two.

Senator FERGUSON. Yes, but you have also to realize that it is not the duty of either the Senate or the Un-American Activities Committee to build cases for prosecution.

Senator MUNDT. There is no substitute for diligence on the part of the Attorney General or the State Department.

Senator EASTLAND. Where is your provision about the statute of limitations?

Senator MUNDT. I am sorry, at the bottom of page 9, going over to the top of page 10. That is new and does not appear in the legislation of last year. It grows directly out of the frustration that the grand jury experienced and that our committee experienced.

Senator EASTLAND. I would like to hear you on that. The committee adopted a 10-year limitation in the internal security bill.

Senator MUNDT. We had in mind when we first worked this over, Congressman Nixon and I, with the Senate legislative conference, the feasibility of putting in a 10-year limitation and decided against it because we were persuaded by this position, that in crimes of this type which are crimes against the security of the country, which are crimes of espionage, though it would be peacetime espionage, which are crimes which, if not detected or punished, may destroy freedom for everyone—we saw no reason to have 10 years any more than to have 3 years because even with 10 years some people might slip through the noose.

Senator EASTLAND. Some people might slip through, but yet would it not also be possible that grave injustice would result? A person could be indicted years after an occurrence, when the witnesses were dead, when the witnesses were beyond the reach of the court, and when his right to make a defense would be prejudiced.

Senator MUNDT. I think there is some danger in that.

Senator EASTLAND. Does not a provision like that sacrifice something that is basic in our system?

Senator MUNDT. I do not think you could quite use the word "sacrifice." I think it does impinge upon it. I want to be candid about it. I think in all legislation of this type you frequently come

to this question: Are we going to run the danger that here and there an innocent man may be somewhat imperiled and perhaps even unjustly punished, or are we going to continue to run the danger that a nation of innocent people is going to be imperiled and perhaps unjustly punished by having their freedoms usurped by dictatorial aggression? Sometimes you run into that twilight zone of decision. We had in mind the case of Hans Eisler, who for 12 years without detection in this country operated as one——

Senator FERGUSON. Was it without detection?

Senator MUNDT. In his case, yes.

Senator FERGUSON. You mean that we had no evidence——

Senator MUNDT. Hans Eisler for 12 years operated as the master mind in the European link of the Communist Party. Finally it was brought to light largely through the testimony of Budenze, who switched from the Communist Party.

Senator EASTLAND. Wait a minute, now. You mean for 12 years he was the European link, the master mind of the Communist Party?

Senator MUNDT. For 12 years.

Senator EASTLAND. And you say in violation of the law?

Senator MUNDT. Because he was here under fictitious passport.

Senator EASTLAND. There was a passport violation, of course.

Senator FERGUSON. That would not be covered by this.

Senator MUNDT. The point I am making, Senator is this: The only law he could violate was a passport violation. There was no law against this kind of business he was doing.

Senator FERGUSON. Would your bill cover that?

Senator MUNDT. Not at all. I point out that as a case to say sometimes it goes beyond 10 years before you detect him. It would not cover that at all.

Senator EASTLAND. That would be true of any crime. I do not see why we should make an exception in this bill.

Senator FERGUSON. Mr. Chairman, that is the reason I am interested in the Bentley and Chambers cases. They were known. They were known.

Senator MUNDT. Yes, they were known.

Senator FERGUSON. Is it not one of our fundamentals that you do have except in rare instances, a statute of limitations so that we can try to protect the rights of people, so that they can not be convicted years afterwards when all of their witnesses, all possible witnesses would be gone? There is such a flux in the world in 10 years that if we cannot discover this in 10 years we should not prosecute.

Senator MUNDT. I readily recognize that we have very little chance in America to win the fight against communism unless and until we can get law enforcement officers and prosecuting officials who will move within the span of 10 years.

Senator FERGUSON. Yes. If you do not move within that time, there is very little prospect of our ever getting convictions.

Senator MUNDT. I agree. I would not quarrel at all with any effort to limit it to 10 years.

Senator EASTLAND. As a matter of fact, you would not object to a limitation?

Senator MUNDT. As I say, we deliberated very carefully and finally decided on no limitation, but I would not quarrel violently with a 10-year limitation.

Senator FERGUSON. I would just like to call to the attention of the committee that we have before us also the bill, S. 1196, which is in substance, with some refinement, what the Judiciary Committee of the Eightieth Congress tried to arrive at.

Senator MUNDT. I have been trying to point out the distinguishing features between this and that.

Senator EASTLAND. I would like to hear Senator Mundt on the difference between your bill and his bill.

Senator FERGUSON. Yes. Wednesday, when we meet, I probably will be able to give some remarks on that distinction, too.

Senator MUNDT. All right.

Senator FERGUSON. I have not any quarrel or pride in authorship in this. I think we are trying to arrive at exactly the same thing.

Senator MUNDT. There is no question about it.

Senator EASTLAND. We will recess now until next Wednesday morning at 10 o'clock.

Senator MUNDT. Do I understand I am to come back at 10 o'clock Wednesday morning?

Senator EASTLAND. Yes.

(Whereupon, at 11:55 a. m., the committee recessed until 10 a. m., Wednesday, May 4, 1949.)

CONTROL OF SUBVERSIVE ACTIVITIES

WEDNESDAY, MAY 4, 1949

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to recess, at 10:10 a. m., in room 424 Senate Office Building, Washington, D. C., Senator Bert H. Miller, presiding.

Present: Senators Eastland (chairman of the subcommittee), Miller (presiding), O'Connor, and Ferguson.

Also present: Robert Barnes Young, and John Mathews, professional staff members.

Senator MILLER. I might observe that Senator Eastland reports that he cannot be here until somewhat later in the morning, and the hearing will be in order.

When we recessed the other day we still had Senator Mundt before us and I guess you may resume your presentation, whatever it might be, Senator.

STATEMENT OF HON. KARL E. MUNDT, A UNITED STATES SENATOR FROM THE STATE OF SOUTH DAKOTA—Resumed

Senator MUNDT. All right, Senator.

When the hearing stopped last week we were in the process of discussing the provisions of S. 1194 and making occasional comparisons and drawing contrasts between that legislation and S. 1196 and also the original Mundt-Nixon bill that passed the House of Representatives last year. You will recall we had just completed discussion of the provisions of section 4 of the bill, and I presume we proceed now to conclude our discussion as to the statute of limitations and the various methods for doing something legislativewise to correct the present situation whereby claims against the Government become outlawed in 3 years.

It is proposed in this legislation to eliminate the statute of limitations entirely. And Senator Ferguson, I think it was, or Senator O'Connor—I have forgotten which—brought out that in another piece of legislation before your committee a 10-year limitation had been established, and I said as far as I was concerned I had no particular violent quarrel as to whether it was 10 or 12 years or no limitation whatsoever, although in my own personal conviction it seems to me that crimes involving treason and espionage should never be outlawed because, after all, they are crimes of a mighty serious consequence.

Proceeding to section 5, unless you gentlemen have questions to me further about that, section 5 is the section headed "Employment of members of Communist political organizations," and that section pro-

vides that "When there is in effect a final order of the Commission," and the term "Commission" and the order of the Commission are described later in the bill.

When there is in effect an order "requiring an organization to register as a Communist political organization, it shall then be unlawful for any member of that organization," to seek or accept any office or employment under the United States, and to conceal the fact that he is a member of such organization. If he seeks it or accepts it without disclosing the fact that he is a Communist, he has committed a crime, or "to hold any nonelective office or employment under the United States."

The reason we used the word "nonelective" is because we feel that in a free country like ours if the electors of any particular district or division of Government decide knowingly that they want to have a Communist to represent them, so long as communism is legal, so long as they know they are electing a Communist, it is their American right to elect any kind of guy they want for office. So we draw the line clearly between nonelective and elective offices.

We also make it illegal for an officer——

Senator FERGUSON. Would not a Communist have a very difficult time taking the oath of office?

Senator MUNDT. I do not think so, because a Communist is trained early in life to lie. So I think he would take it fraudulently.

Senator FERGUSON. I mean if he were actually a Communist, then, of course, he would not pay any attention to the oath.

Senator MUNDT. If he were both a Communist and an honest man, he could not take the oath. He would find a way.

Senator O'CONNOR. Is it possible to be both?

Senator MUNDT. I do not think so. Perhaps some Communists do.

Senator MILLER. Well, Senator, are there not Communists who actually and sincerely believe that they have the true philosophy of government?

Senator MUNDT. I think so.

Senator MILLER. And honestly believe it.

Senator MUNDT. I think so, but since communism teaches in part the destruction of our way of life, and the oath of office insists that you uphold it, I say you cannot be a Communist and an honest man and take the oath of allegiance at the same time.

Senator MILLER. I see your viewpoint.

Senator MUNDT. I do not challenge at all that some Communists are sincere devotees of their particular creed.

Senator MILLER. And probably they figure that resorting to the processes that they do would be justified because of that belief.

Senator MUNDT. The Communists, Mr. Chairman, always figure that the end justifies the means.

Senator O'CONNOR. It always has been said, Senator, that a part of their training justifies in their opinion the taking of false oaths or the allegation that they do not even belong to the Communist organization in order to further their interests.

Senator MUNDT. That is definitely correct, and in some cases where literature of the Communists has been found and discovered, in other cases where the FBI or others have done a counterespionage job on

communism, it has been clearly disclosed that lying to the so-called capitalists is part of the cloak of good behavior for the Communists.

Senator FERGUSON. In fact, they require it, do they not, as part of their training?

Senator MUNDT. It is required certainly from the standpoint of those engaged in the under-cover work.

Senator FERGUSON. Yes. For instance, then their card is concealed and they are under cover, their job is to conceal the fact that they are Communists and that anything is justified to effect that concealment.

Senator MUNDT. Some of these bureaus, as we call them, over on the other side, these former Communists who have disavowed their allegiance to communism and have sincerely rejected it, have rejoined the forces of decency, have clearly told us that at the time they were doing under-cover work for the Communists they were instructed by their superiors to deny the fact that they were Communists. To make the thing clear-cut, they are not even permitted to carry a Communist card and the written records are destroyed in the offices. They go under a code name. They operate in the shadowy activity where they have no record as to their Communist attachments, because a Communist espionage agent, of course, tries to carry out the outward activities of a good citizen so that nobody detects him in his nefarious job.

Proceeding, to make the law effective we provide that any officer or employee of the United States who knowingly appoints to office a member of the Communist Party is also equally in violation of this section of the law. I think that is all there is to that particular section, although I might call to your attention that as used in this section the term "member," shall not include any individual whose name has not been made public because of the prohibitions contained in section 9. As you go through the bill you will note that we have changed the old Mundt-Nixon bill in this connection. We have set up a particular machinery and procedure whereby somebody who feels he has been falsely listed as a Communist has due and ample opportunity to have his name taken from the list before it is published and before the provisions of the law run against him. That will become clear as we go through the bill.

Section 6 is denial of passports to members of Communist political organizations. I think that stands clear by its title. Whenever there is in effect a final order of the Commission requiring that organization to register as a Communist political organization, it is unlawful for any member with knowledge that such order has become final to make application for a passport or to use such a passport, and it is unlawful for any officer of the United States Government to grant such a passport. There again we put in the precaution that it shall refer as "member" only to those whose names have been made public after due process.

Senator FERGUSON. Mr. Chairman, I wonder if he would explain on the record as to why, in his opinion, people should not be given passports because of their going for training and communication, and so forth.

Senator MUNDT. Yes, I think that is a very, very important point. I might illustrate it by the case of one young man from the Senator's State, a young colored boy by the name of Noel, which is a case in

point, who secured a passport after being granted a Communist scholarship to study in Russia. He made no pretense about the fact that he was a Communist. He got the Communist scholarship. He had worked himself up in the particular Communist group he belonged to. He happened to be a young workman in Henry Ford's factory in Detroit. They granted him a passport. He went to Europe and studied in the Lenin Institute in Moscow. After studying there a while he was appalled at what they were teaching him because they were not teaching him what he expected to learn, that there were political, economic, and social concepts of communism. They were teaching him sabotage. They were teaching him espionage. They taught him the location of the water supply of the city of Detroit and the name of the chemicals and poisons to inject into the water to poison the people of the city of Detroit in the event of a Communist revolution in this country or an attack from Communists abroad. They showed him maps and charts and graphs of the network of transportation of the city of Chicago and taught him how he could associate himself with others in sabotaging that transportation bottleneck in America in the event of a Communist revolution in this country or an attack from Communists abroad.

He was a patriotic young man at heart. He came home and discussed it. He came over to our committee. He showed us his notebooks and told us about what he had been studying and said that we should certainly not permit Americans to go over there and to get themselves trained in that kind of business and then come back in order to carry out their plans.

That is just one reason, of course.

Senator FERGUSON. Do you have reason to believe that there are those who go through this school and come back and that they do not disclose it to American authorities and are avowed Communists and will help to carry out their scheme?

Senator MUNDT. That is right. We know of the names of a great many Americans who have gone to the Lenin Institute and finished the course. Incidentally, we know the names of some Europeans, too, like Anna Pauker and some of the dictators of Europe today who have finished the course. They, of course, didn't tell us what they took. We know Neol is not the only one. We have had others who became Communists originally because they felt there was something worth while and sincere about it, and they became badly disillusioned when they found it out and their good American patriotism replaced that Communist illusion.

It would also work in such a situation as this. Mr. Browder over 20 times has crossed the seas to visit Moscow as the leader of the Communist Party, as the director at one time of the Seventh Conference of the Communist International, an organization set up to destroy capitalism around the world. He has gone there of course to report to his rulers in Moscow as to the progress of communism in this country, to relay any secrets which may have come to him from people like Miss Elizabeth Bentley or Whittaker Chambers or Alger Hiss or any one of a number of others who may have given them to him; to bring back from Moscow instructions for his party and for those doing underground work.

It seems to me just a reasonable precautionary method that we should take that when we know a person is a Communist not to grant

him a passport to travel abroad for the purpose of destroying the country which he has left. So we would make that provision in the law.

I would like to say here, Mr. Chairman, that Miss Ruth Shipley down in the Division of Passports has done a highly commendable job. One woman has done a great one-man job down there trying to stop it. She cannot do it alone. She operates without any governing regulation. She has at times been asked to grant passports and visas to people whom she would rather not grant them to, and legislation of this kind I am sure under a woman such as Miss Shipley would be reasonably and accurately and honestly enforced. There is no chance for error under the new provision because the list of names will be before every Government employee.

Section 7, registration and annual report of Communist organizations. Each Communist political organization required to register as such shall within the time specified in this act be compelled to register. We set forth what registration involves. It is registry with the Attorney General on a form prescribed by him by his regulations. They shall register for the kind of organization that it is. The registration required—I am referring now to page 12:

shall be made (1) in the case of an organization which is a Communist political organization or a Communist-front organization on the date of the enactment of this act, within 30 days after such date; (2) in the case of an organization becoming a communist political organization or a Communist-front organization after the date of the enactment of this act, within 30 days after such organization becomes a Communist political organization or a Communist-front organization, as the case may be—

it shall register.

If the organization is one which the Attorney General has found shall be required to register it also has 30 days in which to register.

What does this registration statement include? That takes us to page 13. It shall include, first of all, the name of the organization; secondly, the name and last-known address of each individual who at the time of such registration or who was during the period of 12 months preceding such registration an officer of the organization with the designation and title of the office he holds and with a brief statement of the duties and functions of each individual officer.

So your officers are registered along with the names.

Then an accounting in detail of the moneys received and expended. You will note so far, Mr. Chairman, we require of these Communist organizations precisely the same kind of registration statement that you require of the Republican Party and the Democratic Party under the Hatch Act. In other words, as I said on the day of my original testimony, since the evidence clearly shows that the Communist Party no place in the world, including America, acts like a political party or is a political party, this legislation is an endeavor to channel their activities into the area that a political party operates in this country.

Those three things, if it conforms with them, would compel them to act like a political party.

Senator FERGUSON. I wonder whether I might inquire there, Mr. Chairman. At the present time they are able to take larger donations than \$5,000 from individuals, are they not?

Senator MUNDT. That is correct.

Senator FERGUSON. There is no limit on what they take.

Senator MUNDT. Because they do not engage in political campaigns in the accepted American sense of the term.

Senator FERGUSON. They do not disclose who gives them the money.

• Senator MUNDT. That is right.

Senator FERGUSON. Do you know whether or not there are persons who make large donations to the Communist Party?

Senator MUNDT. Yes; we know of a building in New York City which is used by the Communists as a school which was donated by one fabulously wealthy American by the name of Frederick Vanderbilt Field, and there are other rich Americans who unfortunately have been induced to make large contributions, sugar-daddying these Communist causes.

Now we come to No. 4.

Senator O'CONNOR. Right in that connection, Senator, it is true that quite sizable contributions were reported from members of the movie colony.

Senator MUNDT. Right, tremendous contributions.

Senator FERGUSON. Did your committee have evidence on those?

Senator MUNDT. Yes; we had evidence.

Senator FERGUSON. Reliable evidence?

Senator MUNDT. Incontrovertible evidence as to the size of the contribution, especially in the early days when our committee was proceeding under Martin Dies and was being attacked pretty bitterly by the administration at that time, and Martin Dies used some pretty direct methods of getting evidence by getting it first and subpoenaing it afterward, so the records were pretty complete for a while. That evidence was not obtained in the best manner. Our committee developed better habits of behavior after that, more circumspect habits of behavior, but the evidence at least was secured. There was no question about that.

In recognition of the fact that what we are dealing with is not a political party, we add to these first three which I have given you which applies to them as it applies to Republicans and Democrats, a fourth phase about registration at the bottom of page 13. It says:

In the case of a Communist political organization, the name and last-known address of each individual who is a member of the organization at any time during the period of 12 full calendar months preceding the filing of such statement—

shall be included.

We add a new subsection (5) that—

In the case of any officer or member whose name is required to be shown in such statement, and who uses or has used or who is or has been known by more than one name, each name which such officer or member uses or has used or by which he is known or has been known—

must be registered.

In other words, that grew directly out of the hearings last fall where we discovered that Whittaker Chambers, for example, had about six or seven different names when he was operating as a Communist underground agent, that the people with whom he was associated were each known by a number of names. A clear-cut recognition that without some such safeguard as that simply compelling a Communist to register is simply compiling a useless roll of pseudonyms and aliases. You have to have a law which requires them to list the series of aliases which they use because it is very difficult to remember what is

the right name of a Communist. We started out in writing this provision to say he should use his legal name. We discovered a Communist sometimes has quite a few different legal names in sequence. We think this language we have drawn up after careful consultation with the legislative counsel is broad enough and tight enough and inclusive enough to compel a Communist to list the various names by which he is known. We think that is tremendously important because, after all, we want this to be an enforceable act, and that means that the governmental officials must have the protection of having an index available as to those people who are known to be Communists, and before they make an appointment or before they determine whether or not a passport is to be granted.

Senator FERGUSON. Mr. Chairman, might I inquire.

This list is to be given by the officer of the organization?

Senator MUNDT. It is to be given by the officer of the organization, that is correct.

Senator FERGUSON. Therefore, section 5 on page 4 would apply if he knew that he had aliases or other names?

Senator MUNDT. That is right. We have also a statement later in the bill which places some responsibility on the individual to register if he knows that he is a Communist and knows that he has not been registered.

Then the rest of it I think is pretty clear. It just sets up the dates and the place the registration is to be made, the duties and processes of registration. I might add that this section grew out of testimony that Attorney General Clark gave us in the last Congress, what he said is the reason present registration laws are not enforced and where in his opinion they were unenforceable and why no cases have ever been tried under them; because they fail to fix and fasten the responsibility for registration upon the individual. You cannot prosecute an organization. So we have spelled out here a definite responsibility and the fixation of that responsibility so as to be sure that this time it is an enforceable law.

You can appreciate when you write legislation of this kind you immediately run into difficulty raised by this situation: What is to prevent the Communist officers from including everybody in this room in a registration list and saying that they are Communists and consequently smearing a lot of good citizens? We had to have some means of preventing that. We tried a device under the Mundt-Nixon bill which after more careful deliberation we thought could be improved, so in this legislation there is some new language that I would like to call your attention to because I believe it meets that predicament that you run into whenever you deal with tricky people such as these Communists are.

It starts primarily on page 15, line 16, but I had better start with (g) so that you get the whole concept:

It shall be the duty of the Attorney General to send to each individual listed in any registration statement or annual report, filed under this section, as an officer or member of the organization in respect of which such registration statement or annual report was filed * * *

Senator FERGUSON. So that it might be clear this only applies to Communist political activities.

Senator MUNDT. This applies to Communist political organizations insofar as members and officers are concerned, and Communist-front organizations insofar only as officers are concerned.

Senator FERGUSON. I wanted to get that clear on the record.

Senator MUNDT. Right. [Reading:]

* * * a notification in writing that such individual is so listed; and such notification shall be sent at the earliest possible time * * *.

In other words, there will be a regular procedure, a post card will go out from the Attorney General with this person's correct name and address, stating: "You have this day been listed as a Communist"—or "an officer in a Communist political organization" or "an officer in a Communist-front organization."

And such notification shall be sent at the earliest practicable time after the filing of such registration statement or annual report. Upon written request of any individual so notified who denies that he holds any office or membership (as the case may be) in such organization, the Attorney General shall forthwith initiate and conclude at the earliest practicable time an appropriate investigation to determine the truth or falsity of such denial, and, if the Attorney General shall be satisfied that such denial is correct, he shall thereupon strike from such registration statement or annual report the name of such individual. If the Attorney General shall decline or fail to strike the name of such individual from such registration statement or annual report within 6 months after the receipt of such written request, such individual may file with the Commission a petition for relief pursuant to section 14 (b) of this act.

(h) In the case of failure on the part of any organization to register or to file any registration statement or annual report as required by this action, it shall be the duty of the executive officer—

to perform that duty.

The new point is that there is protection there. As we go through the bill, you will see how that protection ramifies out to give complete security to a person falsely listed.

The "registration of members of Communist political organizations," section 8:

Each individual who is a member of any organization which he knows to be registered as a Communist political organization under section 7 (a) of this act, but which has failed to include his name upon the list of members thereof filed with the Attorney General, shall within 60 days after he shall have obtained such knowledge register with the Attorney General as a member of such organization.

That is the point I was mentioning to you, Senator, that he has some responsibility.

The registration made by such individual shall be accompanied by a registration statement, to be prepared and filed in such manner and form, and containing such information as the Attorney General shall by regulations prescribe.

Senator O'CONNOR. Senator, because of your splendid grasp of this whole subject matter, I thought it might be pertinent to ask a question just at this juncture on this very phase of the matter. What is your opinion concerning the oft-repeated criticism of this particular type of legislation that such provisions as those to which you have just referred, if put into effect, would drive the Communists underground?

In other words, as you know, throughout the country there is on the part of very many fine citizens the thought that the ultimate effect might be to drive them underground and therefore defeat its purposes.

Senator MUNDT. I am very happy you raised that question because it is frequently discussed and it is the source of very honest disagreement among highly patriotic citizens. We have to start, I think, with this realization which unfortunately a lot of our scholarly associates in the field of education and religion and journalism fail to understand, that communism is now underground insofar as the most

significant part of the Communist Party apparatus is concerned. Certainly the Bentley espionage ring, the Chambers espionage ring, the Judith Coplon espionage ring, operated underground. Hans Eisler operated for a dozen years underground in this country, directing from abroad the activities of Communists in this country.

Senator FERGUSON. According to the testimony now in the New York trial, was not a great amount of the activities of the leaders underground as disclosed by these witnesses who are taking the stand?

Senator MUNDT. That is correct. So we have a dual organization at all times. So long as Communists remain in the minority in this country we can be assured that the most dangerous part of the Communist apparatus will stay underground, with or without legislation. They are underground now when there is no legislation dealing with them.

Now to approach the problem from the matter of making the Communist Party illegal would be obviously to drive the whole machinery into the ground. That would put a jail sentence or a monetary penalty on anybody who belonged to the Communist Party. That would compel every activity, every movement, every organization, every circulation of a newspaper, every broadcast to be an underground operation, and it would make it, as I said on the first day of testimony, much more difficult for the FBI, for the Un-American Activities Committee, for the Department of Justice, for the police authorities generally to find even the telltale wake behind the periscope of the submarine to know where their dangerous operator was moving.

So I look at this legislation, frankly, gentlemen, as legislation which forces the Communist Party out of the ground, just the opposite from forcing it into the ground. This legislation should find the support of people who say we think that we should compel the Communist Party to operate above ground, at least in part. This, you see, will compel them at least to register the names of their officers at the very minimum. It will compel them to register the names of some of their front organizations as a very minimum. It will compel them to register names of some of the members of the party as a very minimum, because it cannot help very much to influence public opinion if it appears they have filed their registration statement that they have 17 officers and 20 members. They are going to have to show some kind of membership strength, and they are going to have to have to conduct some of their activities above ground so that they can have some kind of appeal to people that they cannot contact individually by their underground apparatus and mechanism.

So I think this will serve a very constructive purpose of forcing out into the open where everybody can see them some of the Communist activities and individuals who now either operate under the ground completely or in a twilight area where insofar as 75 percent and maybe 90 percent of Americans are concerned, they are underground. Just a few know about their activities.

Senator FERGUSON. Is there any difference between driving these people underground by such a registration law than there is by driving foreign agents that are now required to register?

Senator MUNDT. Not a bit. For other purposes, you mean.

Senator FERGUSON. Correct. The law now requires foreign agents—

Senator MUNDT. To register.

Senator FERGUSON. To register.

Senator MUNDT. That is right.

Senator FERGUSON. And therefore those who say that this will drive people underground, you would think that that law would drive them underground.

Senator MUNDT. Yes.

Senator FERGUSON. That is the purpose of the FBI and the police, to ferret out these who would go underground. Then you would have a penalty against the officers who were officers of an organization and did conceal the fact and put them underground. Today you really haven't any penalty for them being underground.

Senator MUNDT. No penalty whatsoever and there is no way to force them to operate along certain rules. Of course, when America decided that opium smoking should be made illegal, it drove some opium smokers underground. When in our good judgment we decided that kidnaping was not a mark of good citizenship, we drove kidnaping underground. When it was decided that in order to protect the Federal currency we ought to make the printing of money and the coining of coins of Government function instead of voluntary activity by everybody in the community, we drove counterfeiting underground. Certainly this is going to drive espionage further underground perhaps than it is now because it is going to make a penalty for the person who engages in it. I suppose a young lady like Miss Coplon would be more careful about making her contact. She would not make them under the shadow of an elevated railway track in New York City. She might meet further underground in that activity and be more cautious perhaps. But it also gives American prosecuting authorities a way to punish these underground espionage activities. It makes it a peacetime crime and it will consequently tend to discourage its general practice by a lot of people in the class into which I suppose Miss Coplon would fall—romantic, giddy-eyed, adventuresome, who vitiates in the field of espionage. It would make it less attractive to people who don't intend to make a career out of it.

Now going over to the keeping of the registers, public inspection, reports to President and the Congress.

Senator FERGUSON. I think we should not just classify women as those who do these nefarious things.

Senator MUNDT. No, I think you are exactly right.

Senator FERGUSON. It is not always just under the claim of love, is it?

Senator MUNDT. Not always, no. It is hard to drive love from a woman's heart, though. It has lots to do with most of the cases that have been brought in.

Keeping of registers, public inspection and so forth, under section 9:

The Attorney General shall keep and maintain in the Department of Justice (1) a register of Communist political organizations including the names and addresses of all Communist political organizations, registered under the act, the registration statements and annual reports required as to finances and also the registration statements filed by individuals.

Secondly, a registration of Communist-front organizations, two separate registers, one the Communists themselves, the other the dupes, the associates, the cohorts of the Communists, the Communist-front organizations.

Senator FERGUSON. Do you think the Communist fronts will be able effectively to operate under a registration such as these bills would require? Do you think they will be able to finance themselves?

Senator MUNDT. I think one of the big advantages, Senator Ferguson, of that act is to destroy what J. Edgar Hoover told our committee in these hearings was one of the most vicious aspects of Communist activity in this country, and that was its uncanny ability to create fronts through which it functions. I concur with you that the big body of American citizenry, is patriotic and sound enough so that when it knows it is being appealed to by a Communist-front organization, it will resist the appeal. I don't think American Youth for Democracy, AYD, would have made the tremendous strides it did in Michigan and other States, confusing and deluding students and professors alike, if it had been compelled to carry on the masthead of its letterhead and all its publicity the fact that "We are a Communist-front organization."

Senator FERGUSON. Do you not think that the youth of America, the great number of them in our colleges, would just have nothing to do with the front organizations if they could go to a book in the Attorney General's office and ascertain that that was a front and that it was trying to operate among the students? Do you not think that their patriotism for America would be such that they would just have nothing to do with it and that such an organization could not operate on the American campus?

Senator MUNDT. I agree completely. I think you would limit Communist activities on college campuses to a comparatively small tough-minded group of known Communists who were perfectly willing to be known as such and that you would not get any of the people whose patriotism is sound to affiliate with that kind of organization. I agree with you.

The registration shall be kept and maintained as political organizations except that it shall not include the names of the individual members. Such register shall be kept and maintained in such manner as to be open for public inspection. To protect the innocent, we want to make it clear and I certainly hope the press will cooperate in making it clear so that Americans can judge this legislation on the basis of what it is, and not on the basis of what the Communists claim that it is, so we put in this important proviso:

That the Attorney General shall not make public the name of any individual listed in either such register as an officer or member of any Communist organization until 30 days shall have elapsed after the transmittal of the notification required by section 7 (g) to be sent to such individual, and if prior to the end of such period such individual shall make written request to the Attorney General for the removal of his name from any such list, the Attorney General shall not make public the name of such individual until 6 months shall have elapsed after receipt of such request by the Attorney General, or until such time as the Attorney General shall have denied such request and shall have transmitted to such individual notice of such denial, whichever is earlier.

That is entirely new language, and that is brought in*this bill. It is not in the Mundt-Nixon bill. It is not in the other legislation. It is brought in because in consultation with that rarest of all forms

of American political life, an honest liberal, in consultation with some honest liberals, in consultation with people who would like to support this legislation but fear it might be used to smear innocent people, this device has been worked out.

Let me recapitulate so it will be entirely clear: This means that any individual who receives, and they all receive, a written notice that his name has been mentioned can by simply writing a penny postcard to the Attorney General have six complete full calendar months before his name appears on any list, and shall during those 6 months be able to carry through the specific machinery set up here for convincing the Attorney General that he is not properly registered and none of the operations of the law run against him during that period.

Senator FERGUSON. Suppose the Attorney General does not take his name off, then he has a right to appeal to your Commission?

Senator MUNDT. That is correct.

Senator FERGUSON. Does he have a right under this to have a decision by the Commission prior to the time of making public his name?

Senator MUNDT. Yes. We will come to that in the Commission procedure.

Senator FERGUSON. So he has a right to conceal his name until he gets the final order of a Commission, and then it would become public.

Senator MUNDT. That is correct.

Senator FERGUSON. If they denied taking the name off.

Senator MUNDT. That is correct.

Senator FERGUSON. If they find he was a member or was an officer in the case of a front organization.

Senator MUNDT. That is right. That is precisely right. It says the Attorney General shall submit to the President and to the Congress on or before May 1 of each year or at any other time when requested by resolution of either House a report with respect to the carrying out of the provisions of this act, et cetera.

In section 10, "Membership in certain Communist political organizations."

It shall be unlawful for any individual to become or remain a member of any organization if he knows that there is in effect a final order of the Commission requiring such organization to register and such organization has not registered. Let us be clear we are not making it unlawful for a person to become and remain a member of a Communist Party. It is provided the party registers. If the party says, "We are bigger than the law, we haven't our commissar in Washington yet, we haven't established a politburo yet, but we are still important enough that the laws of the Government don't apply to us, so we don't register." Then it is illegal for a person to belong to that kind of organization which operates in blatant and bold defiance of the law.

Senator FERGUSON. And he having knowledge that it is in violation of the law.

Senator MUNDT. He having knowledge that it is in violation, he is himself as a participating member consequently in violation. That is the point there.

"Use of the mails and instrumentalities of interstate or foreign commerce," section 11. Quite to the contrary of editorials I have read even since we had our meeting last week, that this legislation is

going to deny the right, so-called, of the Communists to function in this country, let me point out that when this law becomes operative, if it does, Communists retain every right to use the mails, every right to broadcast, and every right to elect their candidates to office, every right to maintain a campaign, every right to put up posters and pamphlets that any American has. All this legislation says is that it must identify itself properly, identify its product with its name. That already applies to the Republican Party. It already applies to the Democratic Party. We have in fact under the present circumstance granted to the Communist privileges and concessions denied both the Republicans and Democrats, because in campaigning you cannot just send anonymous jokers through the mail attacking a candidate for office. Somebody has to sign it, somebody has to identify it. Under the Hatch Clean Politics Act you have to put the label of the party on it if it is a party matter.

Senator FERGUSON. Even the billboard campaigns has to have on it by that authority. So there is nothing new in this.

Senator MUNDT. Nothing new except it applies the same principle to the Communists, and I would certainly appreciate it when some of these people come, as they inevitably will come before your committee and say, don't discriminate against the Communists. Ask them to justify if they can why the Communists alone today should have the right to anonymity when Republicans and Democrats are expected, and rightfully so, to identify their campaign material. I think the time has come certainly when we discontinue granting special bonuses and privileges and concessions to an outfit dedicated to the proposition of the destruction of this Government. It says here simply in the use of the mails that in order to use the mails Communist-front organizations and Communist Party must put on the literature they send through disseminated by "blank," the name of the organization, a Communist organization or a Communist-front organization if it happens to be that.

Section 12 is clear-cut. You know what it means by its title. We had the unique and incongruous situation develop about 14 months ago that it was disclosed that the Bureau of Internal Revenue was granting tax concession and tax immunity to several Communist organizations, Communist-front organizations, because they allegedly were engaging in an educational program. When the House Committee on Un-American Activities brought out the list, the Internal Revenue Bureau very promptly discontinued granting those tax concessions to those groups. We thought it would be a good safeguard to put it in the law just to make sure that that kind of situation does not develop again. I guess America is unique in many ways, but certainly we are unique in the fact that we give tax concessions to organizations trying to destroy the tax-collecting authority of the Government.

I don't think anybody did that deliberately down there. I think it is a case where it is difficult for the Internal Revenue people to know which organizations are and which are not Communist organizations. In this legislation it will be clear and easy to enforce the law.

Senator FERGUSON. May I inquire, would it not be essential, not blaming the tax collector at the present time, the Treasury Department, it would be required that he give tax exemption if their charter

and proceeding qualified under a certain regulation, unless we have some act like this?

Senator MUNDT. Well, they have considerable latitude, Senator. I have been down in the last 10 years on different cases—

Senator FERGUSON. Should they voluntarily discriminate and pass judgment? Here you have a board finally to pass judgment.

Senator MUNDT. Correct. I concur completely in that. We should have the thing clear-cut so there is no option so far as the Treasury Department is concerned, because you might have authority in the Treasury Department at a certain time in which the Communists had pretty liberally infiltrated themselves, as they had at one time in the State Department and, incidentally, in the Treasury Department.

If that situation prevailed, you could readily run into that situation, if you gave them volition down there so they could grant tax exemption to a great many front organizations. This makes it clear that this certainly expresses the intent of all good citizens, the intent of all good people in the administrative and executive branches of the Government, and relieves them from the measures and temptations which come otherwise if a little group of people can determine yes or no as to tax exemption.

Mr. YOUNG. May I ask one question, Senator Mundt? In section 9, I notice that you deny the use of the mails and radio. Would you mind including television in that section?

Senator MUNDT. No; I think television would be a good addition.

Mr. YOUNG. It happens to be in the other bill and I didn't know whether you omitted it purposely.

Senator MUNDT. Technology moves so rapidly it is hard to keep up with it. I think it would be a good idea to include television.

Senator FERGUSON. Of course this does not deny the use. It merely says if you use these media, you must identify yourself.

Senator MUNDT. That is correct. We want to make it clear that it does not deny it. It does not put a single extra hurdle in front of the Communists which does not now exist for the Republicans or the Democrats. If any member around this table goes on the radio tonight to express his viewpoint as a paid broadcast, he has to identify the source of that income or support.

Section 13, "Subversive Activities Commission." This is very similar to that which has been in the other legislation, and I will mention the parts that are new. "There is hereby established a Subversive Activities Commission," comprised of three people, and you have before you three choices. This legislation says the Department of State would be represented, the Department of Commerce would be represented, and the Military Establishment. The original Mundt-Nixon bill selected them from the Department of State, the Department of Commerce, and the Department of Labor. Senator Ferguson's bill leaves the selection in the hands of the President. You have three different approaches to the same thing.

Senator FERGUSON. The reason I suggested that Board should represent all of the people, and the method of getting them to represent all of the people is through the President and through the Senate by approval, rather than saying that this is a State Department, Treasury, or Army Commission. It was a little broader than that. It is a matter

for all of the people to name this board, and the only medium we have is through the President.

Senator MUNDT. Certainly I have no particular point of view that I care to stress very greatly in that connection. We all agree that it should be appointed by the President. Whether we should establish any guide posts to help him make his selection or not, is comparatively immaterial, I would think. I might say the reason we put in the National Military Establishment is that as regarding these espionage cases we quickly recognized that the security of this country was very definitely involved in this whole business, and we felt maybe they should be brought into the picture. I presume under your arrangement, Senator Ferguson, the President in all probability would take care of that anyhow.

Senator FERGUSON. They should come in as witnesses.

Senator MUNDT. Yes. It shall be the duty of the Commission to function as follows:

“(1) Upon application by the Attorney General” or by any organization, giving to any organization in this country, the most violently and viciously and blatantly un-American organization the same right as the Attorney General, upon application of either the Attorney General or the organization under question to determine whether such organization is a Communist political organization within the meaning of the paragraph or a Communist-front organization, when that is made the Commission is mandated to carry out proceedings to establish findings under the provisions set up under this act.

Upon application made by the Attorney General or any individual concerning the membership of the organization, the Commission makes such rules and regulations not inconsistent with the provisions of this act which may be necessary in the performance of his duties and making its findings. And it appropriates the funds.

Section 14, proceedings:

Whenever the Attorney General shall have reason to believe that any organization which has not registered under subsection (a) or subsection (b) of section 7 of this act * * * shall file with the Commission and serve upon such organization or individual a petition for an order requiring such individual or organization to register—

pursuant to the act. Then that organization and the individual may not oftener than once in each calendar year make application to the Attorney General for the cancellation of such registration or for relief from the obligation to make further annual reports. [Reading:]

Within 60 days after the denial of any such application by the Attorney General, the organization or individual concerned may file with the Commission and serve upon the Attorney General a petition for an order requiring the cancellation of such registration and (in the case of such organization) relieving such organization of obligation to make further annual reports. Any individual authorized by section 7 (g) of this act to file a petition for relief may file with the Commission and serve upon the Attorney General a petition for an order requiring the Attorney General to strike his name from the registration statement or annual report upon which it appears.

That process is resorted to upon the filing of such petition. The Commission or any member thereof or examiner designated thereby may hold hearings, administer oaths and affirmations, may examine witnesses and receive evidence at any place in the United States, and may require by subpoena the attendance and testimony of witnesses

and the production of books, papers, correspondence, memoranda, and other records.

It provides under (d) the method by which the hearings shall be conducted. They shall be conducted in public. Each party in such proceeding shall have the right to present its case by oral or documentary evidence, to submit rebuttal evidence, to conduct cross-examination, and to be represented by counsel. The whole thing is set up.

In determining its findings, the legislation provides certain guideposts for the Commission. In determining whether an organization is a Communist political organization, the Commission shall take into consideration:

(1) the extent to which its policies are formulated and carried out and its activities performed, pursuant to directives or to effectuate the policies of the foreign government or foreign governmental or political organization in which is vested, or under the domination or control of which is exercised, the direction and control of the world Communist movement referred to in section 2 of this act; * * *

In other words, that is one of the criteria to be used, the extent to which foreign domination controls the activities of this group set up in America.

A second criterion, the extent to which the views of this organization and its policies do not deviate from those of such foreign government or foreign organization.

May I suggest that the question of deviation is highly important. It is not so much the places at which they are similar. It is a place at which they do not deviate. Under the rule of the Communists they permit no deviation at all. You smoke them out when they get to a situation such as we had in the world a few months ago when you had to stand up and be counted all over the world in the unhappy event of war between Russia and your country, whose side are you on? Duclos, Thorez, Dennis, Foster, and all the rest of them were compelled to get up and say "We are on the side of the Communists." It is a question of deviation. They do not permit any deviation because Communists know if they permit their hirelings and their underlings even once to express opinions deviating from the master rule, they establish a dangerous precedent that they might again follow and they might have another Tito on their hands.

So it is a pretty safe criterion to follow.

Senator FERGUSON. Might I ask a question at this point? That hasn't varied from the time that Gates and Foster testified before the committee?

Senator MUNDT. That is right.

Senator FERGUSON. That was a year ago. But it was very significant at this time because it followed those in other countries indicating that it was world-wide rather than just the idea of two men or a group of men here that they would not support America and would support Russia. It was significant—was it not?—that when Robeson went to Paris on the so-called peace tour he made a statement in complete conformity with it, and also he refused to answer whether or not he was a Communist.

Senator MUNDT. That is very significant, Senator. I was reading hearings before your committee in the Eightieth Congress the other night when you had Foster before you and were trying to pin him down on this point. He did not deviate then and does not deviate now, but

now he made it crystal clear and then he attempted to confuse the issue.

Senator FERGUSON. That is right. He was a little frightened. He did not know what we were trying to discover or why, but in substance he said the same thing.

Senator MUNDT. That is right. You had not given him time, you see, to communicate with Moscow for the right answer. You caught him rather unprepared, but he was ready the other time.

We list these criteria:

(2) the extent to which its views and policies do not deviate from those of such foreign governments or foreign organization;

(3) the extent to which it receives financial or other aid, directly or indirectly, from or at the direction of such foreign government or foreign organization;

(4) the extent to which it sends members or representatives to any foreign country for instruction or training in the principles, policies, strategy, or tactics of such world Communist movement;

(5) the extent to which reports to such foreign government or foreign organization or to its representatives;

(6) the extent to which its principal leaders or a substantial number of its members are subject to or recognize the disciplinary power of such foreign government organization or its representatives; * * *

As in the case when they removed Browder as head of the Communist Party in the country after the war and put in W. Z. Foster at the direct order of Moscow relayed to this country by Jacques Duclos of France. That is a pretty startling indication that communism in America is a creature movement controlled by the head of the Communists in Moscow.

Senator EASTLAND. Who is the head of the Communist movement in the United States? Is it Dennis?

Senator MUNDT. The head is W. Z. Foster. The associate head is Eugene Dennis. If you are speaking of the part that plays in the public. We have been unable to discover the underground chief who is directing the present espionage activities in Washington. Since Eisler has disappeared, and J. Peters is out of the picture, we do not know that. The open heads at the moment are Foster and Dennis.

Senator EASTLAND. Do you not believe there is in the city of Washington somebody high in this Government with great power that is alined with the Communist movement who places these people in strategic positions in the Government?

Senator MUNDT. I think there is no question about that. They cannot work their way in without great assistance from somebody on the inside. It was said when Miss Coplon was discovered, the main job has not been done. We must find out who it is that is taking the place of Chambers and Bentley, and who is taking the place of the people in Government who helped bring into the official positions these Communist espionage people.

Senator EASTLAND. Of course, great work has been done to root them out.

Senator MUNDT. Especially in the State Department under Jack Peurifoy. He has done a great job.

Senator EASTLAND. It has been done to root them out of all departments; but why is it that, rooted out of one, they show up in another department?

Senator MUNDT. There are very ardent crusaders. Somebody manipulates them.

Senator FERGUSON. You asked a question that has to be answered, Senator. Bentley gave some indication of that answer: that they had people in the various crucial departments and at the crucial points who could see that these people were taken from one department to another. We took some testimony on the Appropriations Committee about 3 years ago about the State Department, and I would like to try and make that available, at least in an executive session, to the committee, showing how they operate.

Senator EASTLAND. The testimony showed that they had cells which did not have contact with each other; groups that did not have contact with each other; but yet, is it not perfectly plain that, when you root them out of one department, they show up in another; there is a directing head?

Senator MUNDT. There is no question about it.

Senator EASTLAND. There is somebody with powerful influence in the Government. I thought the editorial this morning—I do not usually agree with one of the newspapers here or any of them for that matter—but I thought the Times-Herald had a very timely editorial this morning on that subject. That has been my opinion for a long time, and I think that that person has to be identified.

Senator MUNDT. I think, Senator, the best conclusion—that no realist can avoid—is that these people don't operate as an individual agent. They operate as part of a team, part of a cell, part of a network.

Senator EASTLAND. If there is such a person, he is the most dangerous man in the United States; is he not?

Senator MUNDT. Well, he and the fellow who operates underground directing him.

Senator EASTLAND. I say the directing influence. How would your bill assist the Government in detecting those directing heads?

Senator MUNDT. I think it would assist in this way. It will require, as we were discussing earlier this morning, Senator, the Communists to register a portion of their activities, their above-ground activities. It will require them to register a portion of their membership, that part which they authorize to operate above the ground. It will provide a definite penalty against the person engaging in espionage activities. It will provide a penalty against the governmental official who helps bring them into the Government. It will provide opportunity——

Senator EASTLAND. What is the penalty there?

Senator MUNDT. For those crimes, 10 years in the penitentiary and \$10,000.

Senator EASTLAND. For what crime?

Senator MUNDT. Any crime involving espionage against the Government.

Senator EASTLAND. Of course, the person who is guilty of espionage against the United States and in the service of a power foreign would be criminally liable, but what about the directing head who places those agents in Government?

Senator MUNDT. He would be criminally liable under the same section of the bill, section 4.

Senator EASTLAND. What does it say? I would like to have that just explained a bit. You need not read it.

Senator MUNDT. Conspiring to perform an act which would tend to turn the control of this country over to a foreign dictatorship.

Senator EASTLAND. It is already a violation of the law.

Senator MUNDT. No; not in peacetime.

Senator FERGUSON. I am inclined to think with the Senator that it is.

Senator EASTLAND. Yes; it is a violation of the law.

Senator MUNDT. It is a violation if it is done by force and violence. They are trying communism solely on the force-and-violence clause.

Senator FERGUSON. Under the Smith Act.

Senator EASTLAND. What about it, Mr. Attorney?

Mr. YOUNG. I think Senator Mundt is correct on that.

Senator EASTLAND. It is no violation of the law?

Mr. YOUNG. Unless there is force and violence, and then you have a special penal statute which makes it a Federal crime to conspire to overthrow the Government by force or violence.

Senator EASTLAND. This bill, then, in that particular, is needed; is that right?

Mr. YOUNG. I think it is; yes, sir.

Senator FERGUSON. I thought you were asking about the force and violence. I am of the opinion that force and violence is actually in existence, but a very difficult thing to prove, as their experience up in New York indicates. It exists. There is no doubt about it. But this would allow you to do the same thing and not prove force or violence because they are going to set up a dictatorship.

Senator EASTLAND. I know; but, if I understand it, right now a person in the service of the United States or a citizen of the United States who places agents of a foreign power in the Government of the United States for the purpose of espionage today is not guilty of a conspiracy to commit espionage? Is that what you say?

Senator FERGUSON. Oh, I think they are guilty of conspiracy. I do not think there is any doubt about it.

Senator EASTLAND. I am trying to see if he has something that is not already covered in the law.

Senator FERGUSON. That part is covered as sure as anything, the attempt or agreement to put somebody in employment to commit espionage is certainly conspiracy.

Senator EASTLAND. I think so, too. Our attorney says that is not, and I would like that question to be checked.

Mr. YOUNG. I believe that there are two different things: the one that is in this bill and the thing that you mentioned. I believe that is covered under the present espionage statutes.

Senator O'CONNOR. Is this not the situation, though, uncovered, Senator Mundt. While today we grant to any citizen the right to propose any change in the form of government by constitutional amendment or otherwise, nevertheless you seek to make it unlawful for persons with subversive tendencies to seek to change and bring about such radical departure from our constitutional principles when those suggestions are dictated by a foreign government?

Senator MUNDT. That is correct.

Senator O'CONNOR. That is uncovered at the present time.

Senator MUNDT. That is correct. You have the prevailing legislative code on conspiracy, but that doesn't deal with the particular

problem of conspiring to destroy the sovereignty of this Government for deliverance to a foreign power. There have been convictions of people who conspire to rob a bank or something of that kind, but you cannot get a conviction in a case of this kind without pinning it onto something. You have to show that it is definitely part of a plan and a plot and a program. In wartime, when the espionage acts are effective, of course you have considerably more protection than in times of peace, the answer being that for a long period of years now we have known of these espionage cases. We have even had them coming in and reporting themselves, to the Department of Justice, as long as 10 years ago, saying, "Look, I am guilty of spying against the Government and I am guilty of espionage, and we have gotten no convictions and have not even had a trial."

Senator FERGUSON. Can you account for that?

Senator MUNDT. You have either to assume that the Attorney General's office is on the side of the spies or that the laws are inadequate. I prefer to presume that the laws are not adequate.

Senator EASTLAND. I do not think the Attorney General's office is on the side of the spies.

Senator MUNDT. I think you have to assume one or the other of them because the evidence of the espionage is clear-cut. It is a choice of whether or not they are inadequate, and the Attorney General has so testified. Attorney General Clark so testified when the bill was before the House. They are handicapped by loopholes in the law. Nothing specifically limits these particular crimes. It is very difficult to try them now, to prove force and violence activity. Communism has ceaselessly changed its tactics to try to keep about one-half inch ahead of the law all over the world. They move in by espionage; they move in by something else, rather than by the old force and violence tactics.

Senator EASTLAND. I am going to be frank, Senator. I think we should give serious thought to section 4 of the bill.

Senator FERGUSON. That answers your question; does it not, Senator O'Connor? It all depends upon the working of that section. The two bills are substantially the same, except I think for the one word "contributes."

Senator MUNDT. In my bill, I put in the word "knowingly." Certainly we want to make it read tight enough to insure that no loopholes will remain.

I think we had finished discussing the section that deals with procedure. We will find in section 15 also judicial review. So that any person or organization aggrieved has complete judicial review. The full processes and procedures of the courts are made available to the people coming within the purview of this act. Very few changes have been made in penalties, although we have made a few. I pointed out, for example, that for the purposes of this subsection, each day of failure to register, whether on the part of the organization or any individual, shall constitute a separate offense. That was done at the behest of the Attorney General, who said it was important to build this thing up so that in case of definite violations they could make a rather substantial case against a serious violation. We think the applicability of the Administrative Procedure Act appears in all the previous bills, the one that passed the House and the ones that we have here.

In general, that is what is done. It seems to me it puts every conceivable safeguard that you can have around the fact that an innocent organization or an innocent individual might be listed or publicized, and it still does give the Government the right and the power and the authority to protect itself so that we do not simply become the victims of people who misuse this free environment for the purpose of destroying it and making it just another Communist slave camp.

Mr. YOUNG. Senator Mundt, I would like to ask a question at this point, if I may. I think you are almost through. You remember last year we had the so-called Mundt-Nixon bill which passed the House and was referred to this committee. We held extensive hearings on that. That was H. R. 5852. When that bill came over to the committee, we submitted it to the eminent lawyers up in New York—namely, Charles Evans Hughes, Jr., John W. Davis, former Presidential candidate on the Democratic ticket, and also to Mr. Tom Clark, the present Attorney General—for their constitutional views on that bill. As a rule, they sent back to the committee three briefs on constitutionality which were in the negative. I might also mention that in that respect we had other constitutional briefs which said the bill was constitutional. Mr. Robert Milham, chairman of the Special Committee of the American Bar, stated that he believed the bill was constitutional. We had briefs on both sides last year.

Senator MUNDT. Donald Richberg, I think, too.

Mr. YOUNG. Yes; Donald Richberg and also the special research staff of the Library of Congress. We had legal briefs from eminent authorities on each side of the question.

Senator MUNDT. I recall that.

Mr. YOUNG. We took those three briefs from New York and we worked over that bill here in the closing days and tried to get rid of the constitutional objections of these eminent people up here in New York. I would like to know whether this new bill in your opinion is constitutional in light of the objections of those gentlemen last year.

Senator MUNDT. I think so for this reason: As you know, Congressman Nixon and I were afforded the courtesy to sit in with the subcommittee and confer with these folks and many of the changes which this legislation now exemplifies over the Mundt-Nixon bill with those that we worked out during that series of discussions late in the summer, late in the session of the Eightieth Congress. I know that at that time we had concluded the session we had no conclusion on it. It was the opinion though of all the Senators and Congressmen involved that we had met the objections of these three people who had raised some constitutional questions. We have moved further in that direction, as I say, in this bill, by including specific machinery for guaranteeing to organizations and individuals improperly listed their full constitutional right to go right to the commission and the courts for their protection. It seems that there is no opportunity for anybody to raise the questions which have very understandably been raised by people to prior bills.

Mr. YOUNG. To your knowledge, do you know whether the gentlemen I referred to in New York, Mr. Hughes, Mr. Davis, and the Attorney General, have looked at the new bill in the light of the changes that have been made and expressed any change of opinion?

Senator MUNDT. To my knowledge, unless they have written in for a copy—we have had tremendous correspondence on this legislation from lawyers and so forth—but I think I probably would have recalled their names if they had written. As far as I know they have not secured from me copies of the bill. I have not sent them copies. Perhaps your committee would like to consult with them. I certainly have no objection to their being consulted. I think we have fully met the objections that they have raised.

Mr. YOUNG. One other question. We have two bills here before us, 1196 and 1194, which are substantially similar. When you began you started to point out the differences between the two and as you got into the middle of your testimony I think you got so engrossed in your own bill that we forgot to point out some differences. I have a summary here of these two bills by sections in which I point out the differences. I did not prepare it, but it was prepared on the bills. I wonder if I could give that to you after the hearing is over and if you agree with it we could make it part of the record to clarify the record.

Senator MUNDT. I wish you would do that.

Senator EASTLAND. I think you ought to give each member a copy of that.

Mr. YOUNG. I will be glad to do that, Senator.

Senator MUNDT. I will be glad to go through that with you. I think that is very helpful.

(The document referred to follows:)

SUMMARY COMPARATIVE ANALYSIS OF TWO BILLS ON SUBVERSIVE ACTIVITIES, S. 1194 AND S. 1196 AS INTRODUCED

SUBVERSIVE ACTIVITIES CONTROL ACT,
1949, S. 1194

SUBVERSIVE ACTIVITIES ACT, 1949,
S. 1196

(Mundt, South Dakota, and Johnston,
South Carolina)

(Ferguson, Michigan)

DEFINITIONS

DEFINITIONS

“Communist political organization” means a United States organization having some, not necessarily all, usual characteristics of a political party, which is dominated or controlled by a foreign government or foreign governmental or political organization controlling the world-Communist movement and which operates primarily to advance objectives of world-Communist movement.

Same, except that provides for *substantial* foreign domination or control.

“Communist-front organization” means a United States organization (other than Communist political organization and other than any lawfully organized political party not a Communist political organization) which is under the control of a Communist political organization or primarily operated for purpose of aid and support to any Communist political organization, Communist foreign government or world Communist movement.

Same.

“Communist organization” means Communist political organization or Communist-front organization.

Same.

CERTAIN CONSPIRACIES PROHIBITED

Prohibits conspiracy to establish totalitarian dictatorship controlled by a foreign agency.

Prohibits Federal employees' divulging information classified by the President to foreign agents or to Communist organization members.

Provides maximum penalty of \$10,000 fine and 10 years' imprisonment. Attaches ineligibility to hold United States position thereafter.

No statute of limitation would apply.

PRIVILEGES DENIED

Bars Communist political organization members from Federal appointment, but for this purpose no person would be considered a "member" until his name had been made public by the Attorney General.

Bars passports to Communist political organization members, but for this purpose no person would be considered a "member" until his name had been made public by the Attorney General.

REGISTRATION AND ANNUAL REPORTS OF COMMUNIST ORGANIZATIONS

Communist political and Communist-front organizations are required to register with the Attorney General, listing officers.

Communist political organizations would also list members.

Aliases of members and officers required in listing.

Attorney General would notify persons that they are on list.

Upon request of those denying membership, he would conduct an investigation on accuracy of denial. If he does not strike name from list within 6 months, the person might appeal to the Subversive Activities Commission set up by the bill.

Communist political organization members must register themselves if the political organization fails to list them, under criminal penalty.

Membership in Communist political organizations that fail to register upon order of the Commission is illegal.

Two registers would be kept, one for Communist political organizations and members and the other for Communist-front organizations. They would be public, although individual names would not be revealed until the persons were notified and had opportunity to appeal.

Communist organizations are required to keep accurate financial records and report annually to the Attorney General.

CERTAIN CONSPIRACIES PROHIBITED

Substantially the same.

No comparable provision.

Same.

No comparable provision.

PRIVILEGES DENIED

Same except that does not include comparable exclusionary definition of "member."

Same except that does not include comparable exclusionary definition of "member."

REGISTRATION AND ANNUAL REPORTS OF COMMUNIST ORGANIZATIONS

Same.

Same.

No comparable provision.

Same.

Persons denying membership could file disclaimers with Attorney General and he would note disclaimer on the list. Investigation not provided.

No comparable provision.

Same.

A single Register of Communist Organizations, listing both Communist political and Communist-front organizations, would be kept and immediately made public.

Same.

BROADCASTS AND USE OF MAILS

Radio broadcasts and publications of Communist organizations mailed must be properly identified.

TAX DEDUCTIONS AND EXEMPTIONS

Corporate tax exemptions for Communist organizations and income-tax deductibility for contributions to such organizations are denied.

SUBVERSIVE ACTIVITIES COMMISSION

Creates a new commission, consisting of one representative each from State, Commerce, and the National Military Establishment.

Commission would be a quasi-judicial agency to determine, on application of Attorney General or of interested party, whether any organization is a Communist political or Communist-front organization, or whether any individual is a member of a Communist political organization.

Attorney General could file petitions with Commission for an order requiring the organization or individual member of a Communist political organization to register.

In determining whether the organization is Communist political, the Commission would consider, among other things, the extent of Communist foreign direction, financial aid, and control.

In the case of Communist-front organizations, the Commission would consider, among other things, the identity of its leaders, source of finances, and the extent to which policy follows that of Communist political organizations.

The Commission could order registration or deny the Attorney General's petition.

Once a year Communist organizations and individual members of Communist political organizations could apply to Attorney General for cancellation of registration, and, if this is denied, they could appeal to the Commission.

The Commission might hold hearings, subpoena witnesses, etc., in connection with the appeal.

Hearings would be public with opportunity for rebuttal and cross-examination. If, on appeal, the Commission decides that an organization or individual is not Communist, the Commission might order the name stricken from the registration list. The Commission also is empowered to order registration.

Proceedings of the Commission to be governed by Administrative Procedure Act, except where more liberal procedure is prescribed by this act.

BROADCASTS AND USE OF MAILS

Includes television also. Otherwise, the same.

TAX DEDUCTIONS AND EXEMPTIONS

Same.

SUBVERSIVE ACTIVITIES BOARD

Creates an independent Subversive Activities Board of three members appointed by the President with senatorial consent for 3-year overlapping terms. Salary, \$12,500 yearly.

The Board has similar functions, except that there is no provision for determination of whether an individual is a member of a Communist political organization.

Same, except no provision for individual member of Communist political organization.

Substantially the same.

Substantially the same ideas, but spelled out more definitively.

Same.

Same except that no provision for individual members of Communist political organizations.

Same.

Same.

Same.

JUDICIAL REVIEW

Provides for appeal for organizations and individuals to the United States Court of Appeals for the District of Columbia and review of its decision by the Supreme Court on certiorari.

JUDICIAL REVIEW

Same appeal procedure, but limited to organizations.

PENALTIES

Penalties are \$2,000 to \$5,000 for organizations, and in addition, for individuals 2 to 5 years' imprisonment for:

1. Failure to comply with registration orders of the Commission (organizations and individual members of Communist political organizations).

2. Willfully false or misleading statements made by individuals having duty to register or file statement (each name and address deemed separate statement, and each misstatement is a separate offense).

3. Knowing membership in Communist political organization which has not registered as required.

4. Violation of provision requiring identification of publications and radio broadcasts.

5. Violating passport and Federal employment provisions of the act.

PENALTIES

Same:

1. Same, but no duty on Communist political organization members to register.

2. Same, but no duty on Communist political organization members to register. No similar definition of separate offenses.

3. Same.

4. Same, but includes television.

5. Same.

Senator MUNDT. You will note that in establishing what is a Communist-front organization on pages 25 and 26 there has grown up a great amount of research and study by the Committee on Un-American Activities for a long time. I do not want to belabor the committee by going into the background supporting these points individually but if I may have consent to do so I would like to list 12 or 14 facts which characterize communism and the activities of the Communist Party because I think these hearings will be rather widely read, and in support of the definition I gave of Communism on the opening day if I may have permission to do so I would like to submit 12 or 15 short sets of facts demonstrating exactly what communism is and how it operates. It will provide a background for the reasons why we picked out these particular means of identifying the Communist organizations.

Senator MILLER. Mr. Chairman, I think that privilege should be accorded Senator Mundt and not to limit it to that many if you can find others.

Senator EASTLAND. Fine.

Senator MUNDT. We can put in 12 or 15. If I understand I have unanimous consent, I will prepare that.

(The information referred to follows:)

No. 1

One of the characteristics of the Communist Party of the United States is its avowed affiliation with the Communist International until by act of an emergency convention on November 16, 1940, it did "cancel and dissolve its organizational affiliation to the Communist International * * * for the specific purpose of removing itself from the terms of the so-called Voorhis Act."

The real intention of this disavowal was to evade the act and was the only reason given for the dissolution of the party as demonstrated by the Communists' own language.

The Communist International was founded on March 2, 1919, in Moscow, by decision of the Communist Party of the Soviet Union. The Communist Party of Russia was the ruling party of the International until dissolution on May 30, 1943.

In a resolution dated November 16, 1940, the Communist Party of the United States reaffirmed the "unshakable adherence of our party to the principles of proletarian internationalism, in the spirit of its greatest leaders and teachers, Marx, Engels, Lenin, and Stalin." The Soviet Government makes an avowal of the fact that the teachings of the above-named four constitute the officially accepted philosophy of the Soviet Union.

Thus despite the cancellations and resolutions the Communist Party of the United States is still subordinate to the single governing body of the Soviet Union, namely, the Communist Party. Its true nature is again clear.

No. 2

The Communist Party of the United States has received financial and material support from the Soviet Union which has ranged all the way from money or jewels shipped by confidential courier to the sending of voluminous prepaid cable dispatches, the latter practice being in force right up to the present time, according to the sworn testimony of Louis F. Budenz, former managing editor of the Daily Worker, official organ of the Communist Party, on November 22, 1946.

No. 3

The Communist Party of the United States is subordinate to directives from representatives of the Communist hierarchy in the Soviet Union. A specimen list of such directives was submitted in the committee's report. Mr. Budenz has testified that he received such directives from Gerhart Eisler, Jack Stachel, Eugene Dennis, and others.

No. 4

The Communist Party of the United States adheres to the statutes of the Communist International which are still in force despite the alleged dissolution of the organization.

No. 5

The Communist Party of the Soviet Union is accepted as the model party.

This can be substantiated by going to any of the book shops of the Communist Party and purchasing a copy of its standard reference work, History of the Communist Party in the Soviet Union. This work is prescribed for all Communist study courses and schools. It is a bible of strategy and tactics for American Communists.

No. 6

Delegates and representatives of the Communist Party of the United States have been and are being sent to the Soviet Union for special instruction in subversive activities.

No. 7

The Communist Party of the United States makes regular reports to the Soviet Commissars in Moscow.

This is currently reflected by the first-hand information in America to be found in the Moscow press and by espionage cases disclosing the transmission belt by which security secrets of the United States Government are relayed to Russia by way of American Communist in this country.

No. 8

The disciplinary powers over the American Communist leaders emanate from Moscow. The removal of Earl Browder as general secretary of the Communist Party of the United States at the suggestion of Jacques Duclos, former member of the executive committee of the Communist International, is a good example of this disciplinary power.

Mr. Budenz testified before the House Un-American Activities Committee that Clarence Hathaway, editor of the Daily Worker, accepted a severe tongue lashing from Gerhart Eisler without a murmur.

No. 9

American Communist publications reprint the basic doctrines and major articles from the Soviet press and Soviet leaders.

No. 10

Panegyrics and tributes to the Soviet dictator, Joseph Stalin, run all through Communist literature in every language and in every country.

No. 11

The members of the Communist Party of the United States collaborate with official representatives of the Soviet Government.

No. 12

Officials of the Communist Party of the Soviet Union supervise the work of the Communist Party of the United States. This can be shown by a United Press report for 1948: "Soviets Admit Fifth Column. Call Communists 'Defense Belt'." Spokesmen for the Soviet bloc belabored the "imperialistic" aims of the United States today, but tacitly admitted that Russia was building up a special "defense belt" reaching around the world.

"A Moscow dispatch shed some light on Soviet global footholds and intentions. It reported an article in the Communist Party organ Pravada by Ilya Ehrenbourg, Russian newspaperman who found certain facets of American social life so repulsive when he visited the United States after the war.

"He said Russia had a special defense belt which 'extends not only along the borders of our country, but exists in France, China, Greece, Italy, Mexico, England—in all the countries where our comrades live, think, and struggle.'

"Thus Moscow gave implicit acknowledgement to the accuracy of charges made repeatedly in the United Nations recently that the Russians had a fifth column at work all around the world. United Nations spokesmen charged the Communist Parties of each country were bent on undermining and toppling all anti-Communist governments."

No. 13

Communism operates on an interlocking organizational relationship on such formal matters as membership, transfer, attendance at conventions, and so forth, with the Communist Parties of the world in an organic unity of a world party dominated by the Communist Party of the Soviet Union.

Only the Communists, of all of the political groups in the world today, have an internationally organized mechanism with representatives in every civilized country of the world, all moving in unison toward the single objective directed and dominated from a central source, the Kremlin in Moscow.

No. 14

The Soviet Union is accepted as the Soviet fatherland.

Earl Browder on September 29, 1939, before House Committee on Un-American Activities declined to answer the question as to where his allegiance would lie in event of war with Russia. He did state "If the United States entered this war on an imperialist basis, I would not support it."

During the past few months the Communist Party leaders throughout the world have issued the statement to the effect that the Communists would not fight against Russia in the event of war. The statement was issued by Thorez, of France, on February 22, 1949; by Togliatti, of Italy, on February 26, 1949; by Pollitt, of England, on February 27, 1949; by Grotwald, of Germany, on February 28, 1949; and by our own Communist Party leaders on the United States, namely, William Z. Foster and Eugene Dennis on March 2, 1949. Paul Robeson also issued a general statement to the same effect on April 27, 1949, in a meeting which was held in Paris. Since then, Robeson has gone even further in proclaiming his preference for Russia.

No. 15

The Communist Party of the United States has since its foundation followed the line of the Communist Party of the Soviet Union without exception.

The research staff of the House Committee on Un-American Activities follows the Communist press of the United States from day to day and can find no important divergence between the American party and the Russian party on every important question. There is never any significant deviation in the Communist Party's Daily Worker in this country from the editorial policies of all other official Communist papers in other countries.

Senator MUNDT. I want to express my appreciation for being permitted to take so much time to go through this legislation and to say that if as the hearings progress, questions arise, as they well may, as arguments are made by people opposing the legislation, on which you would like to have the opinion of someone who believes that the arguments are unsound, I should like to come back at any time you wish.

Senator EASTLAND. Senator, you have made a very fine presentation, for which we thank you. I am sure that the committee would welcome you to sit in with them and ask witnesses any questions you desire. Would there be any objection on the part of the committee to that?

Senator FERGUSON. None whatever.

Senator O'CONNOR. Not only would there be no objection on my part, I was just about to say that I think we ought not to let the Senator from South Dakota leave without expressing very genuine appreciation for the fine contribution he has made and really to express public commendation for the very fine work he is engaged in, the benefits of which we all will enjoy.

Senator EASTLAND. Do you not think we should give him the privilege of sitting in with the committee and to propound any questions he desires to witnesses?

Senator MILLER. I concur in that, Mr. Chairman.

Senator FERGUSON. He has made a real contribution to this matter.

Senator MUNDT. I will be glad to have the privilege. Thank you so much. I certainly hope this is my swan-song appearance on communism. I have been working on it for some 8 eight years and I hope we can get some legislation after a while that will let the law enforcement authorities proceed with full power.

I will be happy to do what I can. Thank you.

STATEMENT OF HON. HOMER FERGUSON, A UNITED STATES SENATOR FROM THE STATE OF MICHIGAN

Senator FERGUSON. Mr. Chairman and members of the committee: There must be a reason for a bill, before a committee should pass it out as being proposed legislation; and I would just like to make some remarks at the opening now, to indicate why in my opinion there is a reason for this kind of legislation. Sometime later I would like to discuss the constitutional question.

In presenting this bill, I have tried to take the best that the committee produced last year.

Senator EASTLAND. You are speaking of your bill, and not the Mundt bill?

Senator FERGUSON. They are so near alike that I think we can talk generally about the two bills. They propose to do practically the same thing.

Senator MILLER. Is that 1194 and 1196?

Senator FERGUSON. Yes. They were filed on the same day. So when I give this statement today, I have in mind the kind of legislation that is now before us, and not necessarily the words of either particular bill.

I think we have to look at these bills in the light of what communism in the world is today. In my opinion, it is a conspiracy. I think it is aimed directly at representative government. I think it is not an economic philosophy. It is much more than that. It goes deeper into government than that. It is that thing which has caused the cold war. It is that thing which prohibits Russia from allowing anyone to see what is going on in Russia. It is that which causes her to have agents all over the world.

Now, understand: not agents who are Russians, not agents who have been brought up, nurtured, under the communistic rule and sent out as Russia's agents, but people taken from nations where they have been born and raised, and made agents of this Soviet communism.

At times, yes, they use their own agents; and I find that in our foreign newspapers now in America they are importing agents. The chairman of this committee has introduced a bill to deport such alien agents, and some of the members of the committee spoke at the time that was put in, because we have discovered that they are placing in America propaganda agents. They deem that they can accomplish their purposes better with those foreign agents than they could if they confined themselves to taking individuals here and made them their agents.

So I think there is a reason for the bill, and I have tried to analyze it this morning. I hope I am not repeating anything that the Senator from South Dakota has said; I am just trying to put it in a little different light. After all, I think we wholeheartedly agree that this is a conspiracy. And when you are talking about a conspiracy, naturally you use some of the same language to show that it is a conspiracy.

There is no doubt, as shown by the testimony day before yesterday in the New York trial, that this communist movement was operating as a conspiracy, and that they have put their people into Government.

In this connection, I just happened to see yesterday an item in the Washington Daily News of May 3, about the results of the loyalty tests conducted by the Government. It starts out with the headline, "9,000 Lose jobs in loyalty tests."

Mr. Chairman, I would like to put that item in the record because I think it is very important in showing that these people were used as espionage agents.

(The newspaper article referred to is as follows:)

[From the Washington Daily News, Tuesday, May 3, 1949]

9,000 LOSE JOBS IN LOYALTY TESTS—OLD POLICE RECORDS CAUSE FIRINGS

(By Tony Smith)

Soviet spies, exburglars, thieves and sex offenders have been unearched by the Federal Government's employee loyalty investigation program, it was learned today.

The search for subversives in the Government and among those seeking jobs with Uncle Sam yielded 141,400 sets of fingerprints that matched those kept in the FBI files.

FBI Director J. Edgar Hoover reported to Congress that 5.5 percent of the 2,537,843 persons checked had previous police records. As a result, 8,881 persons have been dismissed from the Government service by the Civil Service Commission, Mr. Hoover said.

MANY IN STATE DEPARTMENT

The program turned up 21 "live" Soviet espionage suspects, 45 Communists and 108 suspected subversives in the State Department alone, it was reported. All of those subjected to spy investigations have resigned or been dismissed, it was said. The same is true of those known to be members of the Communist Party. Some of them moved on to the jobs in American agencies of the United Nations, Government records show.

Many of the former law violators brought to light by the loyalty check were minor offenders who had served their sentences. Others, convicted of major crimes, were found to be loyal. Some had been rehabilitated, the records showed. A few were still at their old tricks. These were reported to the heads of the departments in which they worked. Some were fired.

EMPHASIS ON ESPIONAGE

Throughout the check the emphasis was on employees and officials of the Government suspected of espionage activities. Here are excerpts from reports on some State Department workers:

"Mr. ———'s file reflected that he is a close associate of suspected Soviet agents. Most of the derogatory information on him was developed in late 1946. There is nothing in the file to indicate he has discontinued working for the Department."

GREATEST SECURITY RISK

"Mr. ———. This former employee's file is the largest in the Civil Service Administration. It reflects that he furnished material to known Soviet espionage agents and that he has had consistent contact with a long list of Communists and suspected Soviet agents. This subject was in all probability the greatest security risk the Department of State has had. He was first recommended for dismissal July 24, 1946. He finally resigned voluntarily December 13, 1946.

"Miss ———. Her file shows that she signed Communist Party election petitions on a number of occasions. The Security Committee of the State Department decided she was not a security risk on April 15, 1947. It later decided she should be dismissed on grounds of being an undesirable employee. The subject resigned April 25, 1947. This case shows that the Security Committee is inclined to accept a 'change of heart.'"

THIS FELLOW WAS BUSY

"Mr. ———. Confidential informant reported him to be a member of the Communist Party; a sponsor of the Washington Chapter of the American Peace Mobilization Committee; an attendant at the Communist Youth Internationale in Russia in 1934; an active member of American Civil Liberties Union; a member of a central Communist group spearheading an attack on J. Edgar Hoover; an associate of four known members of the Communist Party."

Senator FERGUSON. One of the subheads reads: "Many in State Department,"—and that portion reads:

The program turned up 21 "live" Soviet espionage suspects, 45 Communists, and 108 suspected subversives in the State Department alone, it was reported.

That gives us some indication.

Some may ask: How will this registration bill—I will call it a registration bill—help to unearth these? I think it will do this: As these people join this organization, become Communists, their names will be listed, and we will be able to follow them better in the future. They do take jobs in the State Department and become Communists tomorrow. That is not the way they do business. They have to have a certain amount of training. And I think the Senator

will agree to that. They have to be trained. We will be able to discover who these trained Communists are.

Getting back to the theory of conspiracy that underlies this movement: The bill, S. 1196, which I introduced in the Senate on March 8, has a simple objective. It is aimed at exposing the vast conspiracy of communism with which the Soviet Union has surrounded us. It would apply equally to any other conspiracy, including a Fascist conspiracy, to establish a totalitarian dictatorship in the United States under alien control.

I should, at the outset of my statement, say that while it has been said here that Senators or Congressmen were not going to be asked the question as to whether or not they were Communists—I want to state now that I am not a Communist. I have never been a Communist, and I shall never be a Communist. I state that so that there can be no doubt as to my answer to that specific question.

This bill would apply equally to any other conspiracy, including a Fascist conspiracy, as I said, to establish a totalitarian dictatorship in the United States under alien control.

I might say that the chairman has just shown me now a telegram from Flint, Mich., indicating that because I have sponsored this bill, I must of necessity be a Fascist. I want to now say that I am not a Fascist, that I have never been a Fascist, and that I shall never be a Fascist.

Senator EASTLAND. You would not deny a charge leveled at you by a Communist, would you?

Senator FERGUSON. Here is what we are running into, in a bill like this: The minute you propose to do something against the Communists, you are called a Fascist. If you propose to do something against fascism, they are inclined to call you a Communist. I want to start out by saying that the bill is aimed at both Fascists and Communists, if they would establish a totalitarian dictatorship in the United States under alien control.

In my statement, I wish to place particular emphasis on the word "conspiracy," for that factually describes what communism and the Communist way of life represent.

And that was forcibly brought to my attention during the last hearings that we had here, and particularly was it brought to my attention in the testimony before the Executive Expenditures Committee of Elizabeth Bentley and by the other witnesses in that particular case.

I think we would be on weak legal grounds to place serious restrictions upon the Communist Party and its nefarious fronts if that were not the case; that is, if it were not a conspiracy, if it were not dictated by some alien foreign group.

It is therefore essential that there shall be no question of the nature of communism, and in this statement I shall attempt to make clear that beyond any doubt, communism is a conspiracy directed against our form of Government, and is in fact directed by an alien regime whose hostility is manifest.

Accepting that premise, we are still confronted with the need for adequate measures for controlling that conspiracy, which is an existing threat to our institutions. The essence of the method proposed in Senate bill 1196 is one of exposure, so that all loyal Americans may be put on their guard.

I do not think it would serve any purpose to discuss in great detail the theories and practices of communism. I think these are already a matter of open public record, and have come to the attention of practically every one of us. It will suffice merely to point to one or two of the accomplishments of communism wherever it has been able to gain power.

Few institutions are more sacred to the Christian world than the churches. Regardless of our religious beliefs, all of us consider religion to be a force of strength and inspiration, a guide which governs not only our own lives directly, but our relationships with other people. It is upon religions that our practice of tolerance and democracy is based.

No wonder, then, that the first goal of communism is the church; that is, to dominate the church and to do away with it.

The recent kangaroo court trial of Cardinal Mindzenty in Hungary and the equally unprincipled prosecutions of the Protestant clergymen in Bulgaria have given us a startling picture of the destruction of religion under communism.

Let me bring up another point. In our country we have periodic political contests in which all parties are free to participate. The limits upon electioneering exist only within the realm of good taste.

We accept this as the natural accomplishment of free government. We accept this as our system of democracy. Under communism there would be no more free elections.

Senator EASTLAND. Right there, Senator, let me ask you a question.

Senator FERGUSON. Yes?

Senator EASTLAND. This has nothing to do with this bill.

Our courts are free. A country must not let anyone attempt to intimate or influence a court. How is it that the Communist Party is able to picket a United States court in the city of New York that is trying the 11 Communist leaders of this country for treason? Where do they have the authority to attempt to intimidate a court of the United States.

Senator FERGUSON. I want to answer that by saying that in my opinion that court has full authority and power under the inalienable right which it possesses to punish for contempt each and every one of those people.

Senator EASTLAND. Then what is wrong with a United States judge who does not see that they are cited for contempt, and not permitted to parade around in front of the building and attempt to intimidate people, and attempt to influence that court in its decisions?

Senator FERGUSON. I think you and I have a right to talk about this subject of the action of the court in this particular kind of a case. I think this judge has tried hard, at the beginning, to control this trial. At times it is apparent that it is out of control. I have seen times when it was apparent that the lawyers in the case were in contempt of court.

But we cannot always judge what is going on unless we sit on the bench as the judge. From the outside, however, it certainly appears that he has allowed himself to lean backwards and to try to complete the trial without giving any semblance to the public of an indication, as far as American justice is concerned, that there is a mistrial, or that he has been unfair. So in doing that he allows these men to be outside. I think it would be proper for the proceedings to be stopped,

even though it was a mistrial, and have contempt proceedings against those who are attempting to intimidate the court from outside.

Senator EASTLAND. I am not criticizing the judge. His reasons might be sound. I cannot conceive how they are. But how in the world would it be a reversible error to prevent any group, Communist or any other group, from attempting to intimidate the court in the discharge of its duty?

Senator FERGUSON. I do not think it would be a mistrial, but I think he senses that it might be a mistrial.

Senator EASTLAND. I do not think that in any city in the United States, except the city of New York, people could get by with such conduct. I do not think any other court in this country would permit it, except the court in New York. And the Senator knows as well as I do that there is tremendous Red influence in the city of New York. I attribute it to that.

Senator MILLER. Mr. Chairman, let me interpolate right there, for a moment, for what it is worth.

It has been adjudicated by the Supreme Court of the United States, as many of you will recall, that to prevent picketing is to prevent freedom of speech. If that is the case, which we must assume it is, the exercise of the authority involved, to hold that that act of picketing was contempt would be a violation of freedom of speech.

If, in connection with that, there might be some overt act which carried with it possibly some semblance of violence, then probably it could be done. But as long as it was picketing, I think that court would be absolutely violating the statutory rights of those who were engaged in picketing, under the bill of rights.

Senator FERGUSON. I do not think, Senator Miller, that this may be classed just as picketing. These people are carrying banners, as I understand it, and the picketing is not directed to trying to accomplish something, but trying to influence the jury.

Senator EASTLAND. Certainly.

Senator FERGUSON. And to influence the court.

Senator EASTLAND. And intimidate it.

Senator FERGUSON. And it is a direct attack upon the court. It is an intimidation of the court.

Senator EASTLAND. Yes. It is an attempt to intimidate that court.

Senator FERGUSON. But I still think the judge is leaning backward to avoid any semblance of any injustice, so that he does not have a mistrial.

Senator EASTLAND. I think so too.

Senator FERGUSON. I have felt very regretful of many things that have happened there, and yet I think he is trying to do his duty.

Senator EASTLAND. I think so too. And I think he has gone to great lengths. I think he has given the accused the benefit of every doubt. But I do not think that any group in any trial should be permitted to attempt to influence a court, to attempt to intimidate a court. You strike at the very roots of democracy when you do that.

I do not know but what the Senator might be correct. I just disagree with him.

Senator MILLER. Of course, that judge is probably, as you used the term, leaning over backwards when it comes to seeing to it that the individual rights, or the rights of those who are participating, are

absolutely preserved; and in accordance with that he would go a long way to see that that was done. Because he would be laboring under the impression that if that was not done, and if there was a violation of any right under the Bill of Rights, which of course would be a matter of freedom of speech, then, of course, he would have committed an error that would result in a mistrial. And that he would be very fearful of, I imagine.

Senator FERGUSON. I know that the other day he left the bench, in my opinion, to avoid a contempt case. He merely walked off the bench. I suppose that every judge who has ever sat on a bench for any number of years has had occasions when he thought it was better to recess the court.

Senator MILLER. He might regard it as better to turn his back on it rather than face it.

Senator EASTLAND. I think he has been very patient. I have been very favorably impressed that he is doing a good job, and I understand he is a very able man. Still I do not think that any group should be permitted to attempt to influence a court.

Senator MILLER. I do not either.

Senator EASTLAND. His reasons might be sound. I do not know. I am certainly not criticizing him.

Senator FERGUSON. I certainly feel that he is demonstrating not only to the people of America, but to the world that he is doing everything that is humanly possible to give these people a fair trial, and that while there are certain things that they are doing which really make it an unfair trial for the people, he is willing to waive action on those matters in order that no one can ever criticize him for not giving the defendants a fair trial. Whether that will do some harm to our administration of justice in the future is another question.

Senator EASTLAND. A fair trial has nothing to do with third parties out on the street picketing the court, though.

Senator FERGUSON. I think he has the power, but just does not choose to exercise it.

Senator EASTLAND. Running them in would not, it seems to me, deprive the accused of any rights that they have.

Senator MILLER. Mr. Chairman, at this point I suggest that we recess until some later date.

Senator EASTLAND. We will recess until Friday at 10 o'clock, if that is satisfactory to the subcommittee.

(Whereupon, at 11:55 a. m., the hearing was recessed to reconvene at 10 a. m., Friday, May 6, 1949.)

CONTROL OF SUBVERSIVE ACTIVITIES

FRIDAY, MAY 6, 1949

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to recess, at 10 a. m., in room 424 Senate Office Building, Senator Bert H. Miller, presiding.

Present: Senators Eastland (chairman of the subcommittee), Miller (presiding), Ferguson, and Donnell.

Also present: Robert Barnes Young and John Mathews, professional staff members.

Senator MILLER. The hearing will come to order, please.

Mr. YOUNG. Will the representative of the AMVETS take the stand, please?

(No response.)

Mr. YOUNG. He has left the room.

Will Mr. Williamson, the representative of the VFW, take the stand, please?

Before you take the stand, Mr. Williamson, we would like to administer the oath. Will you raise your right hand, please. Do you solemnly swear or affirm that in the proceedings before this subcommittee you will tell the whole truth, and nothing but the truth, so help you God?

Mr. WILLIAMSON. I do.

Mr. YOUNG. For the benefit of all the witnesses who are here I think that it would be in order to read once the message which the chairman of the subcommittee put out the first day of the hearings.

Attention should be directed to the policy and rule laid down by the subcommittee concerning the relevancy of proposed testimony. To be more specific, I would like to read a short paragraph once this morning which will apply to all witnesses, and we will know how the procedure will go. This is from the first day's hearing on Friday, April 29, 1949, a statement by the subcommittee chairman, Mr. Eastland.

The committee has determined whether or not a person is a member of a Communist Party now or has been a member of the Communist Party is a relevant question. It is something that we should know to be able to evaluate the testimony before the committee. It is a material question. We expect to ask the witnesses whether or not they are members of the Communist Party, whether or not they have been members of the Communist Party, and if any witness should refuse to answer that question, then the committee will not be interested in any testimony from that witness. We do not think that it is right for a witness to come before the committee, refuse to give us his background and select which questions he shall answer and which questions he shall not answer. So that will be the rule in the conduct of the hearings.

You may proceed, sir.

Senator MILLER. Should we wait until we get a quorum?

Senator FERGUSON. Mr. Chairman, I had not completed my statement last week.

Mr. YOUNG. I apologize, Senator; that is my fault.

Senator FERGUSON. I have about 16 pages left. We can make it a part of the record or put it in later after we hear the other witnesses.

Senator MILLER. Before you came in we thought there were some witnesses here whose testimony would not be very long, and you can sit here anyway, I guess.

Senator FERGUSON. I will until about 11 o'clock. Then I have another hearing, but I will be glad, which may be a good thing, to wait until later after we hear this other testimony, for what I have to say. We heard Senator Mundt in the beginning. After the testimony gets in, I can finish my statement, and then I have some remarks to make about the testimony.

(Senator Ferguson did not finish his statement. The complete statement is printed below:)

S. 1196, which I introduced in the Senate March 8, has a simple objective. It is aimed at exposing the vast conspiracy of communism with which the Soviet Union has surrounded us. It would apply equally to any other conspiracy, including a Fascist conspiracy, to establish a totalitarian dictatorship in the United States, under alien control.

In my statement I wish to place particular emphasis on the word "conspiracy," for that factually describes what communism and the Communist way of life represent. I think we would be on weak legal grounds to place serious restrictions upon the Communist Party and its nefarious fronts if that were not the case. It is, therefore, essential that there shall be no question of the nature of communism and in this statement, I shall attempt to make clear that beyond doubt communism is a conspiracy directed against our form of government and is, in fact, directed by an alien regime whose hostility is manifest.

Accepting that premise we are still confronted with the need for adequate measures of controlling that conspiracy which is an existing threat to our institutions. The essence of the method proposed in S. 1196 is one of exposure, so that all loyal Americans may be put on their guard.

I do not think it would serve any purpose to discuss in great detail the theories and practices of communism. I think these are already a matter of open public record, and have come to the attention of almost everyone of us. It will suffice merely to point to one or two of the accomplishments of communism wherever it has been able to gain power.

Few institutions are more sacred to the Christian world than the churches. Regardless of our religious beliefs, all of us consider religion to be a force of strength and inspiration, a guide which governs not only our own lives directly, but our relationships with other people. It is upon religious faith that our practice of tolerance and democracy is based. No wonder, then, that the first goal of Communists is the church.

The recent "kangaroo" court trial of Cardinal Mindszenty in Hungary, and the equally unprincipled persecution of protestant clergymen in Bulgaria, have given us a startling picture of the destruction of religion under communism.

Let me bring up another point. In our country we have periodic political contests in which all parties are free to participate. The limits upon electioneering exist only within the realm of good taste. We accept this as the natural accompaniment of free government. We accept this as our system of democracy. Under communism there would be no more free elections. There would be no campaigning. There would be no political parties. There would be only the Communist steam roller grinding down into the dust the rights of the individual and the political freedom of the Nation.

A few days ago a Hungarian Communist newspaper carried one of the many propaganda articles published by newspapers behind the iron curtain. The writer is comparing elections as they were held in the past and as they are to be held under the Communists:

"The difference," he states, "will mainly consist in that this time there will be no competing parties, no separate lists. * * * Today it is evident that we

could have spared ourselves much trouble had those proposals of ours been accepted (sooner)."

This one statement summarizes the cynicism of the Communists, their disregard for truth, and freedom, and the rights of individuals.

Elections—free elections—are the essence of free government. To set them aside with the cynical statement that they are too much trouble is conclusive proof that communism is determined to destroy constitutional government everywhere.

The Communists in America have attempted to prey on our traditional tolerance for the most widely divergent political philosophies by attempting to pass themselves off as a normal legal political party comparable to the two great parties which exist at this time.

Many Americans have accepted this piece of fiction, and it is not surprising in the light of our democratic history and our history of freedom that they should have done so. It is our nature, it is our desire, to accept people as persons of good will until they have proven themselves otherwise. There can be no question that the Communist Party has proven itself otherwise.

A complete refutation of the character which the Communist Party would assign to itself and the most concise description of communism that I have read comes from J. Edgar Hoover, the distinguished Director of the Federal Bureau of Investigation, who has long been aware of the true nature of communism and has sought to inform the public accordingly. He has said:

"Communism * * * is not a political Party. It is a way of life—an evil and malignant way of life. It reveals a condition akin to disease that spreads like an epidemic, and like an epidemic, a quarantine is necessary to keep it from infecting the Nation."

The Communist Party is in fact a tremendous conspiracy directed from Moscow, aimed at the destruction of all free governments, and particularly the free government of the United States of America. We have been chosen as the No. 1 target of this conspiracy because our country stands today, and has stood for many decades, as a powerful bulwark of freedom. If they succeed in destroying us, they will find their way to world conquest open.

The compliant adherence of the American Communist Party to the dictates of Moscow is already a matter of public record. Louis F. Budenz, one-time managing editor of the *Daily Worker*, and now a professor of Fordham University, made this declaration under oath:

"Never throughout its history has the Communist Party found one defect of any kind in any leader of the Soviet Union who was endorsed by the Kremlin. You can search the *Daily Worker* or any other Communist publication from beginning to end for 25 years and you will find that always the Soviet leadership is 100 percent perfect in those pages. * * * They have godlike qualities that prevent any flaw being found in them. Secondly, this movement follows Moscow in every detail. Examinations of the official Communist press will confirm this, that the policies desired by the Kremlin are followed out servilely by this organization and its leadership. That stamps it immediately as something set off from the rest of America, as a Quisling organization as much under the heel of the Kremlin, or at the behest of the Kremlin, as the Nazi Bund was the agent of Hitler's Germany. * * * I realize that this was not the party it represented it to be, but a puppet apparatus of the Soviet Government."

I would like to recall here a quotation which was given by the distinguished Senior Senator from Nevada about a week ago, when he introduced a bill to deport Communist aliens. The quotation comes from the program adopted by the Sixth Congress of the Communist International in 1928 and it states in unequivocal terms the revolutionary character of the Communist philosophy.

"The successful struggle of the Communist International for the dictatorship of the proletariat presupposes the existence in every country of a compact Communist Party, hardened in the struggle, disciplined, centralized, and closely linked up with the masses.

"The party is the vanguard of the working class and consists of the best, most class-conscious, most active, and most courageous members of that class. It incorporates the whole body of experience of the proletarian struggle. Basing itself upon the revolutionary theory of Marxism and representing the general and lasting interests of the whole of the working class, the party personifies the unity of proletarian principles, of proletarian will and of proletarian revolutionary action. It is a revolutionary organization, bound by iron discipline and strict revolutionary rules of democratic centralism, which can be carried out thanks to the class-consciousness of the proletarian vanguard, to its loyalty to the revolution, its ability to maintain inseparable ties with the proletarian masses and to its

correct political leadership, which is constantly verified by the experiences of the masses themselves."

The Communist Party in this country is part of this general pattern of world revolution. It has a record of complete adherence to the Communist Party line and to Communist Party tactics throughout its entire history.

Former Attorney General Francis Biddle, who can certainly not be accused by even the most rabid Communist of being a "reactionary," made a finding as far back as 1942 which is of particular interest and significance in this hearing. Mr. Biddle stated:

"That the Communist Party of the United States of America, from the time of its inception in 1919 to the present time, is an organization that believes in, advises, advocates, and teaches the overthrow by force and violence of the Government of the United States.

"That the Communist Party of the United States of America, from the time of its inception to the present time, is an organization that writes, circulates, distributes, prints, publishes, and displays printed matter advising, advocating, or teaching the overthrow by force and violence of the Government of the United States.

"That the Communist Party of the United States of America, from the time of its inception to the present time, is an organization that causes to be written, circulated, distributed, printed, published, and displayed printed matter advising, advocating, and teaching the overthrow by force and violence of the Government of the United States.

"That the Communist Party of the United States of America, from the time of its inception to the present time, is an organization that has in its possession for the purpose of circulation, distribution, publication, issue, and display, printed matter advising, advocating and teaching the overthrow by force and violence of the Government of the United States."

Former Ambassador Bullitt, whose knowledge of Communist tactics has made him one of the leading authorities on the subject made the following statement which adds his own knowledge to this subject:

"Here our Communist Party, like all other communist parties, is subject to orders from Moscow. It follows the party line laid down in Moscow with extreme care. We are all familiar with the manner in which the American Communist Party has followed faithfully the line laid down in Moscow and has shifted its position in accordance with every shift of Soviet foreign policy. The party is, in the first place, an agency of the Soviet Government for the purpose of weakening the United States for the ultimate assault that the Soviet Government intends to make on the United States.

"* * * I should consider the Communist Party of the United States composed, in the first place, of potential traitors, since certainly, if the United States were in war with the Soviet Union, the members of the American Communist Party would do all they could to help the Soviet Union and to injure their own country. In the second place, I should consider it a conspiracy to commit murder on a mass scale."

We have the words of the leaders of American communism themselves to substantiate these statements. For example, Earl Browder, former head of the Communist Party, told the Eighth Convention of the Communist Party in the United States that:

"The task of our party today, the tasks of this convention, have been clearly and systematically set forth in the documents before us for adoption, especially the theses and decisions of the thirteenth plenum of the executive committee of the Communist International * * *. My report has been for the purpose of further elaborating these fundamental directives and discussing some of our central problems concretely in the light of these directives."

His admission was echoed a few years later by William Z. Foster, the present chief of the Communist Party and a member of the presidium of the Communist International. He admitted that he accepted the program of the Communist International and he quoted its manifestos extensively in his book *Toward a Soviet America*.

It was, in fact, Mr. Foster who was most instrumental in revealing to me the true nature of the Communist movement in this country. Under examination by me in a hearing before this committee last year, Mr. Foster made it clear that his politics did not, and would not, deviate from those of the movement's parent country, Russia. His testimony was paralleled a year later in a joint statement with Eugene Dennis, secretary of the American Communist Party, in which they, in effect, said that Communists everywhere owe a superior loyalty to Russia

which would preclude supporting the war efforts of their own country in event of a conflict with the Soviet.

The latter statement was dramatic in its timing as it came simultaneously with similar puppet-like performances of the Communist leadership in other countries throughout the world. The text of the American Communists' statement and a summary of the statements by other non-Russian world Communist leaders was inserted by me in the Congressional Record of March 8. Those statements would appear to me sufficient proof in themselves of the treasonous and conspiratorial nature of communism.

What are the methods by which communism hopes to achieve its ends? Again we need only to search the declarations of the Communist leadership and the Communist parties for the answer. And, as we do so, let us recall the lesson of *Mein Kampf*. In *Mein Kampf*, Adolph Hitler detailed the aspirations and even the plans of nazism. Communism's plans and aspirations for world revolution are similarly blueprinted, if we will but read them and, more importantly, heed them.

We are now, Mr. Chairman, coming to the very heart of my argument and, that is, direct evidence on the conspiratorial nature of communism and its methods whereby it attempts to overthrow the legally constituted Government in this country and every other country of the world.

Lenin himself has provided the foundation upon which Communist activity is based when he said "it is necessary * * * to use any ruse, cunning, unlawful method, evasion, concealment of truth."

The program of the Sixth Convention of the Communist International, which was held in Moscow, contains this significant declaration:

"The transition from the world dictatorship of imperialism to the world dictatorship of the proletariat extends over a long period of proletarian struggles with defeats as well as victories; a period of continuous general crisis in capitalist relationships and the maturing of Socialist revolutions, i. e., of proletarian civil wars against the bourgeoisie; a period of national wars and colonial rebellions which, although not in themselves revolutionary proletarian Socialist movements, are nevertheless, objectively, insofar as they undermine the domination of imperialism, constituent parts of the world proletarian revolution; a period in which capitalist and Socialist economic and social systems exist side by side in (peaceful) relationship as well as in armed conflict."

An examination of the meaning of the revolutionary Comintern Congress leaves no doubt but that its basic technique consists of force and violence, I quote from this program:

"The conquest of power by the proletariat does not mean peacefully 'capturing' the ready-made bourgeois state machinery by means of a parliamentary majority. The bourgeoisie resorts to every means of violence and terror to safeguard and strengthen its predatory property and its political domination. Like the feudal nobility of the past, the bourgeoisie cannot abandon its historical position to the new class without a desperate and frantic struggle. Hence the violence of the bourgeoisie can be suppressed only by the stern violence of the proletariat. The conquest of power by the proletariat is the violent overthrow of bourgeois power, the destruction of the capitalist state apparatus (bourgeois armies, police, bureaucratic hierarchy, the judiciary, parliaments, etc.) and substituting in its place new organs of proletarian power, to serve primarily as instruments for the suppression of the exploiters. * * *

"The dictatorship of the proletariat is a continuation of the class struggle under new conditions. The dictatorship of the proletariat is a stubborn fight, bloody and bloodless, violent and peaceful, military and economic, pedagogical and administrative, against the forces and traditions of the old society against external capitalist enemies, against the remnants of the exploiting classes within the country, against the upshoots of the new bourgeoisie that spring up on the basis of still existing commodity production."

In addition to its program the Communist International adopted a resolution entitled "The Struggle Against Imperialist War and the Tasks of the Communists." The resolution was based upon a report by Palmiro Tagliotti, the present head of the Italian Communist Party. This resolution throws revealing light upon the tactics of the Communists.

"But the overthrow of capitalism is impossible without force, without armed uprising and proletarian wars against the bourgeoisie. In the present epoch of imperialist wars and world revolution, as Lenin has stated, proletarian civil wars against the bourgeoisie, wars of the proletarian dictatorship against bourgeois states and against world capitalism, and national revolutionary wars of the oppressed peoples against imperialism, are inevitable and revolutionary."

With unexpected honesty the Sixth Congress of the Communist International asserted that the Communists "openly declare that their aims can be attained only by forceable overthrow of all the existing social conditions."

These, Mr. Chairman, are a few, only a very few, excerpts from the official recognized declarations of the Communist Party. These declarations, manifestos, and orders bear the same significance to Soviet policy as Mein Kampf was the official policy of Adolph Hitler. Yet is it difficult for us to transform these utterances into the realities of Communist attacks upon us. We have all too long considered ourselves beyond the reach of this type of conspiracy. It has been only in recent years that the American public has begun to pay attention to the dangers with which we are now faced. Communism has obtained a strong foothold in our country. Literally hundreds of Communist-controlled organizations have existed, and many of them continue to exist today. Operating as they do behind the multifarious disguises which their conspiracy has been able to devise, they have been able to establish themselves in our midst and to gain support and financial assistance.

It is our task in this Congress to provide legislation which will strip from the Communist conspiracy, this mask, this disguise. The farflung organization which the Communists have been able to establish is, to a large extent, evident from the tremendous financial resources which they have been able to corral for its purpose.

The actual financial condition of the party is a closely guarded, military secret; and, Mr. Chairman, I use the term "military" advisedly because the Communist Party is a part of the Soviet military machine. We do, however, have a fragmentary knowledge of this subject from the unbelievable outpouring of propaganda material with which the Communist Party is attempting to pollute the intellectual life of our country. The amount of money which the Communists are able to spend run into millions of dollars per year. As far back as 1937, when the Communist finances were considerably weaker than they are today, the party financial secretary listed an income of \$260,000 from membership fees alone with an additional \$117,000 in donations and income from party activities.

This, Mr. Chairman, is only the amount publicly admitted by the party itself. It does not include the literally millions of dollars which have been collected by the hundreds of Red fronts, and by the various Communist Party enterprises.

The Daily Worker, official organ of the Communist Party, receives tens of thousands per year and puts on an annual drive averaging \$50,000 to \$100,000 to wipe out its deficits. Special defense financing has been established with a potential income running into hundreds of thousands. In order to defend the 12 Communists presently on trial, a defense drive for a quarter of a million dollars was launched. The International Labor Defense—which was branded by Attorney General Biddle "as the legal arm of the Communist Party"—has collected hundreds of thousands of dollars for the defense of Communists and the Communist Party, and it is now a matter of public record that much of this money has been embezzled for propaganda and subversive activities. The work of the International Labor Defense is still going on under the auspices of its successor, the so-called Civil Rights Congress.

Much of the money collected by the Communists has been poured into iron curtain countries and is undoubtedly part of the war chest which finances conspiratorial activities against us. Let me cite only one instance. Borba, the official organ of the Yugoslav Communist Party, admitted not many months ago that millions of dinars are annually pouring into Yugoslavia from this country. The total income from American sources is close to \$20,000,000. In addition to that, the Communists of Europe receive tremendous quantities of gifts such as trucks, refrigerators, and medical supplies, from the United States. Borbans, has evaluated shipments during recent months of an amount close to a million dollars. The extent of the financial resources directed against our system of government is equally evident from the existence of the network of more than 50 Communist periodicals and newspapers which are currently published in the United States, plus millions of pieces of propaganda literature, leaflets, and pamphlets which are distributed annually. In the foreign-language field alone, there are at least 25 newspapers under Communist domination. I refer to foreign-language Communist newspapers because this is one of the serious problems which my own State of Michigan faces. In order not to give this committee a false impression, let me say categorically—just as I stated on the floor of the Senate last week—that the foreign-born citizens who constitute a large segment of the industrial workers in our country, are as loyal as other citizens, are as willing to contribute their lives and their labors in defense of America as other citizens,

but we are now dealing with a conspiracy which is directed at us from a foreign country by foreign agents.

Alien Communist agents have been especially active in the propaganda field. A number of Communist foreign-language newspapers have been successfully established and maintained for a number of years. The names of these papers are fairly well known, and include the Bulgarian *Norodna Volya*, the Polish *Glas Ludowy*, the Rumania *Romanul-American*, and others. It is significant in this connection to recall that the editors and staff of these Communist newspapers have frequently been aliens imported into this country for that special purpose. I say it is significant because it indicates clearly to me that the average immigrant does not support Communist enterprises and will not lend himself to this job.

Because the tenets, the teachings and the practices of communism are so alien to American institutions, traditions and principles I believe it is a fair conclusion that a substantial portion of those who support Communist enterprises in America, who are deceived by their publications, who are brought into Communist fronts by deception, would not do so if they were aware of their conspirational and traitorous nature.

It follows, as I have remarked earlier, that exposure and identification are the most effective weapons against the Communist movement in America. That, as I indicated at the outset, is the essence of the legislation which is before you.

The purposes, and in fact many of the provisions of S. 1196 are not unfamiliar to members of this committee. It is based on conclusion arrived at following hearings by the Senate Judiciary Committee in the Eightieth Congress on H. R. 5852, known as the Mundt-Nixon bill. As the result of exhaustive study by members of the committee last year, of whom I was one, it accepts many of the basic propositions set forth in H. R. 5852. It also contains numerous departures from that bill, based on considerable reflection.

Cardinal features of S. 1196 are as follows:

1. It establishes that "the recent demonstrations of Communist objectives and methods throughout the world and the nature and control of the world Communist movement itself present a clear and present danger to the security of the United States and to the existence of free American institutions, and make it necessary that Congress enact appropriate legislation recognizing the existence of such world-wide conspiracy and designed to prevent it from accomplishing its purposes in the United States."

2. It provides heavy fine and imprisonment for a conspiracy to attempt to set up in the United States a totalitarian dictatorship under foreign control, and specifies characteristics of a totalitarian dictatorship.

5. It defines a Communist political organization in the United States as one having characteristics of a political party but substantially dominated or controlled by the foreign government or foreign political organization controlling the world Communist movement and operating primarily to advance the political objectives of the world Communist movement; and it defines a Communist-front organization as one under the control of a Communist political organization or operating primarily for the purpose of giving aid and support to a Communist political organization, a Communist foreign government, or the world Communist movement. Both are referred to in the bill as "Communist organizations."

4. It requires registration with the Attorney General of Communist organizations and a filing of a list of officers and a report on the source and expenditure of funds.

5. It requires Communist political organizations to file a list of members, and makes knowing membership in an unregistered Communist political organization illegal.

6. The Attorney General is required to notify all individuals listed as officers of a Communist organization or members of a Communist political organization and such individuals, if erroneously listed, may file a disclaimer with the Attorney General which shall be made a matter of record.

7. It denies governmental employment and passports to members of a Communist political organization.

8. It requires identification of broadcasts or publications circulated through the mails whenever sponsored by a Communist organization.

9. It removes tax exemptions for Communist organizations and removes income tax deductibility provisions on contributions to them.

10. It establishes a Subversive Activities Board which may issue orders, following public hearings and a determination that an organization is a Communist organization, requiring that organization to register. The Attorney General may petition the Board for such an order. Orders and findings of the Board are re-

viewable by United States courts of law. The Board would consist of three individuals, appointed by the President with the approval of the Senate.

It is important that this bill be read in proper context.

It is important that it be related to the premises which establish a world Communist conspiracy as I have described it.

It is essential also that it be recognized that sincere and conscientious effort has been applied to exclude from the bill any feature which could be reasonably construed as persecution of any organization which by its nature does not constitute a real threat to American security and American institutions. Particular effort has been made to avoid any possible use of the bill's provisions to smear any individual by any erroneous or unfair implication with a subversive organization.

It is not a thought-control bill. It outlaws no group which is willing to subject its true character to the bright light of public scrutiny. It is a measure requiring the identification of certain types of activity so that the public may not be deceived as to its nature.

This is no time for hysteria and this bill is not a product of hysteria. The conclusion that the Communist movement constitutes a threat to the security of the United States and its free institutions is not a cry of alarmists.

It may be contended that the existence of such a threat is exaggerated in view of the recent negotiations on the Berlin blockade. For those who would place a premium on the conciliatory attitude which the Soviets have demonstrated there I would refer to the penetrating article "Stalin on Revolution" which appeared in the January issue of Foreign Affairs Quarterly.

The lesson of that article, which is a review of Communist doctrine in the form of Stalin's writings, stands out vividly in the pages of history: Communist tactics may shift and change to benefit strategy, but objectives never alter.

As never before in our history this is a time for clear thinking. It is, moreover, in the face of a challenge which possesses the simplicity and clarity of fanaticism, a time for hard thinking.

With due regard to the spirit of our national Bill of Rights and our legal system the people and the Congress of the United States must address themselves to an obvious and present danger.

S. 1196 is presented as a reasoned, effective means of facing up to that danger.

Senator FERGUSON. I will be here every day. To me it is not a matter of coming here merely to testify.

Senator MILLER. Senator Eastland will not be here for a while this morning. I did not know about Senator Donnell or Senator O'Connor.

Mr. YOUNG. They are coming.

Senator MILLER. Give your name to the reporter, sir, if you have not done so.

TESTIMONY OF JOHN C. WILLIAMSON, ASSISTANT DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. WILLIAMSON. My name is John C. Williamson. I am the assistant director of the national legislative services, Veterans of Foreign Wars of the United States.

Mr. YOUNG. Before you start, sir, may I ask the usual questions? I would like to ask that in the light of the policy which we just read. Are you or have you ever been a member of the Communist Party?

Mr. WILLIAMSON. No, I am not and I have never been.

Mr. YOUNG. Are you now or have you ever been a member of or affiliated in any way with any organization which has been cited by any governmental agency as a Communist organization, a Communist-front organization, or one substantially controlled, dominated, or infiltrated by Communists?

Mr. WILLIAMSON. No, I have not.

Mr. Chairman and Senator Ferguson, I appreciate this opportunity of expressing the views of the 1,500,000 overseas veterans who are members of the Veterans of Foreign Wars of the United States, in regard to the bill S. 1194.

Senator FERGUSON. Have you gone over both bills? Is this just the one bill that you are talking about?

Mr. WILLIAMSON. No, we have gone over both bills. We have gone over the analysis of two bills.

Senator FERGUSON. This statement will apply to both of them.

Mr. WILLIAMSON. Absolutely, it will, sir.

Senator FERGUSON. That is all right.

Mr. WILLIAMSON. The subject matter of this bill was considered at great length by the Americanism committee at our last convention held in St. Louis in September 1948. Two resolutions were subsequently adopted by unanimous vote of the delegates present.

One of the resolutions, No. 291, endorses in principle the Mundt-Nixon bill of the Eightieth Congress, with a certain reservation which I shall discuss later; and the other, No. 469, relates to the strengthening of our antiespionage laws designed to deter the conveying of information affecting the security of the United States to any agent of a foreign power.

Both of these resolutions are submitted for the record.

(The resolutions referred to follow:)

RESOLUTION NO. 291 TO ENDORSE MUNDT-NIXON BILL

Whereas there is presently pending before the Congress of the United States a bill designated as H. R. 5852, the Mundt-Nixon bill, which is designed to control subversive activities within the United States; and

Whereas it is becoming increasingly evident that there exists within this country a Communist Party and certain Communist-front organizations which are dominated by a foreign power and whose objectives are inimical to the welfare of the United States; and

Whereas there are other organizations of the native Fascist type whose objectives would be to deny to many citizens of the United States the rights guaranteed them by the Constitution; and

Whereas this Mundt-Nixon bill would serve to expose the identity of such individuals and such organizations: Now, therefore, be it

Resolved by the Forty-ninth Annual Encampment of the Veterans of Foreign Wars of the United States. That this convention endorse the principles contained in the Mundt-Nixon bill insofar as it does not confer dictatorial powers upon any person nor abridge the freedoms of the American people.

RESOLUTION NO. 469, TO STRENGTHEN THE ANTIESPIONAGE LAWS

Whereas the loyal patriotic citizens of the United States have recently experienced the shocking realization that presumably trusted officers of our Government have conveyed information relating to our defenses to agents of a foreign power; and

Whereas many private citizens in addition to officers of the Government have consorted with and otherwise given comfort to agents of a foreign power—and particularly a foreign power the government of which is dominated by an ideology which seeks the overthrow of our American form of democracy by force and violence; and

Whereas existing laws relating to treason and espionage, although they were appropriate to cope with the imperialistic ventures of nations in the preindustrial era, are inadequate to cope with the dynamisms of totalitarian ideologies in this atomic age; and

Whereas despite the victory of our arms in World War II, the forces of democracy are still being challenged by formidable forces all over the world: Now, therefore, be it

Resolved by the Forty-ninth National Encampment of Veterans of Foreign Wars of the United States, assembled in St. Louis, Mo., August 29-September 3, 1948, That the Congress and the President of these United States be petitioned to enact legislation amending that part of the Criminal Code relating to espionage activities of foreign powers so that any person knowingly conveying to an agent of a foreign power or to any person known to be employed by agents of a foreign power, any information relating to the national defense and security of the United States, shall if convicted be sentenced to imprisonment of not to exceed 20 years, or in time of national emergency as proclaimed by the Congress of the United States or the President, the sentence may be death or life imprisonment; and be it further

Resolved, That for the purposes of this statute information relating to the national defense and security shall include:

1. Any information classified as confidential, secret or top secret by any agency of the Government of the United States.
2. Any information relating to industrial production, plant location, stock piling, results of experiments and developments in atomic energy, electronics, bacteriological warfare, and jet and rocket propulsion.

Mr. WILLIAMSON. The United States, representing by far the strongest bulwark of western civilization, today faces the greatest challenge in its history. It is a challenge that faced all the great civilizations of the past. These civilizations from that of the early Egyptian down through the Hellenic, the Roman, Chinese, and Islamic failed to heed the implications of that challenge and their downfall was inevitable.

Precisely, what is the challenge? It is that of adjustment to a changing environment, a changing world, not of technology but of ideology. We somehow fail to grasp the impact of ideas on our civilization.

The two wars of this generation have nurtured the ideas of a world system of communism which holds forth the vision of a classless society after a thousand years of subjugation. However, as we face this foreign totalitarian idea of twentieth century vintage we confront it with an eighteenth century weapon. The Supreme Court of the United States has enunciated time and time again that the Constitution is a living organism and that the Constitution in the 1789 environment is not the same instrument as in the 1949 environment.

We ask, therefore, that the Congress start with this premise: That the power to defend the Constitution is implicit in that instrument. We stress this point, well realizing that the opponents of this measure, regardless of their motives, fail to differentiate between the preservation of freedom and the protection of that freedom.

In the opinion of our organization the bill S. 1194 is a proper vehicle for effectively meeting the challenge imposed on us by the presence within our midst of a dynamic Communist movement controlled and directed by a foreign power. The aim of that movement is clear and its pattern of conquest is even clearer. It is best that the pattern of control as set forth in this bill be as clear.

The bill S. 1194 meets the reservation of our convention in endorsing the Mundt-Nixon bill, by providing appropriate safeguards and appellate review so that the misguided and those who are being used as fronts would be protected. In fact, the bill would further protect these by exposing at least to them the folly of their apathy and complacency in adhering to the fringes of communism.

It has been pointed out that the danger of such a bill as S. 1194 is that it would drive the Communists underground. The answer to that is this: The ones we have to worry about have always been underground. The leaders of the Communist Party and those who pull the strings on the Communist-front organizations seem to exhibit a passion for publicity as though to beguile us into thinking that is all there are. Those already underground are the cells—the so-called fractions—that argue long and vote late in group meetings; and others who patiently and sometimes successfully weave their way into the confidences of Government officials and oftentimes not only in the confidences of those officials but in their very chairs.

Of course, this bill if enacted might force these further underground—too far underground to be of any effect.

Our second resolution is amply covered by section 4 (a) of the bill and we commend it along with the rest of the bill to your early and favorable consideration.

Senator FERGUSON. Mr. Williams, I noticed yesterday Henry Wallace made a reference to these hearings in this language as a footnote to his memorandum. He said:

And now freedom of thought itself is again under attack as the Senate Judiciary Committee rushes hearings on the 1949 version of the Mundt thought-control bill.

Do you find any provisions in this bill that would control thought?

Mr. WILLIAMSON. No; we don't. Actually, this bill would just permit our Government and the Congress to keep a check on people who follow a line set down by a foreign government and who in time of emergency would very likely be avowed enemies of the United States.

Senator FERGUSON. Eliminating section 4 for the time being, I want to ask you whether or not this bill does any more than register an organization composed of foreign agents.

Mr. WILLIAMSON. Precisely that is what the bill does.

Senator FERGUSON. It registers foreign agents. We have a bill today which registers individually foreign agents, but now when they combine themselves into a so-called political party, the Communist political party, and the front organizations, it merely compels the registration of the organizations rather than the individuals, and then the listing of the members of the one organization which is the political organization. Is that not true?

Mr. WILLIAMSON. That is correct. It also has another purpose in that it would act as a deterrent to many of the misguided who have let themselves be used.

Senator FERGUSON. By a registration of the Communist-front organization which is controlled by foreign agents and therefore in effect is a foreign agent.

Mr. WILLIAMSON. That is correct.

Senator FERGUSON. Have you any doubt, Mr. Williamson, that the thought of the Communists themselves is controlled thought? Mr. Wallace described this bill as controlling thought in America. I wonder whether you have an opinion that thought can be any more controlled than the Communist Party controls thought? Apparently, while Mr. Wallace is not a Communist himself, much of his thought is controlled by the Communist organization. Do you find that to be true?

Mr. WILLIAMSON. We certainly recognize the fact that there is a thought control running through the whole Communist Party. There is no question about that because of the manner in which the party line shifts, and a person who is affiliated with the Communist Party can passionately advocate one thing and when the party line suddenly changes in the Kremlin he thinks differently. There is no question but that that is thought control, and it is a much more sinister one than even if one were to think by stretch of the imagination that this were a thought-control measure.

Senator FERGUSON. Yes. In other words, it appears to some of these left-wingers and those who are following the party line, that if thought control is control by the Communist Party, that is perfectly all right, but if it is the United States Government doing it, then it is claimed that that is thought control. Do you not think that to be true?

Mr. WILLIAMSON. Yes; that is the line. This bill actually aims at the registration of people who are members of organizations that are foreign-dominated. The thought behind, shall I say, pure communism is nothing new in this country. There have been communistic experiments in this country, but that is something different. In other words, the thought behind the ideology of communism certainly isn't controlled, but the activities of those who are foreign-dominated is controlled.

Senator FERGUSON. Did not Marx and Engels in their manifestos and their writings attempt to lay down a thought control as far as the proletariat was concerned?

Mr. WILLIAMSON. Yes; they would have to. There would have to be thought control because of the rigid discipline necessary to bring about the dictatorship of the proletariat.

Senator FERGUSON. A Communist may be said to be a Socialist in a hurry. Is that not about what he is? We might say that a Socialist is a slow-moving picture of a Communist.

Mr. WILLIAMSON. That is right. When you talk about communism by itself, without any domination of a foreign power, it isn't very difficult to argue somebody into the position that communism by itself, pure communism, is the perfect form of democracy, because one could argue and say that it is the basis of Christianity; all men live like brothers and there will be no requirement of a state; there will be no laws. That isn't the great evil of communism. It is this dictatorship of the proletariat that can go on forever. Certainly nobody in his right mind would think that the objective of the present government in Russia is to bring about a society in which the state would wither away. They will always have a state and it will be a plenty tough one. The great evil of communism is this dictatorship of the proletariat which will subjugate the people and people's minds forever.

Senator FERGUSON. Section 4 in the present bill is entirely different from that in the Mundt-Nixon bill, and it is also the same in S. 1196 and 1194. Section 4 starts out:

It shall be unlawful for any person to combine or conspire with any other person to perform any act which would substantially contribute * * *

That is the way it is used in 1196.

In 1194 there is used—

which would substantially facilitate or aid * * *

The language in 1196 is—

would substantially contribute to the establishment within the United States of a totalitarian dictatorship the direction and control of which is to be vested in, or exercised by or under the domination or control of, any foreign government, foreign organization, or foreign individual, with intent to assist in the establishment within the United States of such totalitarian dictatorship.

Then it proceeds. Of course, that part does not attempt to control thought, because it attempts to control a conspiracy to do a particular act. Is that not correct?

Mr. WILLIAMSON. That is correct. That is the interpretation we have.

Senator FERGUSON. Have you found anything in this bill which would carry out what Mr. Wallace has said to the Foreign Relations Committee, that this was a thought-control bill?

Mr. WILLIAMSON. No; we have not, and we insist that it is not a thought-control bill.

Senator FERGUSON. Thank you, Mr. Chairman, for allowing me to ask those questions.

Senator MILLER. I guess that is all, Mr. Williamson, and we thank you for your contribution.

Mr. YOUNG. Mr. McLaughlin of AMVETS? Will you take the stand, please?

Before you sit down, sir, would you raise your right hand. Do you solemnly swear or affirm that in the proceedings before this subcommittee you will tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. McLAUGHLIN. I do.

TESTIMONY OF ROBERT E. McLAUGHLIN, NATIONAL LEGISLATIVE DIRECTOR, AMVETS

Mr. McLAUGHLIN. Mr. Chairman and members of the committee, my name is Robert E. McLaughlin. I am national legislative director of AMVETS.

Mr. YOUNG. Before you start I would like to ask the two opening questions, Mr. McLaughlin, in line with the policy read in the beginning of these proceedings. I ask you, are you now or have you every been a member of the Communist Party?

Mr. McLAUGHLIN. No.

Mr. YOUNG. Are you now or have you ever been a member of or affiliated in any way with any organization which has been cited by any governmental agency as a Communist organization, a Communist-front organization, or one substantially controlled, dominated, or infiltrated by Communists?

Mr. McLAUGHLIN. No.

Mr. YOUNG. Proceed, please.

Mr. McLAUGHLIN. AMVETS—American Veterans of World War II—was incorporated by act of Congress of July 23, 1947, and since its inception, has been actively opposing communism and Communist agitation in this country. Article IV of our national constitution specifically provides:

No person who is a member of, or who advocates the principles of, any organization believing in, or working for, the overthrow of the United States Government by force, and no person who refuses to uphold and defend the Constitution of the

United States, shall be privileged to become or continue to be a member of this organization.

This constitution provision has always been construed to mean that no person who belongs to the Communist Party or who espouses Communist principles, shall be a member of AMVETS.

In February 1948, the national commander of AMVETS appeared before the House Committee on Un-American Activities, and asked that Congress take the following measures toward controlling the Communists in this country:

1. That any person who is a member of the Communist Party or any organization, association or other combination of individuals which is dominated, directed or controlled by the Communist Party be required to register publicly with the Department of Justice as an agent of a foreign principal.

2. That all publications, papers, and any and all mediums of political propaganda disseminated by such persons or organizations be clearly labeled under the law for what it is, namely, Communist propaganda.

3. That the postal regulations concerning the dissemination of the propaganda described above be drastically tightened to restrict their mailing privileges to first-class mail only.

4. That the right of a Communist to be a candidate for any elective office or or any political office be denied by law.

5. That all aliens, whether Communists or not, be required to report their addresses once a year to the Justice Department and that the Justice Department be authorized to hold aliens for a definite length of time when their own countries refuse to take them back.

6. That officers of all subversive groups be made personally responsible for the registration of their groups under the existing Voorhis Act requiring registration of groups under foreign control aimed at overthrow of the Government by force.

Moreover, the 1948 National Convention of AMVETS called upon the Congress to—

enact the Mundt-Nixon bill requiring the registration of all Communists, Communist-front organizations, and all other people or groups advocating the overthrow of the United States by force or by subversion.

These measures have been substantially incorporated in the bills under consideration by the committee, and AMVETS wishes to be placed on record as strongly supporting such a measure.

The constitution and rules of the International Communist Party reveal conclusively that the so-called American Communist Party is only a section of the international and directly governed by the executive committee of the International Communist Party, the ECCI. According to their constitution the ECCI "gives instruction to all sections (parties) and controls their activities." In equivalent language, the said constitution provides that the decisions of the ECCI are obligatory for all sections; that the ECCI has the right to annul or amend decisions of party congresses and central committees of individual parties and make decisions which are obligatory for them; that ECCI has the right to expel entire sections, groups, and individual members of sections; that ECCI has the right to send their representatives to the various sections, to participate in their meetings, speak in opposition to the central committee of a given section, and send instructors to the various sections.

The international control division has power—

to investigate matters concerning the unit of the sections * * * the conduct of the individual members * * * to examine complaints against the actions of the central committees * * * and concerning members * * * and audit the accounts of the Third International.

The central committees (of the various parties) must send the ECCI minutes of their meetings and reports * * * resignation from offices is * * *

disruption * * * leading posts in the party do not belong to the occupant but to the Communist International * * * elected members may resign only with the consent of the ECCI. Resignations accepted by the central committees of sections without the consent of the ECCI are invalid.

Under paragraph 33 of the constitution I was speaking of the international imposes taxes upon every Communist Party; and under paragraph 37, no member of the Communist Party may leave this country without the consent of the central committee, and if he changes domicile he is compelled to join the party in the country to which he moves.

The set-up of the Communist International and its operations in the United States through Communists and through Communist-controlled organizations, is not only an affront to the Government of the United States, but is a clandestine type of warfare perfected and scientifically developed for the purpose of overthrowing that Government by any and every illegal and ignominious means available.

Chief Justice Stone in his dissent in the case of *Bridges v. Wixon* (326 U. S. 135, at p. 168), said the Supreme Court did not challenge the findings of the examiner to the effect that

the Communist Party of the United States and the Marine Workers Industrial Union were, at all relevant times, each an organization which believed in and advocated the overthrow by force and violence of the Government of the United States, and that the Communist Party also wrote, circulated, distributed, printed, published and displayed printed matter advising, advocating or teaching the overthrow by force or violence of the Government of the United States.

It is clearly defined principle of constitutional law that political questions, such as those involved in treating with the Communist Party, are of such nature that the courts generally cannot entertain jurisdiction without legislative pronouncements.

Justice Sanford, in the case of *Gitlow v. New York* (268 U. S. 652), said:

A single revolutionary spark may kindle a fire that, smoldering for a time, may burst into a sweeping and destructive conflagration. It cannot be said that the State is acting arbitrarily or unreasonably when in the exercise of its judgment as to the measures necessary to protect the public peace and safety, it seeks to extinguish the spark without waiting until it has enkindled the flame or blazed into the conflagration. It cannot reasonably be required to defer the adoption of measures for its own peace and safety until the revolutionary utterances lead to actual disturbances of the public peace or imminent and immediate danger of its own destruction; but it may, in the exercise of its judgment, suppress the threatened danger in its incipency.

Senator FERGUSON. Mr. Chairman, I wonder whether I could ask a few questions?

Senator EASTLAND. Yes, sir. You may proceed, Senator.

Senator FERGUSON. Mr. McLaughlin, you spent some time on this question of communism in America and its acts as well as communism in the world. I will ask you whether you find anything in the Communist principles which controls thought?

Mr. McLAUGHLIN. Yes, sir. I agree entirely with the testimony of my predecessor, Mr. Williamson, on that point.

Senator FERGUSON. In other words, they do control thought. I noticed in Mr. Wallace's statement yesterday he referred to this as a "thought control bill." Have you found anything in this bill that would control thought?

Mr. McLAUGHLIN. I don't see those aspects in the bill at all, Senator.

Senator FERGUSON. You are a lawyer?

Mr. McLAUGHLIN. Yes, sir.

Senator FERGUSON. You have studied the bill?

Mr. McLAUGHLIN. Yes, sir.

Senator FERGUSON. You find nothing in the bill that controls thought?

Mr. McLAUGHLIN. No, sir.

Senator FERGUSON. But you do find in communism itself and what is known as following the party line a clear control of thought?

Mr. McLAUGHLIN. Yes, sir; I believe that is their dangerous principle.

Senator FERGUSON. That thought is controlled by a foreign power?

Mr. McLAUGHLIN. Yes, sir.

Senator FERGUSON. In section 4 of both of these bills it prevents a conspiracy to do particular things. That would not be a control of thought. There must be a combination of people. As I understand the law on conspiracy, it has never been contended that to try to stop a conspiracy to commit a crime is the controlling of the thought of the people that they are trying to control. Have you found that?

Mr. McLAUGHLIN. No, sir. The crime is embodied in the combining.

Senator FERGUSON. In the combining, the joint action, in other words.

Mr. McLAUGHLIN. Yes, sir.

Senator FERGUSON. That isn't control of thought of each individual at all, but it is controlling the combination of thought to do an unlawful act.

Mr. McLAUGHLIN. Yes, sir. It is controlling the combination.

Senator FERGUSON. Yes, rather than the thought of each individual.

Mr. McLAUGHLIN. That is right, Senator.

Senator FERGUSON. That is all I have.

Senator MILLER. No questions.

Senator EASTLAND. That is all, thank you.

Mr. McLAUGHLIN. Thank you.

Mr. YOUNG. Will Mrs. Ada Jackson, from the Congress of American Women, please take the stand?

Mrs. Jackson, before you sit down will you raise your right hand, please. Do you solemnly swear or affirm that in the proceedings before this committee you will tell the truth, the whole truth, and nothing but the truth, so help you God?

Mrs. JACKSON. I do.

TESTIMONY OF MRS. ADA B. JACKSON, CONGRESS OF AMERICAN WOMEN

Mr. YOUNG. Now, Mrs. Jackson, having directed attention to the policy or rule laid down by the subcommittee concerning the relevancy of the proposed testimony, I would like to ask you the following two questions, if I may.

First, are you or have you ever been a member of the Communist Party?

Mrs. JACKSON. I have not.

Mr. YOUNG. Second, are you now or have you ever been a member of or affiliated in any way with any organization which has been cited

by any governmental agency as a Communist organization, a Communist-front organization or one substantially controlled, dominated, or infiltrated by Communists?

Mrs. JACKSON. No.

Mr. YOUNG. Mr. Chairman, in the light of these two answers I would like to read a short statement from this pamphlet here, if I may. Senator EASTLAND. What is the pamphlet?

Mr. YOUNG. The pamphlet is entitled "Citations by Official Government Agencies of Organizations and Publications Found to be Communist or Communist Fronts," dated December 18, 1948, prepared and released by the Committee on Un-American Activities, United States House of Representatives, Washington, D. C.

Senator FERGUSON. Before you read that—

Senator EASTLAND. I think the witness is qualified under the ruling, and I think she should be permitted to testify. Then, of course, when she concludes we can put that in the record.

Senator FERGUSON. Mr. Chairman, I just wanted to ask one thing in view of the fact that these questions may be double-barreled or triple-barreled. Your answer to each and every one of them is "No," is that right? Have you ever been or are you?

Mrs. JACKSON. No. I answered the first one. The combination that he gave about being cited by the Government—I would like to ask what he means by "cited by the Government." I want to be clear on that.

Senator FERGUSON. I want to be clear and I want you to be clear. Was it because the question was asked in its form that you answered "No"?

Would you repeat each one of the questions?

Mr. YOUNG. I think the second question is rather complicated.

Senator FERGUSON. It is a triple-barreled question.

Senator EASTLAND. Let me ask you, which organization do you belong to?

Mrs. JACKSON. I am here for the Congress of American Women.

Senator EASTLAND. But what other organization do you belong to?

Mrs. JACKSON. What other organizations? I belong to the schools council of Bedford in Williamsburg; the Brooklyn chapter of the National Council of Negro Women; I am a board member of the Brooklyn YWCA; I belong to the Bethany Baptist Church. I don't remember what other organizations I belong to, community organizations.

Senator EASTLAND. I think she is qualified.

Mrs. JACKSON. I am a member of the Congress of American Women. But I want clarification on that second combination.

Senator FERGUSON. You do want clarification?

Mrs. JACKSON. I want him to clarify that.

Senator FERGUSON. Could he do that now?

Senator EASTLAND. Certainly.

Senator FERGUSON. Were they ever listed by the Un-American Activities Committee as a Communist-front organization?

Mrs. JACKSON. Not to my knowledge.

Senator EASTLAND. They were by the Attorney General.

Senator FERGUSON. Were they by the Attorney General?

Mrs. JACKSON. Not to my knowledge.

Senator FERGUSON. Did you never hear that they were?

Mrs. JACKSON. No. Were they cited by the Government?

Senator FERGUSON. I am just asking you what you know.

Mrs. JACKSON. Not to my knowledge.

Senator FERGUSON. You never heard that any organization that you ever belonged to was cited by any Government agency, either Congress or the Attorney General, as being a subversive organization?

Mrs. JACKSON. I know the National Negro Congress someone said was one listed in the subversive list.

Senator FERGUSON. Are you a member of that?

Mrs. JACKSON. There is no longer a National Negro Congress. It was dissolved some years ago.

Senator FERGUSON. What is its name now?

Mrs. JACKSON. There isn't a National Negro Congress.

Senator FERGUSON. Has it changed its name?

Mrs. JACKSON. No. The organization was dissolved.

Senator FERGUSON. Were you in any way ever affiliated with any Communist organization?

Mrs. JACKSON. Not to my knowledge.

Senator EASTLAND. In other words, what you say is that if the Congress of American Women was cited as a Communist-front organization, you did not know?

Mrs. JACKSON. No.

Senator EASTLAND. I think she should be permitted to testify.

Senator FERGUSON. Yes.

Senator EASTLAND. The organization was cited by the Attorney General in letters to the Loyalty Review Board released June 1, 1948, and September 1, 1948, and it was cited by the California committee on un-American activities in its 1948 report, page 229 to 231, as— one of the most potentially dangerous of many active Communist fronts. Incorporated in January 1945, the national headquarters is in New York City. It is an American branch of the International Democratic Womens' Federation, which was formed at a Paris convention in November 1945 at the call of the international Communist forces.

We want to let every one testify. This bill is based on the findings that communism is an international conspiracy to overthrow the United States Government, that it is controlled by a foreign power. The reason you were asked why you had been a member of the Communist Party is that a Communist can shed more light on the thing that this bill is based on, that it is a party controlled by a foreign power. That is the reason that we asked the question. You have qualified, and you can proceed with your testimony.

Mrs. JACKSON. There is one question I would like to ask, when you talk about "potential."

Senator EASTLAND. I cited from the report of the un-American activities committee of the State of California.

Mrs. JACKSON. Was it that it was one or was potential?

Senator EASTLAND. There is no point in arguing.

Mrs. JACKSON. I am not arguing but I want to be clear on that point.

Senator EASTLAND. They were cited by the Attorney General of the United States, your organization.

Mrs. JACKSON. Whether it was or was potential.

Senator EASTLAND. As a Communist-front organization. You testified you did not know that.

Senator FERGUSON. I would like to ask this question, if I may, Mr. Chairman. If you had known that it was cited by the President as a Communist-front organization, would you have remained a member?

Mrs. JACKSON. Well, I think I would have remained a member due to the fact that there are so many things now that are called Communist that I have worked in all my life and I know that they are not.

Senator FERGUSON. That is what I mean.

Senator EASTLAND. Which are they, now?

Mrs. JACKSON. The Parent Teachers Association groups, the Brooklyn branch or the national branch of the National Association for the Advancement of the Colored People.

Senator EASTLAND. They have all been charged with being Communist?

Mrs. JACKSON. The national office hasn't, but it has been said that some of their affiliates, branches, have been. They have not been cited by the Government but they have been labeled. So there is a difference between what a thing really is and what people say about it.

Senator FERGUSON. When the Attorney General lists this organization as being a Communist-front organization, if you had known that, you would still have remained a member. And I will ask you this question: Would you also want to appear here for that organization even though you know it is cited by the Attorney General of the United States under an Executive order as a Communist-front organization?

Mrs. JACKSON. I believe in the principles and policies of the constitution of the Congress of American Women, and certainly as an American citizen, which I have been all my life, I have not observed anything in the constitution or the bylaws, in their meetings whatsoever, that has not been in the best interests of the people.

Senator FERGUSON. So then you would appear knowing that.

Mrs. JACKSON. Knowing what I know about the congress?

Senator FERGUSON. Yes and knowing——

Mrs. JACKSON. They would have to convince me and would have to explain to me what the congress had done, what was in its principles that was not in the best interests of the people. I would have to be convinced of that point.

Senator EASTLAND. Let us proceed with her testimony.

Mrs. JACKSON. I appear before your committee today in behalf of the Congress of American Women to urge upon you that you do not report out the two Mundt bills, S. 1194 and S. 1196, which are now before you for consideration. These two bills, like last year's Mundt bill which begot them, are diabolically designed to establish in the United States the very totalitarianism which they pretend to prevent.

The Congress of American Women asks that you carefully consider this legislative proposal to put into the hands of a subversive activities commission the power to judge, to suppress the opinions and to penalize the affiliations and activities of all Americans. We want to ask: From what point of view will it judge our opinions and activities? From what point of view of the 14,000,000 American Negroes? The practice of racial and religious discrimination in the United States, in the opinion of many millions of Americans of all races and creeds, is a form of totalitarian dictatorship. Will those practicing discrimination or encouraging it, or condoning it, be adjudged subversive under this

bill? Of course not. What is more likely to happen is that those who combat discrimination and work for its elimination will, under this bill, be subjected to harassment and wholesale penalization, on the ground that their activities coincide with those of the Communist Party.

We, in the Congress of American Women, like millions of women throughout the country, are alarmed about the talk of war which has become all too current, and about what we consider to be policies which might lead to war. We are doing what we can to persuade our Government to alter some of its policies. We intend to continue our efforts. It is our right and we consider it to be our duty. Is legislation to be adopted which would take from us the right of petition, the right to join with others in a common endeavor? We believe that the trend in the direction of militarism, if persisted in, would facilitate the establishment of dictatorship. Many good Americans of all races and religions believe likewise.

Is this bill aimed at this threat to our free institutions—or is it aimed rather at frustrating the efforts of those, who, aware of the danger, attempt to arrest it?

There can be little question about the answer to these questions. White supremacists will not be bothered by legislation of this kind. They will not be found pursuing policies which parallel those of the Communist Party. No vigilant champion of that great democratic institution, the filibuster, will be hampered in his activities by this legislation. No eager advocate of an early atomic war will be gagged by this legislation. No landlord's organization, ready to take full advantage of the recent rent regulations, will find anything to worry about in this legislation.

But every citizen or group of citizens who seek to combat grasping landlords or hide-bound racists or war-minded jingoists are certain to find this legislation used against them. If this were not the case, why does not this Congress set these bills aside and write legislation to curb racists? Why has the Un-American Activities Committee concentrated in its efforts over the years at hampering and smearing the activities of liberals, progressives, and radicals, and paid practically no attention to the activities of Facists, anti-Semites, pro-Nazis, and lynchers?

The Communist label has been pinned on every advocate of decent race relations and social progress in the last decade or so. To pass this legislation is to convert the label into a pair of handcuffs, a gag, and prison bars. It is to say finis to further progress. It is to say "nothing doing" to the prayer for peace. It is to say jail to the protest against the rope and the fagot. We as American women, organized into the Congress of American Women, will never accept such a fate. We will fight for the things we believe in. We will fight this legislation.

Senator EASTLAND. Did you write this prepared statement?

Mrs. JACKSON. It was prepared at our executive office.

Senator EASTLAND. By whom?

Mrs. JACKSON. By whom? Stella Allen.

Senator EASTLAND. Who is she?

Mrs. JACKSON. Executive secretary.

Senator EASTLAND. Any questions?

Senator MILLER. Where was this prepared, here or somewhere else?

Mrs. JACKSON. It was prepared at our national headquarters, 232 East Twenty-third Street, New York City.

Senator FERGUSON. Can you account for the fact that you, as a member of this organization, did not learn about what the Attorney General had said about your organization?

Mrs. JACKSON. I never saw the list. I never knew it was cited as a Communist-front organization.

Senator FERGUSON. What is your office in this organization?

Mrs. JACKSON. My office—I take care of the child commission for all Brooklyn.

Senator FERGUSON. Do you hold any other office?

Mrs. JACKSON. Not for the moment.

Senator FERGUSON. Had you never heard in the organization itself, among its people, that the Attorney General had cited your organization as subversive? A Communist-front organization?

Mrs. JACKSON. No.

Senator FERGUSON. Would you feel that something was wrong if you had a fair trial before a board or a commission as to whether or not your organization was a subversive or Communist organization and then be registered? Is there anything wrong about that?

Mrs. JACKSON. Anything wrong with it being registered?

Senator FERGUSON. Yes.

Mrs. JACKSON. That depends on how far this registration is going to go. When you say that—

Senator FERGUSON. Have you ever read the bill?

Mrs. JACKSON. Read the bill? I read last year's bill. I have had an analysis of the present one.

Senator EASTLAND. Prepared by whom?

Mrs. JACKSON. The American Labor Party. I read their analysis of the bill.

Senator FERGUSON. Have you got a copy of their analysis?

Mrs. JACKSON. Not with me.

Senator FERGUSON. Do you think, Madam, that you can advise the committee on this bill not having read it and just taking the analysis of some American labor party?

Mrs. JACKSON. There is direct quotes from the bill.

Senator FERGUSON. What do you find? What specific provision are you against in the bill?

Mrs. JACKSON. I am against the labeling of organizations that have been active in the interests of the people as being subversive.

Senator EASTLAND. Suppose they are found to be subversive?

Mrs. JACKSON. If they are found that, but I think that when we say a thing is subversive, we ought to give reasons.

Senator FERGUSON. Do you think that if an organization follows the Communist line there is anything wrong about registering it?

Mrs. JACKSON. When you talk about the Communist line, I don't know all the Communist line, but certainly if a Communist was to say that it is wrong for landlord to go up on his rent, and I would think it was wrong, too, would that make me a Communist because I said that?

Senator FERGUSON. No.

Mrs. JACKSON. If he spoke out against discrimination, against the inhuman acts perpetrated against Negro people, and I believed the same thing?

Senator FERGUSON. That would not be subversive.

Mrs. JACKSON. In an association you accept people on their—you don't always know their background. You accept them on their face value, what you know about them.

Senator FERGUSON. You believe in courts and believe in trials?

Mrs. JACKSON. Of course I do.

Senator FERGUSON. So if there is a board set up where you have a fair hearing to determine whether or not your organization or an organization is controlled by the Communists, you would see nothing wrong about that procedure?

Mrs. JACKSON. If it was a fair hearing.

Senator FERGUSON. Do you know that that is just what this bill does?

Mrs. JACKSON. I doubt seriously whether it is a fair hearing.

Senator FERGUSON. Why would you question the fairness of the hearing?

Mrs. JACKSON. I have listened to hearings and they weren't always fair.

Senator EASTLAND. Hearings here, you mean?

Mrs. JACKSON. No, not here, but I have sat in court rooms and listened to hearings that weren't always fair.

Senator EASTLAND. Then you have been to court?

Mrs. JACKSON. I say the people in the court go in to win, they don't go in for justice. You don't always get it.

Senator EASTLAND. Would that not be a reason to have the machinery set up in this bill?

Mrs. JACKSON. So much can be read into these bills. We have laws against discrimination and yet it is the policy of every State in the Union to discriminate.

Senator EASTLAND. This is not a State matter. Here is the Ferguson bill and here is the Mundt bill. Just tell us which sections you oppose.

Mrs. JACKSON. I think it was section 4.

Senator FERGUSON. Section 4 is on page 8. Do you think there is anything wrong about making unlawful a conspiracy—

which would substantially contribute to the establishment within the United States of a totalitarian dictatorship the direction and control of which is to be vested in, or exercised or under the domination or control of, any foreign government, foreign organization, or foreign individual, with intent to assist in the establishment within the United States of such totalitarian dictatorship?

Mrs. JACKSON. I don't believe in any foreign powers controlling or governing or dictating to the Government here in America, but I do believe that we ought to let our own form of government and democracy work in America, and that we have not done.

Senator FERGUSON. You and I agree on that.

Senator EASTLAND. I want to hear her objections. I would like to have the witness give us the section and exactly what she objects to.

Mrs. JACKSON. The main thing that I digested out of this bill—

Senator EASTLAND. Which bill, 1194 or 1196?

Mrs. JACKSON. 1194.

Senator EASTLAND. 1194, all right. Which section?

Mrs. JACKSON. We have gone by the statement of general principles as a whole.

Senator EASTLAND. As a matter of fact, you have not read that bill.

Mrs. JACKSON. I have not read this bill.

Senator EASTLAND. You do not know the provisions of a single section of the bill.

Mrs. JACKSON. I read the last year's bill, I told you.

Senator EASTLAND. Last year's bill?

Senator FERGUSON. This is so much different, Madam, I would feel that you ought to read this one. It is a conspiracy here that we are prohibiting.

Mrs. JACKSON. And it is not based on last year's at all?

Senator EASTLAND. You cannot point out a thing in that bill that you object to, is that right?

Mrs. JACKSON. I haven't had a chance to read the bill. I said we have discussed the bill and we have gone by the general statement.

Senator EASTLAND. Any further questions, Senator Ferguson?

Senator FERGUSON. No.

Senator EASTLAND. There are no further questions?

Senator FERGUSON. Is there anything more you want to add? We want to have a full and complete hearing.

Mrs. JACKSON. No, I haven't anything more.

Senator MILLER. You had better take those.

Senator FERGUSON. Yes, you had better take those copies of the bill.

Mr. YOUNG. Is there a representative of the Civil Rights Congress in the room? They are scheduled to testify.

Mr. THOMAS G. BUCHANAN, Jr. (Civil Rights Congress, Washington, D. C.). I am scheduled to testify for the Civil Rights Congress, but we were not notified that we were to appear today. I have not prepared any written statement.

Senator EASTLAND. If he wants to appear later, that will be all right.

Mr. YOUNG. Mr. Benjamin C. Sigal, representing the Americans for Democratic Action and the American Civil Liberties Union.

Before you sit down, Mr. Sigal, will you raise your right hand, please? Do you solemnly swear or affirm that in the proceedings before this subcommittee you will tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SIGAL. I do.

TESTIMONY OF BENJAMIN C. SIGAL, ATTORNEY, WASHINGTON, D. C., REPRESENTING AMERICANS FOR DEMOCRATIC ACTION AND THE AMERICAN CIVIL LIBERTIES UNION

Mr. YOUNG. Please sit down. Give us your name, address, present occupation, and what organizations you represent, please.

Mr. SIGAL. My name is Benjamin C. Sigal. My office address is 1025 Vermont Avenue NW., Washington, D. C. I am a lawyer. I am here representing the Americans for Democratic Action and the American Civil Liberties Union.

Mr. YOUNG. Mr. Sigal, I would like to ask you two questions, if I may. First, are you now or have you ever been a member of the Communist Party?

Mr. SIGAL. No.

Mr. YOUNG. Second, are you now or have you ever been a member of or affiliated in any way with any organization which has been cited by any governmental agency as a Communist organization, a Com-

unist-front organization, or one substantially controlled, dominated, or infiltrated by Communists?

Mr. SIGAL. The only part of that that I can answer definitely is the Attorney General's list, which I have examined. I have never been a member or affiliated with any organization listed on that list. As to the rest of that I am in no position to answer. It is much too general. If you more specifically state it I will be glad to answer.

Mr. YOUNG. That is all right.

Senator EASTLAND. Do you want to ask him any questions?

Senator FERGUSON. I just wondered, what is too general about the question: Are you now or have you ever been connected with any organization that is dominated by Communists?

Mr. SIGAL. I said "No."

Senator FERGUSON. That is what I mean.

Mr. SIGAL. The question was any organization cited by any agency of the Government anywhere.

Senator FERGUSON. Have you ever heard that any of the organizations of which you were a member were listed by either the Attorney General or the Un-American Activities Committee?

Mr. SIGAL. The latter part, I cannot say that I am familiar with every organization ever listed by the Un-American Activities Committee as subversive, but so far as I know, I have not been a member of any such organization.

Senator FERGUSON. That is the question.

Senator EASTLAND. Do you have any questions?

Senator MILLER. No.

Senator EASTLAND. You may proceed.

Mr. SIGAL. I should say that I am appearing here in opposition to both S. 1194 and S. 1196.

The Americans for Democratic Action and the American Civil Liberties Union are unalterably opposed to communism, but we are equally opposed to any denial of the basic civil rights and liberties. It is our conviction that the two measures pending before this committee are unconstitutional, that they seriously curtail rights of free speech and thought, that they will, in effect, materially aid the Communists, drive them underground and greatly enhance their chances for success.

I will consider both bills together without making any distinction between the two.

Senator EASTLAND. All right.

Mr. SIGAL. First, as has already been stated, the bill would have the inevitable effect of driving the Communists' movement underground. Communists have already announced that they would not comply with the provisions of this bill. Such noncompliance would then, of course, compel Communists to seek refuge in underground activities.

Senator FERGUSON. Do I understand that, as a lawyer, you say that if people say they will not abide by a law, that is one reason why it should not be passed?

Mr. SIGAL. Oh, no. That is simply a comment on the general situation. I will explain as we go through this.

Senator FERGUSON. Do you know of any criminal statute that does not have the effect of causing the people who want to commit the crime to try to conceal the commission of that crime?

Mr. SIGAL. No, of course.

Senator FERGUSON. They all do, do they not?

Mr. SIGAL. Unquestionably. The problem here, if I may, I will attack in regular order.

Senator MILLER. May I ask a question, Mr. Chairman?

Senator EASTLAND. Yes, sir.

Senator MILLER. This might be the best place to ask it. You state here that both bills seriously curtail the rights of free speech and thought. Will you amplify that just a little as to how they do that?

Mr. SIGAL. I will be glad to, Senator. This whole statement is directed to that, and if I may proceed in an orderly fashion, I will be glad to answer any questions before that or any way you like, but the statement is directed to explaining that approach.

Senator EASTLAND. I want to be enlightened, frankly, on how the law can control human thought.

Mr. SIGAL. I am sorry, I didn't get your question.

Senator EASTLAND. How a statute can control human thought.

Mr. SIGAL. By making it a penalty to entertain given thoughts.

Senator FERGUSON. Does it do that in this bill?

Mr. SIGAL. I think so, gentlemen, and I will elaborate if I may in the course of this statement.

Senator EASTLAND. I will be very interested to get it.

Mr. SIGAL. We believe that there are adequate laws now on the statute books to combat any "clear and present danger" from communism, which is all the proponents of this bill seek to safeguard against, that is as we understand it. While we are strenuously opposed to the views of those who would be immediately affected by S. 1194, we must recognize the perils to which legislation of this type would expose the whole Nation.

Today Communists are condemned as un-American because their motives are suspected, and so, if S. 1194 were to become law, those who furthered the Communists' program would be penalized.

Senator FERGUSON. Mr. Sigal, as a lawyer, you say that the Communists are only condemned because their motives are suspected? Is that the only reason why Communists are condemned in America?

Mr. SIGAL. We might state it differently. Of course, their program is objected to, certainly.

Senator FERGUSON. Yes.

Mr. SIGAL. There is no question about that.

Senator FERGUSON. You say that your two organizations violently oppose their program.

Mr. SIGAL. Certainly.

Senator FERGUSON. Then you would say that there is reason for suspicion, is there not?

Mr. SIGAL. I think there is reason for objecting to their program.

Senator FERGUSON. Yes.

Mr. SIGAL. Yes. The question of course is whether or not there is in the first place a clear and present danger and in the second place, whether the mechanics adopted here will do more damage to the Nation as a whole, to our democratic institutions in the course of trying to eliminate what is considered to be this peril.

Senator FERGUSON. All right. The United States Government are trying 11 men in New York City. You are in full sympathy with that trial?

Mr. SIGAL. I would like to discuss that trial separately, if you please.

Senator FERGUSON. And your organization is in full sympathy with that trial?

Mr. SIGAL. I don't think that is pertinent, Senator.

Senator EASTLAND. I think it is a pertinent question.

Senator FERGUSON. Why is it not?

Mr. SIGAL. I am perfectly willing to give you my personal opinion. I am not trying to avoid giving you my personal opinion. Your question was what position the organizations have taken on this.

Senator FERGUSON. Do you know?

Mr. SIGAL. I am not aware of specific positions taken by either of these organizations on this particular trial.

Senator FERGUSON. Do you know what their general idea is?

Senator EASTLAND. I would like to have an answer to the Senator's question.

Mr. SIGAL. There is some question as to whether or not—

Senator EASTLAND. Are you in sympathy with those trials?

Mr. SIGAL. May I explain. I think there is considerable question whether or not the acts or whether the indictment there states a crime under a constitutional law of this Nation. I think there is considerable constitutional question. If that law is constitutional and the indictment is properly framed in accordance with the law, then certainly I am in sympathy with the matter. If you ask me as a lawyer as to whether or not there is any question about it, I think there is question certainly on the constitutional aspects of the whole proceeding.

Senator FERGUSON. Suppose that they have been guilty of a conspiracy to overthrow this Government by force. Do you not think that that is a proper thing for the law to prohibit?

Mr. SIGAL. If there is a clear and present danger established. Under the constitution as the Supreme Court has interpreted it, that kind of act is a crime and it is properly held to be a crime if there is a clear and present danger of execution of the plan or the program.

Senator FERGUSON. That was under another statute. Do you not think that the United States Congress can pass a law making it illegal to conspire to overthrow this Government by force or violence?

Mr. SIGAL. There is no question of that.

Senator FERGUSON. No doubt of it.

Mr. SIGAL. No doubt about that; no, of course not.

Senator FERGUSON. Has either of these organizations taken any stand as far as this trial in New York is concerned?

Mr. SIGAL. I cannot answer.

Senator FERGUSON. You do not know?

Mr. SIGAL. I do not know. I can't answer. I was going to say my impression is that they have not, but I am not certain.

Senator MILLER. You express yourself to the effect that you have doubts as to the constitutional phases of the prosecution that is going forward. That is due entirely to inadequacies of law, is it not?

Mr. SIGAL. If it is unconstitutional?

Senator MILLER. Yes.

Mr. SIGAL. That may be; yes.

Senator MILLER. You would say so as a lawyer?

Mr. SIGAL. I would qualify that. If the law and the indictment as drawn up under the law fail to state the kind of crime which may constitutionally be penalized, then it isn't merely a failure of the law. It is a limitation of the constitution.

Senator MILLER. You think, then, that that would be a failure or inadequacy probably of the charge contained in the indictment. Is that it?

Mr. SIGAL. Partly so. I think it is clear——

Senator MILLER. Let me ask you: Do you figure that we would have an adequate law in the instant case, that is, of these particular prosecutions, in the event it was properly charged?

Mr. SIGAL. Let me answer it in this way: If the evidence establishes that the acts of the defendants constitute a clear and present danger to the Government of the United States, then there can be no question of the validity of the prosecution and the constitutionality of the proceeding.

Senator MILLER. That is true, but in order to bring about a condition of that kind and arrive at a decision such as you have suggested, it would be necessary in the first instance, would it not, to have an adequate law upon which to base a prosecution?

Mr. SIGAL. Oh, unquestionably.

Senator MILLER. If this act does that very thing, what could there be harmful about it?

Mr. SIGAL. If I might be permitted to give my statement, I will give my reason for thinking it is not an adequate law.

Senator MILLER. Very well.

Mr. SIGAL. May I proceed, Mr. Chairman?

Senator EASTLAND. You may proceed.

Senator FERGUSON. One more question: Do you not think that the people of America have a right to suspect the motives of the Communists?

Mr. SIGAL. Oh, I think so; but people are not penalized for motives. People are penalized for criminal acts.

Senator FERGUSON. Do you know what the Communist Party line is?

Mr. SIGAL. Well, I know what I read in the papers and what other information I get. I think I have a general knowledge of the Communist Party line on basic principles, basic issues.

Senator FERGUSON. Do you think it is a world-wide conspiracy to overthrow capitalism and governments such as the United States of America?

Mr. SIGAL. Whether I would use the term "conspiracy" in a technical sense, I am not certain. I think it certainly is a movement the basic principles of which would look toward the elimination of capitalism and the establishment of a dictatorship of the proletariat, yes.

Senator EASTLAND. Do you think that movement is controlled from Moscow?

Mr. SIGAL. I think so far as the Communist movement as such, Moscow certainly exercises a dominant influence.

Senator EASTLAND. Do you think they control the Communist Party of the United States?

Mr. SIGAL. I can't say. I would say from what I observe that I certainly think they exercise a dominant influence over the basic

policies of the organization, judging by the line that the American party takes when you compare it with the line that the Soviet Union takes on basic political principles.

Senator EASTLAND. Do you think the Soviet Union controls the Communist Party in the United States?

Mr. SIGAL. I have give the best answer I can. I think it exercises a dominant influence over it.

Senator EASTLAND. Then the program is to overthrow our Government by force, by violence, and to establish this governmental control which itself is controlled by a foreign government.

Mr. SIGAL. I am willing to accept for the sake of argument that that is the eventual objective.

Senator EASTLAND. That is what we are attempting to combat in this legislation.

Senator FERGUSON. Do you not think that is un-American?

Mr. SIGAL. I think it is opposed certainly—

Senator FERGUSON. I am interested in your answer.

Mr. SIGAL. Insofar as it proposes to overthrow this Government by force and violence, it is clearly un-American.

Senator FERGUSON. Clearly un-American.

Mr. SIGAL. Right.

Senator FERGUSON. And the people have a right to suspect it.

Senator EASTLAND. Do you think a movement is un-American that is controlled from abroad and that seeks to place the control of this country in the hands of a foreign power?

Mr. SIGAL. I certainly object to it, whether you call it un-American or not.

Senator EASTLAND. Is it un-American?

Mr. SIGAL. I think all Americans would object to it. I think the term "un-American" is a very vague one. I object to it and I think most Americans would object to it certainly.

Senator FERGUSON. Do you not think it should become illegal and should be penalized, as you say?

Mr. SIGAL. I think it should be illegal to make any present attempt to achieve it. The question of whether or not persons entertain the idea that sometime in the future that is a desirable objective is not something under our Constitution which should be made a crime.

Senator EASTLAND. It goes further than that. You have a movement and you have overt acts this day to execute the program.

Mr. SIGAL. The overt act itself is not sufficient. Under the Supreme Court decisions there must be some clear and present danger that the objective will be achieved.

Senator EASTLAND. Would there be a clear and present danger when representatives of that organization hold important places in this Government?

Mr. SIGAL. I don't think that in itself constitutes a clear and present danger, depending on what places they hold, of course. The fact that they hold jobs in the Government would not in itself constitute a clear and present danger.

Senator FERGUSON. Mr. Sigal, there has been testimony before this committee so far, in which Mr. Mundt has testified, that a young man from Detroit was sent over on a scholarship to Russia and he studied and was given the location of water works and other vital places in Detroit, and was taught how to sabotage, street fighting, and all, to

overthrow this Government and to destroy property and lives in the city of Detroit. The evidence indicates that and shows that. Would it not be true that the people had a right to say that that was un-American and that the acts of that kind of people here in America under that kind of conspiracy should be penalized and made illegal?

Mr. SIGAL. I can restate it, Senator, if you wish.

Senator FERGUSON. What do you say about that?

Mr. SIGAL. The fact that one man has studied such things I don't think constitutes a clear and present danger to the Government of the United States.

Senator EASTLAND. You have hundreds of acts like that.

Senator FERGUSON. Hundreds of them have been taught this same thing.

Senator EASTLAND. Do they all create a clear and present danger?

Mr. SIGAL. May I point out, if I am permitted to do so, that this law does not apply simply to acts? It applies to thought, if I may be allowed to elaborate.

Senator FERGUSON. It does not, but you may elaborate on it. It is the conspiracy, the combination of such people. Noel was this boy's name. The combination of those people coming back to America. Do you not think there is a present danger in hundreds of those people all over America?

Mr. SIGAL. If there were enough of them and if it approached close enough to execution of the plan, that is another thing, Senator.

Senator FERGUSON. Then do you say that America ought to wait until they are just built up to the point where they can overthrow before we pass a law?

Mr. SIGAL. No, of course not, but I say it is not the job of Congress in a declaration of findings to convict these people in advance. That is one of the deficiencies of this law. It does not leave it to a court to decide whether or not there is a clear and present danger of such thing. The Congress makes certain findings, there are certain very vague and general criteria set up which we believe are in themselves unconstitutional because of their vagueness, and then the crime consists, at least in part here, of failing to register and so forth.

Senator FERGUSON. Do you think that Communists should be registered in America?

Mr. SIGAL. I think that Communists as Communists should no more be registered or should be registered to the same extent as Democrats as Democrats and Republicans as Republicans. The question of registration as such for the sake of expressing an opinion we think is unconstitutional under the decisions of the Supreme Court.

Senator FERGUSON. Should people who are agents of foreign governments be registered in America?

Mr. SIGAL. There is a law to that effect now.

Senator FERGUSON. You believe in that?

Mr. SIGAL. That is the law. I do.

Senator FERGUSON. If a Communist is an agent of a foreign power, why should not his association be registered?

Mr. SIGAL. Assuming that association—Well, to start initially, to say that every person who may be found to be a Communist under the provisions of this law doesn't necessarily make that person an agent of a foreign country.

Senator FERGUSON. Wait a minute. You did not answer my question, but there is no doubt in your mind that Communists are agents of a foreign power.

Mr. SIGAL. If you say individual Communists, I am not prepared to say that every person who has joined the Communist Party—

Senator FERGUSON. You do not have to say every one. I am asking you now whether or not Communists in America are not agents of a foreign power.

Mr. SIGAL. I am prepared to believe that a number of Communists in this country are agents, may be considered agents, of a foreign power.

Senator FERGUSON. All right. When they form an association known as the Communist Party, why should they not as an organization be registered and the Government know who its officers are and who its members are, because that party is an agent of a foreign power? Why should they not be registered?

Mr. SIGAL. It has been the basic principle of American law, at least up to this time, that guilt is personal, that no man should be convicted of a crime because of his association with somebody else who may have committed a crime. Just because the officers of a given organization, which by administrative procedures, found to be a Communist-controlled organization, failed to register, should not, we think, under American principles be convicted of a crime because certain other persons failed to comply with the law.

Senator FERGUSON. Let us say that the officers of this organization are Communists, and they are foreign-dominated. What is wrong about registering that association?

Mr. SIGAL. I think the whole context in which that appears in this law—If I may I say, Senator, you cannot consider separate provisions in this law apart from the total effect of the law and its purposes.

Senator FERGUSON. Forget this law for a moment. I give you the general principle: You and I know that Communists are foreign agents, that they have a party line, and that they follow it. We start out with that premise. We know that there are Communists in America who are foreign agents. We know that, do we not?

Mr. SIGAL. Yes, sir.

Senator FERGUSON. All right. Let us say the next thing is that those Communists organize and call themselves the Communist political party. What is wrong about the registration of that party?

Mr. SIGAL. If you take it apart from all other considerations—

Senator FERGUSON. Yes.

Mr. SIGAL. And if you establish and postulate the assumption that every person who is a member is an agent of a foreign country, I see no objection to the group as such being required to register.

Senator FERGUSON. All right.

Mr. SIGAL. If you make all these other assumptions—

Senator FERGUSON. Suppose some innocent person is in there. You register corporations. States require them to give a list of all their stockholders. What is wrong about that? What is wrong about registration?

Mr. SIGAL. I have said if every person in the group is an agent of a foreign country—

Senator FERGUSON. But suppose they are not. Suppose there are a few in there who are not, what is wrong about the registration of the association and the listing of the members?

Mr. SIGAL. Because it becomes a crime under this law for a person not to register, for the officers not to register, and for a person to belong to an organization, whose officers have not registered.

Senator FERGUSON. And knowingly remains a member?

Mr. SIGAL. Over whom he has no control, over whom he may have no control. You are making it a crime for this person who may have absolutely nothing to do with what the officers of the organization are doing.

Senator FERGUSON. But the officers of the organization are supposed to register, and if a man remains in the organization a certain number of days after he knows the officers failed to register, after a final order is issued by a board or commission, and they don't get out, why shouldn't they be penalized?

Mr. SIGAL. I think the question, Mr. Senator, is why should they be penalized?

Senator FERGUSON. If you believe in communism.

Mr. SIGAL. I do not believe in communism, but you are postulating the assumption that this person is not a foreign agent. All right, with that assumption, I ask you why should they be penalized if you assume from the start that they are not agents of a foreign country.

Senator FERGUSON. If a group of foreign agents are organized into an association, and 90 percent of them are foreign agents, the law requires them to register. Why should not the Government know all of the members of that organization?

Mr. SIGAL. It is not merely a matter of knowing, Senator Ferguson.

Senator FERGUSON. That is all this does.

Mr. SIGAL. I beg your pardon. It goes much further. If I may be allowed to state my ideas in some logical form, I will answer your questions, I think.

Senator EASTLAND. You may proceed and then we will ask questions, if that is all right.

Senator FERGUSON. That is all right.

Senator EASTLAND. Proceed, Mr. Sigal.

Mr. SIGAL. Chief Justice Hughes some time ago, in *De Jonge v. Oregon*, made this statement:

The greater the importance of safeguarding the country from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press, and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government.

Senator EASTLAND. Do you not believe that that is what is in this bill, what it seeks to do?

Mr. SIGAL. No; I think not, Mr. Senator.

Senator EASTLAND. It seeks to uphold exactly what Chief Justice Hughes has said.

Mr. SIGAL. I think not, and I think I will come shortly to my reason.

Senator EASTLAND. The attempt of this bill is to safeguard the right of free speech, do you not think so?

Mr. SIGAL. No.

Senator EASTLAND. Do you have free speech in any country dominated by Communists?

Mr. SIGAL. It appears certainly that the purpose is to repress it. It is not the intention to propagate them, to permit them to promote their ideas. The intention is to make it as uncomfortable as possible to promote those ideas, to promote this kind of political discussion. That is the objective of the bill as I read it.

Senator EASTLAND. Is it not the objective of the bill to prevent a foreign country from taking over the United States through its agents in this country and are we not trying to repress that movement?

Mr. SIGAL. The question is, Do you in the course of carrying out that objective seriously damage the fabric of our constitutional government? I think that is the basic issue. If you cause more damage in the effort to stop this than good that you can accomplish, then I think this thing is objectionable.

Senator EASTLAND. The object of the bill, as I understand it—and frankly I have not made up my mind about the bill—is to safeguard American institutions and to maintain this Republic. It is to maintain the system that gives us freedom of speech and freedom of the press and freedom of assembly, the very things that Communists take away.

Mr. SIGAL. If I may use a rather homely—

Senator EASTLAND. It is, further, to the end that Chief Justice Hughes stated in what you cited—

that the Government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means.

This bill attempts to protect those rights, does it not?

Mr. SIGAL. Senator, it may certainly be the objective to protect those rights, but I think in the course of protecting them we are seriously impairing and damaging those rights. I think that is the basic issue here, as to whether or not these constitutional freedoms will be suppressed by the force of repression exercised, to such extent that people will be afraid to discuss unorthodox ideas.

Senator EASTLAND. I am going to thoroughly agree with you in the next sentence in your statement: "These words," you mean there the Chief Justice's, "have apt application to the present problem." I want to thoroughly agree with you in that statement.

Mr. SIGAL. The question is the application.

Senator EASTLAND. Correct.

Mr. SIGAL. If it be true, as S. 1194 declares, that our American institutions are threatened by advocacy of a totalitarianism alien to our traditions, we must meet the threat not by direct or indirect repression, but by the "free political discussion" which is the very cornerstone of democracy.

Senator FERGUSON. Mr. Chairman, I cannot help but ask a question.

Senator EASTLAND. Go ahead.

Senator FERGUSON. Do you think that you can discuss our free institutions with Communists?

Mr. SIGAL. You mean do I think they will listen?

Senator FERGUSON. Yes.

Mr. SIGAL. They may listen, but the question is, how many Americans will listen to what they have to say? Should we be afraid of what they say? Are Americans not sufficiently sold on our democratic institutions to ignore them so that the threat is of no consequence?

Senator EASTLAND. The test is not what a man says in a speech he makes or what he writes. As I understand, the test here is conspiracy,

an organization that conspires to destroy this country and to deliver this country into the control of a foreign power. That is the test.

Mr. SIGAL. That is the general statement which the bill has made, yes, but that I think is not in itself sufficient to warrant this kind of procedure set up here.

Senator EASTLAND. I think this is a very intelligent and very shrewdly drawn defense of communism in the next paragraph. That is what it means.

Mr. SIGAL. I disagree. I must disagree violently. May I point out the very next statement of Justice Jackson that we quote:

Freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

Senator EASTLAND. Correct. I agree, and I base my statement that this is a shrewdly drawn defense of communism on the statement above and that very quotation right there. Of course you have a right to differ as to things that touch the heart of the existing order, but has a man got a right to take part in a conspiracy to destroy his country's independence and to deliver his people to the control of a foreign power? Are we not dealing in reality with treason?

Mr. SIGAL. In treason, if I may point out, Senator you require proof of definite overt acts of the individual. In the most serious crime that our Constitution establishes, very special safeguards are set up to protect a man. There must be personal guilt. There must be proof of an overt act.

Senator EASTLAND. I understand that.

Senator FERGUSON. Not personal guilt if there is a conspiracy.

Mr. SIGAL. I appreciate personal guilt leading to an overt act or more than one overt act in treason. The question is the overt act. There is not a single overt act required by this law so far as I read the law. I may conspire. Under the Mundt bill it so merely an agreement, without a single overt act which would constitute the crime. I just don't see how you can——

Senator FERGUSON. Are you familiar with the attempt of China, for instance, through General Marshall, to consolidate the Nationalist Government of China with the Communists, and are you familiar with what happened in Czechoslovakia in trying what you call free political discussions of another government with the Communists?

Mr. SIGAL. I am generally informed on those things.

Senator FERGUSON. You would say there is no chance of a free political discussion, would you?

Mr. SIGAL. May I point out that the situation here, Senator, is not what it is in China. It is not what it was in Czechoslovakia at the time the seizure took place. We now have a democracy which we think the great majority of our people want to preserve.

Senator EASTLAND. That is right.

Senator FERGUSON. That is correct.

Senator EASTLAND. Is that not what we are doing, preserving it?

Mr. SIGAL. I think not. I think if this is adopted it will seriously endanger those very things which you say the bill tries to protect.

Senator FERGUSON. Do you think if a group of Fascists, which this bill prohibits, too, under section 4——

Mr. SIGAL. I don't recognize that, Senator.

Senator FERGUSON. You do not?

Mr. SIGAL. No.

Senator FERGUSON. You do not think that is totalitarian?

Mr. SIGAL. No, no. What I mean is I don't know what you have in mind when you say that the Facists are covered by the law, what foreign country would be involved. Certainly it is clear that under this act home-grown totalitarianism is not a crime. Even though a group may get together and do all these various things that is perfectly all right.

Senator FERGUSON. That is true.

Mr. SIGAL. Even though the fabric of our government would be endangered to exactly the same extent, nevertheless, if there is no showing of any connection with a foreign group, that apparently is not objected to in this law.

Senator FERGUSON. Is it not the idea of the foreign government or foreign power that makes it something that this government must defend itself against?

Mr. SIGAL. Would you say this government should not defend itself against a threat to overthrow the government by violence if the violence is occasioned by home-grown Fascists?

Senator FERGUSON. Yes.

Mr. SIGAL. This law says nothing about that. If it is merely a question of—

Senator FERGUSON. Do you think that ought to be prohibited?

Mr. SIGAL. Of course I do. Why does the law make a distinction?

Senator EASTLAND. If you think it should apply to home-grown Fascists, why should it not apply to agents of a foreign power?

Mr. SIGAL. I think the laws on the books right now are perfectly adequate to take care of the situation. Nobody would claim that it is legal to overthrow the Government of this country by force and violence. Nobody would support that contention. We say that the provisions of this law, and I will give my reasons more in detail as I go along, are a much greater danger to the democratic principles which all of us want to uphold than the present threat of 75,000 Communists or whatever there may be in this country.

Senator FERGUSON. Could I ask you how you came to come here? Did you have a board meeting?

Mr. SIGAL. I was asked by both of these organizations to come.

Senator FERGUSON. Who asked you?

Mr. SIGAL. I was asked by the national office of the Americans for Democratic Action, which have their office here in town, and also by a representative of the ACLU.

Senator FERGUSON. Did these bodies ask you to give your opinion, or is this their opinion?

Mr. SIGAL. This is their opinion, and it is my opinion.

Senator FERGUSON. But did you write it or do they write it?

Mr. SIGAL. This statement which you have before you is not my own drafting.

Senator FERGUSON. It is not your drafting.

Mr. SIGAL. It is not my own drafting. May I point out, Senator—

Senator FERGUSON. Whose drafting is it?

Mr. SIGAL. May I finish my statement? We were given 2 days' notice. We got a wire on Wednesday for both organizations to come here today, and there was no time to prepare an adequate statement

in that short time. What we did was simply throw together a statement as quickly as we could and come here today. I didn't have the time.

Senator FERGUSON. You have many members?

Mr. SIGAL. Yes, indeed.

Senator FERGUSON. Is this the action of the board of directors of each of these organizations?

Mr. SIGAL. Which do you mean, this statement?

Senator FERGUSON. This statement you have.

Mr. SIGAL. The principle. Both organizations have taken exception to the Mundt bill.

Senator EASTLAND. Who are they?

Mr. SIGAL. The national convention of the Americans for Democratic Action was held only a month ago in Chicago, and adopted a general statement of principle in opposition to the Mundt bill, the basic principles of it. Do you want to know their names?

Senator EASTLAND. No; I do not care about that.

Mr. SIGAL. So far as the American Civil Liberties Union is concerned, do you want to know their names?

Senator EASTLAND. Yes.

Mr. SIGAL. Mr. Roger Baldwin is the executive head of the Americans for Civil Liberties Union.

Senator EASTLAND. Roger Baldwin. He used to be with the Government.

Mr. SIGAL. Never, not to my knowledge, no. This is Roger Baldwin who has been associated with the Civil Liberties Union for 30 years.

Senator FERGUSON. Who else is in that organization? I am not familiar with it.

Mr. SIGAL. Morris Ernst is one of their counsel. I think he is now the general counsel of the organization. If you wish I can provide you with the names of the board of directors.

Senator EASTLAND. Would you please tell me, Mr. Sigal, who prepared this statement?

Mr. SIGAL. This particular statement was prepared in the national office of the American Civil Liberties Union.

Senator EASTLAND. By whom?

Mr. SIGAL. I think their house counsel is a man by the name of Levy. I think his first name is Herbert.

Senator EASTLAND. What is the connection, the ADA and the American Civil Liberties Union?

Mr. SIGAL. There is no formal connection. They are organizations both of which think along similar lines on the issues of civil liberties. I happen to belong to both. That is why I have been asked to represent them and speak here. I am president of the Washington chapter of the Americans for Democratic Action.

May I proceed?

Senator EASTLAND. Yes, sir.

Mr. SIGAL. The bill has two major objectives. It imposes criminal sanctions for a large number of activities; it seeks to compel the registration of certain kinds of Communist organizations. Before considering the provisions of the bill in detail, we wish to point to two underlying aspects which in our opinion render most of its provisions unconstitutional: (1) The definitions of the bill; and (2) the fact that

determination of the basic issue in regard to the character of the organization is left to the Subversive Activities Commission rather than to the courts.

There are two basic terms in the bill: "Communist political organization," section 3-3, and "Communist-front organizations;" neither is defined with sufficient precision.

Senator FERGUSON. Do you think you could define them?

Mr. SIGAL. I think I would have a great deal of difficulty. I would have at least as much difficulty as the drafters of the bill have had.

Senator FERGUSON. Then is there any reason why something should not be done just because it is impossible to take an organization with all its ramifications and all its ebbs and flows and be able to define it?

Mr. SIGAL. Under the Constitution, Senator, if you want to make an act a crime, you have to define it with reasonable certainty so that people who might be covered can be informed.

Senator FERGUSON. All right, I will give you a crime: Gross negligence in the operation of an automobile. That is a crime in many States. Will you tell me how definite gross negligence is? It has been sustained by the courts.

Mr. SIGAL. Obviously I can't tell you how definite that is.

Senator FERGUSON. Will you look it up and come in and say whether or not that is more definite than what these bills do?

Mr. SIGAL. I have cited here cases which are much closer to the question.

Senator FERGUSON. Are you familiar with that, though?

Mr. SIGAL. Yes, of course I am familiar with that, and of course there is a vast body of law which defines negligence and which defines gross negligence. So we cannot say at this stage that persons are unfamiliar with what gross negligence in the driving of a car may constitute. I think it is not quite the same.

Senator FERGUSON. Will you give us your opinion later?

Mr. SIGAL. You have my opinion. I can cite you many cases on the question.

It would appear that a finding could be based on any one of the criteria set forth in section 14. In the case of "political" organizations, the criterion is control by a foreign government or political organization, plus operation "primarily to advance the objectives of the world Communist movement."

Either criterion can be determined on the basis of a series of considerations set forth in section 14, many of them wholly unrelated and entirely lawful. There is a typographical error in the statement. It should be "lawful" instead of "unlawful."

Senator FERGUSON. Are any of them unlawful?

Mr. SIGAL. Some of them would be unlawful, but some of them would be entirely lawful, and there is no distinction in the act as between those that are lawful and unlawful. Among those mentioned are the extent of nondeviation of its views and policies from those of foreign Communist governments and organizations and the extent to which the organization resists the efforts to obtain information with regard to its membership. Included also are matters more directly connected with control by a foreign government.

In the case of "front" organizations, the criterion is either control by "Communist political organization" or a finding that the suspected

“front” is primarily operated to give aid to a “Communist political organization,” a Communist foreign government or the “world Communist movement.”

Either of these criteria can be established on the basis of the identity of persons active in management, the sources or use of funds and the positions taken by the organization on matters of policy.

We submit that such catch-all definitions transgress the requirements of certainty imposed by the due-process clause and operate as a serious impairment of freedom of speech and association.

The case cited there is one of the most recent cases on the determination of what constitutes definition of certainty in any criminal law.

MR. YOUNG. That is the Winters case, Mr. Sigal.

MR. SIGAL. Yes.

MR. YOUNG. You are also familiar that in the Winters case you find the following statement, that in any bill “the entire text of the statute or the subject dealt with may furnish an adequate standard.” That is also in the Winters case. Are you familiar with that?

MR. SIGAL. Oh, yes; that is true. Despite all that, in that case the statute was declared unconstitutional.

Senator FERGUSON. Mr. Sigal, are you familiar with any front organization?

MR. SIGAL. I know the names of organizations that are called Communist-front organizations.

Senator FERGUSON. Would you know how they act?

MR. SIGAL. What do you mean, how they act?

Senator FERGUSON. What their purpose is and how the Communists take them over, and all.

MR. SIGAL. I know what is generally said of organizations that are supposed to be Communist-front organizations.

Senator FERGUSON. Are they not dominated by the Communists?

MR. SIGAL. I am not prepared to agree to that, Senator. I don't know all of them.

Senator FERGUSON. If you do not know that, how can you say they should not be required to register?

MR. SIGAL. It seems to me the burden is to establish that they should be required to register, not why they shouldn't be required to register. You are singling out certain people. It seems to me you should establish why those people should be dealt with differently from anybody else.

Senator FERGUSON. Does not the bill do that?

MR. SIGAL. I think not properly. I give you my reasons. The question of how you define such an organization we think is so indefinite that many types of political organizations may well be required to register and be penalized if they do not register.

Senator FERGUSON. Do you think that the United States Government has no right to register, for instance, foreign agents of a government?

MR. SIGAL. I didn't say that, Senator. I don't think that is true. The individual. If a given individual fails——

Senator FERGUSON. If they combine themselves into an association, why should not the association be required to register?

MR. SIGAL. If you start with the assumption that every individual is admittedly a foreign agent, then I certainly would not object to

saying that the organization of which all of them are members ought to register. That is not the situation here.

Senator FERGUSON. I cannot get your argument that if some are not, the organization should not be registered.

Mr. SIGAL. Previously the point is how do you determine whether or not a given organization should register. We have said here that the criteria established are so vague and general that you may very well bring into the scope of the coverage of this law organizations which certainly do not fall within this category.

Senator FERGUSON. Suppose you say that if Communists organize, they should be required to register and file reports. You know that the Republican Party and the Democratic Party have to file reports which requires registration.

Mr. SIGAL. They file reports of their expenditures.

Senator FERGUSON. Yes.

Mr. SIGAL. They are not required to file statements of their members, the names of their members, or the people who vote Republican or the people who vote Democratic.

Senator FERGUSON. But the States require that you register at the time. You have to say what ballot you want in all primary elections.

Mr. SIGAL. In order to vote.

Senator FERGUSON. Yes.

Mr. SIGAL. Then the Communists, presumably, and any other political organization is required to do the same thing. To that extent everybody is on an equal level, and there is no discrimination between one group and another.

Senator FERGUSON. Mr. Sigal, do you really compare the Communist Party in America with the Republican Party and the Democratic Party?

Mr. SIGAL. I am not.

Senator FERGUSON. Do you want to compare them?

Mr. SIGAL. For purposes of political action. The question is, are you going to single out a given political group?

Senator FERGUSON. This is not for political action.

Mr. SIGAL. Of course, it isn't for political action. The question is on this particular section we were discussing and the criteria which the act sets up for the purpose of determining whether or not a given organization is a Communist political organization or a Communist front. We say they are so very indefinite——

Senator FERGUSON. Suppose the definition just included Communists who organized.

Mr. SIGAL. But the definition does not say that, Senator, and we are now talking about the bill we have before us. The bill we have before us is so vague and general that it may cover a score, hundreds, thousands of people who never dreamed that they were Communists or had any sympathy with Communists. Your illustration certainly has no pertinence to the way this particular bill or your bill is drafted, because it is so very vague.

Senator FERGUSON. Do you think that you cannot tell from those bills who are required to register?

Mr. SIGAL. Absolutely not. If I may go on, I will indicate in more detail.

Senator FERGUSON. If you can point that out.

Mr. SIGAL. As to the next point in what I have said: The foregoing is rendered even more objectionable by the fact that the Government may be able to avoid offering proof before a judge and jury that the suspected organization comes within the category of the law. For the bill in its registration provisions compels action by an organization designated as coming within the scope of the law by the subversive activities commission under the administrative provisions of section 14. The failure of the organization to register is then a crime. It is not clear whether it is criminal to fail to register before a formal designation is made.

Senator FERGUSON. I would say it is clear in the bill that it is.

Mr. SIGAL. I think it could be interpreted one way or another. I think it is not quite certain. That is just an aside.

Senator FERGUSON. It is after the Commission or the Board enters an order.

Mr. SIGAL. I think it is not quite so clear. That is a smaller point.

Membership in an organization that has not registered is then also a crime. Use of the mails or instrumentalities of interstate commerce or of the radio is a crime unless accompanied by a statement that a Communist organization is responsible for the utterance.

Senator FERGUSON. Do you think that is wrong?

Mr. SIGAL. The decision in *Thomas v. Collins* had declared it unconstitutional, I think.

Senator FERGUSON. You know now that all political parties are required to give who sponsored the program and who paid for it. Even a billboard must designate who pays for it. You know that.

Mr. SIGAL. It is not made a crime to refuse—

Senator FERGUSON. Will you look at the statute and see?

Mr. SIGAL. May I finish, please?

Senator FERGUSON. Yes.

Mr. SIGAL. It is not made a crime to use the mails without identifying the nature of the organization.

Senator FERGUSON. No, but it is made a crime not to designate on the information sent through the mail as to who is sending it.

Mr. SIGAL. That applies to everybody, Senator.

Senator FERGUSON. No, no; just to the two political parties.

Mr. SIGAL. I say it applies to everybody who comes under the designation "political party."

Senator FERGUSON. What is wrong about this?

Mr. SIGAL. What are you pointing to?

Senator FERGUSON. Compelling them to register or to say who is giving the radio program, if they are Communists?

Mr. SIGAL. Insofar as it distinguishes those from anybody else who does it. That is No. 1. No. 2, the Supreme Court in *Thomas v. Collins*, I submit, has declared that it is unconstitutional to require anybody to obtain a license before he can deliver a speech. I think whether it is a speech or radio address, it is the same thing. You are licensing the right to talk. I think that is not constitutional as the Supreme Court has interpreted the Constitution.

Since it is contemplated that the Subversive Activities Commission will determine which organizations are within the scope of the law, the Government may contend that in a prosecution under the law that they need only show failure to register, failure to label speeches

or printed matter or continuance of membership, and that the order of the Subversive Activities Commission, if upheld on appeal, is conclusive. That we submit is in violation of the provisions of the sixth amendment which guarantees trial by jury and a right of confrontation of witnesses.

Section 4 creates criminal penalties wholly independent of the two types of organizations we have been discussing. Any conspiracy or agreement to perform any act which would substantially facilitate or aid in the establishment of a totalitarian dictatorship is punished by a possible fine of \$10,000 or imprisonment for 10 years, plus ineligibility for public office, provided the dictatorship is under the control of a foreign government or individual. Domestic efforts to produce totalitarianism are left untouched. The bill quite plainly is aimed at every effort in this direction and is not limited to acts of violence and to overt acts at all. For the section expressly punishes an agreement to do any act which would substantially facilitate or aid the establishment of such a dictatorship.

Senator FERGUSON. There is a little difference in each bill on that.

Mr. SIGAL. Yes, I appreciate that. One leaves out the "or agree."

Senator FERGUSON. One says conspire and combines to facilitate.

Mr. SIGAL. Yes, I appreciate that. One says "agree."

Senator FERGUSON. Do you think there is any difference in the language?

Mr. SIGAL. There is difference in the language. I don't think there is any difference in the constitutional disability as to each.

Senator FERGUSON. You do not think there is any difference?

Mr. SIGAL. I think obviously the Mundt bill is wider and to that extent is more objectionable in this provision, but I think that the same thing is true in 1196 as in 1194.

There is now a definition as such of what constitutes a "totalitarian dictatorship," lacking in last year's Mundt bill, and I, of course, agree that there is a little difference in the definition of both in each act. Beyond that, it is quite clear that this provision on its face is not applicable to acts alone, but to speech and publication as well. It is hard to imagine phrases broader than those used as a method of criminal liability, except perhaps the phrase used in last year's bill, that is, "in any manner" to facilitate or aid, and so forth.

Again referring to *Winters v. New York*, the court said:

A statute so vague and indefinite, in form and as interpreted as to permit within the scope of its language the punishment of incidents fairly within the protection of the guaranty of free speech is void on its face.

Mr. YOUNG. Mr. Sigal, in the light of that *Winters* case, which you are making so much of, let's look at the decision in *Screws v. United States*. In upholding a criminal statute against a charge of uncertainty in that case, the court said that the constitutional requirement of due process of law demands only that a statute give a person acting with reference to it "fair warning that his conduct is within its prohibition."

You are acquainted with that also? The *Screws* case is one of a long line of decisions in cases, which say that under the fifth amendment statutes have to be definite. The question is whether or not this bill here is definite enough; is that right?

Mr. SIGAL. That is the point we make. As to the rest of section 4, it is so vague that one would not know with any certainty what actions

would subject one to criminal liability. What exactly is prohibited in the injunction against—

knowingly to combine, conspire, or agree with any other person to perform any act which would substantially facilitate or aid in the establishment of a totalitarian dictatorship.

Senator FERGUSON. Do you not think that is clear?

Mr. SIGAL. May I finish the statement? The next is an example: If a group files a brief amicus in the trial of the Communist leaders in New York and helps secure their acquittal, is this an agreement or combination which would aid such an establishment?

Senator FERGUSON. Do you think it is?

Mr. SIGAL. That is the question.

Senator FERGUSON. I am asking you.

Mr. SIGAL. I don't know under the language of this law.

Senator FERGUSON. Do you know it is not? How would that be substantial aid?

Mr. SIGAL. If you start out with the assumption that these people are Communists.

Senator FERGUSON. It is privileged. You know that as a lawyer.

Mr. SIGAL. That is not the point.

Senator FERGUSON. That is the whole point.

Mr. SIGAL. I don't think so. That isn't the point of what we say here. Legal aid is given.

Senator FERGUSON. Yes.

Mr. SIGAL. Not what it says in the brief, but the act of giving legal aid. That is the example given. Is the act of giving legal aid to persons known to be Communists one which facilitates?

Senator FERGUSON. The act of a lawyer to give legal aid to a criminal, when he knows that the legal aid he is giving him is criminal, is a crime. A lawyer isn't protected from that.

Mr. SIGAL. No; of course not.

Senator FERGUSON. If a lawyer goes into a conspiracy to tell a witness not to tell the whole truth, he may say that is legal aid, that will get him out of the crime. He is still liable for the conspiracy to obstruct justice. Would he not be?

Mr. SIGAL. In the example you gave, certainly. There is no question. But we raise this question and don't say we have an answer, Senator.

Senator FERGUSON. Suppose he files a brief, just merely a legal brief, there wouldn't be any liability, but if he conspires—

Mr. SIGAL. What certainty is there to that, Senator?

Senator FERGUSON. You know what is going on up in New York now.

Mr. SIGAL. Oh, no. I say what certainty is there that under the language of law as it is now written that a lawyer who gives legal aid to persons known to be Communists is not facilitating? In this example he would not be the lawyer for the defendants. He would only be filing a brief amicus which does not make him the lawyer for the defendants.

Senator FERGUSON. The court would not accept such a brief. Why would the court accept the brief of a man who was not a lawyer?

Mr. SIGAL. He is not the lawyer representing the defendants, I said.

Senator FERGUSON. Then he would have to have consent of the court to file the brief. If he had, it would be privileged. He would not be aiding in carrying out the conspiracy.

Mr. SIGAL. We raise the question: This law may be so vague that it would destroy that privilege.

Senator FERGUSON. Do you think that lawyers ought to be able to enter into a conspiracy with Communists who are charged with a crime, that they ought to be able to enter into a conspiracy with them to substantially aid in overthrowing this Government or the courts?

Mr. SIGAL. Of course not, Senator.

Senator FERGUSON. No.

Mr. SIGAL. The question I raise here is this example, all we raise and give you as an example. We say the law is so vague and uncertain that even under this example you and I cannot agree whether or not the law would cover it.

Senator FERGUSON. I can agree.

Senator EASTLAND. We will recess now. We have to go to the Senate, and there is no chance to finish this statement. Suppose he finishes the rest of section 5. It will take just a minute.

Mr. SIGAL. Note that there is not even a requirement of intent. It is sufficient if the agreement aids the establishment. Is an attorney who defends a Communist—

Senator FERGUSON. Just a minute. In bill S. 1196 there is. I would not say about 1194.

Mr. SIGAL. Yes, but not in 1194, though.

Senator FERGUSON. There is an intent in 1196.

Mr. SIGAL. Let's examine it.

Senator FERGUSON. Yes, let's examine it. Line 12:

with intent to assist in the establishment within the United States of such totalitarian dictatorship.

A brief by some lawyers may assist and may be intended to assist in the establishment.

Mr. SIGAL. S. 1194 does not contain that.

Senator FERGUSON. S. 1196 does.

Senator EASTLAND. Do you desire to file the rest of your statement or do you desire to appear next Friday?

Mr. SIGAL. Next Friday?

Senator EASTLAND. You may do either.

Mr. YOUNG. We need at least a week's time to inform the out-of-town witnesses. Some of them have expressed a desire, one in particular, to come from California, and we should give them at least a week's advance notice.

Mr. SIGAL. I can't tell you now, Senator, because I don't know what my schedule is. I can let you know later.

Senator EASTLAND. You may take your choice.

Mr. SIGAL. Thank you.

Senator FERGUSON. It is nice seeing you again.

Senator EASTLAND. The meeting is adjourned.

(Thereupon, at 12 noon, the subcommittee recessed until 10 a. m., Friday, May 13, 1949.)

(Mr. Sigal's complete statement appears in the appendix.)

CONTROL OF SUBVERSIVE ACTIVITIES

WEDNESDAY, MAY 18, 1949

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to call, at 10 a. m. in room 424, Senate Office Building, Senator Herbert R. O'Connor, presiding.

Present: Senators McCarran (chairman), O'Connor (presiding), and Miller.

Also present: Senator Johnston; and Robert Barnes Young, and John Mathews, professional staff members.

Senator O'CONNOR. The meeting will please come to order.

The subcommittee of the Judiciary Committee will proceed now to further consideration of S. 1194 and S. 1196. Numerous witnesses have been invited to appear or have requested to appear and we shall be pleased to give opportunity to those individuals to be heard.

The first witness on the list is Mr. Harry V. Hayden who will introduce Mr. Green. I may say at the outset that in conformity with the procedure that has been adopted by the subcommittee, I will ask the counsel if he will proceed to administer the oath and make the regular statement.

Mr. YOUNG. Mr. Hayden, will you raise your right hand, please. Do you solemnly swear or affirm that in the proceedings before this subcommittee you will tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HAYDEN. I do.

Mr. YOUNG. You may proceed to introduce Mr. Green.

TESTIMONY OF HARRY V. HAYDEN

Mr. HAYDEN. Chairman O'Connor, the record of the American Legion since its inception more than 30 years ago is too well known in guarding the country from enemies from without as well as within. We have had in our national organization an organization known as the National Americanism Commission which has jurisdiction over and directs the Americanism program of the Legion. The chairman of that commission, which has membership from all of the States in the Union for the past 3 years has been an outstanding Legionnaire who served as commander of the largest post of the American Legion, Omaha Post No. 1, with some 25,000 members. He has served as chairman of this Americanism commission for the past 3 years. He had an outstanding record serving his country for 5½ years in World War II.

I know of no one better qualified to represent the American Legion on this important legislation than the witness whom I am proud to

present today, National Americanism Chairman James F. Green, of Omaha, Nebr.

Mr. YOUNG. Mr. Green, will you stand and raise your right hand, please? Do you solemnly swear or affirm that in the proceedings before this subcommittee you will tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GREEN. I do.

Mr. YOUNG. For the benefit of all witnesses who are here, I think it would be in order to read once the message of the chairman of the subcommittee given during the first day of the hearings.

Attention should be directed to the policy and rule laid down by the subcommittee concerning the relevancy of proposed testimony. To be more specific, I should like to read a short paragraph once this morning which will apply to all witnesses that we may know the procedure. This is from the first day's hearing on Friday, April 29, 1949, a statement by the subcommittee chairman, Senator Eastland:

The committee has determined whether or not a person is a member of a Communist party now or has been a member of the Communist party is a relevant question. It is something that we should know to be able to evaluate the testimony before the committee. It is a material question. We expect to ask the witnesses whether or not they are members of the Communist Party, whether or not they have been members of the Communist Party, and if any witness should refuse to answer that question, then the committee will not be interested in any testimony from that witness. We do not think that it is right for a witness to come before the committee, refuse to give us his background, and select which questions he shall answer and which questions he shall not answer. So that will be the rule in the conduct of the hearings.

Mr. Green, will you state your name, address, and present occupation, please.

TESTIMONY OF JAMES F. GREEN, CHAIRMAN, NATIONAL AMERICANISM COMMISSION, THE AMERICAN LEGION, OMAHA, NEBR.

Mr. GREEN. James F. Green, Omaha, Nebr. I am an attorney.

Mr. YOUNG. Would you give us the organization that you represent now or any other organizations that you might represent?

Mr. GREEN. I represent only the American Legion.

Mr. YOUNG. Now, Mr. Green, I should like to ask you two questions.

First, are you now or have you ever been a member of the Communist Party?

Mr. GREEN. I am not and have never been.

Mr. YOUNG. Second, are you now or have you ever been to the best of your knowledge, a member of any organization which has been cited by a governmental agency as a Communist organization or a Communist-front organization?

Mr. GREEN. I am not and have never been.

Mr. YOUNG. Please proceed.

Mr. GREEN. Thank you very much.

Senator O'CONNOR. It is our understanding, Mr. Green, that you have a prepared statement.

Mr. GREEN. I do.

Senator O'CONNOR. It is perfectly agreeable for you to proceed to read the statement and then make any supplemental remarks that you may desire.

Mr. GREEN. I suppose I should supplement it at the start by not accepting Harry Hayden's introduction. I should like to blush modestly and lead you to believe that it is true. I am telling you at the outset it is a lot of "bunk," but letting that pass for the moment, I shall, with your permission, proceed with the statement.

I do not believe it is necessary for me to consume time in a recitation of the many resolutions adopted by national and department conventions of the American Legion in support of legislation to expose and control Communist activity and legislation of the type being considered in particular. Nor would it serve any useful purpose to recount the years of faithful activity by the organization I represent in vigilant opposition to the spread of liberty-destroying, atheistic communism. Many of the resolutions heretofore have been introduced at hearings before this committee and before the House Committee on Un-American Activities. They are a part of the record. The history of American Legion activity is too favorably known to be improved by words of mine.

S. 1194 and S. 1196 are identical in their general purpose, differing only in detailed mechanics. For that reason I will treat them as one in this discussion except to point out portions of one which might be preferable to portions of the other.

The legislation is intended to implement the present law and to provide specific controls to prevent and stop a real present danger to the security of the United States.

At this late date extended argument as to the nature of the Communist conspiracy is not required. In times past we have had to look to Communists' own doctrines, interpretations, and declarations of intent to show the party's true nature as the slavishly obedient, willing instrument of a foreign power. That is no longer necessary. Today in the files of this committee, the House Committee on Un-American Activities, and in the domain of public knowledge, there is an increasing record of acts and betrayals in attempted fulfillment of the conspiracy. The Chambers-Hiss incident has more closely associated the "pump-kin" with spies and stolen secrets than with the traditional observances of Halloween and Thanksgiving.

Those who lament this legislation as an intrusion upon fundamental American rights or free speech and free assembly completely ignore the nature of communism. Communism is not an idea. Communism is not a club. Communism is not a political party. It is an organized international conspiracy. It is directed from Moscow according to a central plan based upon Stalin's version of Lenin's version of Karl Marx' 101 year old plan of world conquest. American Communists are bound by iron discipline to carry out the orders given them from abroad. They are not formulating ideas. They are carrying out orders. They are not expressing ideas. They are handing out Soviet propaganda. Won't ideological legal obscurantists learn that they are not dealing with individual thoughts or individual ideas or individual acts. They are dealing with a criminal conspiracy. These are not the free ideas of individuals. They are the imposed ideas of foreign schemers. Unquestioning acceptance is a condition precedent for party membership. Those who join the party surrender individual status. They accept puppet status intentionally and knowingly. They become a part of a foreign intelligence corps to carry out the orders of their commanders. This is not a debating society for expressing ideas in the public forum. It is a conspiracy criminal in

its nature and damnable in its intent. The principle of free speech is nowhere involved. We are not dealing with the expression of thoughts or ideas. At the risk of being redundant, please let me point out again this is conspiracy in execution. Acts pursuant to the conspiracy are ordered acts. Thoughts pursuant to the conspiracy are ordered thoughts. They are imposed; not freely conceived.

Those who would argue otherwise ignore compelling recent evidence. Only recently French Thorez and Italian Togliatti, obedient to their orders, blithely announced that another war would find France's Communists and Italy's Communists teamed with their Bolshevik compatriots on the side of Russia. The sound of their voices had scarce been stilled when the American stooges in Stalin's international act obediently picked up the theme and meekly echoed in effect, "We, too, will play with Russia." Let us quit kidding ourselves. We cannot permit ourselves to be confused. We can't afford to be mistaken. Communists, their aides and dupes, are not welfarers seeking to correct the world's ills. They are not debaters arguing abstract ideas. They are coldly scheming revolutionists and betrayers; bent upon a mission of liberty destruction; lured by a dream of personal power.

Free speech is of the essence of freedom. It must be protected, true. But you cannot permit it to be prostituted. Argument against these bills in the name of free speech is not argument to protect free speech. It is argument to extend it. Again let me repeat we are dealing with a conspiracy, not with a debating society. Eight hundred millions of enslaved peoples covering one-fifth of the worlds' surface are strong argument for us not to be mistaken. Paraphrasing Mr. Justice Jackson's learned statement in his recent Supreme Court decision, we should not convert the Bill of Rights into a suicide pact.

That specious argument about driving Communists underground is so frivolous as to deserve no rebuttal. In its nature this conspiracy is underground. Witnesses in New York who were underground with it testify to the fact that only the false facade of pretended American loyalty shows. The rest is hidden. Schemes of betrayal are laid in secret. Acts are executed in stealth. Stolen secrets are handed over in darkness. What is above ground now? The Mundt and Ferguson bills are calculated to expose, not to conceal.

Exposure is necessary. Organizations should be identified. Literature should be marked. The migration of international contact men and messengers should be stopped. We cannot permit Americans to be victimized. Again we are not dealing with idea salesmanship. Were we, fears could be set at rest. Communism would be overwhelmingly rejected. The selling of Communists is the criminal salesmanship of confidence men and crooks. Americans are entitled to be protected from such fraud just as they are protected against offers of fraudulent securities.

One word about limitations upon employment. No man has an inalienable right to be employed in government. Government, like the individual, has a right to select its employees. Employees of government, who in the course of their daily work are entrusted with the intimate affairs of government, must be absolutely reliable and trustworthy. We have already had too much proof that Communist adherents and sympathizers are not. Sound judgment dictates that they be barred from such employment. No legal right is being

abridged. I might say—this is an attempt to at humor—that millions of Americans do not even recognize the right of Republicans to be employed in Government. I know of no reason why tears should be shed over Communists being deprived of the opportunity. It seems laughable that they want so much to earn their bread at the expense of the Government to which they admit no obligation of fidelity.

Legislation like S. 1194 and S. 1196 is needed. To argue that laws now on the books which heretofore have proved inadequate are sufficient is to ignore the fact that until now conspirators have escaped penalty for their participation in the conspiracy. Even known Communist spies have escaped indictment though they have been tried and convicted in other lands. The Mundt or Ferguson bill or a combination decisions of them should be adopted.

I wonder if, in addition to the prepared statement, Senator, I might have your permission to consider just one or two points in the specific bills.

Senator O'CONNOR. We shall be glad to have you do so.

Mr. GREEN. This is not pretended to be a learned examination but an amateur comparison. There are parts of one bill which seem preferable to parts of another.

Referring, first of all, to section 7, subparagraph (5), on page 14, to my mind that is a desirable addition which this bill has and leaves it preferable to the Ferguson bill, in that it specifically takes cognizance of the fact of the passing of information and adds individuals to those included within the purview of the act. It is, to that degree, a stronger measure.

The only other point that I would like to make concerns itself with section 15 of Senate 1194, as compared with its counterpart section 14 of Senate 1196.

Senator O'CONNOR. That is "Judicial review," section 15, page 30.

Was there any comment specifically, Mr. Green, that you desired to make on that?

Mr. GREEN. Yes. It seems to me that that section 14 of Senate 1196 is the desirable provision inasmuch as it does not attempt to abridge the scope of the investigation which may be conducted by a reviewing court. Neither does it provide standards for the adjudication or evaluation of evidence. I would consider an attempt to impose standards for accepting or adjudicating or evaluating the evidence undesirable inasmuch as it might open that provision to assault in judicial procedure. It seems to me that the brief statement of Senate 1196 which simply authorizes the use of the process of justice already established in this country is the more desirable.

Senator O'CONNOR. Senator Miller, have you any questions?

Senator MILLER. Can you give me the name of the case you just mentioned with respect to the recent Supreme Court decision?

Mr. GREEN. That was the Terminiello case decided day before yesterday.

Senator O'CONNOR. Mr. Green, you mentioned the decision of the Supreme Court Monday which decided by a 5-to-4 decision the case of *Arthur Terminiello v. The City of Chicago*. You quoted the language of Mr. Justice Jackson that under certain conditions the Bill of Rights might be converted into a suicide pact. Without in any sense expecting you to be critical or to make a critical analysis of the opinion

or opinions of the Court, is there anything further that you would desire to say?

Mr. GREEN. With reference to that case?

Senator O'CONNOR. Yes.

Mr. GREEN. I think it is important to point out with reference to that case and some other authorities which have been cited before this committee that they are not germane to the subject being considered. Remember, in the unfrocked Father Terminiello you have an individual that is accused of conduct which was alleged to have made him a disturber of the peace, as I recall it. It is the act of an individual, the thought or expression of an individual, and it was that distinction I was attempting to make in this statement.

Senator O'CONNOR. The reason I asked you the question is that you very forcefully mentioned the desirability, of course, of the exercise of free speech.

Mr. GREEN. Absolutely.

Senator O'CONNOR. Certainly it is not your intention to have it unnecessarily abridged in any manner at all. What have you to say with respect to the majority opinion, which of course interprets the law and must be accepted as the law of the land unless and until it is overruled?

Mr. GREEN. Frankly, I do not think the majority opinion has any bearing upon this subject. If you would care to have me do so, I shall be happy, after leaving here, to prepare and submit to you a legal brief. But you have to make this one distinction in dealing with communism and its nature. You are not talking about the free ideas of an individual. This is a conspiracy, a combination in which ideas are insisted upon; they are imposed forcibly upon those who belong. Whatever Father Terminiello may have been expressing, he was not a part of an international conspiracy, as these people are; and, in the sense that the Supreme Court of the United States or of any of the States failed to make their distinction, they are making an artificial and arbitrary imposition of law which to my mind is not protecting free speech but attempting to extend it.

Senator O'CONNOR. Fine. In that connection, because you have put your finger on a vital point, we should like to advert to the two opinions of the Supreme Court just handed down 48 hours ago. I have here both the majority opinion written by Mr. Justice Douglas and the minority opinion written by Mr. Justice Jackson. I first should like to read one little portion of the minority opinion. It says this:

Before giving the first and fourteenth amendments to the Constitution this effect we should recall that our application of the first amendment to Illinois rests entirely on authority which this Court has voted itself. The relevant parts of the first amendment—

with emphasis applied—

reads "Congress—

and that is italicized—

shall make no law—

"no" is italicized—

abridging the freedom of speech." This restrains no authority except Congress, and read as literally as some would do, it restrains Congress in terms so absolutely that no legislation would be valid if it touched free speech, no matter how obscene, treasonable, defamatory, inciting or provoking.

Mr. GREEN. Right.

Senator O'CONNOR. That is Mr. Justice Jackson.

I should like to read this other point. The majority opinion states this:

Mr. Justice DOUGLAS. Accordingly, a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or inspires people to anger.

Continuing further down:

There is no room under our Constitution for a more restrictive view, for the alternative would lead to standardization of ideas either by legislatures, courts, or dominant political or community groups.

Mr. GREEN. First of all, I do not recognize that case as being germane to this legislation, but let us go into this business of free speech. To simply consider words as being things in themselves is to ignore the fact that legally—and this is a well-established rule of evidence—words may be a part of an act, a verbal part of an act. You will recall it in reference to the exceptions of the hearsay rule. Mere words spoken, mere arguments, in public places certainly are not a conspiracy, but words as part of a conspiracy, words that have been dictated, that are not the arguments of the speaker or the writer but rather are the orders or words spoken in carrying out those orders certainly have no reference. They are the verbal part of a conspiracy which is being executed by those acts. If we fail to make that distinction, then we are going to create the body of law that is so foolish as to do just what Mr. Justice Jackson predicted might have been done. I do not think you can ignore the central fact that you are not dealing with the exchange of ideas. We have no objection to anyone going into market place or any forum of ideas in this country and expressing any thought he may have, but don't you see this fundamental thing? If we are dealing with a group acting in concert, not expressing their ideas, nor theorizing opinions, but carrying out orders to do this, to do this with an end that is known, with an end is testified to strongly by acts already performed in this country within the last late months, then we are absolutely taking this principle of freedom of speech and we are extending it to God knows what wind, extending it to protect God knows what things to the point of which singing "Sweet Adeline" on your corner when you are trying to sleep would no longer be disturbing the peace.

To my mind you can extend these things ad infinitum. Protection is one thing. This would constitute extension; not protection.

Senator O'CONNOR. Any further questions, Senator Miller?

Senator MILLER. Mr. Green, on page 2 of your statement you speak of ideological legal obscurantists who are dealing with a criminal conspiracy. Now, I was just wondering if I can quite agree with you that it is conspiracy and it may be that the explanation you have just made would be the groundwork for your stating that it was a criminal conspiracy.

Mr. GREEN. It was.

Senator MILLER. Without that explanation, I would have some hesitancy probably to adopt that statement. I could see there would be a conspiracy all right, but the element of criminality might be wanting.

Mr. GREEN. If you are talking about a legal restriction of criminality under existing law?

Senator MILLER. Yes.

Mr. GREEN. It is not intended to convey any such impression as that.

Senator O'CONNOR. We are grateful to you for your very intelligent presentation.

Mr. GREEN. Thank you, Senator, I am delighted to be here.

Senator O'CONNOR. The next witness is a representative of the American Jewish League against Communism, Inc. We shall be pleased to accord the opportunity to Rabbi Benjamin Schultz to be heard.

Mr. YOUNG. Will you raise your right hand? Do you solemnly swear or affirm in the proceedings before the subcommittee you will tell the truth, the whole truth, and nothing but the truth, so help you God?

Rabbi SCHULTZ. I do.

TESTIMONY OF RABBI BENJAMIN SCHULTZ, EXECUTIVE DIRECTOR, AMERICAN JEWISH LEAGUE AGAINST COMMUNISM, INC., NEW YORK, N. Y.

Mr. YOUNG. First, I should like to ask you two questions, if I may.

Rabbi SCHULTZ. Yes.

Mr. YOUNG. Rabbi Schultz, are you now or have you ever been a member of the Communist Party?

Rabbi SCHULTZ. I am not and I have not been.

Mr. YOUNG. Secondly, are you now or have you ever been, to the best of your knowledge, a member of any organization which has been cited by a governmental agency as a Communist organization or Communist-front organization?

Rabbi SCHULTZ. I am not and I have not been.

Mr. YOUNG. Please proceed.

Rabbi SCHULTZ. I happen to be executive director of the American Jewish League Against Communism, Inc., 220 West Forty-second Street, New York City, and the former rabbi of Temple Emanu-El of Yonkers, N. Y. I am also a member of the Central Conference of American Rabbis. I am here speaking for myself, as an individual American citizen concerned about the security of his country, which is being menaced by the new-style war against it—the internal war of infiltration—that is, of Communist aggression against our democratic institutions. This internal war is waged by persons of Communist sympathies who are trained to seem to be what they are not.

In reality, these persons are the conscious or unconscious agents of the Cominform, though they uniformly appear in the guise of "democrats" and "pure Americans."

The Mundt-Ferguson bills are designed to smoke these people out, and to smoke out the organizations—innocent-appearing—through which they work. I concede these bills represent a new departure in American life. But so does the war of infiltration represent a new departure in the totalitarian fight against democracy. "Infiltration" and the "united front" were invented by the German Communist Willi Muenzenberg, who sold the idea to Stalin in the early thirties. It has been very successful in the United States.

Besides speaking as an American, I am speaking also as a Jew and a rabbi. My people have found a wonderful refuge in this country. When this country is menaced, the greatest haven for Jewry is menaced. Without American democracy, American free enterprise and our present form of government, there would be no welfare or prosperity for the 5,000,000 Jews in the United States or their millions of Jewish beneficiaries in Europe and Palestine.

As a Jew, I am conscious of increasing anti-Semitism in Communist Europe. Bolshevism cannot stand a Jew, who represents individualism and liberty in his very history. The Moscow synagogue has the constant presence of the secret police.

If I may interpolate, my organization is publishing a pamphlet this week called Soviet Russia and the Jews, which documents all these facts.

Thousands of Jewish leaders and Zionists languish in Siberia. We don't want that here, through a clever war of infiltration or any other form of Stalinist victory.

American liberty, now endangered, is the creation of the Judeo-Christian ideal of individual liberty and the sanctity of man's soul. The roots of the American ideal are found in the ancient Hebrew prophets, as well as the Books of Moses. As a religious leader and a rabbi, therefore, I favor these bills to spotlight the enemies of American God-rooted democracy, who are servants of an atheistic and enslaving dictatorship.

The accusation that these bills are "Fascist" or "antifreedom of speech" is as specious as it is largely insincere. All that is needed is a reading of these bills. A Communist front must be labeled as such. Certain norms are set up for the labeling of an organization as Communist. An elaborate system of appeals from any decision of the Attorney General is established. There is instituted a Subversive Activities Commission appointed by the President, to hear arguments. I believe the name of the Subversive Activities Commission is part of the Mundt bill, and I think the Ferguson bill has the same thing under a different name. Provision is made for cross-examination of witnesses, and also for public hearings. Finally, there is permitted judicial review by the United States court of appeals. Not only will an organization which has gone through this mill, and remained with the label "Communist," justifiably be considered Communist by the public; but there will not remain the slightest doubt that the procedure has "leaned backward" in the interests of democracy, being at the same time devised for the security of America.

The plain truth is that the Mundt-Ferguson bills are a great tribute to democracy. They are based on a conviction—which was also the conviction of the founding fathers—that if you "let the people know," if you place all the facts before the public, the public will know what to do. There is no "enforced silencing" in this bill. There are no restrictions on speech. There is only an insistence that the public has the right labels.

These bills are repressive if the pure-food laws are repressive. Pure-food laws protect the public by preventing fraudulent labels. These bills are the pure-food laws of the American intellect. They insist on truthful labels for groups and persons.

And I repeat, there is a faith underlying these bills—a faith that you don't really need anything more than to let the people know. It is the same faith which authored the Bill of Rights.

Most of the harm of Stalinist infiltration is caused by the unawareness of the American people about what is going on. The opponents of these bills would like that unawareness to continue, because exposure is the greatest enemy of communism. These bills aim at exposure.

Most of us—Christians and Jews—are worried about our youth. Many of these are coming under pro-Soviet influences. In the New York area, much of the strong intellectual influence is subversive. This influence permeates, to large degree, the flower of our youth. It is especially dangerous because it has not been sufficiently exposed.

I am amazed, for instance, at the indifference in high places to the fact that a leading spirit at the important Union Theological Seminary, the Methodist Dr. Harry F. Ward, professor emeritus of theology, is a leading pro-Communist. He has taught numerous clergymen. It is a fact that he opposed American help to the Allies during the Hitler-Stalin Pact, but as soon as Hitler attacked Russia he became ardent in the "democratic" cause. He conducted a column in the New York Daily Worker, official Communist organ. In 1945, he spoke with Earl Browder at a Lenin memorial meeting. He has written articles in the Worker praising Marxism. Unfortunately, he and his many pupils have wide influence on our younger "progressive" generation. This is no implication that either Dr. Ward's church or the Union Theological Seminary is Communist.

Instances could be multiplied. Some intellectual and even religious leaders are dangerously allied with subversive movements. Not the majority of them. But is it not the powerful minority that has betrayed one democratic country after another?

We are worried about our youth. It seems that almost nothing can be done about another man of wide influence in New York—an assistant professor of English at the large public-supported Brooklyn College—Dr. Frederick Ewen.

May I say to all intents and purposes that he is boss of the English department. I have that from official sources.

There has been trouble with some of the vociferous "pink" students at Brooklyn College. Much of the trouble from this loud minority may be traced to influences like Dr. Ewen. He is the chairman of the notorious School for Jewish Studies in New York, which is not Jewish at all, but Communist, and has been labeled as Communist by the Department of Justice. It was under his direction that courses in Marxism were instituted at this school. In 1948 it was announced that this school, headed by Dr. Ewen, was giving a course in "imperialism", to expose nefarious American institutions regarding the Marshall plan and Truman doctrine. Here and there, a course in something Jewish is announced, but this is camouflage. The school is reviled by the Jewish community.

At a dinner for Professor Ewen 5 months ago, at the Henry Hudson Hotel, greetings were extended from the Jefferson School, also labeled as Communist by the Department of Justice. The toastmaster was Maurice Schappes, the Communist convicted of perjury by the Rapp-Coudert Committee investigating subversion in the city colleges.

We know what atheistic communism teaches about the capturing of the young mind at any and every opportunity. And it should be more widely known that the people are taking an awesome risk in the department of English at Brooklyn College. Unfortunately, that great

American and anti-Communist, President Harry Gideonse of Brooklyn College, is powerless in the situation.

President Gideonse has been harassed by a member of the board of higher education (which supervises city colleges). This member is Ira A. Hirschmann, who recently wanted charges entertained against Dr. Gideonse for opposing Communist teachers. Hirschmann's term expires next month. Reports are that Mayor O'Dwyer may reappoint him, but I cannot believe it. Hirschmann is a leading pro-Soviet agitator, who has recently written a book showing that we are always wrong and Russia is always right. That book is called *The Embers Still Burn*. He claims that the "iron curtain" countries are perfect, while anti-Communists are reactionary and Fascist.

In line with these views, Hirschmann has demanded that the indictment of the 12 Communist Party leaders in New York be dropped; he has been associate chairman of a pro-Communist dinner, *Save the Voice of Freedom*, at the Park Central Hotel, together with Vito Marcantonio and Johannes Steel. He opposed "American meddling" in the Italian elections in 1948. These are only some of his activities. We are worried about the possible reappointment of Mr. Hirschmann—though some veterans' organizations are beginning to take action—because we are worried about our young students, who are under the jurisdiction of the board of higher education. The situation in New York, of course, is partly alleviated by such sterling anti-Communists as Professor Sidney Hook, of New York University. There should be more like him.

France was overrun by Hitler in 1940 largely because of a previously unpublicized gap in the famous Maginot line—a little, fatal opening near the border of Belgium. The gap in our Maginot line is the upper intellectual segment of our population. It is Stalinist technique to try to capture it, and thereby to confuse and weaken our country from above, so that its military strength may be nullified. We spend millions on fighting communism in Europe. We arm our soldiers to the teeth. But our battle is lost unless the gap in our Maginot line is repaired.

I favor the Mundt-Ferguson bills because the names of the Wards and the Hirschmanns, and persons of this kind, would be revealed. The public would know their connections; and, therefore, the public would make its opinion felt, and the people would win.

My faith that this will occur is equivalent to my faith in the American democratic process.

Senator O'CONNOR. Senator Miller, do you have any questions?

Senator MILLER. No questions.

Mr. YOUNG. I should like to ask Rabbi Schultz, who has made a great study of communism and who is quite an expert on it, what proportion of the Jewish people in his opinion subscribe to the theory of communism. We know it is a very small percent, but the Communist line is that the Jewish people are sympathetic toward it.

Rabbi SCHULTZ. The Communist line is that all minorities, so-called, are sympathetic toward it. The Jews are 98 percent non-Communist. They are subject to Communist propaganda in the same proportion that the American people are subject to Communist propaganda; and, just as the average American non-Communist is influenced by Communist propaganda, going down the line without his knowing that he is being influenced by Communist propaganda,

so the average Jew, the average Catholic, the average Protestant, and average Negro is sometimes influenced by Communist propaganda without knowing it.

I happen to be a Jew, and I am interested in the Jewish angle, but we all have our own houses to clean. I favor the establishment of an American Protestant League Against Communism, an American Catholic League Against Communism, and an American Negro League Against Communism. By the way, George Schuyler, a well-known Negro, told me that he favored an American League Against Communism along the line of my league. I was greatly flattered.

We had a War-Savings-bond campaign when I was up in Yonkers. There was a War-Savings-bond committee in the Knights of Columbus. There was a War-Savings-bond committee in the House of Jewish Women. There was a War-Savings-bond committee in the Sons and Daughters May Arise, and so forth. I favor an anti-Communist committee in every walk of American life, because there is not a walk in American life that the Communist does not try to penetrate through the use of techniques skillfully designed to appeal to that particular walk of life.

I resent the fact that the Communist Party has a Jewish section. It was largely because they raised the Jewish issue that my organization was founded.

I hope I have answered your question.

Mr. YOUNG. Yes; you have. Thank you.

Senator O'CONNOR. We are grateful indeed for your contribution.

The next witness on the list is a representative of the American Labor Party.

Mr. Young, will you proceed, please.

Mr. YOUNG. Mr. Schutzer, will you raise your right hand, please? Do you solemnly swear or affirm that in the proceedings before the subcommittee you will tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. SCHUTZER. I do.

Mr. YOUNG. Give us your name, address, and present occupation.

TESTIMONY OF ARTHUR SCHUTZER, STATE EXECUTIVE SECRETARY, AMERICAN LABOR PARTY, NEW YORK, N. Y.

Mr. SCHUTZER. My name is Arthur Schutzer. I am state executive secretary of the American Labor Party, which is New York State's progressive party. The address is 570 Seventh Avenue, New York City.

Mr. YOUNG. Will you tell us what organization or organizations you represent here today?

Mr. SCHUTZER. I appear here in behalf of the American Labor Party of New York State.

Mr. YOUNG. Thank you.

I would like to ask you two questions, please. First, are you now or have you ever been a member of the Communist Party?

Mr. SCHUTZER. Sir, I came here today to testify. I assumed that the purpose of these hearings before this committee was to afford representatives of independent organizations as well as individuals to

present their viewpoints concerning the very important legislation under consideration.

Senator O'CONNOR. Mr. Schutzer, I will interrupt you just to say that before you can make a statement to the committee, we would like to have the question answered categorically.

Mr. SCHUTZER. I am replying to that question.

Senator O'CONNOR. That answer can be given "Yes" or "No," and we would prefer to have it categorically.

Mr. SCHUTZER. Will you permit me to explain for a minute?

Senator O'CONNOR. I will not permit you to do any such thing.

Senator MILLER. The rule, however, is that if he answers "Yes" or "No," he can explain his answer.

Senator O'CONNOR. That is right. You are privileged to make any explanation you desire, but we are not interested in having your views if you are not willing to state categorically your answer to that question.

Mr. SCHUTZER. May I finish this sentence?

Senator O'CONNOR. You may not finish anything further. You may answer the question "Yes" or "No," or we will not be interested in hearing anything from you.

Mr. SCHUTZER. You realize that the very putting of the question imposes a political test on the right of a citizen to testify before a Senate subcommittee?

Senator O'CONNOR. We are here to listen to you if you desire to answer the question.

Mr. SCHUTZER. Why not permit me to present my statement first and we will take up any questions concerning any test?

Senator O'CONNOR. I ask you whether you are prepared to answer the question "Yes" or "No"?

Mr. SCHUTZER. I am trying to explain to you if you will be courteous enough to give me 1 minute of your time.

Senator O'CONNOR. Repeat the question.

Mr. SCHUTZER. I know what the question is, sir.

Mr. YOUNG. Mr. Schutzer, I ask you the first question: Are you now or have you ever been a member of the Communist Party?

Mr. SCHUTZER. That question seeks to impose a political test on my right to testify before a subcommittee.

Senator O'CONNOR. We will not hear further from you unless you answer that question categorically. Will you answer it?

Mr. SCHUTZER. For me to answer that—

Senator O'CONNOR. Mr. Schutzer, you will leave the stand.

Mr. SCHUTZER. It is a violation of the Constitution and also it is a violation of the Legislative Reorganization Act.

Senator O'CONNOR. The next witness will be a representative of the National Lawyers Guild. Is he present? Step up, please, sir.

Mr. YOUNG. Will you raise your right hand, please? Do you solemnly swear to affirm that in the proceedings before the subcommittee you will tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. DURR. I do.

Senator O'CONNOR. Proceed.

**TESTIMONY OF CLIFFORD J. DURR, PRESIDENT, NATIONAL
LAWYERS GUILD**

Mr. YOUNG. Would you give us your name, address, and your present occupation, Mr. Durr?

Mr. DURR. My home address is R. F. D. 2, Seminary, Alexandria, Va. My business address is 1625 K Street, N.W., Washington, D. C.

Mr. YOUNG. Mr. Durr, will you tell us what organization you represent, please?

Mr. DURR. I represent the National Lawyers Guild.

Mr. YOUNG. Mr. Durr, you were here and heard the announcement at the beginning of the hearing and I should like to ask you two questions, if I may, sir.

Are you now or have you ever been a member of the Communist Party?

Mr. DURR. I am not and I have never been a member.

Mr. YOUNG. Are you now or have you ever been, to the best of your knowledge, a member of any organization which has been cited by a governmental agency as a communistic organization or Communist-front organization?

Mr. DURR. The National Lawyers Guild has received mention from the House Committee on Un-American Activities along with hundreds of other organizations including, as I recall, the League for Nonparticipation in Japanese Aggression, the chairman of which was Henry L. Stimson, the vice chairman Admiral Yarnell; the Council Against Intolerance in America, the YMCA, and other organizations.

Senator O'CONNOR. I may just interrupt. When you say it has received mention, do you mean to say it has been classed as a Communist or Communist-front organization?

Mr. DURR. The classification is somewhat vague. I think it is mentioned in a pamphlet that the Un-American Committee got out. I do not have that before me. I do not recall exactly what was said about it but I might add that the National Lawyers Guild is not on the Attorney General's list.

Senator O'CONNOR. It is not? I see. You have answered the question, so we shall be very happy to have you proceed.

Mr. DURR. As I said earlier, I am now practicing law in the District of Columbia. Until June 1948, I was a member of the Federal Communications Commission. At the time of my appointment to the Commission by President Roosevelt, I was an assistant general counsel of RFC and general counsel of Defense Plants Corporation.

I am president of the National Lawyers Guild and appear here on behalf of that association.

Senator O'CONNOR. May I ask, sir, whether you have a prepared statement and, if so, whether you desire to present that first or whether you desire just to make your comments with regard to any specific provisions of the proposed legislation?

Mr. DURR. I have a prepared statement which has been distributed. I should like to follow that very closely because we are trying to make a legal analysis of the bill. I should like to have that as a guide before me. Some points I think I can skip which are merely for the documentation of points I want to make.

Senator O'CONNOR. Very well, we shall be very glad to have you do so and any part you do not read in full will be placed in the record.

Mr. DURR. Thank you.

The National Lawyers Guild is opposed to the passage of these two bills involved, that is, S. 1194 and S. 1196, because it regards them as dangerous and far-reaching encroachments on the fundamental liberties of the American people, including freedom of speech, press, assembly, and the guaranty against punishment without the due process of law. It believes that if these bills or any of them are enacted, it will go far toward destroying the very foundations of our democratic system.

As I understand it, the proponents of those two bills assert that the bills do not infringe on constitutional liberties. There are two rather basic contentions made by them.

First, it is contended that the bills do not restrict any person's right to speak or assemble as he pleases; that they merely require him to disclose his identity and to speak and assemble under his true colors. It is also claimed that the bills do not outlaw any organization.

The second basic contention is that the bills apply only to persons or groups seeking to establish in this country a totalitarian dictatorship controlled by a foreign government or "the international Communist movement," which is described in section 2 of the bill.

The provisions of the bills, however, we think contradict these assertions. We shall attempt to demonstrate this by examining the detailed provisions of the Mundt bill, S. 1194, in some detail. Senator Ferguson's bill, S. 1196, is so nearly identical that the observations we make with reference to the Mundt bill have general application to Senator Ferguson's bill as well.

Section 4 (a) of the bill makes it unlawful for persons knowingly to conspire or agree "to perform any act which would substantially facilitate or aid in the establishment within the United States of a totalitarian dictatorship, the direction and control of which is to be vested in, or exercised by or under the domination or control of, any foreign government, foreign organization, or foreign individual." "Totalitarian dictatorship" is defined as a nonrepresentative form of government characterized by the existence of a single political party, which is for all practical purposes identical with the government, all other parties being prohibited.

The crime created by this subsection does not, as is the case in many conspiracy statutes, require an overt act but only an agreement to perform an overt act. The punishable agreement extends not to an agreement to establish, or even to facilitate, a totalitarian dictatorship itself, but extends as well to an agreement to perform an act which will substantially facilitate or aid in the establishment of such a dictatorship.

In short, this subsection would punish a person for conduct which was not intentionally in aid of totalitarian dictatorship and which would not involve otherwise unlawful conduct, if only a court should find that an innocently done act in fact contributes to the establishment of the dictatorship.

Now the phrase "any act which would substantially facilitate or aid" is without clear meaning. We do not believe that an average citizen could know what acts or agreements the courts might say would come within the meaning of that phrase. However, in the light of the bill's preamble and the definitions in section 3, it seems clear that one objective of the subsection is to punish cooperation or agree-

ments to cooperate in any way with the Communist Party, or any other group which may be subject to the provisions of this bill.

Senator O'CONNOR. Mr. Durr, do you object to being interrupted?

Mr. DURR. No, sir.

Senator O'CONNOR. If you do, we shall be very pleased to have you conclude, but I thought it might help in the understanding of your position if we were to ask questions as you go along.

In connection with what you have said, this sentence in the bill introduced by Senator Mundt and Senator Olin Johnston of South Carolina simply states:

It shall be unlawful for any person knowingly to combine, conspire, or agree with any other person to perform any act which would substantially facilitate or aid in the establishment within the United States of a totalitarian dictatorship the direction and control of which is to be vested in, or exercised by or under the domination or control of, any foreign government, foreign organization, or foreign individual.

Now, do you for a second, Mr. Durr, oppose such a provision as that?

Mr. DURR. This implies knowledge of the act, which he does not have; not to the consequences of his act.

Senator O'CONNOR. If people combine and agree together to overthrow the present Government in this country and do that under the domination or control of a foreign government, do you not think that ought to be prevented and ought to be punished?

Mr. DURR. If anybody is trying to overthrow the Government, certainly I think they should be punished.

Senator O'CONNOR. This merely makes a crime of the combination or conspiracy knowingly when those persons would agree to do things which would facilitate or aid in the establishment of a totalitarian dictatorship, which of course is different from what we have here, when that movement is under the domination of a foreign government. Now why should we permit or allow to go on in this country such a movement unmolested when it is dictated by a foreign government to establish another form of government in our country?

Mr. DURR. I think you misunderstood my point here. The point I was trying to make is that he may knowingly commit a certain act but he might be wholly innocent as far as the consequences of the act is concerned, and be unaware of the consequences of the act that he is committing.

Now if he acts with the intention and knowledge of the consequences, then you have a different kind of situation.

The CHAIRMAN. Would it not be well for you to answer the chairman's question?

Mr. DURR. I was trying to do that, sir I was making an effort to answer the question.

The CHAIRMAN. No; you are avoiding the question entirely.

Mr. DURR. I was not intending to avoid it.

The CHAIRMAN. Answer it.

Mr. DURR. If a person knowingly conspires to overthrow the Government, then something should be done about it, but I say a person might engage in an act, intending to engage in that particular act, but being wholly unaware of the consequences of the act he does not know or intend the consequences.

Senator O'CONNOR. Is it not a well-accepted legal authority that a person is presumed to have intended the natural and probable consequences of his act?

Mr. DURR. If you get the question of enactment and probable consequences of the act, you have that in your—

Senator O'CONNOR. A person knowingly enters into a conspiracy to do these things that the Mundt-Johnston bill prohibits. Are you still saying that the law should not be placed on the statute books?

Mr. DURR. Here is the point I am trying to make. You might cooperate with someone and knowingly cooperate with them in an action which you think is all right, but the other person may have an end result which he attempts to accomplish that you are wholly unaware of.

Senator O'CONNOR. I do not think you have a proper understanding of conspiracy. That would not be conspiracy.

Mr. DURR. The "knowingly" here applies not to the knowledge of the act committed; the "knowingly" used here applies to the act committed and not to the knowledge of the results contemplated.

The CHAIRMAN. If an individual representative of a foreign government that was intent upon breaking down or destroying this form of government entered into the spirit of that arrangement, would you support him?

Mr. DURR. I think if an individual is consciously entering into a conspiracy to overthrow the Government, certainly I think something should be done about it. I think he should be tried and, if found guilty, should be punished in court.

Mr. YOUNG. Without force and violence?

Mr. DURR. Without force and violence. I think you have to draw a distinction between the advocacy of a change in our form of government as an abstract political philosophy and the advocacy of force and violence to bring about that change.

Certainly, if you get into the question of abstract political philosophy, you could have Jefferson, Lincoln, and many of our great heroes who would be in trouble. They made very strong statements. They are contained in our Declaration of Independence, for that matter.

Senator O'CONNOR. You are losing sight of the very important provision that the Mundt-Johnston bill has, that is, that these conspiracies are punishable when they are under the domination and control of a foreign government. Certainly, you cannot talk of Jefferson and other patriots in that light?

Mr. DURR. Going back and reading, I expect at the time the charges were made, as I recall, that Jefferson really was under the domination of the French revolutionists.

Senator MILLER. Irrespective of whether or not this person knew what the consequences would be, as you mentioned, would it not be sufficient if he aided, abetted, counseled, and advised in connection with the matter? Would that not constitute the offense whether it was an overt act or not?

Mr. DURR. He might be participating in some act that is perfectly legitimate and perfectly proper on its face but there may be some others who have very different intentions from his own; they want to accomplish things he does not want to accomplish at all.

Senator O'CONNOR. Will you proceed?

Mr. DURR. I think the point I was trying to make there is that we do not believe the average citizen could know that actual agreement, the court might say, would come within the meaning of the phrase "substantially facilitate or aid." However, if you take the bill's

preamble, as I said that appears to be directed at any kind of cooperation with the Communist Party even though it might be cooperation on a particular measure and not with the ends of the Communist Party.

By the bill's definitions in sections 2 and 3, the Communist Party and the other proscribed groups seek to establish a totalitarian dictatorship in the United States or function primarily to that end of establishing such a dictatorship. Hence, any cooperation with them in furtherance of common objectives, including acts which are constitutionally protected, is readily construable as an act or agreement to commit an act which "would substantially facilitate or aid" the establishment of a dictatorship.

In other words, you might have a person very much interested in widening the franchise in this country, for example; his only objective would be to widen the franchise in the interest of a broader representative type of government. You may have some in the Communist Party say: "We want to widen the franchise because we get people in at the lower economic level. We think there would be a better chance of those people voting Communist."

Last year the Senate Judiciary Committee called upon three distinguished lawyers, recognized by the committee as experts in constitutional law, for their opinion of the constitutionality of last year's Mundt-Nixon bill. I understand that Senator Mundt has testified before this committee that their objections to the bill have been met in S. 1194. Here is what these three experts said on the corresponding provisions of the old bill:

Chairman Evans Hughes, Jr., said:

The question of the validity of this bill turns principally on that of its compatibility with the first and fifth amendments to the Constitution.

In my opinion, section 4 of the bill offends both of these principles. That section would make it a crime to attempt "in any manner" to establish in the United States a totalitarian dictatorship under the control of "any" foreign organization or to perform or attempt "any act" with intent to facilitate or aid that purpose. Manifestly, this would include attempts to bring about such result by expression of opinions through speech or publication, or by participation in peaceable assemblies, designed to bring about changes in the Government through orderly processes of amendment of the Constitution. Statutes which spread as wide a net as that violate the first amendment (*Stromberg v. California*, 283 U. S. 359 (1931); *Herndon v. Lowry*, 301 U. S. 242, 249-250, 255, 260-261 (1937). See *Schneiderman v. United States*, 320 U. S. 118, 137-138 (1943)).

Senator JOHNSTON. Would you consider it orderly process if they come in here and try to upset our Government by force?

Mr. DURR. I would say not.

Senator JOHNSTON. Is that not what the Communists advocate?

Mr. DURR. That is one of the issues that is for decision in the courts today. I do not know that I am qualified to give the answer.

Senator JOHNSTON. The reason I raise that point is that you distinguish what we are trying to do under our bill with that decision you quoted. That is the reason I raise that point.

Mr. DURR. When you attempt to bring it about by speech or publication, then you run into the first amendment to the Constitution short of the clear and present danger where you have an immediate danger. Certainly, a speech might move into the realm of action if you have a milling mob that is armed and someone gives them direction to move immediately upon the State capitol or courthouse or what have you. Then you have your clear and present danger

involved. But the Supreme Court has said short of that the first amendment guarantees absolute freedom to speech.

Then the Attorney General, Tom C. Clark, last year said:

From the language of the bill, it appears uncertain whether mere membership in a Communist organization as defined in section 3, would constitute a violation of section 4. The principle that a criminal statute must be definite and certain in its meaning and application is well established; a principle which may not be satisfied by the definitions and criteria of the bill. * * *

It is also doubtful whether or not this proposal will meet the requirements of due process under the fifth amendment. A statute which would define the nature and purposes of an organization or group by legislative fiat is likely to run afoul of the due-process requirements.

Then Mr. John W. Davis said:

It is forbidden (1) "to attempt in any manner to establish in the United States a totalitarian dictatorship." * * * under foreign control; (2) "to perform or attempt to perform any act with intent to facilitate or aid in bringing about the establishment," etc. The difference in language between these paragraphs (1) and (2) seems to create more confusion than it removes. * * * it is not at all clear what acts are contemplated in the second paragraph beyond those embraced in the first. If, for instance, the advocacy of a constitutional amendment changing the form of government would be such an act as paragraph (2) envisages, it is at once apparent that constitutional questions based on the first amendment would be presented.

It may well be that some or all of the evils with which the bill purports to deal are not susceptible of more precise description. But that which cannot be defined cannot be criminally punished under our conception of law.

I do not know whether Mr. Richardson, President of the Loyalty Review Board in the Civil Service Commission, gave his statement upon the request of the committee or whether it was volunteered, but he had some observations, also. I quote him:

I am inclined to the view that before section 4 of the act can be deemed a proper exercise of the power of the Congress to protect the country against threatened danger, the bill should provide that efforts to establish a totalitarian dictatorship must be accompanied by force and violence and by unconstitutional procedures.

That was the point I was trying to make earlier, the question of whether you are using constitutional or unconstitutional measures to accomplish the results. It seems apparent, therefore, that, despite contentions of the sponsors of these bills, section 4 (a) is at least as unconstitutional now as it was a year ago.

Section 4 (b) relates to the unauthorized communications by officers or employees of the Government of classified information. Except for the proposal contained therein to abolish the statute of limitations, we find nothing seriously objectionable in this subsection. If there is any clarification needed, it seems to us it might be more appropriate to deal with that in the espionage statute than here.

Although section 4 is highly objectionable, the major vice of these bills lies in the remainder of their text, which deals with the registration of organizations and individuals.

It is apparent that registration carries with it severe consequences for the organization which has registered and for its members and supporters. Some of these consequences are expressly provided for in the bill itself. Thus, an organization which is required to register must, under pain of severe penalties, publicly divulge its members and financial affairs. Its literature and radio and television broadcasts must, under section 11, be invidiously labeled. The organizations are denied tax exemptions and contributions to them are not tax deductible.

Senator O'CONNOR. Why should they have tax exemption? If an organization is composed of members who are seeking to overthrow the Government and who are un-American, why should they enjoy tax exemption?

Mr. DURR. If that determination has been reached with reference to an organization, I certainly agree with you.

Senator O'CONNOR. Do you not agree that the Communist organization has been proven to be un-American in its essence?

Mr. DURR. I do not agree with the Communist Party.

Senator O'CONNOR. I did not ask you that. I asked you whether or not you do not think it has been demonstrated that the Communist Party is un-American.

Mr. DURR. I do not know what that term "un-American" means.

Senator O'CONNOR. All right, if you do not, you are about the only one in the room who does not understand it. So you can go ahead.

Mr. DURR. I think this question of whether they advocate the overthrow of government by force and violence is determined by the courts.

Senator O'CONNOR. The political parties in this country are required to go through certain registrations and make certain reports.

Mr. DURR. I think they should.

Senator O'CONNOR. You come here and you are espousing the cause of Communist front organizations by opposing the registration of those organizations.

Mr. DURR. I want to make it clear that I am not espousing Communist organizations.

Senator O'CONNOR. I meant to the extent that you are arguing they should not be required to undergo registration.

Mr. DURR. I say they should be certainly subjected to the requirements of all other political organizations; then if it is proven in court proceedings after considering the evidence in accordance with the safeguards guaranteed by the Constitution, and they reach certain conclusions with reference to them, we should act accordingly. I think these matters ought to be determined by the courts upon evidence after a fair trial. I am concerned here only with what seems to me to be a very basic provision in our Bill of Rights and not with protecting any particular organization, because once we let out these safeguards I think we all become exposed.

But the legal disabilities, as severe as they are, are mild compared to the unexpressed social and economic consequences which will befall the members of a registered organization. A registered organization is, under the bill's definition, conspiratorial, disloyal, and seditious. In other words, an organization by registering is entering a plea of guilty to a charge amounting to sedition or treason. It is quite obvious that any organization which either voluntarily publicly describes itself in such terms, or is so described by governmental action, is subject to intense public odium, as are those persons hardy enough to remain members therein.

It is perfectly apparent that no organization can or will voluntarily register under these provisions. I do not believe they will do that and Attorney General Clark pointed that out. He said:

It can be assumed that no organization would confess guilt by registration * * *

The simple fact is that the mere act of registration would cause an organization either to disappear or to become an illegal, "underground" society. No organization could retain open membership and support if it either voluntarily registered or was ordered to do so by official governmental action requiring disclosure of its membership. Its officers, members, and contributors must either depart from the organization or be subject to the most onerous, and increasingly family sanctions of public odium, including loss of employment, social stigmatization, expulsion from "legitimate" organizations, and perhaps mob violence. Even resignation would not wholly save the victims because the names must be filed of all those who were members at any time in the preceding year. What is more, if they do actually register, then they may find themselves subject to prosecution under section 4 (a) of the bill. I refer to the Attorney General's opinion on this question which is contained on page 423 of the hearings.

Accordingly, it seems to us that the case of the bill is misstated when it is asserted that the bill merely performs disclosure functions and does not outlaw any organization. The fact is that the bills envisage not that any organization will register but rather that individuals will be relentlessly prosecuted for belonging to organizations which have failed to register. It seems to us that the bill does effectively outlaw all the organizations within its scope.

Our next point is that the scope of the bill is unconstitutionally broad and vague, that it includes organizations who merely exercise constitutional rights, and that its standards are irrelevant to the opprobrious conclusions on the basis of which registration is required.

Take a look at the scope of the bill. It is apparent that the general definition of "Communist political organization" contained in section 3, subsection (3), is vague. That provision refers, first, to an organization which has "some, but not necessarily all, of the ordinary and usual characteristics of a political party." What such characteristics are and how many are "some" is neither explained nor self-explanatory. It is, we assume, an "ordinary and usual characteristic" of a political party that it has a treasury and distributes literature. Every organization practically does the same thing. In addition, the terms "dominated or controlled by" and "operates primarily to advance the objectives" of the "world Communist movement" are obviously vague, as is the definition of those objectives in section 2.

The vagueness of this general definition is aggravated, rather than removed, by the eight criteria given for its application in section 14 (c). First of all, there is no indication as to how many of these criteria must be present to support a finding that the definition is met. Secondly, each of the criteria begins with the words "the extent to which," without any indication of the extent which is to be deemed significant. Thirdly, most of the criteria have no relevance to the general definition, vague as it is. Fourthly, the criteria themselves employ many vague terms of no defined or commonly understood meaning.

Thus, the first criterion refers expressly to the formulation and carrying out of the policies and activities of the organizations. Clearly, therefore, the mere expression of ideas comes within the criterion, if they are found to have been formulated and carried out to "effectuate the policies of the foreign government" or organization referred to in

section 2. Then again, this phrase "to effectuate the policies" is a most elastic concept. Since there is no requirement of showing of intent, presumably the purpose may be inferred from the character of the policies carried out. In that case, the first test would be substantially indistinguishable from the second test, which is discussed below and which is subject to the same objections. Moreover, the policies being "effectuated" may have no connection whatever with the objectives of the "world Communist movement" referred to in section 2, and indeed may have no relevance to the establishment of "totalitarian dictatorship," in this country.

The second criterion expressly makes "views and policies" a test which, of course, refers to ideas and expressions. This criterion contains no requirement whatever that a totalitarian dictatorship under foreign control shall be advocated. There is no indication of what views and policies are to be deemed significant, as long as they coincide with the views of the prohibited group. In any case, the section abandons the traditional American creed that ideas are to be tested on their merits, in favor of the notion that they are to be spurned because of a governmental attitude toward others who may advocate the same views.

The third criterion, relating to the extent to which the organization "receives financial or other aid, directly or indirectly, from or at the direction of such foreign government or foreign organization," seems to us to have no necessary relevance to the establishment of a totalitarian dictatorship under foreign domination. The reference to the receipt of "aid" "indirectly" is obviously a loose standard. An organization may not even know that it is "indirectly aided" by a foreign source. The whole organization and its membership is penalized because its support in an unspecified amount comes to it indirectly and possibly for perfectly laudable purposes from one of the prescribed sources. If an organization includes among its members Communists or members of other prescribed groups, it could, under the loose definitions in sections 2 and 3, be said to receive support indirectly from a foreign group. It seems to us that these criteria are subject to the objections which talk about subsection 6.

The fourth criterion relates to the organization's sending of representatives to any foreign country for instruction or training in the principles of "the world Communist movement." That imposes penalties for taking steps to secure information concerning political and economic ideas which are prevalent in large parts of the world. That, it seems to us, has the effect of stigmatizing what may be no more than educational efforts to study and understand, irrespective of agreements. If an organization sends a delegate to attend any foreign international conference and Communists should take part in that conference, it might be held that the delegate was sent for a prohibitive purpose. This might be true even though the instruction received was wholly unrelated to the establishment of a dictatorship in this country.

The fifth criterion is the extent to which the organization "reports" to the foreign government or organization. A mere exchange of communications, no matter how innocuous, can be taken as an element of reporting. Furthermore, the reporting may have no connection with the establishment of a totalitarian dictatorship in this country. Presumably, the reading of a resolution or report at an international con-

ference in which foreign Communists might be participating could be construed as falling within this test of the report.

The sixth test is "the extent to which the organization's principal leaders or a substantial number of its members are subject to or recognize the disciplinary power of such foreign government or foreign organization or its representatives." It is not explained who qualifies as a "principal leader" or how many is a "substantial" number. What is the meaning of the terms "subject to" and "recognize the disciplinary power of such foreign government?" That question has to be resolved. It does not seem to us that these words have a very clear meaning. It is not apparent how such criteria could prove that the organization as a whole is controlled by the foreign government or movement, and "operates primarily to advance the objectives of the world Communist movement."

Senator JOHNSTON. Are you really afraid of that in this bill?

Mr. DURR. Yes; I am afraid of an extension of this idea of guilt by association and getting people involved who are no more than exercising their constitutional rights.

Senator JOHNSTON. How could it do any harm to let people know, that is Communists and non-Communists, who he happens to be?

Mr. DURR. What you have here, first, is a declaration saying that some types of organizations are in effect treasonable in themselves. Then you are not going to get your registration because anybody who registers there would be pleading guilty to the things that the preamble of the bill says about the organization itself. You put a person in a position where he really has a brand on himself, the "Scarlet Letter." He may be perfectly satisfied in his own mind that his own objectives and motives are entirely proper in accordance with American tradition but he may find himself caught under a construction.

Senator JOHNSTON. Just how would you handle the situation in which we find ourselves in America at the present time?

Mr. DURR. First, if a person violates the laws adopted in accordance with our Constitution, I would try him in accordance with established procedures and if I found him guilty, I would send him to jail or impose whatever penalty was prescribed.

Senator JOHNSTON. Is that not what the Government is trying to do now and they are finding themselves handicapped in not having proper laws on the statute books?

Mr. DURR. I do not agree with that, I think we do have abundant laws on the statute books. I think in the Voorhees Act you have this provision for registration that goes awfully far. It seems to me that that does cover the question of registration.

Senator O'CONNOR. Do you refer to registration of foreign agents?

Mr. DURR. Yes, but the definition of foreign agents in section 23,866, title 18 of the United States Code, is as follows:

Every organization subject to foreign control which engages in political activity must be registered; every organization which engages both in civilian, military activity and political activity; every organization subject to foreign control which engages in civilian, military activity and every organization, the purpose or aim of which or one of the purposes or aims of which, is establishment, control, conduct, seizure, or overthrow of government or a subdivision thereof by the use of force, violence, military measures, or threats or any one or more of the foregoing.

I do not know of any prosecution that has taken place under that provision. It seems to me if you have a problem there, the solution

is possibly to call on the Attorney General to enforce this law that is already on the books.

Senator O'CONNOR. I might say that the Senate is due to go in session in about 15 minutes. I did not know whether you desired to summarize, and then to submit your statement.

Mr. DURR. I will try to move a little faster, if you will. I was pointing out the sixth test which tends to bring all organizations into suspicions, because some of their members may belong to organizations which are under suspicion.

The seventh test is the extent to which it resists or fails to make disclosure of membership lists, and so on. If you have got any kind of organization that you have secret meetings from time to time, and you use the test that is applied, there is one that is certainly of aid.

It is also common for all kinds of groups to exclude nonmembers from their meetings on some occasions. Those secret meetings, are they within the definition or are they not?

The last test relates to which leaders or members of organizations subordinate their allegiance to the United States. Again you get into the question of what is subordination of allegiance to the United States.

I recall an attack made several years ago by the Chicago Tribune on some Government officials and Members of Congress who had been educated at Oxford University. Some were Rhodes scholars, and they claim that as the result of having received money from the Rhodes Trust, they were under the domination in effect of the British Government, and part of a scheme to bring the United States back into British Empire.

We can get into some pretty fantastic ideas once you get started on that.

Then if you get to the definition of Communist organization, which gets very vague, and we do not think meets the test of reasonably ascertainable standard of guilt for the purposes of the fifth amendment to our Constitution, there are four criteria for determination whether the group falls within the definitions, and they are set forth in section 10 (f). None of these four tests has any necessary connection with the domination by a foreign government or the world Communist movement, since the finding of control by an organization which is found to be a Communist political organization is all that is required.

We have many problems of what constitutes control when we talk in terms of ownership of corporations, what stock ownership, what connection, what constitutes control, and when you begin to apply that to the criminal statutes, you get into a very vague realm that it is very difficult for a person to know when he acts whether he has subjected himself to the penalties of the criminal law.

The first of these tests relates to the ability of the active members. It does not say what characteristics of the members are to be taken into account, or how many of those are active in an organization must be bad people, and the vague term of what is active management, especially as people might be active not necessarily have to have official position in the organization.

You have the test that relates to the sources from which we get part of the organization's support, financial and otherwise, are derived, what kind of support and what extent of support is necessary.

The third test relates to the use made by the organizations of its funds, but it does not tell what use is condemned. Suppose a fifth is used for purposes that are bad, and the rest is used for purposes entirely loyal. It might involve a member of the organization subjecting himself to penalties of the act. That might involve.

The fourth test refers to the extent to which position is taken or advanced on matters of policy do not deviate from the positions taken by any Communist political organization. I just do not see how practically any test of that kind would ever be applied. It would take a detailed study of all positions taken by the Communist Party, all positions taken by organizations which is found under the definition to be a Communist political organization, and a comparison and check there which would be endless. The fact that the definition and criteria for both Communist political organizations and Communist fronts are so vague and irrelevant, and threat of totalitarian dictatorship that the Commission could require registration of almost any organization without discretion.

For example, the Progressive Party, which got about a million votes last year, could be determined to be Communist political organization by these tests. It disapproves of the Marshall plan, the Truman doctrine, aid to Franco Spain, and support of the Chiang Kai-shek government, opposes compulsory military service. It might be construed that the taking of these positions to effectuate the policies of Russia that they were, because the positions happen to coincide.

As for Communist-front organizations, the power would be there, and the discretion to include a very large number, if not virtually all of the labor unions of the country because some of their active members also may contribute funds who are Communists or members of the Progressive Party or members of other organizations which are alleged to be Communist-front organizations.

So we think that the bill is unconstitutional, to sum up. Sections 5 and 6 of S. 1194 deny the right of employment or holding nonselective office in the United States, the right to obtain passports merely for membership in proscribed organizations.

Section 10 makes mere membership a crime under certain conditions, and in addition to the actual legal penalties, the drastic social and economic consequences for belonging to a proscribed organization is very severe. The individuals involved are made second-class citizens in practical effect. They become branded, and in effect outcasts from society.

It seems to us that you have here a very clear application of the unconstitutional doctrine of guilt by association, and under our law guilt is personal. Our courts have recognized that members of organizations notoriously do not adhere to all of the tenets of the organization.

Then organizations may be for all practical purposes completely destroyed by members subjected to legal, social, and economic because of views, regardless of how peaceable their conduct may be.

Thus it seems to us that the first amendment, which guarantees freedom of speech and assembly is clearly violated.

The registration standards impose punishment upon organizations on the basis of vague standards which we think violate the due process clause of the fifth amendment.

Then the mere fact of registration by an organization may invite the prosecution of its members under section 4 (a). Hence, you have a requirement, the requirement of registration in effect compels self-incrimination, in violation of the fifth amendment.

Again, I would like to refer to Mr. Hughes' statement last year in last year's record. He said, and I quote him:

In my judgment, the definitions in section 3 of the organizations against which organs, the members of which the sections are directed are permeated with even greater vagueness and ambiguity than those of section 4.

And Mr. John W. Davis expressed a similar view.

A special observation should be made with respect to the provisions of section 11. It seems to us you have a clear abridgment of freedom of speech and of the press, since you require all speeches and writings to be invidiously labeled regardless of what their content may be, merely because the organization which communicates them has been brought within the ban. It seems clear that that is an abridgment of the Constitution safeguards of speech and the press, not only against denial but against any kind of abridgment. Certainly no periodical could be expected to obtain mail subscribers if it contained—if it was enclosed in a wrapper which labeled it virtually as a treasonable document.

We think too that this legislation is wholly unnecessary. There are many statutes already on the books which we feel are more than adequate to deal with the problem. I referred earlier to the registration provisions of the Voorhees Act which is section 2386 of title 18 of the United States Code, but we have innumerable statutes dealing with these problems. Senator Johnston, I believe, said we had no peacetime espionage statute. We have chapter 37 of the United States Code, sections 791 through 797 of title 18 that deal with espionage. Maybe those laws should be tightened up. I have no suggestion about what should be done in that line, but it seems to me that the appropriate way to deal with the problem of espionage would be under the espionage statute.

Senator O'CONNOR. I might say that the Senate just by that signal has gone into session. I wonder with your statement so carefully prepared—it does show a great deal of work—and whether you would desire to file the rest, or would you desire to return?

Mr. DURR. I don't want to impose on your time, and I am perfectly agreeable, unless you have questions, to putting the rest of this into the record.

Senator O'CONNOR. We want to afford you every opportunity you wish. It is very obvious you have given a lot of time and thought to the information, for which we are thankful, and I assure you that it will be read and included in the record, if that is agreeable to your wishes.

Mr. DURR. If I may, I would like to state my own personal basic philosophy behind this bill. I feel very strongly that the guaranties of our Bill of Rights are essential to the functioning of our whole form of government. Our form of government is based upon certain premises, and I think one of the basic premises is confidence in people, in their ability to deal with ideas, to discuss ideas, and to work out their own destiny, provided only they are given full access to all information and ideas so that they can make a choice. They are given

freedom to assemble, and to vote, so that they might make their choices or some synthesis of their choice effective.

It seems to me if you reject that premise, you reject our form of government, and you are in danger of moving into something else. Our form of government is a government of risk, and you place a gamble on this idea that if people are given free access to ideas and information, why, they can work it out. You cannot very well separate the good and bad and apply those principles. It is a gamble. It is a government-calculated risk, as I say, in that respect, and we either take those risks, or we don't have that particular form of government. We move into something else and something that I would not like to see us move into.

There is always the temptation to tear down these safeguards a little bit to get at some individual or some group or idea that we don't like. It seems particularly abhorrent at the particular time, but when once you do that, then you expose everybody, the barriers are down, and you can't let it down for some ideas and keep it up for others very effectively.

We have had these periods when we did get very concerned about it, a period of the alien sedition laws, coming along in the late nineties. We were very much concerned with the French Revolution. Napoleon was demonstrating his military genius and his lust for conquest, and we got pretty disturbed when we had the alien sedition laws, and we got over that period. And then we had it following World War I. People found it quite difficult to make distinctions between Communists, anarchists, Socialists, and even labor unions, because in many parts of the country labor was a new idea—labor organizations, that is—and people were getting petty excited about it, and there were some pretty cruel things done during that period, and a lot of suppression. We came through that again.

I am just afraid that we may be moving into the same kind of thing. I think that our basic American idea is strong enough and powerful enough to do more than hold its own in the market place. I think that when people violate the law and resort to methods other than speech and exchange of ideas, then they ought to be tried under the legal procedures laid down by our Constitution.

Senator O'CONNOR. You have stated that clearly to us, and we certainly have your opinion on that.

Mr. DURR. That is the only effective way of getting at these things—in a court trial, subject to all of the constitutional safeguards.

Senator O'CONNOR. Thank you very much. We certainly understand your views, because you have stated that before and very clearly. We shall insert your entire paper in the record at this point.

(The statement is as follows:)

STATEMENT OF CLIFFORD J. DURR, PRESIDENT OF THE NATIONAL LAWYERS GUILD,
ON THE MUNDT-FERGUSON BILLS (S. 1194 AND S. 1196)

My name is Clifford J. Durr. I am an attorney admitted to the bars of Alabama, Wisconsin, and the District of Columbia. Until June 30, 1948, I was a member of the Federal Communications Commission. At the time of my appointment to the Commission by President Roosevelt I was an assistant general counsel of RFC and general counsel of Defense Plants Corporation.

I am president of the National Lawyers Guild and appear here on behalf of that association.

The National Lawyers Guild is opposed to the passage of these bills because it regards them as dangerous and far-reaching encroachments on the fundamental

liberties of the American people, including freedom of speech, press, assembly, and the guaranty against punishment without the due process of law. It believes that these bills if enacted will go far toward destroying the very foundations of our democratic system.

The proponents of S. 1194 and S. 1196 assert that the bills do not infringe constitutional liberties. They make two basic representations concerning them:

First, they say that the bills do not restrict any person's right to speak or assemble as he pleases; that they merely require him to disclose his identity and to speak and assemble under his true colors. It is claimed that they outlaw no organization.

Secondly, they say that the bills apply only to persons or groups seeking to establish in this country a "totalitarian dictatorship" controlled by a foreign government or "the international Communist movement," described in section 2 of the bill.

The provisions of the bills, however, contradict these assertions. This we shall demonstrate by examining in considerable detail the provisions of Senator Mundt's bill, S. 1194. Senator Ferguson's bill, S. 1196, is so nearly identical that the same observations will have general application to his bill as well.

UNLAWFUL AGREEMENTS

Section 4 (a) of the bill makes it unlawful for persons knowingly to conspire or agree "to perform any act which would substantially facilitate or aid in the establishment within the United States of a totalitarian dictatorship, the direction and control of which is to be vested in, or exercised by or under the domination or control of, any foreign government, foreign organization, or foreign individual." "Totalitarian dictatorship" is defined as a nonrepresentative form of government characterized by the existence of a single political party, which is for all practical purposes identical with the government, all other parties being prohibited.¹

The crime created by this subsection does not, as in the usual case of conspiracies, require an overt act, but only an agreement to perform an overt act. The punishable agreement extends not to an agreement to establish, or even to facilitate, a totalitarian dictatorship itself, but only an agreement to perform an act which substantially facilitate, or aids the establishment of such a dictatorship.

In short, this subsection would punish a person for conduct which was not intentionally in aid of totalitarian dictatorship and which would not involve otherwise unlawful conduct, if only a court should find that an innocently done act in fact contributes to the establishment of the dictatorship. There is no requirement of the use or agreement to use or even of advocacy of any unlawful means to facilitate a dictatorship. All that need be shown is that two or more people agree to do something which a court might find aids substantially in the result.

The phrase "any act which would substantially facilitate or aid" is without clear meaning. We do not believe that an average citizen could know what acts or agreements the courts might say would come within the meaning of that phrase. However, in the light of the bill's preamble and the definitions in section 3, it seems clear that one objective of this subsection is to punish cooperation or agreements to cooperate in any way with the Communist Party, or any other group which may be subject to the provisions of this bill. By the bill's definitions in sections 2 and 3, the Communist Party and the other proscribed groups seek to establish a totalitarian dictatorship in the United States or function primarily to that end. Hence any cooperation with them in furtherance of common objectives, including acts which are constitutionally protected, is readily construable as an act or agreement to commit an act which "would substantially facilitate or aid" the establishment of a dictatorship.

The subsection, then, under its comprehensive wording and its apparent objective would threaten criminal punishment for, say, agreements or cooperation with the proscribed groups to support common candidates for office, to join in demonstrations or picketing activities, or to support defense activities in legal cases, as for instance, the current trial of the Communist leaders. In addition to this including within its scope the activities of non-Communists, it even more clearly encompasses the activities of Communists no matter how innocuous. Members of the Communist Party by merely agreeing to pay dues, to solicit subscriptions to the Daily Worker and other Communist periodicals, to meet

¹ The Ferguson bill omits the words "or agree." However, there is no real difference between "agreeing" and "conspiring" in the context of this section. The word "conspire" means merely plot or scheme or agree.

with each other, to hold mass meetings and the like could by such activities subject themselves to the reach of the subsection.

Unless the first amendment of the Constitution is to be reduced to a mockery, these activities must be protected. Under the bill, however, they carry punishment up to 10 years' imprisonment and a fine up to \$10,000, together with the denial under subsection (c) of the right to hold public office or any position of trust or profit created by the laws of the United States.

This subsection also contains words other than "substantially facilitates or aids," which have no clearly defined meaning, such as "direction and control of which is to be vested in, or exercised by or under the domination or control of * * *." What are the exact boundaries of the term "representative form of government"? What does "characterized by" mean? Must the form of government advocated have all of the three characteristics of "totalitarian dictatorship" as that term is defined in section 3, or will it be sufficient if only one or two of these characteristics are indicated?

The present subsection is in our opinion more oppressive than the corresponding provision of last year's Mundt bill (H. R. 5852). Last year the same numbered subsection had four parts. The second standard of the former section 4 (a) was "to perform or attempt to perform any act with intent to facilitate or aid in bringing about the establishment in the United States of such a totalitarian dictatorship." This provision is identical with the present clause except that now S. 1194, in contradistinction to S. 1196, requires no proof of intent. Thus greater proof was required under section 4 (a) of the former bill than under S. 1194.

In the light of the foregoing analysis, subsection 4 (a) is unconstitutional for the following reasons:

1. Under the guise of punishing attempts to establish a totalitarian dictatorship in the United States dominated from abroad, it permits the punishment of peaceful advocacy and assembly as distinguished from acts and incitements threatening the immediate destruction of our Government. Accordingly, it violates the first amendment, which denies to Congress the power to make any law abridging freedom of speech or assembly.

2. It violates the due process clause of the fifth amendment because it defines a crime in terms so vague and indefinite that an ordinary citizen cannot know from reading it what conduct is prohibited.

Last year the Senate Judiciary Committee called upon three distinguished lawyers, recognized by the committee as experts in constitutional law, for their opinion of the constitutionality of last year's Mundt-Nixon bill. I understand that Senator Mundt has testified before this committee that their objections to the bill had been met in S. 1194. We have already shown that no material change, except for the worse, has been made in subsection 4 (a). Here is what these three experts said of that subsection of the old bill:

Charles Evans Hughes, Jr., said:

"The question of the validity of this bill turns principally on that of its compatibility with the first and fifth amendments to the Constitution.

"In my opinion, section 4 of the bill offends both of these principles. That section would make it a crime to attempt 'in any manner' to establish in the United States a totalitarian dictatorship under the control of 'any' foreign organization or to perform or attempt 'any act' with intent to facilitate or aid that purpose. Manifestly, this would include attempts to bring about such result by expression of opinions through speech or publication, or by participation in peaceable assemblies, designed to bring about changes in the Government through orderly processes of amendment of the Constitution. Statutes which spread as wide a net as that violate the first amendment (*Stromberg v. California*, 283 U. S. 359 (1931); *Herdon v. Lowry*, 301 U. S. 242, 249-250, 255, 260-261 (1937). See *Schneiderman v. United States*, 320 U. S. 118, 137-138 (1943).)

* * * * *

"In addition, section 4 fails to meet the test of due process which requires that the definition of a crime must be sufficiently definite to be a dependable guide to the conduct of the individual and to the court and jury which passes upon his guilt or innocence. This is true of the critical terms * * * 'vested in, or exercised by or under the domination or control of, any foreign government, foreign organization, or foreign individual,' and 'any movement.' Interpretation of these phrases receives only the slightest aid from the legislative declarations in section 2, because the latter relate to a particular 'Communist totalitarian dictatorship' and to a 'world Communist movement,' whereas section 4 denounces attempts to establish any totalitarian dictatorship controlled by 'any' foreign

organization and 'any' movement so long as it aims at that end. Especially in such a context the terms 'attempt,' 'facilitate or aid,' and 'actively to participate' are too vague and indefinite for a criminal statute" (p. 416 of hearings on H. R. 5852).

Attorney General Tom C. Clark said:

"From the language of the bill, it appears uncertain whether mere membership in a Communist organization as defined in section 3 would constitute a violation of section 4. The principle that a criminal statute must be definite and certain in its meaning and application is well established; a principle which may not be satisfied by the definitions and criteria of the bill (*Connally v. General Construction Company* (269 U. S. 385); *Lanzetta v. New Jersey* (306 U. S. 451)).

"It is also doubtful whether or not this proposal will meet the requirements of due process under the fifth amendment. A statute which would define the nature and purposes of an organization or group by legislative fiat is likely to run afoul of the due process requirements. *Manley v. State of Georgia* (279 U. S. 1 (1929))" (p. 424 of hearings on H. R. 5852).

John W. Davis said:

"It is forbidden (1) 'to attempt in any manner to establish in the United States a totalitarian dictatorship' * * * under foreign control; (2) 'to perform or attempt to perform any act with intent to facilitate or aid in bringing about the establishment,' etc. The difference in language between these paragraphs (1) and (2) seems to create more confusion than it removes. * * * It is not at all clear what acts are contemplated in the second paragraph beyond those embraced in the first. If, for instance, the advocacy of a constitutional amendment changing the form of government would be such an act as paragraph (2) envisages, it is at once apparent that constitutional questions based on the first amendment would be presented.

* * * * *

"It may well be that some or all of the evils with which the bill purports to deal are not susceptible of more precise description. But that which cannot be defined cannot be criminally punished under our conception of law." (P. 421 of hearings on H. R. 5852.)

While I do not know whether Seth Richardson, president of the Loyalty Review Board in the Civil Service Commission, was so honored by the committee's request, his objections to this subsection should be interesting to this committee. He said: "I am inclined to the view that before section 4 of the act can be deemed a proper exercise of the power of the Congress to protect the country against threatened danger, the bill should provide that efforts to establish a totalitarian dictatorship must be accompanied by force and violence and by unconstitutional procedures." (P. 444 of hearings on H. R. 5852.)

It therefore seems perfectly apparent that, despite the contrary contentions of the sponsors of these bills, section 4 (a) is at least as unconstitutional now as it was a year ago.

UNAUTHORIZED DISCLOSURE OF CLASSIFIED INFORMATION

Section 4 (b) relates to the unauthorized communication by officers or employees of the Government of classified information. Except for the proposal contained therein to abolish the statute of limitations, we find nothing seriously objectionable in this subsection. However, we cannot see any valid reason for including such a provision relating to espionage, in this bill which has no connection whatever with that subject matter. If revisions are needed in the espionage laws, they should be made within the context of sections 793-797 of title 18 of the United States Code. While we do not express here any opinion on the merits of the revisions to those sections proposed by the Attorney General and contained in S. 595, which I understand has already been reported favorably by this committee, with certain amendments, it presumably contains the revisions of the espionage laws which the whole Judiciary Committee thought necessary or appropriate. Certainly there can be no justification for eliminating the statute of limitations. However, I will not discuss this provision as I understand your committee has already indicated its disapproval of this harsh clause.

THE REGISTRATION PROVISIONS

Although section 4 is highly objectionable, the major vice of these bills lies in the remainder of their text, which deals with the registration of organizations and individuals.

It is apparent that registration carries with it severe consequences for the organization which has registered and for its members and supporters. Some of these consequences are expressly provided for in the bill itself. Thus an organization which is required to register must, under pain of severe penalties, publicly divulge its members and financial affairs. Its literature and radio and television broadcasts must, under section 11, be invidiously labeled. The organizations are denied tax exemptions and contributions to them are not tax deductible (sec. 12). Members of organizations ordered to register as "Communist political organizations" have additional disabilities. Thus they may not hold nonelective Federal office, must reveal their membership when seeking elective Federal office, and cannot obtain passports (secs. 5 and 6).

But these disabilities, severe as they are, are mild compared to the unexpressed social and economic consequences which will befall the members of a registered organization. A registered organization is, under the bill's definition, conspiratorial, disloyal, and seditious. Obviously any organization which either voluntarily publicly describes itself in such terms, or is so described by governmental (including judicial) action, is subject to intense public odium, as are those persons hardy enough to remain members therein.

It is perfectly apparent therefore, that no organization can or will voluntarily register under these provisions. Attorney General Clark pointed this out. He said: "It can be assumed that no organization would confess guilt by registration * * *" (p. 424, hearings on H. R. 5852). The simple fact is that the mere act of registration would cause an organization either to disappear or to become an illegal, "underground" society. No organization could retain open membership and support if it either voluntarily registered or was ordered to do so by official governmental action requiring disclosure of its membership. Its officers, members, and contributors must either depart from the organization or be subject to the most onerous, and increasingly familiar sanctions of public odium, including loss of employment, social stigmatization, expulsion from "legitimate" organizations, and perhaps mob violence. Even registration would not wholly save the victims because the names must be filed of all those who were members at any time in the preceding year. What is more, they may all be subjects for prosecution under section 4 (a) of the bill. (See the Attorney General's Opinion to the same effect, p. 423 of hearings.)

Accordingly, the sponsors of the bills misstate the case when they assert that the bill merely performs disclosure functions, and does not outlaw any organization. The fact is that the bills envisage not that any organization will register, but rather that individuals will be relentlessly prosecuted for belonging to organizations which have failed to register.

The bill then, effectively outlaws organizations within its scope. Our next point is that this scope is unconscionably broad and vague, that it includes organizations who merely exercise constitutional rights, and that its standards are irrelevant to the opprobrious conclusions on the basis of which registration is required.

Let us examine the scope of the bill—that is, its definitions of "Communist political" and "Communist-front organizations."

It is apparent that the general definition of "Communist political organization," contained in section 3 (3) is vague. It refers first, to an organization which has "some, but not necessarily all, of the ordinary and usual characteristics of a political party." But what such characteristics are, and how many are "some", is neither explained nor self-explanatory. It is, we assume, an "ordinary and usual characteristic" of a political party that it has a treasury and distributes literature, but so does virtually every organization of any kind. In addition, the terms "dominated or controlled by" and "operates primarily to advance the objectives" of the "world Communist movement" are obviously vague, as is the definition of those objectives in section 2.

The vagueness of this general definition is aggravated, rather than removed, by the eight criteria given for its application in section 14 (e). First of all, there is no indication as to how many of these criteria must be present to support a finding that the definition is met. Secondly, each of the criteria begins with the words "the extent to which," without any indication of the extent which is to be deemed significant. Thirdly, most of the criteria have no relevance to the general definition, vague as it is. Fourthly, the criteria themselves employ many vague terms of no defined or commonly understood meaning.

Thus the first criterion refers expressly to the formulation and carrying out of the policies and activities of the organizations.² Clearly, therefore the mere

² This subsection is identical with the former sec. 3 (3) (B).

expression of ideas comes within the criterion, if they are found to have been formulated and carried out to "effectuate the policies of the foreign government" or organization referred to in section 2. The phrase "to effectuate the policies" is a most elastic concept. Since there is no requirement of showing of intent, presumably the purpose may be inferred from the character of the policies carried out. In that case, the first test would be substantially indistinguishable from the second test, discussed immediately below and subject to the same objections. Moreover, the policies being "effectuated" may have no connection whatever with the objectives of the "world Communist movement" referred to in section 2, and indeed may have no relevance to the establishment of "totalitarian dictatorship" in this country.

The second criterion expressly makes "views and policies" a test which, of course, refers to ideas and expressions.³ This criterion contains no requirement whatever that a totalitarian dictatorship under foreign control shall be advocated. There is no indication of what views and policies are to be deemed significant. In any case, the section abandons the traditional American creed that ideas are to be tested on their merits, in favor of the notion that they are to be spurned because of a governmental attitude toward others who may advocate the same views.

The third criterion, relating to the extent to which the organization "receives financial or other aid, directly or indirectly, from or at the direction of such foreign government or foreign organization,"⁴ again has no necessary relevance to the establishment of a totalitarian dictatorship under foreign domination. The reference to the receipt of "aid, indirectly" is obviously a loose standard. An organization may not even know that it is "indirectly aided" by a foreign source. Moreover, the whole organization and its membership is penalized because support in an unspecified amount comes to it indirectly, and possibly for perfectly laudable purposes, from the source mentioned. If an organization includes among its members Communists or members of other proscribed groups, it could, under the loose definitions in sections 2 and 3, be said to receive support indirectly from a foreign group. This criterion thus is subject to the same objections mentioned below in connection with subsection 6.

The fourth criterion which relates to the organization's sending of representatives to any foreign country for instruction or training in the principles of "the world Communist movement,"⁵ imposes penalties merely for taking steps to secure information concerning political and economic ideas which are prevalent in large parts of the world. It thus has the noxious effect of stigmatizing educational efforts. If an organization sends or authorizes a delegate to attend any foreign or international conference, and Communists take part therein, it might be held that the delegates were sent for the prohibited purpose. And this is true even though the "instruction" received is wholly unrelated to the establishment of a totalitarian dictatorship in this country.

The fifth criterion is the extent to which the organization "reports" to the foreign government or organization.⁶ A mere exchange of communications, no matter how innocuous, can be construed as reporting. Furthermore, the reporting may have no connection with the establishment of a totalitarian dictatorship in this country. Presumably the reading of a resolution or report at an international conference in which foreign Communists participate could be construed as falling within this test.

The sixth test is "the extent to which [the organization's] principal leaders or a substantial number of its members are subject to or recognize the disciplinary power of such foreign government or foreign organization or its representatives."⁷ It is not explained who qualifies as a "principal" leader, or how many is a "substantial" number. What is the meaning of the terms "subject to" and "recognize" the disciplinary power of such foreign government? These are words with no clear meaning. It is not apparent how such criteria could prove that the organization as a whole is controlled by the foreign government or movement, and "operates primarily to advance the objectives of the world Communist movement"? Some labor unions have democratically elected Communist leaders, and

³ In the old bill the corresponding test (3-3(e)) was the "extent to which they are the same as those of such foreign government or foreign organization." The current bill refers to "the extent to which its views and policies do not deviate from those of the foreign government or movement. We see no distinction between the two versions.

⁴ This test is identical with the old sec. 3 (3) (E).

⁵ This test is identical with the former sec. 3 (3) (F).

⁶ This test is identical with the former 3 (3) (G).

⁷ The same as the former 3 (3) (H) except that the word "principal" is now inserted before the word "leaders" in the former bills and the words "a substantial number of its" are inserted before the word "members."

some may include a substantial number of Communist members. In view of the bill's "finding" in section 2 (5) this fact, in itself, would under the sixth test proscribe the union even though neither it nor its leaders have done anything related to the establishment of a dictatorship. It is equally clear that a majority of the members of a group may be branded as foreign agents under this test merely because of the way a minority of their group are alleged to feel about a foreign Government or movement. This is guilt by association with a vengeance.

The seventh test has to do with the extent of the resistance or failure of a group to make disclosure of its membership lists, records or other information, the extent to which its members (in unspecified number) refuse to reveal their membership, and the extent to which meetings or other functions are secret.⁸ Certainly under this section it is unnecessary to prove any action toward subordinating our Government to any other, or that the organization operates in any way to advance the objectives of any foreign government or movement described in section 2. Most trade-unions have opposed disclosure of their membership lists and financial or other records. In some parts of our country to be known as a member of a trade-union, or of the NAACP, or of the Progressive Party is to be visited with social ostracism, loss of employment, and even physical violence. Everywhere, to be known as a Communist, even though the Communist Party is a legal organization in the United States, is to meet severe penalties, usually involving at the least, the loss of the means of earning a livelihood. Failure or refusal to make a disclosure is thus explicable merely by the natural interest in self-preservation. It has no logical or reasonable connection with foreign domination.

It is very common for all kinds of groups to exclude nonmembers from their meetings on certain occasions. Are these secret meetings? For the same reasons that membership lists are not disclosed, meetings of members are often not disclosed. But we cannot see how the effort to avoid the consequences of community intolerance, which usually meets those who support unpopular causes, shows foreign domination. Accordingly, to permit a finding of such foreign domination based upon such "evidence" is to violate the most elementary principles of justice and due process of law, and to subject lawful groups to suppression for the mere exercise of constitutionally guaranteed freedoms.

The eighth and last test relates to the extent to which some leaders or members of the organization subordinate their allegiance to the United States.⁹ The terms "allegiance" and "as subordinate to their obligations, etc.," are most indefinite, and can be measured only by purely subjective standards. For example the Commission might consider that a person has subordinated his allegiance simply because he believes that a particular policy of a foreign government like opposition to the Marshall plan and the North Atlantic Pact, is more conducive to world peace and is therefore preferable to the policy of our State Department. If that could be deemed proof of superior allegiance to a foreign government, this provision is substantially indistinguishable from subsection (6) discussed above, and is therefore subject to the same objections. In any case an organization could be branded as a foreign agent, and part of an international criminal conspiracy, merely because some of its principal leaders and a minority of its members are found to have certain feelings regarding a foreign government or movement, although no act has been performed or even any view expressed which is logically or reasonably germane to the finding to be made.

The definition of a "Communist front organization" in section 3 (4) is no more satisfactory. It includes an organization which is controlled by or operated primarily for the support of a "Communist political organization." Accordingly, all the objections to the vagueness, irrelevancy and scope of the definition a "Communist political organization" are automatically carried over to the definition of "Communist front organization." The specific criteria which are to be considered by the Commission do not remedy the faults of this general definition.

Four criteria for determining that a group falls under this definition are set out in section 14 (f).¹⁰ None of these four tests has any necessary connection with domination by a foreign government or the world Communist movement since a finding of "control" by an organization found to be a "Communist political organization" is all that is required.

The first of these tests relates to the "identity" of active members. It does not say what characteristics of the members are to be taken into account, or how

⁸ This is identical with the former 3 (3) (I).

⁹ This corresponds to the former 3 (3) (J). The only change is the same change made in subsec. 6, discussed above.

¹⁰ The first three are identical with the first three criteria used in last year's bill (sec. 3 (4) (A) (B) and (C)). The fourth criterion is identical with the former (D) except that the words "does not deviate from" are substituted for "the same as." We have already seen that there is no difference between these two phrases.

many of those active in the organization must be "bad people." What is the meaning of the term, "active in its management," especially as the people involved need not hold any office in the organization, according to the test? Again it is clear that the group is to be stigmatized because of the associations or views of a few active people who are not to the liking of a commission. Freedom of speech and association is thus abridged and the doctrine of guilt by association is applied. It is impossible to see how this test bears any necessary relation to domination by a "Communist political association" or the "world Communist movement."

The second test relates to the sources from which an "important part of the organization's support, financial or otherwise, is derived." What sources of support are deemed significant? How much is an important part? What is the meaning of support other than financial? There is no requirement that it be shown that the group knew that the support was coming from the unspecified "bad" source, or that the group shall have done any act logically indicating support for a "Communist political association" or the "world Communist movement."

The third test refers to "the use made by the organization of its funds, resources, or personnel."

What use is to be condemned? Suppose it uses one-fiftieth part of its resources for purposes deemed "bad," is that enough? Clearly, the use can be and undoubtedly is primarily the facilitation of the expression of views, and the organization of meetings and publications and broadcasts to express views. Accordingly, in addition to extraordinary vagueness, the penalties provided may attach merely for exercise of speech, press, and assembly.

The fourth test, referring to the extent to which the position taken or advanced * * * on matters of policy does not deviate from the position taken by any "Communist political organization" is identical with subsection 14 (e) (2) discussed above except for the substitution of the words "Communist political organization," for the words "such foreign government or organization," and subject to the same objections.

The fact is that the definitions and criteria for both "Communist political organizations" and "Communist fronts" are so vague and irrelevant to any threat of totalitarian dictatorship that the Commission could require registration of almost any organization in its virtually unfettered discretion.

For example, the Progressive Party, which obtained more than a million votes in the last election, could readily be determined to be a "Communist political organization" by these tests. Because it disapproves of the Marshall plan, the Truman Doctrine, aid to Franco Spain, aid to Chiang Kai-shek, compulsory military service, etc., the Commission could, if it desired to do so find that its policies and activities "effectuate the policies" of Russia and that its "views and policies do not deviate" to a sufficient extent from those of Russia. In addition, the Commission could find that some of its leaders and a "substantial number" of its members are Communists (and thus, by the "findings" in sec. 2 (5) and 2 (9) are persons who recognize the "disciplinary power" of Russian Communists or who owe Russia a "superior allegiance"). Furthermore, the Progressive Party would undoubtedly resist, for purposes of self-preservation, efforts to obtain information as to its membership, and very likely some members of that party (like members of the Democratic or Republican Party) often meet in closed, unpublicized ("secret") meetings.

As for Communist fronts, these can include virtually all labor unions and progressive organizations, because for example, some of their active members who may also contribute funds, are Communists or members of the Progressive Party (already shown to be a likely candidate for designation as a Communist political organization). They may take policy positions which do not deviate from certain policies of the Communist or Progressive Party.

The foregoing analysis demonstrates that the registration provisions of the bill are unconstitutional for the following reasons:

1. Sections 5 and 6 of S. 1194 deny the right of employment or of holding non-elective office under the United States and the right to obtain passports, merely for membership in a "Communist political organization." Section 10 makes mere membership in such organization a crime under certain conditions. These penalties and the drastic social and economic consequences of belonging to a prosecuted organization apply without regard to any action, fault or wrongful intent on the part of the individual. The individuals affected are thus made second-class citizens. They are branded and made to suffer disabilities on the assumption that they are agents of a foreign government or political group, although not the slightest proof is required that in fact they are anything of the

kind. This is the clearest application of the unconstitutional doctrine of guilt by association. Under our law, guilt is personal, and our courts have recognized that members of an organization notoriously do not adhere to all of its tenets.

2. Organizations may be destroyed and their members subjected to legal social and economic disabilities merely because of the views they advocate, regardless of how peaceable their conduct. Thus the first amendment, which guarantees freedom of speech and assembly is violated.

3. Registration imposes severe punishment on the organizations and their members. This punishment is imposed on the basis of vague standards, and hence violates the due process clause of the fifth amendment.

4. Registration may readily subject the organization and its members to prosecution under section 4 (a). Hence, the requirement of registration compels self-incrimination in violation of the fifth amendment.

Our views as to the unconstitutionality of these bills are supported by the opinion of the lawyers whom this committee last year recognized as constitutional experts. Their comments were made with respect to H. R. 5852, but these bills have not removed the defects they noted. We have already indicated the inconsequential changes made in section 14. The other changes¹¹ are equally without significance in relation to the constitutional questions involved.

Charles Evans Hughes found the criteria for determining "Communist organizations" in sec. 3 of the old Mundt bill (now contained in sec. 3 and 14) to be clearly unconstitutional for vagueness. He said:

"In my judgment, the definitions in section 3 of the organizations against which, or against the members of which, the above sections are directed, are permeated with even greater vagueness and ambiguity than are those of section 4." (P. 417 of hearings on H. R. 5852.)

John W. Davis expressed a similar view. He said:

"Without pausing to consider such constitutional questions as are raised by the general frame of the bill or others which might appear in the course of its attempted enforcement, I am constrained to think that because of its indefiniteness and uncertainty the bill fails to meet the constitutional requirement of due process.

* * * * *

"Section 3 purports to define the persons and organizations at which the bill is aimed. These definitions are the pivots of the bill. It is built around them, with the exception perhaps of sections 4 and 5 to which I shall later allude. It would seem to be clear that if the definitions are themselves vague and uncertain that uncertainty must vitiate the act throughout." (P. 420 of hearings on H. R. 5852.)

There follows a detailed analysis of each of the criteria for determining which organizations must register, after which Mr. Davis concluded:

"I cannot withhold the opinion which I have above expressed, namely that H. R. 5852 is violative of the Constitution * * *." (P. 421 of hearings on H. R. 5852.)

A special observation should be made with respect to the provisions of section 11. This section is a clear abridgment of freedom of speech and of the press since it requires speech and writings to be invidiously labeled regardless of their contents merely because the organization which communicates them has incurred governmental displeasure. It is obvious that the labeling requirement is an effective restraint on the dissemination of information. Thus no periodical could expect to obtain mail subscribers if it is contained in a wrapper which labels it as a virtually treasonable document.

Concerning this section, Charles Evans Hughes had the following comment:

"There is a separate constitutional question as to whether section 11 of the bill is an abridgment of freedom of speech and of the press in violation of the first amendment.

* * * * *

"There is no question of vagueness or indefiniteness here, because the section applies only to an organization which is registered or as to which there is in effect

¹¹ Former sec. 5, relating to loss of citizenship by persons violating sec. 4, has been omitted. Sec. 8 of the present bill, providing for the registration of members of "Communist political organizations" is new, but it is subject to the same objections as are applicable to sec. 7 providing for the registration of organizations and hence requires no separate treatment.

Apart from the foregoing omission and addition to the old bill, the principal changes effected are: that the determination as to those who are obliged to register under the bill is now to be made by a Commission of three rather than by the Attorney General; the penalties and obligations now arise only after a final order has been made by the Commission, and, in the case of penalties applicable to members, the order must be known to the individuals concerned.

a final order of the Attorney General requiring it to register. But there may well be a question whether under *Thomas B. Collins* (323 U. S. 516 (1945), supra) such a requirement is not an undue abridgment, because not supported by any clear necessity. The publications and broadcasts which are thus required to be identified as Communist-inspired may be on any subject, however far removed from any international Communist objective or even any domestic Communist program. With respect to 'Communist-front organizations,' which might, within the definition, exist chiefly for relief or other humanitarian purposes, the obligation to label themselves as 'Communist organizations' appears particularly onerous." (P. 419 of hearings on H. R. 5852.)

Indeed the entire principle of requiring registration as a condition to the exercise of freedom of speech or assembly even when done only for the purpose of identification without invidious characterization is violative of the Bill of Rights. As the Supreme Court said in *Thomas v. Collins* (323 U. S. 516), "As a matter of principle a requirement of registration in order to make a public speech would seem generally incompatible with an exercise of free speech and free assembly."

THIS LEGISLATION IS UNNECESSARY

What is the justification offered for the introduction of these repressive bills? It is said that such legislation is needed "to preserve the sovereignty of the United States" (sec. 2 (11)).

If, as the preamble to the bill claims, there exists a conspiracy in this country seeking to destroy our national security and subject us to a foreign dictatorship, then such activity can be prosecuted under existing criminal legislation, which is adequate for that purpose. Aside from numerous State statutes, there are Federal criminal statutes which punish the following activities among others:

Acting as agent of a foreign government without notification to the Secretary of State (18 U. S. C., sec. 951); private correspondence with foreign government with intent to influence relations with the United States or to defeat measures of the United States (18 U. S. C., sec. 953); possession of property in aid of foreign government for use in violating any penal statute or treaty rights of the United States (18 U. S. C. sec. 957); espionage activities (18 U. S. C. secs. 793-797); inciting or aiding rebellion or insurrection (18 U. S. C., sec. 2383); seditious conspiracy (18 U. S. C. sec. 2384); advocating overthrow of the government by force (18 U. S. C. sec. 2385); treason (18 U. S. C. sec. 2381); misprision of treason (18 U. S. C. sec. 2382); undermining loyalty, discipline or morale of armed forces (18 U. S. C. sec. 2387); sabotage (18 U. S. C. secs. 2151-2156); importing literature advocating treason, insurrection or forcible resistance to any Federal law (18 U. S. C. sec. 552); injuring Federal property or communications (18 U. S. C., sec. 1361); conspiracy against the constitutional rights of citizens (18 U. S. C. sec. 371); conspiracy to impede discharge of Federal officer's duties (18 U. S. C. sec. 372).

In addition, organizations engaged in civilian military activity, subject to foreign control, affiliated with a foreign government, or seeking to overthrow the Government by force, are subject to registration requirements under the Voorhis Act (18 U. S. C. 2386). While some of these acts would punish mere advocacy of ideas and are, therefore, unconstitutional, they do not differ in that respect from this proposed bill. If some of these acts have technical deficiencies these can be remedied by technical amendments.¹²

The purpose and effect of the Mundt-Nixon bill, however, is not to avert danger to our Government and democratic institutions. Instead, it is, as appears from the foregoing analysis, designed to suppress or punish dissenting political expression or assembly under the pretext that such expression or assembly constitutes a conspiracy to establish a totalitarian dictatorship under foreign control. This purpose the bill would accomplish by permitting an administrative determination of a treasonable status on the basis of standards and proofs which are relevant not to treasonable activities but to the expression of dissenting opinion.

ADMINISTRATIVE DETERMINATIONS AND COURT REVIEW

We have shown that the condemnation of an organization under the provisions of this bill is tantamount to destruction. It is also true that a finding that an organization must register is equivalent to conviction for "special types of odious and dangerous crimes." *U. S. v. Lovett* (328 U. S. at 216). Yet under the provisions of this bill condemnation would result from the finding of a mere commission composed of political appointees. Thus the requirement of judicially compe-

¹² Last year the Attorney General suggested certain technical revisions which this year were embodied in S. 595. He then said: "I do not believe that sweeping new legislation is required." (P. 424 of hearings.)

tent proof beyond a reasonable doubt before a court of law and an impartial jury, which is essential under our judicial system for even the most innocuous misdemeanors, would be avoided in cases involving thousands of individuals, perhaps hundreds of organizations, and their fundamental civil liberties.

The fact that court review is available for the Commission's findings does not mitigate the vices inherent in the bill. If the standards are vague and improper for the purpose of administrative determinations, then the same standards are vague and improper for the purpose of judicial review. Furthermore, the Commission's findings of fact are conclusive if supported by a preponderance of the evidence (substantial evidence only under the Ferguson bill).

THE BILLS THREATEN SELF-GOVERNMENT

It is the essence of our democracy that the people shall govern themselves. Their only hope of doing so wisely lies in the collective wisdom derived from the fullest possible information, and the fair presentation of differing opinions. Without such information our people cannot find their way intelligently to the policies and candidates who suit their wishes and needs and our Government cannot be made responsive to their will.

Because in a democracy the people must have the right to choose the good from the bad ideas, no governmental authority "can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion." "* * * authority * * * is to be controlled by public opinion, not public opinion by authority" (*Board of Education v. Barnette*, 319 U. S. 624, 641, 642). Indeed, the Supreme Court has said, "The very purpose of the first amendment is to preclude public authority from assuming a guardianship of the public's mind through regulating press, speech, and religion. In this field every person must be his own watchman for truth, because the forefathers did not want any government to separate the truth from the false for us" (*Thomas v. Collins*, 323 U. S. 511, 545).

This freedom to speak, to write, to hear, to choose, without governmental interference, must carry with it the effective right to persuade to action. "The first amendment is a charter for government, not for an institution of learning. 'Free trade in ideas' means free trade in the opportunity to persuade to action, not merely to describe facts" (*Rutledge, J. In Thomas v. Collins*, supra, p. 537). And "freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order." (*Jackson J., in Board of Education v. Barnette*, supra, p. 642).

If these democratic principles are to be made effective, the people must be free to organize into associations, whether political, religious, or economic, without governmental restraint. For it is only through such associations, that the will of the people can be brought to bear upon the market place of ideas, and upon the governmental authorities.

Because these bills would deny that freedom of association and expression to all who fail to meet the criteria of political orthodoxy which they prescribe, the bills strike at the very foundation of democratic government in the United States.

Adherence to democratic principles has made America great—has made it possible for our country to progress in the face of gigantic trials and vast changes in the condition of life in the United States and the rest of the world. Our national interest, and the welfare of every American, requires that this heritage of freedom and democracy shall be cherished by us all, and vigilantly safeguarded against every threatened inroad.

For the reasons we have indicated, we regard these bills as a threat of unprecedented magnitude to the most basic essentials of our democratic institutions. For they sweep within their ambit the liberties of all Americans, making the exercise of liberty subject to the constant surveillance of a governmental commission clothed with almost limitless power.

There is a painful incongruity between these bills and the principles of freedom for which our representatives at the United Nations and in many foreign lands purportedly stand. We had a leading part in sponsoring the universal declaration of human rights which has been approved by the General Assembly of the United Nations. Article 2 of the declaration states: "Everyone is entitled to all the rights and freedoms set forth in this declaration, without discrimination of any kind, such as * * * political or other opinion. * * *" Article 19 declares: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Article 20 provides in part: "Everyone has the right to freedom of peaceful

assembly and association." In our view it is impossible to square these bills with our moral obligations under the universal declaration of human rights.

If you are not now to take inspiration from the universal declaration we sincerely hope that you will at least take warning of the dangers inherent in these bills, from another source. The following are some of the laws and decrees enacted by the national socialist government of Adolph Hitler:

On July 26, 1933, a law was passed (Reichsgesetzblatt, 1, 538) which provided: "Conduct violating the duty to loyalty against the Reich and People will be found particularly if a German assists in the hostile against Germany or if he has tried to insult the prestige of the measures of the National Government."

On May 26, 1933, the following law (Reichsgesetzblatt, 1, 293) was passed: "Section 1:1. The supreme authorities of the State or the authorities designated by them may confiscate in favor of the State, the property and rights of the Communist Party of Germany and its auxiliary and substitute organizations, as well as the property and rights used or destined for the advancement of Communist endeavors."

And 6 weeks later, the Nazis passed another law (Reichsgesetzblatt, 1, 479, July 14, 1933):

"The provisions of the law regarding the confiscation of Communist property of May 26, 1933 (RGBl, 1, 293) are applicable to property and the rights of the Social Democratic Party and its auxiliary and substitute organizations, as well as to property and rights used or destined for the advancement of Marxist or other endeavors found by the Reich Minister of the Interior to be hostile to the people and State."

By the charter annexed to the agreement establishing the tribunal for the trial of war criminals (The Nurnberg Trial, 1946, 6 Fed. Rules Decisions 73-202, 76) certain acts were held to be punishable as crimes against humanity. Among these were "persecutions on political, racial or religious grounds * * *" (supra, p. 78). The judgment of the tribunal which recites the methods by which the Nazis consolidated their power, lists among them:

By "a series of laws and decrees" (supra, p. 81), hostile criticism, "indeed any criticism of any kind, was forbidden, and the severest penalties were imposed on those who indulged in it" (supra, p. 83).

CONCLUSION

It is our conclusion that the enactment of these bills would make possible the introduction in the United States of a despotism abhorrent to American tradition, and destructive of democratic government. They, accordingly deserve to be emphatically rejected by this Committee.

Senator O'CONNOR. There remain other witnesses who have come, and whom we would be very glad to hear. Of course, it being understood that they will testify under the conditions that have been mentioned. The Senate now being in session, we will hear Senator Johnson, and then recess for the day.

Mr. DURR. Thank you.

Senator O'CONNOR. Mr. Durr said he is perfectly willing to have you proceed with your statement as coauthor of this proposal, and we would be very pleased to have the benefit of your views in connection with it.

STATEMENT OF HON. OLIN D. JOHNSTON, A UNITED STATES SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator JOHNSTON. I think that Senator Mundt has explained the bill in detail already, but I did want to call to the attention of the committee just a few things that I consider of vital issue at the present time.

There is a certain faction in America that immediately denounces anyone who seeks to curb the insidious activities of the communistic conspirators who seek to overthrow our Government, but I am willing to subject myself to abuse, if need be, in order that we might enact

legislation that will protect this country from further encroachment of traitors, traitors who know no allegiance except to the bloodthirsty Russian dictatorships.

I remember too well the hearings conducted last year on the Mundt-Nixon bill, and for the information of the committee, we studied those hearings and tried to write a better bill and present it to Congress, which we think that we have done at the present time.

Throngs swoop down upon Capitol Hill denouncing Communist-control legislation. I fully realize the difficulties involved in drafting such legislation and at the same time to maintain the fundamental rights guaranteed under our Constitution. However, I am in no way willing to sacrifice our constitutional liberties in an ill-informed and misdirected effort to preserve them. I am of the opinion that this legislation fully protects the rights of the innocent, while on the other hand it exposes and provides punishment for those who seek to destroy us and our form of government.

As my colleague, the distinguished Senator from South Dakota, has so well put it, there is no desire on the part of anyone to persecute anybody. We do not want to dam the stream of liberty in the United States. But it is very important to keep the stream pure; pure from the conspirators who seek refuge behind the shield of constitutional freedom. We are compelled to bring them into the open, as I see it. No legislation should by force retard the development of political parties or the inalienable right of every citizen to his or her views on political issues. Fundamentally it does not matter how much we differ with our fellow men on political issues, but communism is more than a political party. It is an organized movement striving for monopolistic control of the world, without regard for the ways or methods by which that purpose is attained. The Communist Party member is so blinded by party loyalty that he subordinates his family, his friends, his career, his relatives, his fortune, and everything that we as Americans have been taught to cherish and love. Marxist theories advocate an international network of governmental systems from the Kremlin, placed at the top to serve as an intelligence bureau for the communistic measures. If these theories are ever realized, and God forbid, it will be just like a puppet show with the leader behind a curtain pulling the strings for the members connected by the central system to move at the slightest command.

Mr. Chairman, we are compelled to deal with such persons with our present outmoded statutes. How can we expect to do justice to the people of America?

To illustrate the need for such legislation, I point out that in the Chambers-Hiss instance, with all of the threat to our safety and security involved therein, the grand jury could only indict as to perjury, since we have no law dealing specifically with peacetime espionage. It is unnecessary to pass judgment on the innocence or guilt of Alger Hiss, Chambers, Miss Coplon, Miss Bentley, or others who have been under trial or suspicion for practices dangerous to the security of America. I have faith in the ability of the legal profession and the judiciary of this country to protect the rights of the individual. I fear for the ability of our law-enforcement agencies and the court to preserve our way of life and our form of government with the laws now existing for the control of subversive activities and subversive agents in this country, or the lack of laws.

The new legislation proposal provides a tougher series of penalties, outlaws peacetime espionage, makes the statute of limitations inapplicable to treasonable acts in time of peace, and requires the registration and publication of names of all members of the Communist Party in America. If we, the American people, continue to attempt to cope with the Communist Party in this country with our present statutes, I fear we will find ourselves confronted with the same political entanglements which now face many of the European countries.

Section 4 of the bill of which I am cosponsor specifically outlaws certain un-American practices. Section 4 states:

It shall be unlawful for any person knowingly to combine, conspire, or agree with any other person to perform any act which would substantially facilitate or aid in the establishment within the United States of a totalitarian dictatorship, the direction and control of which is to be vested in and exercised by or under the domination or control of any foreign government, foreign organization or foreign individual.

It vests authority in the Attorney General of the United States to keep specific records of all persons or suspected members of any subversive organization. The bill has been clarified so that no honest opponent or misguided critic can allege that it is a thought-control measure, that it deprives any political party of its constitutional rights, that it denies any loyal citizen the complete exercise of his citizenship privileges.

The act would establish a Subversive Activities Commission comprised of three members appointed by the President, one each from the Department of State, Department of Commerce, and the Military Establishment, whose duty would be to work with the Attorney General in enforcing and administering the provisions of the law.

The bill outlaws peacetime espionage, and requires the Communist Party to sever its ties with Russia or refrain from acts, I repeat, or refrain from acts designed to establish totalitarianism in this country.

It waives the present 3-year provision of the statute of limitations on crimes of this type.

The proposed bill requires the registration of all members and officers of all Communist organizations, but also provides for specific safeguards for innocent people falsely listed, and sets up the machinery for such individuals to avoid publication of their names. This provision will eliminate the name-smearing campaigns which were prevalent during the past session of Congress.

The bill also prohibits the Communist Party or any subversive organizations the use of the mails and instrumentalities of interstate or foreign commerce. This in effect will tend to curb some of the vicious propaganda now being circulated and disseminated by the Communist Party.

The act also specifically denies tax deductions, you will remember, that is deductions for Federal income taxes now allowed under section 101 of the Federal Revenue Code. Mr. Chairman, I call that to your attention, the United States Government has spent and will spend billions of dollars for each fiscal year 1948, 1949, 1950, and 1951 for ECA. Do you think America would have spent all of this money if she had not feared the spread of communism? Then if we are willing to spend all of these billions to check the spread of communism abroad, how much more important is it to us to see that we have the necessary laws on the statute books to properly protect us at home.

The immediate need for this bill was borne out a few weeks ago by the statement of Paul Robeson, so-called American citizen, when he said that if Russia and America were to meet in armed conflict, the members of his race would not bear arms against Communist Russia. Are we as Americans going to tolerate such a bold declaration of policy? I do not think the American people are so lost in their democratic ideals and principles that they will let such a traitor go unpunished and continue to enjoy all of the benefits of this great Nation.

Under the present laws, however, we must grin and bear it. That is all we can do under the present laws. We have disregarded the necessity of this legislation, as I see it, long enough. Now is the time to analyze our statutes and if we need them revised, then do so. We have given this problem enough of lip service, as I see it. Now is the time for definite action.

Although I am the coauthor of a bill that we have given a great deal of study to, this Senate 1194, I want to tell the chairman of this committee that the main thing that I am trying to preserve is our American way of life, without being interfered with from any outside influence, and if this bill is not properly drawn, I am not fussing over details, but I do realize that something must be done in America to tighten up our statutes in regard to matters of this kind, and for that reason I urge that all of the consideration that you can possibly give, with all of the rest that you have, with so many matters on you at the present time, that you try to work out something that will be beneficial and helpful, to all of America.

Senator O'CONNOR. Senator Miller, have you any questions?

Senator MILLER. No questions.

Senator O'CONNOR. We are indeed grateful to you, and assure you that this legislation will receive our very earnest and conscientious consideration.

Senator JOHNSTON. Thank you.

Senator O'CONNOR. The Senate now being in session, we will recess this hearing, and the hearing to be resumed tomorrow morning at 10 o'clock.

(Thereupon at 12:10 p. m., a recess was taken until Thursday, May 19, 1949, at 10 a. m.)

CONTROL OF SUBVERSIVE ACTIVITIES

THURSDAY, MAY 19, 1949

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to recess, at 10 a. m., in room 424, Senate Office Building, Senator Herbert R. O'Connor presiding.

Present: Senators Eastland (chairman of the subcommittee), Miller, O'Connor, and Ferguson.

Also present: Robert Barnes Young and John Mathews, professional staff members.

Senator O'CONNOR. The hearings will be opened.

As the first witness we have Mr. Harris from the CIO.

May I state at the outset that our counsel will announce the policy of the subcommittee which is applicable to all witnesses, and which is the result of consideration by this Senate Judiciary Subcommittee by unanimous vote. Mr. Young, would you be kind enough to announce the policy, please?

Mr. YOUNG. For the benefit of all the witnesses who are here, I think it would be in order to read once the message of the chairman of the subcommittee given during the first day of the hearings:

Attention should be directed to the policy and rule laid down by the subcommittee concerning the relevancy of proposed testimony. To be more specific, I should like to read a short paragraph once this morning which will apply to all witnesses that we may know the procedure.

This is from the first day's hearing on Friday April 29, 1949, a statement by the subcommittee chairman, Senator Eastland:

The committee has determined whether or not a person is a member of a Communist Party now or has been a member of the Communist Party is a relevant question. It is something that we should know to be able to evaluate the testimony before the committee. It is a material question. We expect to ask the witnesses whether or not they are members of the Communist Party, whether or not they have been members of the Communist Party, and if any witness should refuse to answer that question, then the committee will not be interested in any testimony from that witness. We do not think that it is right for a witness to come before the committee to refuse to give us his background, and select which questions he shall answer, and which questions he shall not answer. So that will be the rule and the conduct of the hearings.

Mr. Harris, will you stand and raise your right hand? Do you solemnly swear or affirm in the proceedings before this subcommittee you will tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HARRIS. I do.

TESTIMONY OF THOMAS E. HARRIS, ASSISTANT GENERAL COUNSEL, CONGRESS OF INDUSTRIAL ORGANIZATIONS, WASHINGTON, D. C.

Mr. YOUNG. I should like to ask you two questions, if I may. First, are you now or have you ever been a member of the Communist Party?

Mr. HARRIS. I am not and have never been.

Mr. YOUNG. Secondly, are you now or have you ever been to the best of your knowledge a member of any organization which has been cited by a governmental agency as a Communist organization or a Communist-front organization?

Mr. HARRIS. I am not and never have been a member of any such organization.

Mr. YOUNG. Please proceed, sir.

Senator O'CONNOR. Mr. Harris, I understand you have a prepared statement. Would you have any desire to complete it, or would you object if in going along any questions which occurred to the subcommittee members, that they might ask you?

Mr. HARRIS. I think it would be much better if the subcommittee would ask any questions as they go along.

Senator O'CONNOR. Very good. Sometimes witnesses have no desire on that. We will be very glad to act accordingly. All right Mr. Harris, just proceed, then, and give us the benefit of your views.

I might say the two bills, of course, S. 1194, introduced by Senator Mundt for himself and Senator Johnston, and 1196, introduced by Senator Ferguson, if you do have specific references to either of the bills, it would be helpful if you would make that plain as you go along.

Mr. HARRIS. Yes, sir; I will.

Senator O'CONNOR. You may proceed in your own way.

Mr. HARRIS. My name is Thomas E. Harris. I am Assistant General Counsel of the Congress of Industrial Organizations. I appear on its behalf.

The CIO opposes both the Mundt and the Ferguson bills. Our reason for opposing these bills is not because we have any sympathy for communism. We believe that the Communist movement, in whatever country it operates, is oriented toward Moscow; and we do not agree with or defend the tenets of the Communist Party. On the contrary, the CIO and its national officers are strongly opposed to communism, and have fought it both inside and outside the labor movement.

Senator FERGUSON. What do you mean by the words "oriented toward Moscow"?

Mr. HARRIS. I think its policy is derived from there.

Senator FERGUSON. You think it is really controlled from there? Isn't your present fight, or let us say argument with certain members of your own union that they are controlled from Moscow, rather than controlled from the interests of the labor movement in America.

Mr. HARRIS. That is certainly——

Senator FERGUSON. In other words, Mr. Murray has the same problem today that we are having in Government. How can you get them out of the labor movement in America, being controlled by a foreign power? He is doing what he can and everything he can

to do that, and the first thing I understand he has to do is to get them identified, and then after he gets them identified as leaders in various unions, the next thing is he has to get them out. Would this not help him to do that if we could register all members of the Communist Party?

Mr. HARRIS. I don't think that we have found that the identification is any great problem.

Senator FERGUSON. You do not think so?

Mr. HARRIS. No. Wherever an individual follows, wherever his policies follow precisely those followed in Moscow, why, we can either assume that he is a Communist or that his policy so closely follows that it does not make any difference.

Senator FERGUSON. Well, then, you think that it has been known, and it has not been a difficult job even for the CIO to identify these Communists in their own organization? I thought that was a difficult job.

Mr. HARRIS. No, Senator, I don't think it is.

Senator FERGUSON. All right. I am glad to have your opinion.

Mr. HARRIS. I think it is well understood in the labor movement who follows what belief.

Senator O'CONNOR. Following Senator Ferguson, why is there so much opposition to the registration on the theory that it would drive them underground?

Mr. HARRIS. If you would let me go ahead, Senator, I think I will get to that.

Senator O'CONNOR. So long as Senator Ferguson touched that point, I agree entirely.

Senator FERGUSON. I thought this word "orient" hardly describes the real thing, does it, that they are dominated, they are controlled?

Mr. HARRIS. Well, certainly their policy either derives from Moscow or derives from a common source, because there is no difference in the policy of the American Communist and the policy of Moscow.

Senator FERGUSON. And the one in Italy and France and England, wherever he may be, Japan or China, is that correct?

Mr. HARRIS. Yes.

Senator FERGUSON. They are one.

Mr. HARRIS. Yes.

Senator FERGUSON. So it must have a fountainhead, a thought; is that correct?

Mr. HARRIS. Yes.

Senator FERGUSON. That thought is controlling.

Mr. HARRIS. The reason that I pause at the word "control", the showing of direct control from Moscow of the American Communist Party is a matter of some difficulty. The Government is perhaps attempting such a showing in the present trials in the southern district of New York, but I would not say that it had been directly shown. It may be inferred from the exact coincidence of policies of the American party and Moscow.

Senator FERGUSON. Circumstantial evidence has always, you as a lawyer and I as a lawyer, and others here understand that you can prove certain facts by circumstantial evidence, and you can prove beyond reasonable doubt; isn't that correct?

Mr. HARRIS. Surely.

Senator FERGUSON. Therefore, if all of these policies are the same in all of these countries, a reasonable man would draw the conclusion that they are dominated from one source.

Mr. HARRIS. Or that they come from one source.

Senator FERGUSON. Come from one source; yes.

Mr. HARRIS. That is right.

Senator O'CONNOR. That is right. Just proceed, Mr. Harris.

Mr. HARRIS. The CIO, for example, supports the European recovery program and the North Atlantic Pact, both of which are anathema to the Communists. Only about 2 weeks ago, on May 5, Mr. James B. Carey, secretary-treasurer of the CIO, appeared before the Senate Foreign Relations Committee to endorse the North Atlantic Pact.

Nevertheless, we oppose the Mundt and Ferguson bills, for the following reasons:

(1) Those bills would substantially curtail civil rights guaranteed to every American by the Constitution. Liberty is indivisible and repression contagious. Unless the civil rights of Communists are protected, those of others will not be. Indeed, we think the language of these bills is so broad that they could be used to imperil the existence of all labor unions.

(2) We believe that any threat to the security of this country which the Communist movement poses is adequately met by existing statutes.

(3) Despite the evil intentions of the American Communists, we do not believe that they constitute or will ever constitute any substantial threat to an America which continues to cherish its democratic traditions and which provides its people with the opportunity to make a decent livelihood.

Senator FERGUSON. Does not your own organization feel that they are a menace and threat to the labor movement in America?

Mr. HARRIS. We have no question that we will be able to take care of them inside the labor movement.

Senator FERGUSON. Is that not your purpose that you feel today they are a threat and that your present action, and I am all for it, I am back of you on it, is to get them out of the labor movement, so that the labor movement may do the thing and carry on the purpose for which it is created and should carry on? Do you not find that it must be a menace or you would not be doing what is going on in this very city today?

Mr. HARRIS. We don't find that it is any menace which we can't take care of ourselves. We don't ask for any assistance from a government by a statute to take care of it. We don't think that it should be taken care of that way.

Senator FERGUSON. Do you not think that if you had a list and knew all of the Communists in America, and knew of the Communist fronts, that it would be beneficial to the CIO so that they could keep them out of their organizations? Do you not think that would be of value? Has not the Attorney General's listing been of value to you?

Mr. HARRIS. We have never paid the slightest attention to it, Senator.

Senator FERGUSON. You have not? You do not think it is of any value whether or not a movement is a Communist movement for you to know that?

Mr. HARRIS. We are able to judge these people by how they conduct themselves inside the labor organizations, and that is what is of concern to us.

Senator FERGUSON. Then you are not concerned how they might conduct themselves outside of the labor organizations.

Mr. HARRIS. I should say that there is nothing in the constitution of the CIO at the present time which prevents a Communist from being a member of its affiliated national or international unions.

Senator FERGUSON. Well, do you not think that in all of your work, you ought to know whether a man is a Communist, whether he is the president, vice president of a local, or treasurer, or anyone else, if he is a steward? Is that not important to you?

Mr. HARRIS. We haven't found any difficulty in figuring out the political viewpoints of people in the labor movement.

Senator FERGUSON. Then I understand——

Mr. HARRIS. Every day of the world there is an occasion for them to show what their viewpoint on various issues are and there is no difficulty about it.

Senator FERGUSON. Then as I understand it, your union knows them, all that are in the union.

Mr. HARRIS. We may not know them all, but if any man in a prominent position where he takes a stand or where his views make a difference, why, certainly the people in the union know what they are.

Senator FERGUSON. You know that he is a Communist or a fellow-traveler, which as you say is just the same if he follows the party line.

Mr. HARRIS. If he follows the party line, we certainly know it.

Senator O'CONNOR. Proceed.

Mr. HARRIS. Even if the danger to our democratic system from the American Communist movement is graver than we think, we do not see how democracy can be protected or preserved by destroying the very freedoms which are its essential attribute.

At the outset, we would like to call attention of this subcommittee to the specific provisions of the Mundt bill which, in our judgment, violate constitutional rights of freedom of speech, press, and assembly. These specific comments are directed only to the Mundt bill and not the Ferguson bill.

Senator FERGUSON. Before you start in on that, I wonder whether I could ask to be excused for a short time. I have an appropriation meeting, and I have promised to be there.

Senator O'CONNOR. If you can come back, we would certainly like to have you.

Senator FERGUSON. I may want later, if you and I could sit down after I read this and talk over some of the things. I would want your views on the record. Would that be all right with you?

Mr. HARRIS. Fine.

Senator FERGUSON. You as a member of your organization and I as a Member of the Senate, we have no dispute between ourselves. It is merely how we can solve some of these problems for the benefit not only of all of the people, but even your particular union, because I know you are interested in just personally what I am interested in; if communism is a menace, if it is going to do harm to the American institutions, we do not want that. I take for granted that you understand that the union, and I understand it too, is an American institu-

tion, and we have to protect that the same as we do our other institutions, because they are all part of our system.

If I may be excused.

Senator O'CONNOR. We would like to have you back if you can come back. Thank you, Senator.

Mr. HARRIS. For the sake of brevity this specific analysis will take up only the provisions of the Mundt bill. For the most part, however, those provisions are paralleled in the Ferguson bill.

The bill regulates opinion, not conduct. A very basic objection to both of these bills is that their purpose is to police and regulate not action or conduct, but thought and expression. Under these bills, organizations and individuals are punished, restrained, and regimented solely on the basis of political opinions, rather than on the basis of overt acts of disloyalty.

It has been traditional in this country, and in other democratic countries, to allow the widest possible freedom of thought and expression. Belief and speech hostile to the existing system of government is not only tolerated, but is protected by our Constitution, unless it takes the form of advocating some course of conduct in circumstances such as to make it probable that unlawful action will in fact ensue. What I have reference to is the clear and present danger doctrine. In the language used by Mr. Justice Holmes in first enunciating what has been since known as the clear and present danger test, freedom of speech can be restricted only if—

the words 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 the Congress has a right to prevent—

(*Schenck v. United States* (249 U. S. 47, 52). More recently, in *Bridges v. California* (314 U. S. 252), the Supreme Court said (p. 263):

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.

And still more recently, in *Thomas v. Collins* (323 U. S. 516, 530):

Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation.

I do not find that either of these attempts to meet or comply with these standards.

In the Eightieth Congress, the sponsors of the Mundt-Nixon bill, which was similar to these bills, sought to justify its restriction of freedom of thought, speech, and assembly on the ground, among others, that the bill proceeded only against organizations, and did not prevent individuals from maintaining or advocating abstract views concerning the subjects dealt with in the bill. But if freedom of thought and freedom of speech has any meaning, particularly in the political field, it must necessarily include the right to create and work through organizations. For, under the political systems which have been developed in the democratic countries, effective political action means group action—action through political parties, labor unions, and other associations.

The right to create, to solicit others to join, and to act through such organizations is, therefore, protected by the Bill of Rights. It is the form which the freedom of assembly of earlier times takes in a more populous country and a more complicated society. Such

groups often afford the only effective vehicle for the exercise of free speech. The Supreme Court has specifically held that the right to solicit others to join organizations is protected by the first amendment. It said:

It was not by accident or coincidence that the rights of freedom in speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances. All these, although not identical, are inseparable. They are cognate rights. * * * and therefore are united in the first article's assurance (*Thomas v. Collins*, 323 U. S. 516, 530.)

If, therefore, the restrictions which this bill places upon freedom of thought, speech, and assembly can be justified under our Constitution, or reconciled with democratic principles, it cannot be on the basis that organizations rather than individuals are regulated. The only justification would be some overwhelming necessity for the legislation. To that issue we will come later.

I turn now to the specific provisions of the Mundt bill.

Senator O'CONNOR. Before you leave that, inasmuch as you did refer to the dissenting opinions in the well-known cases, I was wondering whether you had opportunity to read the opinion in the decision handed down on Monday of this week by the Supreme Court of the United States in the Terminella case.

Mr. HARRIS. No; I have only read the newspaper accounts of it.

Senator O'CONNOR. I have here both the opinion of Justice Douglas and the dissent of Mr. Justice Jackson. Of course in the dissent, just one or two of these references have been published quite prominently in the press, but this paragraph probably sums it up. Justice Jackson says this:

This Court has gone far toward accepting the doctrine that civil liberty means the removal of all restraints from these crowds and that all local attempts to maintain order are in impairment of the liberty of the citizen. The choice is not between order and liberty. It is between liberty with order, and anarchy without either. There is danger that if the Court does not temper its doctrinaire logic with a little practical wisdom it will convert the Constitutional rights into a suicide pact.

Have you any comment to make on that, whether or not the tendency as indicated by Mr. Justice Jackson, without attempting to criticize the Court, I do not ask you to do that, but rather to whether you have any comment on the observation.

Mr. HARRIS. I do not think that anyone would disagree with the language of Justice Jackson. The question always is whether the facts of the particular situation fit the language. But the general principles which he states I think there would be no disagreement with them.

Senator O'CONNOR. All right. Proceed.

Mr. HARRIS. The bill threatens the existence of all progressive organizations. The bill deals with two types of organizations: Communist political organizations and Communist front organizations.

It starts out in section 3 dealing with definitions. Subdivision 3 of section 3 defines the term "Communist political organizations."

A "Communist political organization" is defined in section 3 (3) as having "some, but not necessarily all, of the ordinary and usual characteristics of a political party," and which (a) is controlled by the foreign government or organization controlling the world Communist movement, and (b) operates primarily to advance the objectives of that movement. However, we are at a loss as to why this definition

is included in the bill, since it does not seem to be controlling for any purpose.

For section 13 (a) of the bill creates a Subversive Activities Commission, which is to determine whether an organization is a "Communist political organization." In making this determination, the Subversive Activities Commission is not referred to the definition of section 3 (3) but is to "take into consideration" a long list of factors enumerated in section 14 (e).

Why we have this definition in the act, we therefore do not know. The criteria that the Subversive Activities Commission is to take into account includes such things as whether an organization's policies are formulated to effectuate the policies of the foreign government or organization controlling the world Communist movement, the extent to which its views and policies do not deviate from those of such foreign movement or government, the extent to which it sends members to any foreign country for instruction in the principles of world communism, the extent to which it fails to disclose or resists efforts to obtain lists of its members, and so on and so on.

There are eight of these numbered paragraphs, and some of them have subdivisions. The Commission is directed to take all of these factors into consideration, but it is not told what weight it shall give to any particular factor, or even that it must find the existence of a certain number of these elements before concluding that an organization is a Communist political organization.

It is therefore perfectly apparent that an organization labeled as Communist political organization solely on the basis of ideals and opinions, rather than on the basis of illegal acts.

The provision in the bill that resistance to efforts to obtain membership lists is a hallmark of a "Communist political organization" is particularly objectionable to labor organizations, which have learned through long experience that the submission of such lists is the first step to a blacklist through which an organization may be completely destroyed.

A "Communist-front organization" is defined in section 3 (4) as any organization which is either under the control of a "Communist political organization," or is primarily operated for the purpose of giving support to a "Communist political organization," a Communist foreign government, or the world Communist movement. This definition also seems to be meaningless, since the Subversive Activities Commission is again, in section 14 (f), further furnished with a list of entirely different criteria which it is "to take into consideration" in determining whether any organization is a "Communist front organization."

These criteria are the identity of the persons active in the management of the organization "whether or not holding office therein"; the sources of its support, financial and otherwise; the uses made by it of its resources and personnel; and the extent to which the position taken by the organization from time to time on matters of policy does not deviate from the position taken by any Communist political organization. Here again the Commission does not have to find that all or any stated number of these factors exist.

Thus, under this bill, if a few Communists are active in connection with a labor organization, even though they do not hold office, that fact alone could furnish the basis for a finding of the Subversive

Activities Commission that the organization is a "Communist front organization."

The proposed bill could very easily condemn an organization as illegal solely because its policies happen to coincide with those of the Communist Party. Thus, support by a labor organization of objectives also supported by Communists, such as the abolition of the poll tax, enactment of an adequate housing program, and the protection of civil rights, could, under the standards proposed in the bill, furnish the basis for the conclusion that the organization is a Communist front.

Under these provisions, not only labor organizations but other progressive organizations could be branded as subversive and destroyed. The CIO is familiar with the indiscriminate use of such terminology by the House Committee on Un-American Activities. Both CIO and CIO-PAC have been repeatedly and wrongfully denounced as "Communist," "Communist front," and "totalitarian" organizations. In its 1944 report, the House Un-American Committee denounced CIO-PAC as representing "a subversive Communist campaign to subvert the Congress of the United States by its totalitarian program." There is no particular reason to suppose that the Subversive Activities Commission set up in this bill will be any more responsible or any less reactionary than this congressional committee has been.

The bill is not just another routine measure. This bill is in fundamental conflict with our constitutional form of government and with the premises of a democratic society.

The penalty provisions are vague, oppressive, and unconstitutional. The Mundt bill requires Communist political organizations and Communist-front organizations to register as such, and to file certain information with the Attorney General. The bill requires both types of organizations to file a list of all officers and full financial statements of receipts and expenditures. In addition, "Communist political organizations" are required to submit a full list of members, and any member whose name is not submitted is required to register himself. All of this data is to be available for public inspection.

Senator O'CONNOR. I was wondering what your opinion was as to this, while you have pointed out very forcibly the possible dangers which, in your opinion, confront an organization in being classified as Communist front, do you not think that the other provisions of the bill for review and for appeal both administratively and judicially safeguard the interests of patriotic and American organizations, as distinguished from Communist and other subversive organizations?

Mr. HARRIS. No, Senator; I do not. The extremely loose and dangerous standards to which I have referred are those that are to control the Subversive Activities Commission, and if there is an appeal to the courts from the finding of that Commission, the courts are still given just these same standards. Under those standards, I do not suppose there is a progressive organization in America that could not be labeled as a Communist-front organization.

On these penalty provisions, both Communist-political organizations and Communist-front organizations, are required by the bill to label all mail intended for more than one person as "Disseminated by (blank), a Communist organization. They are also required to initi-

ate all radio broadcasts which they sponsor with this announcement: "The following program is sponsored by (blank), a Communist organization."

You are thus requiring these people to label themselves as Communist organizations. I recall that some years ago the National Labor Relations Board, when that first got under way, had a form of order in which it directed employers found guilty of violating the act to post a notice that they would cease and desist from doing so, and so and so and so. The employers objected that by this form of notice they were required to acknowledge guilt that they didn't merely say that they had been ordered to do this; they said that they would cease and desist from doing it, thus admitting that they had been doing it.

Judge Learned Hand on the Court of Appeals for the Second Circuit, a most famous and distinguished judge, pointed out that and said in his judgement it was unconstitutional. The Labor Board without attempting to take the issue to the Supreme Court, decided that he was right, and they then abandoned that form of order, and thenceforth only required employers to post notices that they had been ordered to cease and desist from doing so and so.

Senator O'CONNOR. That is a pretty good indication that judicial review is certainly very helpful in protecting the rights of innocent persons.

Mr. HARRIS. We have never questioned that.

Senator O'CONNOR. That is why I asked you before whether you did not think the provisions of the bill granting such review and several reviews, in fact do not safeguard the interests of innocent persons.

Mr. HARRIS. I don't think the provisions of the bill safeguard them at all. The Constitution might.

Senator O'CONNOR. I meant in setting out the steps which can be taken in order to have the matter brought under review.

Mr. HARRIS. I don't find in the bill any standards that would govern the courts any more than they govern the Subversive Activities Commission.

Mr. YOUNG. The Senator is making reference to the procedural parts of the bill, and not the substantive.

Mr. HARRIS. As to the procedural thing that I will come to later, or I can deal with it here in very brief form. It sets up a bureau, it calls it a commission, it does not even appear to be an independent commission, it is a bureau of three Government employees, who are to act under the basis of these very loose standards that were given them by the bill. Then there is an appeal from that to the Court of Appeals in the District of Columbia, which acts under the same standards. There are none of the safeguards of trial before a jury, trial in a Federal district court here. Inevitably this bureau of three Government employees would be completely dominated by the department heads. It is not even an independent commission. To punish people even before an independent commission is contrary to Anglo-Saxon traditions of law. We believe that a man should be tried in a court and before a jury. He does not get that here. And the appeal provisions give him very little, since they are under the same standards.

Mr. YOUNG. He is not being punished before the bureau or commission. They are to determine the fact whether or not he is a mem-

ber of one of these groups. There is no punishment involved at that stage of the procedure.

Mr. HARRIS. Which will come to that point a little later. We say that that determination does subject him immediately and directly to criminal punishment.

In the Eightieth Congress the sponsors of the Mundt-Nixon bill, which was the predecessor of this bill, argued that it was a mild measure because it did not outlaw organizations labeled as Communist political organizations or Communist-front organizations. Such a claim is completely misleading. There can be no question that the registration requirements amount to destruction. This is so for the obvious reason that organizations which are made to register are subject by legislative fiat to the stigma of disloyalty. Any claim that this bill does not destroy these organizations reduces itself to the assertion that the bill compels them to commit suicide, rather than destroys them outright.

The blacklist which would result from registration would in itself be sufficient to destroy an organization. For there can be no question but that persons listed as members of Communist political organizations would thereafter be unable to secure, or have great difficulty in securing, jobs. Indeed, the labeling last year of certain Hollywood writers as Communists led their employers to breach written employment contracts. Such a blacklist would likewise be possible in the case of a Communist-front organization, even though such organizations are not required to submit membership lists, since they are required to disclose the sources of their funds, and that information would serve to identify contributors to the organization.

Here I would like to interpolate in commenting on the Mundt bill last year. The Department of Justice pointed out that it would destroy the organizations which it covered, that it would destroy, certainly destroy the organizations required to register, that it would drive those organizations either out of existence or underground, because the penalties provided are so heavy.

Section 4 of the bill appears to apply both to organizations and individuals. This section of the bill makes it illegal for any "person", defined elsewhere as either an individual or organization, "knowingly" to conspire with any other person "to perform any act which would substantially facilitate" the establishment in this country of a "totalitarian dictatorship" under foreign domination. A violation of this section is punishable by fines up to \$10,000, imprisonment up to 10 years, or both. There is no period of limitations for crime under the provisions of this statute. Offenses under this provision may be prosecuted at any time without regard to any statutory limitations.

The broad sweep of this bill, and the use which could be made of it to punish all sorts of activities, whether or not treasonable, is nowhere better illustrated than by this provision.

Suppose, for example, that the United Steelworkers of America, in bargaining collectively with the United States Steel Corp., requests a reasonable wage increase—one needed by the workers to maintain a decent standard of living—and the directors of the corporation reject the request. Certainly it could be said that the rejection of such a request "would substantially facilitate" the establishment of a Communist regime in this country by depriving the workers of a decent standard of living, and creating hostility between labor and capital.

The directors of the United States Steel Corp. could thus be indicted and sent to jail under this provision for rejecting the union's demand.

Mr. YOUNG. You missed the element there of foreign domination.

Mr. HARRIS. I felt that we were assuming that the Communist movement was under foreign domination.

Mr. YOUNG. I mean when you mention that the directors refuse this wage increase, you say they would be liable under section 4. In order to be liable under that, you have to be dominated by a foreign political—

Mr. HARRIS. Not at all. That isn't at all what that provides. It makes it illegal for any person to perform any act which would substantially facilitate the establishment of a Communist regime in this country. "It would substantially facilitate" is the language of the bill.

Senator O'CONNOR. But right there do you not have in mind that the provisions of the bill in one sentence says this—

It shall be unlawful for any person knowingly to combine, conspire, or agree with any other person to perform any act which would substantially facilitate or aid in the establishment within the United States of a totalitarian dictatorship, the direction and control of which is to be vested in, or exercised by, or under the domination or control of, any foreign government, foreign organization, or foreign individual?

All of those elements must be present before the crime is committed.

Mr. HARRIS. There is no indication that the accused committed the act in question for that purpose. The statute says if he knowingly does any act which will substantially facilitate the establishment in this country of what we may briefly call a Communist dictatorship, then he is guilty of a crime. The language which you have read is in effect part of a definition of a Communist dictatorship. That is, it requires that it be under foreign control. But I understood that we were assuming that it was. So that any act that will strengthen the Communist movement in this country would literally come under the provisions of this statute, and would be a crime.

The same way if the union puts forward a demand which could be regarded as unreasonable, it could just as well be convicted under this statute on the theory that that demand might tend to create industrial strife, and therefore strengthen the Communist Party.

The difficulty with this provision of the bill is, of course, that it does not require that the action which would aid the Communist movement be undertaken for that purpose or with that intention, but only that it be done "knowingly." "Knowingly" in criminal statutes has sometimes been interpreted as requiring only a conscious act, and under the strictest construction means only that the defendant contemplated, or should have contemplated, the consequences of his action; that the actor must foresee or perhaps should have been able to foresee the consequences of his act; nothing more. It does not require any evil purpose, any evil intention.

This provision is like one in the Mundt bill. In the last half of section 4 (a) it adds a definition, but that definition does not help very much. It defines that rather peculiarly as a form of government not representative in form, characterized by three enumerated factors.

That, however, is not by any means the only objection to this provision. The Mundt-Nixon bill, which contained a similar provision, was criticized because it failed to define "totalitarian dictatorship." A definition has now been added, but it doesn't help much.

It defines "totalitarian dictatorship" as a form of government "not representative in form," characterized by three enumerated factors.

Now, the Soviet Government is "representative in form." It has all of the forms of a democracy; it is only the reality that is lacking. The communists describe themselves as the only true democrats, and are fond of boasting that the Soviet Constitution is the most democratic in the world. And maybe it is if we do not look behind the form to the reality. For example, the Soviet Constitution provides for universal adult suffrage, as contrasted with restrictions on voting which prevail in many American States. Of course this universal suffrage means nothing, because there is never more than one slate of candidates. But the Soviet Constitution does not provide that there shall be only one slate.

Thus, this provision of the bill appears to play right into the hands of the Communists, making form rather than substance decisive.

On the other hand, it would be very difficult to frame a provision which did accomplish what was meant, and nothing more. If the phrase "not representative in form" were eliminated from the definition, it then would be too broad. The Government of this country during, say, the presidency of James Monroe, was characterized by all of the elements listed in the definition for identifying a "totalitarian dictatorship." For the Government of this country during that period was characterized by (1) the existence of a single political party, the Democratic Party; (2) such identity between that party and its policies and the Government and governmental policies as to render the party and the Government indistinguishable for practical purposes; and (3) it was characterized by the abolition of all other political parties, the Federalist Party having disappeared, and the Whig Party not yet having arisen.

The reason for these difficulties in drafting is that the bill is not aimed at acts or conduct, which are capable of precise definition. Rather it is the intention of this section to punish as a crime mere advocacy, argument or persuasion, whether or not calculated in the circumstances to lead to the immediate commission of overt illegal acts. As we have already stressed, the Supreme Court has consistently ruled that mere advocacy of ideas, however odious, cannot, under our Constitution, be restrained or punished. From the year 1816 until 1832 there was only one party in this country.

Senator O'CONNOR. Do you find anything in the bill which specifically says that mere belief shall be considered unlawful and punishable?

Mr. HARRIS. I do not find that it specifically states that, but the factors listed for identifying a Communist political or Communist-front organization are factors which deal with belief or doctrine. They don't deal with acts.

Senator O'CONNOR. But there is nothing specific which says that mere belief is punishable.

Mr. HARRIS. The bill does not say so in terms, but I think that that is its effect.

It should be noted, moreover, that the very act of registration by an organization will lay the foundation for a charge against its officers and members that they are in violation of the provision dealing with totalitarian dictatorships. For once an organization is labeled as a "Communist political organization" or a "Communist front organization," membership or payment of dues to such an organization would

no doubt be regarded as aiding in the establishment of a "totalitarian dictatorship." If, under the compulsion of criminal penalties, the officers of an organization register it, they subject themselves and their members to additional criminal charges of violating the extremely broad provisions of the section of the law, section 4, dealing with totalitarian dictatorships. Such a statute plainly violates the constitutional protections against self incrimination.

Since writing this I have read the letter that the Attorney General filed with the Senate committee last year on the Mundt bill. He makes precisely those points that the act of registration would be subjecting members to criminal punishment under section 4, and would violate the constitutional privileges against self incrimination. In our statement I next deal with the procedures of the bill. I think I will skip that as well as the summary.

Senator O CONOR. You have, of course, stated your position in regard to that.

Mr. HARRIS. The bill's procedures ignore common law safeguards. One would expect that a bill which imposes such drastic penalties upon organizations and individuals would scrupulously adhere to the time-honored procedural protections which are the boasts of the Anglo-American legal and constitutional systems. This would include provisions for fair trial on the issues before a judge and jury and the application of the usual rule that a defendant in a criminal case is presumed innocent until proved guilty and must be convicted upon evidence establishing guilt beyond a reasonable doubt.

This bill disregards these and other important safeguards. In the first place, under this bill, certain types of organizations are condemned as illegal by congressional fiat instead of by judicial trial. Instead of laying down the rule of conduct and leaving it to the courts to determine whether a particular defendant falls within that rule, Congress has defined the crime, made findings with respect to who is guilty of the crime, and provided penalties for such guilt. Such procedure has been repeatedly condemned by the Supreme Court as a bill of attainder in violation of constitutional guarantees.

If an organization refuses to accept the brand or stigma which the bill would stamp upon it, certain procedural requirements are laid down to permit the Attorney General, not through a criminal proceeding, but through an administrative proceeding, to impose the bill's brand on them. Under these administrative procedures the Subversive Activities Commission is authorized to make an administrative finding, after a hearing, that the organization involved is a "Communist political organization" or a "Communist-front organization."

The Commission's hearing, like all administrative hearings, is without jury, and wholly lacking in those protections to the defendant which would obtain in a criminal trial. The hearing itself is not before a judge but before a board of Federal employees, who would inevitably be subject to control by their respective Departments.

It should also be borne in mind that the Attorney General does not merely prosecute the accused organization, he likewise is charged with the task of investigating the organization. In doing so, he is authorized by the law to subpoena the books and records of the organization and to compel testimony. Such a provision would, of course, permit the Attorney General a virtually unlimited power of search over the

internal affairs and membership lists of such organizations as labor unions.

The bill provides that the findings of the Subversive Activities Commission that an organization is illegal, within the meaning of the bill, may be appealed to the Court of Appeals for the District of Columbia within 60 days. Such a review, of course, would consider only questions of law.

Legislative findings upon which the statute rests, the trial procedure and the review procedure make a mockery of our constitutional guaranties which have been developed for the protection of defendants in criminal cases.

In summary, the Mundt bill is a serious threat to our most cherished constitutional safeguards.

It imposes penalties upon association and opinion rather than upon overt actions.

The bill is so loosely drawn that it could impose a black-out upon the civil rights of thousands of individuals who would be driven from progressive organizations out of fear that the vague provisions might be made applicable to them.

Penalties and disabilities are imposed upon individuals, not as a result of unlawful activities but merely upon the basis of affiliation or association. Moreover, the operation of various provisions would permit the creation of the blacklist, so obnoxious to our traditions.

The bill wipes out the fundamental protections for defendants in criminal cases. It substitutes administrative procedure for due process of law. It embodies the unconstitutional principle of a bill of attainder and violates the constitutional safeguards against self incrimination.

The definitions of the bill would make it possible for the Attorney General to proceed against labor organizations, and the vague character of the bill's standards would make possible a tremendous expansion of its scope.

At best, the vagueness of the bill affords no security to the fair use of the opportunity for free political discussion. The bill is strewn with terms which have no precise legal meaning and which will force reasonable men to act at their peril. In *Stromberg v. California* (283 U. S. 359, 369), the Supreme Court stated:

The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic is a fundamental principle of our constitutional system. A statute which upon its face, and as authoritatively construed, is so vague and indefinite as to permit the punishment of the fair use of this opportunity is repugnant to the guarantee of liberty contained in the fourteenth amendment.

More recently, in *Winters v. New York* (333 U. S. 507), the Supreme Court held:

A failure of a statute limiting freedom of expression to give fair notice of what acts will be punished and such statute's inclusion of prohibitions against expressions, protected by the principles of the first amendment, violates an accused's rights under procedural due process and freedom of speech or press.

There can be no question that the Mundt bill is so pervasively vague as to impose broad pressures and restraints upon the exercise of rights of political expression. Moreover, as the Supreme Court has repeatedly pointed out, vagueness in a statute involving civil rights lays the basis for discriminatory and unfair application. Such dis-

drimination is easily directed against minority groups, who, more than other groups, need the shield of constitutional protection.

From the strong pressure in both the Eightieth Congress and the present to pass a bill like those now before this subcommittee, one might suppose that there were no existing law dealing with supposed danger, or that the statutes now on the books were in fact inadequate to meet the supposed peril.

Such is not the case.

Since 1790 this country has had on the books a law defining and punishing treason. It was one of the first bills passed when the First Congress met after the adoption of the Constitution. While this law defines treason narrowly, it is worth remembering that that narrow definition was written into the Constitution itself by men who were familiar with the oppressive use which had been made of the treason laws by the British Government. Our Constitution was adopted only 6 years after this country had secured its independence, and at a time when it was surrounded by a hostile British Empire to the north, and a hostile Spanish Empire along the entire southern and western frontiers. Powerful Indian tribes within our frontiers were not yet subdued. Even in that perilous situation our forebears preferred to define treason narrowly, and take the chance that this Nation would defend itself against enemies from within, rather than risk the oppression by government which British experience showed might stem from a broader treason law.

From the bills which are proposed in this Congress, one might suppose that this Nation had grown smaller, weaker, and less secure since 1790—or else that our devotion to freedom and civil liberties is less than that of our ancestors.

The criminal statutes also have sections dealing with "rebellion or insurrection", "conspiracy to overthrow * * * or to destroy" the Government by force, and a very broad provision making it criminal to advocate or teach the desirability or propriety of overthrowing the Government "by force or violence."

It is under this last provision, which is known as the Smith Act, and was enacted as part of the Alien Registration Act that the Communist leaders are now being tried in New York. If the Government is successful in that case, it is most difficult to see how there can be any possible need for the present legislation.

The report of the House Un-American Activities Committee last year, reporting out the Mundt-Nixon bill, stated that existing legislation was inadequate because the Communist Party operated secretly. This statement is a non sequitur. Secrecy may increase the problem of detection, but can hardly be met by passing more laws. Moreover, the FBI does not seem to have found it impossible to penetrate the Communist Party.

Only yesterday an FBI agent took the stand in the trial, an agent who the night before had attended a meeting of the Communist Party.

The Smith Act also makes it criminal to print or circulate written matter advocating or teaching the desirability of overthrowing the Government by force or violence, or to organize any society or group or assembly of persons to teach or advocate that doctrine.

Finally, the Criminal Code contains elaborate provisions requiring the registration of certain organizations. These organizations include

“every organization subject to foreign control,” which is defined as including any organization which—

accepts financial contributions * * * or support of any kind, directly or indirectly, from, or is affiliated, directly or indirectly, with, a foreign government, or * * * a political party in a foreign country, or an international political organization.

It requires the registration of any organization which engages both in political activity and in “civilian military activities,” the latter is defined as including, among other things, any—

form of organized activity which in the opinion of the Attorney General constitutes preparation for military action.

It requires the registration of every organization the purpose or aim of which is the “overthrow” of the Government by force or violence. Failure to register is punishable by a fine of \$10,000 and an imprisonment of 5 years.

These provisions obviously cover exactly the same subject matter as do the proposed bills, and even utilize approximately the same mechanism. If the existing provisions are in any particulars defective, it would appear that the appropriate course would be to amend them, not to enact a new law, in part duplicating, and in part conflicting with the existing legislation.

That I also have discovered since writing it is approximately what the Attorney General said last year in connection with the Mundt bill. In the report of the House Un-American Activities Committee on the Mundt bill, dealing with the question of inadequacy of existing legislation, they say:

The Attorney General pointed out some technical weaknesses in these acts in his testimony before the committee, and his recommendations have been incorporated in the registration provisions of the committee bill.

Then they say:

The Attorney General, together with a great majority of the expert witnesses who appeared before the committee during its legislative hearings, agreed that existing laws were inadequate to deal with the Communist threat and that new legislation was essential.

I submit that that is a gross misstatement of what the Attorney General said. I would request you gentlemen to read the report that the Attorney General did file last year.

Senator O'CONNOR. We have that opinion.

Mr. HARRIS. He made certain suggestions for minor amendments. He said no major new legislation was necessary, just the opposite of what the committee report says.

Mr. YOUNG. Is that the House committee?

Mr. HARRIS. He says at the same time:

I do not believe that sweeping new legislation of this type is required.

Mr. YOUNG. Could you tell me whether that was the House committee report that you read from?

Mr. HARRIS. The House committee report.

Mr. YOUNG. And the Attorney General's letter was addressed to the Senate Judiciary.

Mr. HARRIS. It is addressed to the Senate. I assume he sent the same letter to the House.

Mr. YOUNG. You are not certain of that?

Mr. HARRIS. I am unable to get the House report, because they did not have enough to circulate. I mean the House hearings, not the House report. They did not even have them last year.

(House Un-American Activities Committee did not hold hearings in connection with H. R. 5852. Attorney General's testimony is thus not in point on H. R. 5852, 80th Cong.)

Mr. YOUNG. You do not know what the Attorney General said in the House hearings on which that report was based.

Mr. HARRIS. I have no reason to suppose that he sent a letter other than one identical with this. The Department of Justice normally sends the same letter to both Houses. This is all that we have been able to get.

I would like to make it clear that we are not endorsing all of the legislation that is already on the books. Much of that legislation, and the Smith Act in particular, is objectionable because it prohibits advocacy without regard to the clear and present danger test. All that we are saying is that with such provisions already on the books, there is no occasion for additional legislation.

Senator O'CONNOR. Inasmuch as you have concluded on that point, may I ask your opinion on this question. Without in any sense passing on the merits of the Alger Hiss case or indicating any opinion about it whatsoever, do you think that the fact that it was found necessary for indictment merely for perjury was returned indicates the apparent lack of adequate legislation at the present time for peacetime espionage?

Mr. HARRIS. I have not made a close study of that matter, Senator, but it was my assumption that the reason he could be indicted only for perjury was that the statute of limitations had run on the subject of crime.

Senator O'CONNOR. Would that indicate that if otherwise it should have been prosecuted, that the statute of limitations ought to be changed, or that there was found need at least for the change if the Department felt it was necessary to prosecute him on the other charge?

Mr. HARRIS. It would indicate that. But I did not understand that the difficulty was that there was no law that he could have violated. I understood it was just a question of the statute of limitations. There is before Congress now, a bill to amend the espionage-sabotage laws in various respects and that bill would eliminate the statute of limitations. This bill of course would not deal with that anyway.

Senator O'CONNOR. I was just referring to the adequacy of legislation in general. I understand that.

Mr. HARRIS. I would like to say a word or two about the question of the seriousness of the Communist threat in this country.

As stated, we believe that the American Communists take their guidance from Moscow, and we hold no brief for them. But we do not believe that these Communists possess such power as to make them a real danger, or that they will, except in the possible circumstance of war, ever constitute any real threat to an America which is prosperous and democratic.

There is no indication that the Communist movement in America is gaining strength, and every indication that its power is receding, and has been ever since 1933. In Presidential elections, the Communist Party and its predecessors increased their strength from 33,000 in 1924 to 49,000 in 1928 and 103,000 in 1932. That was their high-water mark. By 1936, however, the Communist vote declined to

80,000, and in 1940 it was down to 49,000. The Communists have not run their own candidate for President since 1940, but have endorsed candidates of other parties, so that no figures are available as to the vote polled by the Communists in 1944 or 1948. However, there would seem to be little question that the strength of the party in this country has continued to weaken throughout that period, due to increasing prosperity here, more widespread understanding of the nature of the Communist movement, and, in recent years, to increasingly bad relations between this country and Russia.

This situation certainly does not seem to call for sweeping new anti-Communist legislation which would deny civil rights not only to Communists but to everyone else. The proposed legislation would not only result in the outlawry of the Communist Party, but would jeopardize the existence of every progressive organization to which the government in power might be hostile. This is a country where the Communists are steadily losing strength, and where they constitute no conceivable threat except in the possible eventuality of war with Russia. Such an eventuality would unquestionably be met as such eventualities have in the past—by internment. The bills under consideration are not needed and would not cope with that situation.

That this country should be considering legislation so repressive of political and civil rights at a time when it is in no real danger from the Communist movement in America, is surely little to our credit. Our fears, and the lengths to which it is suggested we should go to soothe them, present an unflattering contrast to the recent conduct of France and Italy. In those nations, which have no such continuous tradition of democratic government as we have, the local Communist Parties possess real strength, or did a short time ago. The Russian armies were and are close indeed to the borders of those nations. Yet neither France nor Italy resorted to any such extreme measure as outlawing the Communist Party or passing repressive legislation of any sort. Today the democratic forces in those countries, with the aid of ERP, have gained greatly in strength, while the local Communist movements have lost adherents. If those countries, gravely threatened, could show such devotion to democracy, surely it is not necessary for this Nation, of all countries the most secure, to turn away from its democratic tradition.

Senator O'CONNOR. Just in connection with that last observation, you would not, of course, contend that it would be necessary to wait until their strength had assumed very sizable proportions before legislating against subversive organizations, would you? In other words, you start out with the contention, and you have frankly admitted, that there are evil intentions, and that is the language you employ very properly, and we agree. But you would not after making that admission and recognizing that, at least, you would not of course assume that the country should wait until the Communists did become a greater threat than they are now, if in fact they are hostile to American institutions.

Mr. HARRIS. I would employ approximately the same tests, Senators, as that which the Supreme Court has often enunciated, clear and present danger test. A situation is conceivable when the local Communists might constitute such a clear and present danger to the overthrow of the Government of the United States. I don't think it constitutes any such threat now. I think that their power grows less

every day. I think they reached their peak in 1933 and have been going downhill ever since, and I hope and believe that they will continue to go downhill. In that situation I would not pass any new laws. I would let them alone.

Senator O'CONNOR. All right, Mr. Harris. Any other questions?

If not, we thank you.

Mr. HARRIS. Thank you.

Senator O'CONNOR. The next witness listed is Mr. David Scribner.

Mr. YOUNG. I have a telegram which just arrived from Mr. Scribner, in which he states that he is unable to be here today and requests permission that his statement be made part of the record.

Senator O'CONNOR. The next witness is Miss Ritter, representative of the United Office and Professional Workers.

[Not present.]

Senator O'CONNOR. Is the witness here representing the Young Progressives of America?

TESTIMONY OF REV. JOHN DARR, JR., NEW YORK 25, N. Y.

Mr. YOUNG. Will you stand, please, and raise your right hand. Do you solemnly swear or affirm in the proceedings before the subcommittee you will tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. DARR. I do.

Mr. YOUNG. State your name and address, and present occupation.

Mr. DARR. My name is John W. Darr, Jr. My address is 200 West One Hundred and Seventh Street, New York City 25. I am a Congregational minister, and I am here on behalf of the Young Progressives of America, as their spokesman, and not as an individual.

Mr. Chairman, I wonder if I could raise a question of procedure at this point.

Senator O'CONNOR. Did you hear the statement made, which quoted from the comment by Senator Eastland, the chairman of the subcommittee, as to the general policy of the subcommittee? If you did not hear it, we will again read it.

Mr. DARR. I heard that. That was why I wanted to raise two questions of procedure, if I may.

Senator O'CONNOR. What are the questions?

Mr. DARR. In the first place, I am here as a spokesman for a group. This statement has been made up by that group, and while I contributed to the statement, it is not just my own statement. I am not here as an individual, and therefore I feel that it would be improper before I read this statement to answer any questions as to my personal political convictions or activities. After the statement I think it might be appropriate, but not before the statement.

Senator O'CONNOR. Very true. The committee has established a policy that in order that the identity of the witness may be known, and that we can properly evaluate his testimony, whether or not he is a member of the Communist Party or has been, or is identified with any Communist front organization, we should first have it made clear on the record what his identity is with any such organizations, so I will now ask the counsel—

Mr. DARR. May I put the other question?

Senator O'CONNOR. Yes, indeed.

Mr. DARR. The second one is this: As I understand it, my private political views are protected by the first amendment of the Constitution, so that it is improper for a Government body to ask me political questions. I would be willing to answer such questions if this body will adjourn, and we can ask them informally, but I cannot in good conscience answer such questions.

Senator O'CONNOR. We will now proceed, and the counsel will propound the questions to you, and you are at liberty of course, you come here, I assume, at your own invitation.

Mr. DARR. At the invitation of my organization.

Senator O'CONNOR. In other words, your organization's request is that you appear.

Mr. DARR. Yes.

Senator O'CONNOR. You have therefore come, and ask the committee to hear you. We want to know who you are and with what organizations you are identified. Inasmuch as those organizations desire—we have not asked them to come, to be heard—we have a right to know who they are and what they represent. So I will now ask counsel to propound the questions to you. You of course are at liberty to refuse to answer or answer as you see fit.

Mr. YOUNG. Reverend Darr, are you now or have you ever been a member of the Communist Party?

Mr. DARR. I cannot answer that question in good conscience.

Mr. YOUNG. Are you now or have you ever been to the best of your knowledge a member of any organizations which have been cited by a governmental agency as a Communist organization or a Communist-front organization?

Mr. DARR. I cannot answer that question in good conscience.

Senator O'CONNOR. I wish to just read the comment by Senator Eastland, the chairman, as indicating the attitude of this committee again:

The committee has determined whether or not a person is a member of a Communist Party now or has been a member of the Communist Party is a relevant question. It is something that we should know to be able to evaluate the testimony before the committee. It is a material question. We expect to ask the witnesses whether or not they are members of the Communist Party, whether or not they have been members of the Communist Party, and if any witness should refuse to answer that question, then the committee will not be interested in any testimony from that witness. We do not think that it is right for a witness to come before the committee to refuse to give us his background and select which questions he should answer and which questions he shall not answer. So that will be the rule in the conduct of the hearings.

That statement of policy as announced by Senator Eastland and subscribed to by all of the members of the committee will be applicable in this instance, and we will therefore ask you to excuse yourself, because we will not be interested in hearing your testimony.

Mr. DARR. All right.

Senator O'CONNOR. The next witness is a representative of the Civil Rights Congress.

TESTIMONY OF THOMAS G. BUCHANAN, LEGISLATIVE DIRECTOR, CIVIL RIGHTS CONGRESS, WASHINGTON, D. C.

Mr. YOUNG. Will you rise, please, and raise your right hand? Do you solemnly swear or affirm in the proceedings before the subcom-

mittee you will tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BUCHANAN. I do.

Mr. YOUNG. Will you state your name, address, and present occupation.

Senator O'CONNOR. I might say that there were statements passed around by the Reverend John Darr, Jr., to members of the committee, and inasmuch as the committee is not interested in hearing from the witness, the statements will be returned.

Mr. YOUNG. I will repeat the question.

Mr. BUCHANAN. Thomas G. Buchanan, Jr. I am a legislative director of the Civil Rights Congress, and my home address is Park Lane Apartments, Washington, D. C.

Mr. YOUNG. Will you tell us what organization or organizations you represent here today?

Mr. BUCHANAN. I represent exclusively the Civil Rights Congress.

Mr. YOUNG. I would like to ask you two questions, please.

Are you now or have you ever been a member of the Communist Party.

Mr. BUCHANAN. I would like at this point to ask the same privilege that Mrs. Jackson of the Congress of American Women and Mr. Siegel of the ADA, and the American Civil Liberties Union asked, that is to say, the right to assert clarifying questions so that I may fully understand the import of the question, the two questions here made a prerequisite to testify.

Senator O'CONNOR. Did you hear the statement?

Mr. BUCHANAN. I heard it. The point is that while I have heard the statements like the previous witness, I am not certain that I understand the full import of the questions, and therefore I want to be sure that I answer these questions in full knowledge of the significance of the questions.

Senator MILLER. By that do you mean that you do not know whether you are a Communist?

Mr. BUCHANAN. No, sir; that is not what I mean. If I may be permitted to explain, I believe that the Senator from Idaho has already answered my first question at yesterday's hearing, but I did not fully understand the reply made to the Senator of Idaho by the Senator from Maryland, and consequently I wish to know if the position of the committee is the position expressed by the Senator from Idaho.

The first question I have to ask is whether if any witness answers either of these two questions in the affirmative he will be permitted to testify.

Senator O'CONNOR. I see no reason, Mr. Buchanan, for any misunderstanding on your part, because it is was clearly stated yesterday that if the witness answers the question, he may proceed with any explanatory statement he desires.

Mr. BUCHANAN. That clarifies that point.

The other point is, if any witness shall answer either or both of these questions in the affirmative, would such a witness be subject to prosecution under any existing law?

Senator O'CONNOR. The committee will certainly not undertake to pass on that, Mr. Buchanan. That is of course for the witness with advice of counsel or otherwise to determine for himself or herself.

Mr. BUCHANAN. The chairman realizes that I am not asking the question with regard to any possible subsequent testimony I may make, simply as to the simple answer of "Yes" to either or both of these questions.

In other words, I am sure that the committee does not intend that any witness shall here incriminate himself under any existing law. I want to make certain that is not the case in the case of affirmative answer.

Senator O'CONNOR. As I said before, Mr. Buchanan, we do not undertake to tell the witness what he or she should or should not do, and what the consequences of their statements would be. The committee is concerned with the identity of the people who appear before them at their request, and who ask us to hear their opinions. They are free to come or to stay away, as they please. But when they come and appear before the committee, we have a right to know, we think, who the witnesses are and what they represent. So the questions will be propounded to you, and if they are answered in the affirmative or otherwise, but if they are answered directly as to your connection with the organizations, you may then proceed to make any explanation you desire.

Mr. BUCHANAN. Is the chairman saying in effect that there is such an existing law?

Senator O'CONNOR. The chairman is giving you no advice at all as to the existing law.

Mr. BUCHANAN. The chairman is asking witnesses here to answer this question without knowledge as to whether they are incriminating themselves thereby.

Senator O'CONNOR. Mr. Buchanan, we have stated our position. The counsel will now propound the questions. You are free to answer them or not to answer them, as you please, and if you do not desire to state your identity, we are not interested in hearing your testimony.

Mr. YOUNG. Mr. Buchanan, are you now or have you ever been a member of the Communist Party?

Mr. BUCHANAN. The position of my organization is that we will answer this question providing we are certain—

Mr. YOUNG. Please answer "Yes" or "No."

Mr. BUCHANAN (continuing). —We are not subjecting our representative here to incrimination.

Senator O'CONNOR. Will you please answer the question "Yes" or "No," and then after answering it you may explain.

Mr. BUCHANAN. The conditions under which I am authorized to answer this question, I am stating that—

Senator O'CONNOR. Will you answer that categorically?

Mr. BUCHANAN. Not without knowing what it is.

Mr. YOUNG. You have a right to stand on your constitutional rights and say that you decline to answer the question, in that it will violate or tend to incriminate you or violate the Constitution.

Mr. BUCHANAN. I do not think—

Mr. YOUNG. That is one answer you may make.

Mr. BUCHANAN. I do not take that position. I do not believe that an affirmative answer to either question would incriminate me. I am asking if the prosecuting authorities—

Senator O'CONNOR. Just a minute. Please desist. Please desist. Do you or not desire to answer the question?

Mr. BUCHANAN. I do not at this stage. I do not feel that I can intelligently answer that.

Senator O'CONNOR. We do not desire any explanation from you at all, and we therefore will ask you to leave the stand.

Mr. BUCHANAN. It is my position——

Senator O'CONNOR. We are not interested in having any comment from you, and no statement will be included in the record. We do not desire that. If you desire to remain in the room, you will be quiet. Otherwise leave the room.

Senator O'CONNOR. The next witness is the representative of the Communist Party, Mr. Arnold Johnson.

**TESTIMONY OF ARNOLD JOHNSON, LEGISLATIVE DIRECTOR,
COMMUNIST PARTY, NEW YORK, N. Y.**

Mr. YOUNG. Will you stand, please, and raise your right hand. You do solemnly swear or affirm in the proceedings before this subcommittee you will tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. JOHNSON. I do.

Mr. YOUNG. State your name, address, and present occupation.

Mr. JOHNSON. Arnold Johnson, 35 East Twelfth Street, New York, legislative director, Communist Party, United States.

Mr. YOUNG. Will you tell us what organization or organizations you represent presently?

Mr. JOHNSON. Communist Party.

Mr. YOUNG. I would like to ask you two question, sir.

Are you now or have you ever been a member of the Communist Party?

Mr. JOHNSON. The laughter sort of indicates that it is a rather redundant question, apart from the constitutional question, representing the Communist Party.

Senator O'CONNOR. Answer, please.

Mr. JOHNSON. I think that is sufficient identification.

Senator O'CONNOR. I desire you to answer the question.

Mr. JOHNSON. Well, isn't that——

Senator O'CONNOR. We are not concerned about any explanation from you. Just answer the question. One word will do it.

Mr. JOHNSON. You see, Senator, allow me to indicate there is a great constitutional question——

Senator O'CONNOR. We are not going to be interested in that. You have indicated your answer. Just state it for the record.

Will you repeat the question, please?

Mr. YOUNG. Are you now or have you ever been a member of the Communist Party?

Mr. JOHNSON. I think the answer is obvious, both from identification——

Senator O'CONNOR. Will you please answer?

Mr. JOHNSON. It is in the statement; sir.

Senator O'CONNOR. We have not read the statement. We have not any statement from you officially.

Mr. JOHNSON. I certainly——

Senator MILLER. You can answer that "Yes" or "No."

Mr. JOHNSON. I have to protest that kind of questioning because it seems to me it has such an obvious question here.

Senator EASTLAND. Will you please answer the question?

Mr. JOHNSON. My membership is a matter of record all of the time. In that sense it seems to me—

Senator O'CONNOR. Mr. Johnson, we have asked the question politely, and the three members of the subcommittee have asked it of you. We will not have any testimony or any further statement from you unless you do, as every witness here is to be required to do, including the Members of Congress.

Will you read the question again?

Mr. YOUNG. Mr. Johnson, are you now or have you ever been a member of the Communist Party?

Mr. JOHNSON. I intend to get this testimony into the record.

Senator O'CONNOR. We will not put any testimony in the record until that question is answered.

Mr. JOHNSON. Therefore, it provokes a great deal of levity. It appears ridiculous to ask the question, and provide with the viewpoint of my membership. I say it is well known that I speak as a member of the Communist Party.

Senator O'CONNOR. Is your answer therefore "yes"?

Mr. JOHNSON. I think you would draw that inference.

Senator O'CONNOR. Is your answer therefore "yes"?

Mr. JOHNSON. This testimony just must get into this record.

Senator O'CONNOR. You are free to make any statement explanatory of it after you have answered the question. But we will not have any testimony from you, and we will not permit any comments from you until that question is answered. Just make your own decision. You are here at your own request. Make your decision as to whether or not you want to answer it.

Mr. JOHNSON. I want to protest any effort to get me—

Senator MILLER. Just a minute. Just a minute. That is not before you at the present time.

Mr. JOHNSON. I am expressing that protest, and the answer is "Yes."

Senator O'CONNOR. Read the second question.

Mr. YOUNG. Secondly, Are you now or have you ever been to the best of your knowledge a member of any organization which has been cited by a governmental agency as a Communist organization or as a Communist-front organization?

Mr. JOHNSON. I stated I represented the Communist Party. That answers that question.

Senator O'CONNOR. That party has been cited.

Mr. JOHNSON. By whom?

Mr. YOUNG. The question is, Are you now or have you ever been to the best of your knowledge a member of any organization which has been cited by a governmental agency as a Communist organization or a Communist-front organization.

Senator EASTLAND. I think he has answered that question when he said he was a member of the Communist Party. I think he is qualified to testify.

Senator O'CONNOR. Very well.

Mr. JOHNSON. My name is Arnold Johnson.

Senator O'CONNOR. Just proceed, Mr. Johnson.

Mr. JOHNSON. I am secretary of the national legislative committee of the Communist Party. I am here to testify in opposition to the Mundt bill (S. 1194) and the Ferguson bill (S. 1196) and to urge their rejection in toto by the Senate Judiciary Committee.

The bills under consideration here are virtually identical. They differ only in minor detail from the Mundt-Nixon bill (H. R. 5852, 80th Cong.). And like the Mundt-Nixon bill, the Mundt and Ferguson bills would nullify the Bill of Rights, cripple the trade-unions, and advance the establishment of a full-fledged Fascist dictatorship in the United States by outlawing the Communist Party. These unconstitutional measures are aimed particularly against the growing peace movement in our country, and seek to advance Wall Street's preparations for war by destroying every democratic right cherished by the American people.

This contention is amply supported by the provisions of S. 1194 and S. 1196. Moreover, witnesses have already appeared here to testify that these bills adversely affect wide circles, including groups which have no connection or sympathy with the Communist Party.

I now call your attention to section 4 (a) of the Mundt bill, which is practically the same as a similar provision of the Ferguson bill. This section would make it unlawful for persons knowingly to conspire or agree to perform any act which would substantially facilitate or aid in the establishment within the United States of a totalitarian dictatorship to be directed or controlled by a foreign government, foreign organization, or foreign individual.

Since the preamble giving the so-called necessity for these bills, to these bills arbitrarily declares that the Communist Party and other proscribed groups seek to establish a totalitarian dictatorship under foreign control, any agreement entered into by them or their members would automatically become punishable as a crime.

Senator EASTLAND. Mr. Johnson, does the Communist Party desire to establish dictatorship in the United States?

Mr. JOHNSON. The sense in which it is used here and in the declarations, certainly not, no. The answer is "No."

Senator EASTLAND. Well, in what sense does it—

Mr. JOHNSON. In no sense.

Senator EASTLAND. Does the Communist Party desire to set up—

Mr. JOHNSON. In no sense. I want to identify two things. First, I want to say that the definitions placed in this whole section of the bill are completely false views, have no relation to the truth. Therefore, I say that in that sense, I, likewise in any other sense see, that is the point of my answer to it. One answer and then the other. You will note that all the way through it is based upon this—

Senator EASTLAND. Is there any connection between the American Communist Party that you represent, and the world Communist movement?

Mr. JOHNSON. There are no organizational connections between the United States Communist Party, the Communist Party of the United States, and any Communist Party outside of the United States, in the sense that there is a body of literature which everybody reads, whether it is mathematics or science or anything, Communists and all others read and follow the basic literature, basic ideology; the basic philosophy which we hold is a philosophy that is very scientific in every sense, very helpful to the American people, grows out of the

American scene, as well as out of every scene, in this sense there is no organizational political ties to a political party anywhere else, and it is not tied in that sense at all.

Senator EASTLAND. Is there any connection between the Communist Party organization which you represent and the Communist Party of Russia, or the Government of Russia?

Mr. JOHNSON. No.

Senator EASTLAND. Have you been in Russia?

Mr. JOHNSON. I was in the Soviet Union on a tour in 1930 together with Senator Barkley and a number of others.

Senator EASTLAND. Did you ever attend the Lenin Institute?

Mr. JOHNSON. No.

Senator EASTLAND. In Moscow?

Mr. JOHNSON. No; I was a tourist.

Senator EASTLAND. Do you know Hans Eisler?

Mr. JOHNSON. Hans Eisler; no.

Senator EASTLAND. Do you know Gerhard Eisler?

Mr. JOHNSON. I had seen Gerhard Eisler in meetings speak; yes.

Senator EASTLAND. Did you have any dealings with him?

Mr. JOHNSON. No.

Senator EASTLAND. Did you know that the Eislers represented the Russian Government in the United States?

Mr. JOHNSON. They did not.

Senator EASTLAND. Have the official representatives of the world Communist Party of the Government of Russia ever had any authority or ever held a place of authority with the American Communist Party?

Mr. JOHNSON. There are two factors there. In the first place, there is a certain stage in the development of the Communist movement, there was a Communist International. I think it was in the year 1940.

Senator EASTLAND. Did that Communist International send funds to the American Communist Party?

Mr. JOHNSON. No.

Senator EASTLAND. Did your party—now, wait just a minute.

Mr. JOHNSON. That is not in existence now.

Senator EASTLAND. Wait just a minute, please.

Did your party ever secure any funds from abroad?

Mr. JOHNSON. No.

Senator EASTLAND. How does it secure its funds?

Mr. JOHNSON. By appeals to the American people, constantly making fund drives. That is really a constant thing.

Senator EASTLAND. Then all of your finances are raised by subscription from the people of the United States.

Mr. JOHNSON. Subscription in the sense of a general solicitation of funds; yes.

Senator EASTLAND. No funds have ever come from the Union of Soviet Socialist Republics?

Mr. JOHNSON. None.

Senator EASTLAND. And you have no connection, your organization has no connection with the party?

Mr. JOHNSON. That is right, none.

Senator EASTLAND. Did you ever have any connection with, that is, your party ever have any connection with the Russian consulate in the State of New York?

Mr. JOHNSON. No.

Senator EASTLAND. Any contact with the Russian Embassy in the city of Washington?

Mr. JOHNSON. No.

Senator EASTLAND. Who is J. Peters we read about in the newspapers?

Mr. JOHNSON. J. Peters? You mean, I think that is a question of identification of individuals. In a sense like this, you would start from there, you start out and say, "Who is who?" I want to present my statement in regard to this particular legislation.

Senator EASTLAND. I do not want—

Mr. JOHNSON. And the case of J. Peters is a matter of public discussion, public knowledge. Everything that has appeared in the newspaper is just about the way people hear it.

Senator EASTLAND. I understand. The questions are responsive to your statement here about your totalitarian dictatorship. If anyone can throw any light on the allegation in this bill that the Communist movement is a conspiracy to set up totalitarian dictatorship under foreign control, you should be able to do that. Your party should be able to do that. That is the reason I want to ask—

Mr. JOHNSON. That is the reason I want to get in this full statement.

Senator EASTLAND. You will be given plenty of time.

Who is J. Peters. That is why I want to have you answer that question. Do you know him?

Mr. JOHNSON. You see, Senator, if from this you conceive the purpose of appearing at a Senate hearing to stop me from presenting my statement—

Senator EASTLAND. I do not want to stop you. I am not trying to stop you. I want you to present your statement. I want to give you adequate time to present it. I just asked you a question.

Senator MILLER. What is that name, please?

Senator EASTLAND. J. Peters.

Senator O'CONNOR. There is no disposition to stop you, as Senator Eastland has stated. His question is addressed to your acquaintance-ship, if that be so, with a certain individual.

Senator EASTLAND. He is said to be a representative of the Russian Government. He says there is no tie-up between his party and the Russian Government. He says that in his statement.

Mr. JOHNSON. I would definitely say that is not true.

Senator EASTLAND. Then who is J. Peters? If you do not want to answer the question, that will be all right. I will withdraw it, and let you proceed with your statement.

Mr. JOHNSON. You see, there is a fundamental point. I prefer that you withdraw for a very simple reason, that is, that I do not intend to proceed into a so-called explanation and discussion of a whole series of individuals. I want to proceed with my statement.

Senator EASTLAND. I know, but when you appear as a witness before the committee, you are here for all purposes, and subject to questions, that is, from the committee, if you are here in good faith. I am going to waive that. I am going to withhold that question for the minute and let you proceed.

Senator O'CONNOR. Just along that line, you have answered that there is no organizational connection, I understand, between the Communist Party of America and the world Communist Party. Did I correctly understand you?

Mr. JOHNSON. That is right.

Senator O'CONNOR. Are any instructions or advices received from Moscow by the American Communist Party?

Mr. JOHNSON. No.

Senator O'CONNOR. From the Cominform?

Mr. JOHNSON. None.

Senator O'CONNOR. Has there been to your knowledge any suggestions as to what the attitude of your membership should be in the event of any conflict with Soviet Russia?

Mr. JOHNSON. I was going to submit, which I think would help to aid in answer that very question proposed now, a statement by William Z. Foster, and Eugene Dennis, in reply to a question, and then a further statement, an open letter to President Truman, which deals likewise with this question, and a twisting of the question that occurred when the President charged the leadership of the Communist Party as being treasonous. If you want I would just read it right in at this stage—

Senator O'CONNOR. Do you have it there?

Mr. JOHNSON. To have it complete. It is a pretty lengthy statement.

Senator O'CONNOR. Could I see it?

Mr. JOHNSON. This is the first statement which is continued over here. This is the second statement, continued here.

Senator O'CONNOR. Very well.

Mr. JOHNSON. Because it answers it a lot more in an official way, answers it more thoroughly as far as an expression is concerned.

Senator O'CONNOR. Right in that connection, Mr. Johnson, in your opinion what would be the attitude of the members of the Communist Party in the event of conflict with Soviet Russia, that is, of war between the United States and Russia? To which country do you think the allegiance of the Communist Party would be?

Mr. JOHNSON. In the first place, I think you are asking a question that deserves the kind of an answer that is a political answer, and a full explanation of the Communist position in regard to war.

At the outset I want to say that as Communists we maintain the most vigorous struggle for peace, we maintain that peace is the essential need of the American people and the peoples of the world, and in stating that, we would struggle for peace at all levels at all times.

We hold also that war between the United States and the Soviet Union is not inevitable and that peace can be achieved and that two social systems can peacefully coexist.

In this sense we also start from the premise that there is no such thing as a preventable war, and features of that character which some of the advocates of war try to advance. I also hold that as far as where does war danger come from, I say the war danger arises from the imperialist policies of Wall Street, that the war danger does not arise from the Soviet Union or a Socialist country, that a war danger cannot arise from a Socialist country, that that is part of the history of Socialist countries, and from the viewpoint of likewise, on the other hand, part of the history of capitalist countries.

In this sense, too, I would say that a war between the United States where the United States would conduct a war against the Soviet Union, I would say that would be a very unjust war, and that such an unjust war would have to be opposed as being contrary to the interests of the

American people. I would hold that our loyalty is to the American people at all times, and, therefore, would constantly struggle against such a war.

Senator O'CONNOR. But in the event——

Mr. JOHNSON. And thus seek the most rapid termination. And my feeling is very frankly that the mass of the American people would oppose such a war, not desire it, struggle against it, and really impose peace. And in that sense to conduct this fight for peace.

Senator O'CONNOR. Very well. My question, may I ask the question then, but in the event that such a war were declared, where would the allegiance of the Communist Party be, to the United States?

Mr. JOHNSON. To the American people.

Senator O'CONNOR. Or to Russia?

Mr. JOHNSON. To the American people, expressed in the struggle for peace.

Senator EASTLAND. What you say is this, and correct me if I am wrong; that the first loyalty of your party is to the American people, that under any conditions the best interests of the American people could not be served by war with Russia; therefore, if war should be declared, regardless of the cause, your first loyalty would still be to the American people. The war, you say, would be against their interests, and, therefore, you would refuse to defend this country, is that right?

Mr. JOHNSON. Therefore, I would consistently struggle——

Senator EASTLAND. Answer my question.

Mr. JOHNSON. For the imposition of peace, and the establishment of peace.

Senator EASTLAND. Answer my question. Would you refuse to defend this country?

Mr. JOHNSON. You see——

Senator EASTLAND. I want a "Yes" or "No" answer, Mr. Johnson.

Mr. JOHNSON. You are asking for a political answer to a political question, and you know it.

Senator EASTLAND. I want you to answer regardless of what I know; I want you to tell us whether or not you will defend this country? Is it your country?

Mr. JOHNSON. This country belongs to the people, doesn't it?

Senator EASTLAND. Is this your country?

Mr. JOHNSON. This country belongs to the people, and it is on that basis I say very categorically that the people's interests have to be preserved at all times.

Senator EASTLAND. Would you defend this country?

Mr. JOHNSON. I do not say that a person has to answer a question like that which becomes the kind of a question that only serves to create strength to those who would try to advance a war program within this country.

Senator O'CONNOR. The question is a very simple one and it is directly in line with the question I propounded as to where your allegiance would be in the event of a conflict, in war between the United States Government and the Soviet Government, and Senator Eastland's question is a direct one and we would like to have your answer as to whether you would or would not refuse to defend the United States Government in the event of armed conflict with the Soviet Union.

Mr. JOHNSON. On that kind of a question, Senator, I stated that the question has to be answered with all of the policy involved.

Senator EASTLAND. I want a "yes" or "no" answer to my question. Would you defend this country? Would your party's policy be the defense of this country?

Mr. JOHNSON. Our party policy is constantly in defense of the interests of the American people and that is where it rests.

Senator EASTLAND. Would you defend the United States?

Mr. JOHNSON. I would further add to that that in doing so, pursuing my policy, I would be pursuing a similar policy advocated by Abraham Lincoln against the unjust war against Mexico.

Senator EASTLAND. You attempt to draw a distinction between the American people and the Government of the United States. Now I will ask you if war, regardless of cause, arose, would you defend the Government of the United States?

Mr. JOHNSON. You see, Senator, that is exactly why I was saying that this statement should have been, perhaps, incorporated in full into the sentence because then you get a full statement of it.

Senator O'CONNOR. Just a minute.

Senator EASTLAND. Wait just a minute.

Mr. JOHNSON. Despite the efforts of the peace forces of America in the world, Wall Street should succeed in plunging the world into war, we would oppose it as unjust, aggressive, imperialist, as undemocratic and antisocialist party destructive of the deepest interests of the American people and all humanity.

Senator EASTLAND. Just a minute.

Mr. JOHNSON. Even as Abraham Lincoln while a Congressman opposed the unjust annexationist Mexican War and demanded its termination, so would we Communists cooperate with all democratic forces to defeat the predatory war aims of American imperialism and bring such a war to a speedy conclusion on the basis of a democratic peace.

Senator EASTLAND. We have heard you.

Mr. JOHNSON. It seems to me that states our position very clearly.

Senator EASTLAND. No, sir. What you are trying to do is to draw a distinction between this Government and the American people, and saying that the people's interest would not be furthered by such a war, and you are loyal to the people, and that by being loyal to the people you would be disloyal to the Government.

I want to know if you would defend the Government of the United States, and I want to know if your party's policy would be to defend the Government of the United States.

Mr. JOHNSON. You see—

Senator EASTLAND. If it would not, you are certainly disloyal.

Mr. JOHNSON. No, no. We hold the opposite. We are not disloyal. We hold that we have a right to our definition of loyalty. You may make your definition of loyalty. I may not necessarily subscribe to your definition of loyalty, and advance my definition as a loyal American citizen, loyal to the institution of America, loyal to its progress and its advance, and it is on that sense that I say that I have a right to make my definitions, too.

Senator EASTLAND. What you are saying, then, is that you could refuse to defend your country in case of war.

Mr. JOHNSON. I am saying this——

Senator EASTLAND. You say you are not disloyal under your definition you are loyal to the people—wait just a minute. I want you to answer my question.

Mr. JOHNSON. This is answering the very question he is asking.

Senator EASTLAND. No, sir, I want that question answered "Yes" or "No."

Mr. JOHNSON. You see, let me just pose this——

Senator O'CONNOR. You can make any explanation you want——

Mr. JOHNSON. Who preceded——

Senator O'CONNOR. Just a minute. Just a minute. You can make any explanation you desire. We will stay here and listen to it calmly. But when the Senator propounds a question, he is entitled to an answer, and upon making the answer, you can elaborate on it as much as you wish, and we will give you the opportunity to do it, politely and fully.

Mr. JOHNSON. Don't you see this, he is giving certain definitions what he terms loyalty to country, people, and so forth. I do not answer on the score of his definitions.

Senator O'CONNOR. You can so explain it.

Mr. JOHNSON. That is what I am doing.

Senator O'CONNOR. You can explain it when you make your answer.

Mr. JOHNSON. Take this sentence——

Senator O'CONNOR. Just a minute. Do you mean to say that you do not understand the Senator's question when he asks in the event of war with Russia, would you defend the United States?

Mr. JOHNSON. You see, I take this sentence from Senator Carl Schurz, whom you perhaps well remember who in 1872 on the Senate floor made this sentence: "Our country right or wrong, when right to keep it right, when wrong to put it right."

Senator EASTLAND. You will not take control of this committee meeting.

Mr. JOHNSON. I am not.

Senator EASTLAND. You certainly are not. We want these questions answered, and we want to be polite to you, but we are not going to let you create a scene here, and we are not going to have a Communist demonstration here. The question is a reasonable question. I will ask it again. Would you defend the Government of the United States in case of war with Russia? The answer is "Yes" or "No." If you do not care to answer the question, then say you do not care to answer it.

Senator O'CONNOR. When you do answer——

Mr. JOHNSON. I subscribe to the statement which I have submitted here by William Z. Foster and Eugene Dennis as being my full answer to the question raised.

Senator EASTLAND. Would you join the American Army in case of war with Russia?

Mr. JOHNSON. I repeat with this statement, this statement is adequate, it is a political question, deserves a political answer.

Senator EASTLAND. I do not think this witness has answered.

Senator O'CONNOR. The question has not been answered. You are privileged to make any explanation you wish after you answer the question, but the question is a very clear one, and a very simple one,

and is apparently understood by you. What is your answer, or do you decline to answer?

Mr. JOHNSON. I prefer to read the full statement which I think is the only sensible way to answer that kind of a question. I think that I should have the opportunity to do so without any interruption.

Senator EASTLAND. I say that we let him go on and read his statement into the record.

Mr. JOHNSON. With this understanding, that this has now——

Senator O'CONNOR. You can refer to it.

Mr. JOHNSON. I submit it as being part of the record.

Senator O'CONNOR. Inasmuch as the Senate has gone into session, we will have to adjourn this meeting and resume at 10 o'clock tomorrow morning.

(Thereupon at 12 o'clock noon, the subcommittee recessed to reconvene Friday, May 20, 1949, at 10 a. m.)

CONTROL OF SUBVERSIVE ACTIVITIES

FRIDAY, MAY 20, 1949

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to recess, at 10 a. m., in room 424, Senate Office Building, Senator James O. Eastland (chairman of the subcommittee) presiding.

Present: Senators Eastland and O'Connor.

Also present: Robert B. Young and J. H. Mathews, professional staff members.

Senator EASTLAND. The committee will come to order.

Now, Mr. Johnson, you may proceed. Where were you yesterday?

TESTIMONY OF ARNOLD JOHNSON, LEGISLATIVE DIRECTOR, COMMUNIST PARTY, NEW YORK, N. Y.—Resumed

Mr. JOHNSON. I was just concluding on the first page. I concluded with the sentence:

Any agreement entered into by them, or their members, would automatically become punishable as a crime.

I want to add this one additional sentence on that page there: This method of outlawing the Communist Party and other organizations must be understood for what it is, the destruction of the Bill of Rights, and the political rights of the American people.

It is obvious that one of the principal aims of this section is to prohibit non-Communist progressives and their organizations from cooperating with the Communist Party or its members in the furtherance of any common objective.

Senator EASTLAND. What non-Communist organizations do you refer to in that statement?

Mr. JOHNSON. Any and all non-Communist organizations. I mean any organization that is not the Communist Party, whether it is a trade union, whether it is a tenants' organization, whether it is an organization to abolish the poll tax, an organization dedicated to outlaw lynching, the NWACP, any other non-Communist organization, et cetera.

Senator EASTLAND. Would you mean also organizations that have been referred to or designated by the Attorney General as subversive or Communist-front organizations?

Mr. JOHNSON. What he designates as such. However, I do not accept his appellation that they are subversive.

Senator EASTLAND. I understand.

Mr. JOHNSON. Yes.

Senator EASTLAND. But that are Communist-front organizations. What about the Workers Alliance; would that be one of those organizations?

Mr. JOHNSON. Now, when you term it Communist front organization, then I do not classify the Workers Alliance in the period when the Workers Alliance was in existence as a Communist front organization. I do not take that term and use its application in the sense in which I find definitions being given here. I place it down as simply a non-Communist organization which was an organization of unemployed and relief workers at that particular time, WPA workers.

Senator EASTLAND. Did you belong to the Workers Alliance?

Mr. JOHNSON. Oh, surely, yes.

Senator EASTLAND. Were you an unemployed worker?

Mr. JOHNSON. Was I employed?

Senator EASTLAND. Were you an unemployed worker at the time you belonged to the Workers Alliance?

Mr. JOHNSON. Yes. I was an officer in the Workers Alliance.

Senator EASTLAND. What officer? What was your position, your title in that organization?

Mr. JOHNSON. I was the State chairman of the Workers Alliance in Ohio. I was a member of the national board of the Workers Alliance.

Senator O'CONNOR. If you say that the other organization to which Senator Eastland referred is not a Communist front organization, what organizations are Communist front organizations? Give us some examples.

Mr. JOHNSON. I do not use that definition. Therefore I find it impossible to give examples.

Senator O'CONNOR. You apparently knew what the chairman referred to when you said that such an organization was not Communist front. If you knew they were not Communist front, what organizations are Communist front?

Mr. JOHNSON. No, no, the logic does not follow that way in my opinion. It is true if you apply a formal position, a formal syllogism in that form of question you can come to that; that does not necessarily follow, you see.

Senator O'CONNOR. Do you or not admit that there are organizations which are Communist front? That will bring it right to a head. Are there any such and if so, what are they?

Mr. JOHNSON. No; I don't classify organizations as Communist front at all.

Senator O'CONNOR. You take the position that there are none such.

Mr. JOHNSON. That is correct.

Senator O'CONNOR. There is none such?

Mr. JOHNSON. That is correct. The organizations have their own identity according to their own purposes, their own membership, and their own bylaws, et cetera, within that they identify themselves. Some people classify trade unions, for instance, Communist front. That does not make it into one.

To use the term that way is sometimes used on the basis of trying to make it appear as if there is some direct or indirect or whatever other kind of connections between the Communist Party and that particular organization. But to make statements like that, just like years ago you know you could make a statement, many people believed it, said the world was flat. That didn't make the world flat. The

fact that thousands of people said it for many hundred years, still the world was not flat because people said so. If definitions do not deal with the exact elements of truth, then those definitions are both misleading and false, and it is in that sense I say that sometimes you create terminology and sometimes people use words which have entirely different meanings to different peoples when they are not related to the truth.

Senator EASTLAND. Mr. Johnson, this bill as you of course know hits at such organizations such as you describe, and I judge that the Workers Alliance would be; is that organization in existence now?

Mr. JOHNSON. No.

Senator EASTLAND. The National Workers Alliance of America is not in existence at this time?

Mr. JOHNSON. It has not been in existence since I would say about 1938.

Senator EASTLAND. I would judge that would be one of the type of organizations to which this bill, if enacted, would apply.

Who were the other national officers of the Workers Alliance?

Mr. JOHNSON. Now, just a second. As soon as you start to ask me for names of people, in view of the effort being made within this legislation, I don't know how you people are going to try to interpret legislation of this character, to ask me to refer to individuals.

Senator EASTLAND. We do not interpret it.

Mr. JOHNSON. I know you don't. But how it will be interpreted, say, by Tom Clark, the technique in which these interpretations occur, if such legislation is passed, is to ask me to turn into a person trying to bring people into jeopardy before the law, et cetera. Do you see my point?

Senator EASTLAND. I see your point.

Mr. JOHNSON. I just can't do it.

Senator EASTLAND. I judge the national officers of the Workers Alliance, their names were not secret.

Mr. JOHNSON. That is right; they were not.

Senator EASTLAND. That was something——

Mr. JOHNSON. Therefore, you have other means of finding, of determining whatever names you may want. That is my point.

Senator EASTLAND. That is the way the Communist Party operates is through the fronts where they can publish the names as members of the organization, rather than as Communists, isn't that correct?

Mr. JOHNSON. No, no; now you are really, you are really creating an idea in your own mind.

Senator EASTLAND. What members of the Communist Party were officers of the Workers Alliance to which you belonged?

Mr. JOHNSON. Now, you see, you are doing the same thing again.

Senator EASTLAND. I want you to——

Mr. JOHNSON. I don't think you appreciate this position that we just customarily take, especially when you are discussing a piece of legislation which has with it this field of trying to put people into jail for something that may have been as far as affiliations are concerned years ago. The next thing you can ask me, you know, "Are they still members of the Communist Party?" And you would find yourself getting involved in this kind of a question, questions of names. I don't, just don't see the point of it.

Senator EASTLAND. You are down here at your request, Mr. Johnson, to oppose this legislation.

Mr. JOHNSON. That is right.

Senator EASTLAND. This bill, and you can throw light on whether this measure is meritorious or not, and we think that you should give us the information on which to act. If you do not know, no one else can. You know more about it than we do. What are the members?

Mr. JOHNSON. You see, what I want to do is to give you my full statement. When it comes to this question of saying who is the names of this person or that person or other persons, et cetera, then you will find the complete resistance on my part to the utilization of any names, dealing with any feature of this legislation, from the viewpoint that history begins to show that later utilization of those particular names against those, and taking of actions against people, and I just absolutely do not in any committee anywheres turn into a person who indirectly by any stretch of the imagination could become a so-called informer or stool pigeon against a person.

Senator EASTLAND. Then what you refuse to do is to give the names of the Workers Alliance, of the officials when you say it was not a Communist front organization.

Mr. JOHNSON. That is right.

Senator EASTLAND. Not controlled by Communists.

You may proceed.

Mr. JOHNSON. Yes, sir.

Thus, individuals could be fined or sent to prison for belonging to organizations that endorse a candidate for public office, support a wage demand advanced by a trade-union, or join in the legal defense of frame-up victims like Mrs. Rosa Lee Ingram, the Trenton Six, or the 12 Communist leaders.

It would be necessary only to show "reasonable ground for belief" that Communists, or alleged Communists, were parties to such agreements. Regardless of whether the Communist Party were the initiator of a united front movement, or came to the support of a good cause started by non-Communists—organizations and individuals participating in any movement alleged to embrace Communists would be penalized.

Under this section of the Mundt and Ferguson bills, it would be an easy matter to prosecute labor and nonlabor groups cooperating in an effort to secure repeal of the Taft-Hartley Act and restoration of the Wagner Labor Relations Act.

Why not? The Communist Party advocates, seeks to initiate, and vigorously supports united action to this end.

Negro and white organizations and their leaders could similarly be prosecuted for uniting to secure passage of a real civil rights program.

Why not? Everybody knows that the Communist Party is everywhere in the forefront of the struggle for Negro rights, and participates in every movement for full economic, political, and social equality for the Negro people.

In the present atmosphere of intense war preparation and hysteria, this section of S. 1194 and S. 1196 could and would be used to intimidate and prosecute any people's movement of opposition to the Atlantic Pact, or to other aspects of Wall Street's bipartisan imperialist war program?

Why not? It is well known that the Communist Party is the most active and consistent advocate of peace, of an American-Soviet peace pact, of universal disarmament, of the decartelization and demilitarization of Japan and Germany. Every measure favorable to the maintenance of lasting peace is supported by the Communists—whether it be support to the national liberation movements of the colonial world, barring Franco Spain from the United Nations, or the establishment of friendly relations with the new, liberated China.

Is it not we Communists who most stubbornly insist that World War III is not inevitable, and that the peace forces of the world, the world anti-Fascist and the anti-imperialist camp, can check and defeat the world camp of war and monopoly reaction headed by American big business? Have not the banker generals, their press, radio, and politicians already proclaimed that to advocate a return to the peace policies of Roosevelt is to reveal oneself as a “dupe,” a “fellow traveler” or a “Communist”?

Cooperation with other peace-loving Americans who engage in joint efforts to check and defeat the Wall Street war mongers already carries a heavy penalty in our country. For this, non-Communists as well as Communists are pilloried in the public press. They may also be fired evidently from private and public employment, dismissed from their teaching posts in schools and universities, expelled from college, or denied relief after being blacklisted. For this, Americans of foreign birth are threatened with deportation. For this, workers in some trade-unions are barred from holding office.

In connection with this general pattern of attempted intimidation, the current political heresy trial of the Communist leaders has special relevance to S. 1194 and S. 1196.

As the committee knows, it was immediately after the storm of popular protest temporarily blocked passage of the Mundt-Nixon bill that the 12 Communist leaders were indicted on July 20, 1948.

I ask leave to attach to my testimony a copy of that indictment, which I handed in yesterday, and I again do it at this time.

Senator EASTLAND. Wait right there. Do I understand you to say that because the Mundt-Nixon bill was not enacted at the last session of Congress that some connection between the failure of this committee to report that bill out and the indictment of the 12 Communist leaders came about?

Mr. JOHNSON. I point out simply that it was the historical fact that immediately after the vast protest to the Mundt-Nixon bill that this indictment was handed down.

Let me go on.

Senator EASTLAND. Do you mean to leave that impression?

Mr. JOHNSON. This explains the point.

Senator EASTLAND. I am not arguing with you. Is that the impression you mean to leave?

Mr. JOHNSON. I think the rest of it explains the point.

Senator EASTLAND. I want you to explain it now. Does it?

Mr. JOHNSON. I think the effort, yes, I put it like this. I think the effort to outlaw the Communist Party last year by the Mundt-Nixon bill, failing to do that, then the Attorney General likewise seeking to outlaw the Communist Party, went then to utilize the courts in an effort to outlaw the Communist Party, and the Bill of Rights, through

the courts, and in utilizing the courts, utilized the blue-ribbon grand jury. I would even add this to it: It seems to me here you had one of those situations where the grand jury, a blue-ribbon grand jury, at the very beginning, directed against the working class, directed against the struggles of peoples for many years, undertook to take away from the people the people's rights to judge a political party, and in this sense proceeded to outlaw it. Yes, in that way this does have a relevance.

Senator O'CONNOR. Inasmuch as you are discussing that very question of indictment, let me ask you this: Assuming for the sake of discussion that one or the other of these bills or a similar bill were to be enacted requiring the Communist Party to register, would you abide by the law?

Mr. JOHNSON. I have a statement at the concluding part of it on that exactly.

Senator O'CONNOR. I think it is pertinent right here, because you are talking about indictments. I would like to know whether it would be the policy of the Communist Party to abide by the law and to register as the law would require?

Mr. JOHNSON. Would we register? No.

Senator O'CONNOR. You say now that even though the Congress passed the law, and it were signed by the President and became the law of the land that the policy of the Communist Party would be to violate it?

Mr. JOHNSON. No, no; that the point of what would happen is this, that then you would force us into a position whereby your outlawing us forces us into a position of underground.

Senator O'CONNOR. So that——

Mr. JOHNSON. Just could not abide by that kind of a law in the sense of saying do you abide by a law which is a law which is contrary to the interests of the American people, that violates the Bill of Rights, the Constitution. Would we be a partner to violating the Constitution and the Bill of Rights. I say "No."

Senator EASTLAND. You would go underground.

Mr. JOHNSON. I suppose that is the only place we could go.

Senator O'CONNOR. Would it be your policy as one of the officers of the Communist Party and the policy of your fellow officers to advise any of your affiliated organizations not to register? Would you direct them not to abide by the provisions of the law?

Mr. JOHNSON. I would insist on, I insist on everybody upholding the Bill of Rights and the Constitution of the United States, and in doing so I would have to insist upon that they would not do that. They would not register.

Senator EASTLAND. You mean to uphold the Bill of Rights and the Constitution, as you interpret it; is that right?

Mr. JOHNSON. Yes, and as I think historically it does have its interpretation.

Senator O'CONNOR. Just for the purpose of this discussion, I was confining your attention to this one specific piece of legislation. Assuming that it is to be enacted in the form that I am talking about it, and you are now analyzing it, so correct me if I am stating your position incorrectly, my understanding of your position is that even though this law were enacted and made a part of the law of the land, you would refuse to abide by its provisions, and the Communist Party

would refuse to register and would go underground. Do I understand your position correctly?

Mr. JOHNSON. Yes. I elaborate upon this point later in my exact statement.

Senator O'CONNOR. You may do so. I wanted to see if I got your position correctly, and apparently I do. All right.

Mr. JOHNSON. In flagrant violation of the Bill of Rights and America's democratic traditions, it alleges that it is a "crime" for the Communist Party and its leaders to teach and advocate the working-class principles of scientific socialism. That is the indictment that I am inserting here. It makes an unfounded and arbitrary finding that the duty and necessity to overthrow the Government of the United States by force and violence is "a principle" of Marxism-Leninism. That is, the indictment makes that.

The press has reported that Senators Mundt and Ferguson consider that the Justice Department made a mistake in indicting the Communist leaders on this ground, rather than on the grounds set forth in the preambles to their bills.

I contend, and many non-Communist Americans agree, that it is not a "mistake" but a crime against the Bill of Rights to attempt to try an American working-class political party in a court of law, or to indict its leaders for what they believe in, teach, and advocate.

Senators Mundt and Ferguson should know that the indictment under which the Communist leaders are presently being tried is barren of the charge that they committed, or even planned to commit, any overt act of force and violence against the Government of the United States. Moreover, the Senators should know that a desperate effort was made to indict them on charges similar to those made in this preamble in this legislation. And that this attempt failed because these charges are so utterly false that no evidence to warrant an indictment on them could be contrived or concocted.

Mr. YOUNG. How do you know that? Were you in the grand jury when the attempt was made?

Mr. JOHNSON. No, no.

Mr. YOUNG. Have you any facts there to substantiate that?

Mr. JOHNSON. That was generally placed in the public press all the way through and became a matter of general public knowledge.

Mr. YOUNG. Was the press in the grand jury when the attempt was made?

Mr. JOHNSON. One of the unfortunate things that happened in regard to that grand jury, which should have been investigated by this committee, incidentally, was the manner in which the press intervened into the internal affairs of that grand jury and repeatedly tried to influence the grand jury from without in violation of the function of the grand jury. That was one of the other features about that particular grand jury which was, where they let leaks out, so to speak, and then utilized leaks to try to bring pressure on the grand jury, to bring exactly these kinds of indictments. That was the fact of the matter, and that is why there was a great deal of common knowledge about it.

Mr. YOUNG. You say you get this common knowledge from press reports.

Mr. JOHNSON. Yes, sir.

Mr. YOUNG. That is your source?

Mr. JOHNSON. Yes, sir.

Nevertheless, the preamble to the Mundt and Ferguson bills makes a wholly unsubstantiated finding in regard to the Communist Party and so-called Communist-front organizations. It declares that there exists "a world Communist movement controlled by the Communist dictatorship" of an unnamed "foreign country"—

Senator EASTLAND. What is the Communist International?

Mr. JOHNSON. The Communist International?

Senator EASTLAND. Yes, sir.

Mr. JOHNSON. You see, the Communist International, the Third International, existed up until 1943, when it was dissolved at that time. The Communist Party of the United States was disaffiliated from the Communist International in 1940, I think it was.

Senator EASTLAND. Well, up until 1940—

Mr. JOHNSON. Since, there has been no Communist International.

Senator EASTLAND. Just a minute now. Until 1940, do I understand that the American Communist Party was an arm of the Communist International?

Mr. JOHNSON. Was a section of it; yes.

Senator EASTLAND. Go ahead. What was the Communist International?

Mr. JOHNSON. Like many other organizations, and many other organizations, I may have taken the most simple comparison, take like recently there was an organization of churches whereby the churches established a World Council of Churches. I understand respective world organizations in that sense, and in that sense the Communist International was a body to which respective parties, Communist parties throughout the world, sent delegates and participated in conferences, et cetera.

Senator EASTLAND. For what purpose? What were those conferences?

Mr. JOHNSON. For the purposes of Communist discussion of common problems that may exist among the people in the development of an ideology, in the thinking out of programs, development of science, analysis of exact events everywhere. You know, people everywhere are interested in what is happening everywhere else.

Senator EASTLAND. What was the objective, the object or the objective of the Communist International? What was it?

Mr. JOHNSON. I suppose you become more specific; what you mean by objective.

Senator EASTLAND. What was the objective; was it world communism?

Mr. JOHNSON. The strengthening of Communists everywhere; yes, oh, sure.

Senator EASTLAND. It was to create Communist states in the world; is that right?

Mr. JOHNSON. That is, you see, anybody can learn. I trust that the situation will always remain where people learn from each other.

Senator EASTLAND. Well, now, wait a minute.

Mr. JOHNSON. The constant development in this sense of respective parties in all parts of the world, in thinking, and in this sense advancing.

Senator EASTLAND. Was it or was it not its purpose to create Communist states in the world?

Mr. JOHNSON. I would not put it in exactly that way, Senator.

Senator O'CONNOR. You just said a minute ago that the objective was, in answer to the Senator's question, that the Communist movement would be extended world wide. Did I not understand you correctly to say that that was your ultimate purpose and desire?

Mr. JOHNSON. You see, there is quite a distinction here, that is used a little bit interchangeably. I noticed Senator Eastland's remarks and I noticed some variations likewise in how it is placed from time to time. For instance, you can use this term world wide, and thereby try to create an impression which would be a false impression, that from a particular point there would be a direction over and determination of what happens in respective countries. That is not true.

Senator EASTLAND. Answer my question.

Mr. JOHNSON. That is the point.

Senator EASTLAND. Answer my question, please, Mr. Johnson. Was the objective of the Communist International to set up Communist states throughout the world?

Mr. JOHNSON. No.

Senator EASTLAND. How?

Mr. JOHNSON. No, that would not be true.

Senator EASTLAND. What was its objective?

Mr. JOHNSON. You see, when you talk in terms of the responsibility of respective Communist parties in their own countries, those respective Communist parties in each and every one of their own countries are responsible to the working class of their country, to the people of their country, not to some outside force, and that has always been the policy. That was true during the period of the Communist International.

Senator EASTLAND. Well, now——

Mr. JOHNSON. Do you see?

Senator EASTLAND. You mentioned a minute ago that the Communist International meetings that your party affiliated with, that it was to carry out plans, you later said, and then you have taken back that word, that it was to set up Communist states in the world.

Mr. JOHNSON. No, I didn't say that, no, no; no, you make the variation here.

Senator EASTLAND. Wasn't one of the purposes of the Communist International to set up a Communist government in France?

Mr. JOHNSON. No.

Senator EASTLAND. How?

Mr. JOHNSON. No, no. You can't put it just as simply as that because you have to discuss the question of the role of the respective party of every single country, and the parties within each country are responsible to the working class, and the people of that particular country. You see, that is the difference in it.

Senator EASTLAND. What was its object, then? Just explain the object in it, then.

Mr. JOHNSON. In this sense, that Communists of one country can well learn from the experiences of Communists in another country, and in the sense that there is a strong bond just a normal bond between peoples of all lands, to use that excellent phrase which is quoted in here, for instance, of Abraham Lincoln, I don't find it quickly, the international bond being a close bond second only to the tie of families. I mean it is a firm feeling among people always expressed in people's desire for peace, et cetera.

Senator O'CONNOR. There are general principles that permeate the Communist organizations in all countries, more or less common objectives, are there not?

Mr. JOHNSON. There is this, Senator O'Connor. In a science you see sometimes people just do not understand. Our body theory arises from experience everywhere. The whole stack of books you might say that would more than fill up all the four walls of this room, which become a body of knowledge, you might say, thus perfecting a science which analyzes the development of society in respective countries, how that society is growing, which direction, and all of that, all of this becomes part and parcel and the common property, you might say, of all of us.

Senator EASTLAND. Wait a minute right there.

Mr. JOHNSON. It is also necessary to get together and discuss it, not only necessary to read it.

Senator EASTLAND. That is not what you said. You said a common plan. One of its meetings was to carry out a common plan, one of its purposes, to carry out a common plan. What is that plan?

Mr. JOHNSON. Let us go back and see just what I did say.

I don't agree with that interpretation of what I said. I make statements, I stand by my statements, I stand by the explanations necessary in making those statements, because when you are asking a question dealing with a fundamental point such as this—

Senator EASTLAND. Are you standing by your statements? I want to know what that plan is that you spoke about.

Mr. JOHNSON. I didn't. I hold I never designated any such thing as so-called common plan, certainly not in the way you are trying to imply at the present time.

Senator EASTLAND. You said one of the objectives of the Communist International was a plan, that they had these meetings to discuss the plan, the international meetings. What is that plan? Was it to overthrow this Government?

Mr. JOHNSON. No; no. No; no such thing as a common plan, if you are trying to create words of that character, if you talk about a common body of ideas.

Senator EASTLAND. What did you mean? I want to know what you meant. You said a plan. What did you mean by it?

Mr. JOHNSON. Let us go back and see what I just did say.

Senator EASTLAND. Was it a plan?

Mr. JOHNSON. No; no.

Senator EASTLAND. You have no plan?

Mr. JOHNSON. That is why I don't subscribe to what you are saying now.

Senator EASTLAND. Did you or did you not have such a plan?

Mr. JOHNSON. No.

Senator O'CONNOR. If there were no plan, world-wide, nevertheless, you do hold that there are certain common objectives among the Communist organizations in various countries, do you not, some over-all general principles to which they all subscribe?

Mr. JOHNSON. If I can make my interpretation, I would say "Yes."

Senator O'CONNOR. Very true. Let me get it down to practical terms. Do you think that communism has reached its perfection in the Soviet Union?

Mr. JOHNSON. It is constantly reaching a greater and greater perfection.

Senator O'CONNOR. Greater perfection. Do you admire and approve of the life under the Soviet regime? Do you think that that is a desirable way of life?

Mr. JOHNSON. Oh, sure.

Senator O'CONNOR. You do?

Mr. JOHNSON. Yes.

Senator O'CONNOR. If the Communist Party came into control in the United States of America, would you and your associates seek to have a way of life similar to that being practiced in Soviet Union today?

Mr. JOHNSON. You see now——

Senator O'CONNOR. Answer the question first, and then make any explanation you wish.

Mr. JOHNSON. An explanation is necessary, really, Senator, because——

Senator O'CONNOR. Won't you answer the question first?

Mr. JOHNSON. Repeat the question.

(Question read.)

Mr. JOHNSON. Well, you have an easygoing question you know in many ways because you have a way of life, material, and I mean interpretation of way of life may be differently from yours. Therefore I would say "Yes."

Senator O'CONNOR. That is all I want.

Mr. JOHNSON. You see, because within that, now, you said I could make a further explanation, because, look——

Senator O'CONNOR. Yes, indeed.

Mr. JOHNSON. That is where I think it is necessary.

Senator O'CONNOR. In other words, just let me ask one question and I do not want to interrupt you. You prefer, in other words, the way of life of the Soviet Union to that which is prevalent in America today; do you not?

Mr. JOHNSON. The way of life—let me pose this question. Do I prefer socialism to capitalism? Yes, when you put it upon that score. When you discuss the question of the development toward socialism, you do not create an exact blueprint. It is not the fitting in of a blueprint, but an analysis of the developments of forces, and so forth. For instance, we hold there are certain elementary things in life which as you indicated before on this question of what are certain common ideas. We make a certain interpretation of society which arises out of also a very thorough analysis of nature, in finding laws of development that apply in the field of nature and in natural science, likewise apply in the field of society as such. Here you commit a thorough and full discussion of what is generally termed dialectical and historical materialism, a philosophy that is deserving not of a few moments, but where I would say the room would be filled with the books, and an analysis of our philosophy is an essential part in the understanding of the full meaning of your question.

That is just saying that, you see, without going into it in a thorough way, because you and I would be here for hours and hours on end, and I would bring out another book and you would bring out another book, and so forth.

Next I would say this that as I indicated that this point of what would be the character of society in America where you have the means of production socially owned. That is basic to an understanding, and I would hold, you see, that within this form, this way of life, the Socialist way of life that for all Americans there would be a tremendous advance.

Next I would hold that this Socialist way of life has its roots in America, and that is why also when you speak in terms of a way of life, we should go back into the history of America. It may interest you to know, for instance, that the first President that the Communists supported in his campaign, his campaign happened to be Abraham Lincoln in 1864, and the Communist League in the United States had a big debate in a convention. There were some who were in the east and west had different points of view, should they or should they not support Lincoln, and they came and campaigned and supported Lincoln.

In this sense, you see, Communists' ideas and our own way of life is very germane to the American soil. That is the point I want to get in. You see when you discuss this question of the way of life, because I think too that there are so many false interpretations that can be made within this. I would go through a whole history, as a matter of fact I would go beyond that, if you go back to certain developments that came into that way of life you would have to go clear back into some of these early Utopians, and so forth. You know early Utopians, Socialists, spoke to this Congress and Senate, the United States; they were welcomed here to the floor to discuss their ideas back in the early part of the nineteenth century.

So let us not feel that here is something that is alien to American soil and traditions. It is part of it, and these American traditions on the other hand are likewise part of Communist thinking.

I would add this, even; you know we Communists spend an awful lot of time studying American history, steeping ourselves in it, learning the best of the American traditions. It is part and parcel of our way of life. That is why I pose this question, comes in, and that is why there is a lot of elaboration on a question of this kind.

May I proceed with this?

Senator EASTLAND. What is the name of the international Communist organization at this time?

Mr. JOHNSON. At this time?

Senator EASTLAND. Yes, sir.

Mr. JOHNSON. You are perhaps referring to the Communist Information Bureau.

Senator EASTLAND. I am just asking you a question.

Mr. JOHNSON. There is no international Communist organization to which the Communist Party of the United States is affiliated.

Senator EASTLAND. What is the Cominform?

Mr. JOHNSON. That is a terminology, combination of letters, you might say. Communist Information Bureau is what it really means. A number of the Communist Parties of Europe, in order to exchange opinions and information, established what is known as the Communist Information Bureau last year.

Senator EASTLAND. Your party did not affiliate?

Mr. JOHNSON. Did not affiliate, no.

Senator EASTLAND. Your party affiliates with no international organization?

Mr. JOHNSON. That is right.

Senator EASTLAND. That is the Communists.

Mr. JOHNSON. Yes.

Senator EASTLAND. You may proceed.

Mr. JOHNSON. That this Communist movement seeks through "terroristic and treacherous methods to establish a Communist totalitarian dictatorship in every country of the world"; and that it "utilizes for this purpose conspiratorial political organizations and affiliated front organizations." That is in the statements in the bill.

It is significant that even the indictment of the Communist leaders, returned after more than a year of investigation by a grand jury of strong anti-Communist bias, contains none of these charges which are so baldly and falsely stated to be facts by the preamble to the proposed legislation.

Even the indictment makes no allegation that the Communist Party is under the control of a foreign government. Even the indictments brought by the blue ribbon grand jury do not charge that the Communist Party, or its leaders, use terroristic and treacherous methods.

The press conveys the impression that Senators Mundt and Ferguson are dissatisfied with the prosecution's performance in Foley Square, and even fear that the attempted frame-up of the Communist leaders will fail.

I respectfully inquire if Senators Mundt and Ferguson think an even bigger frame-up would have had a greater chance of success—and if they are trying to give the prosecution a helping hand by pushing their bills at this time?

The political heresy trial now going on in Foley Square, like the Mundt and Ferguson bills, is aimed at outlawing the Communist Party. Although both the United States attorney in the southern district of New York and the authors of this proposed legislation deny this plain fact, it is clear that the gentlemen do protest too much. Their protestations are understandable, if disingenuous. For the American people, including many who have been deceived and misled by the barrage of anti-Communist propaganda to which they have been subjected, have registered their opposition to the outlawing of the Communist Party.

The American people know something about the facts of modern political life. They know that the outlawing of the Communist Party has usually accompanied or been followed by the outlawing of all labor and progressive organizations, by the establishment of a Fascist dictatorship of the trusts and the military, and by the launching of imperialist war.

Like the Mundt-Nixon bill, the Mundt and Ferguson bills carefully refrain from mentioning the Communist Party by name. This is a transparent device for getting around the constitutional prohibition against bills of attainder. But the tricky use of the term "Communist political organization" won't wash—there is only one "Communist political organization" in the United States and that is the Communist Party.

S. 1194 and S. 1196 refer to an unnamed "Communist political organization" and so-called Communist-front organizations which

the Attorney General finds it "reasonable to believe" seek by any means to "establish in the United States a totalitarian dictatorship under foreign control."

That shoe doesn't fit the Communist Party, despite the proposed legislation's edict that it does fit. It doesn't fit any progressive organization, though there is enough elastic in the section on "Definitions" to stretch to every progressive group.

When the Mundt-Nixon bill was under consideration last May, William Z. Foster, national chairman of the Communist Party, testified that if the bill were to pass the Communist Party would not perjure itself by admitting any resemblance to the caricature of its nature and purposes drawn in that legislation.

We emphatically repeat that statement today.

We said a year ago, and we say again, that the Communist Party would not dishonor the 15,000 members of our party who fought against fascism in World War II by giving de facto sanction to the lie on which the first anti-Communist axis turned.

We said, therefore, and we say again, that this is another reason why we would refuse to register.

Furthermore, as a party of patriotic and loyal Americans we could not and would not become accessories to the murder of the Bill of Rights.

We said before, and we repeat now, that that is another reason why we would not register.

And finally, we said before and we say again that we would not register because we would never expose our membership to persecution, ostracism, and blacklisting in employment.

Among those who last year opposed the Mundt-Nixon bill, and who now oppose the Mundt and Ferguson bills, there are probably some who subscribe to the professed objectives of these measures, and would support a so-called plain and simple method of registering only Communists. We must therefore categorically repeat that any such proposal means outlawing the Communist Party, just as surely as does the method revived in the Mundt and Ferguson bills.

Any kind of discriminatory and punitive registration is abhorrent to American tradition and spirit. It smacks of the hateful domestic passport system. It is as degrading as the yellow badge which degraded not the Jewish people, but the degenerate Nazis who forced them to wear it. We Communists will never be party to the institution of such police state practices in the country of Thomas Jefferson and Abraham Lincoln.

Nothing could be further from the truth than the deceptive argument that registration is a device to "force the Communists out into the open." We Communists are battling with all our wits and energy to stay out in the open, while those who persecute us in court and seek to legislate us out of legal existence are trying to bury us and the Bill of Rights with us 6 feet underground.

For us it becomes daily more difficult to reach the American people through the radio, press, public meetings, political campaigns for public office, and other avenues of mass communication. We have to struggle endlessly, and often in vain, to buy advertising space, radio time, to rent a meeting hall, or get on the ballot.

Our telephone wires are tapped, our letters are filched from the mail. Our leaders and members are followed wherever they go;

brought before grand jury inquisitions and imprisoned without bail for refusing to surrender their constitutional rights or to disclose the names of Communists and other anti-Fascists. The FBI, through the parade of stool-pigeon witnesses in Foley Square, boasts that it makes a practice of infiltrating our party, the trade-unions, and other people's organizations with spies and agent provocateurs.

We would welcome legislative and executive action to enforce the Bill of Rights, thereby assuring Negroes, trade-unionists, and Communists equal rights with all other citizens. This is the only kind of legislation meriting the support of those who want to bring the Communist Party "out in the open."

This should be plain enough, especially to any worker whose memory goes back to the 1920's and early 1930's. The trade-unions had to put up quite a fight against this registration idea. It was the passage of the Wagner Act that brought the members of the trade-unions "out in the open" by removing the penalties for union membership. Many American workers remember the days when the trade-unions were underground, and had to take all sorts of precautions against labor spies hired to ferret out individual members and mark them for dismissal and blacklisting.

The American workers and all progressives demonstrated in the national election last November how highly they value the rights won in the Wagner Act, and how ardently they desire its restoration. President Truman's campaign promise to repeal the Taft-Hartley Act and restore the Wagner Labor Relations Act is generally conceded to have been an important factor in his reelection.

The Communist Party considers it significant that the Truman administration, which is prosecuting our leaders and persecuting our members, has joined forces with the GOP and the Dixiecrat wing of the Democratic Party to betray this pledge to organized labor.

This Democratic Eighty-first Congress has failed to right the wrongs done to labor and the people by the GOP-dominated Eightieth Congress which was repudiated in November.

This Congress has filibustered against the rights of the Negro people, unrebuked by the President who turned his back on the struggle against lynching, the poll tax and discrimination, and at a critical moment went south, not to crusade but to vacation.

The Eighty-first Congress, like the hated Eightieth, is tending strictly to the business of its Wall Street masters. That business is world domination and advanced military preparation for a third world war.

It is not surprising that hearings on the Atlantic Pact and on the Mundt and Ferguson bills are held concurrently. Implementation of the Atlantic war alliance requires not only the weapons of mass destruction evidently. It also requires measures aimed at the destruction of the Bill of Rights, the rights of labor, and the growing peace movement in our country, which is a major obstacle in the path of Wall Street's preparations for world war III.

That is why the Mundt and Ferguson bills have been moved up on the Senate Calendar, while Taft-Hartley repeal, civil rights legislation, health and medical programs, low-rent housing, expanded social security, and increases in the minimum wage are brushed aside.

With these bills, the rapidly increasing numbers of the unemployed and part-time employed workers are offered another feast of red her-

ring. The monopolists who are responsible for the developing new economic crisis in our country are preparing new and more brutal methods of repression to force the workers and common people to bear the burdens of mass misery and mass unemployment. The Mundt and Ferguson bills, far from helping delay or alleviate this new capitalistic crisis of overproduction, are instruments for blocking the people's independent efforts to defend their homes, their jobs, and their living standards.

It is useful at this time to recall how broad were the forces that opposed the Mundt-Nixon bill last summer. They included two anti-Communist labor leaders, William Green and Philip Murray. These supporters of Truman and the United States imperialists were forced last year to admit that this bill could be used to destroy the American labor movement and cripple the activities of 14,000,000 AFL and CIO members.

Americans for Democratic Action, an organization dedicated to combatting communism and advancing the imperialist war aims of Wall Street had to oppose this bill on the ground that it could be used to suppress even limited criticism of official policy on minor as well as on major issues.

The National Association for the Advancement of Colored People called for the defeat of this measure in the belief that it would prevent their organization's half-million Negro and white members from continuing to champion the rights of the Negro people.

The National Council of Jewish Women and the American Jewish Congress joined the Protestant Council in urging defeat of the Mundt-Nixon bill. While the bill had substantial support in the Catholic hierarchy and among the leaders of the Catholic War Veterans, it was strongly opposed by Bishop Francis J. Haas of Grand Rapids, Mich., and many lay Catholics.

Distinguished constitutional lawyers, among them spokesmen for the National Lawyers Guild, demonstrated conclusively that the Mundt-Nixon bill flagrantly violated the Constitution of the United States and the Bill of Rights.

Without here going into the strong legal arguments against the legislation now under consideration, I associate myself with the charge that S. 1194 and S. 1196 are as patently unconstitutional as was the Mundt-Nixon bill whose provisions they follow in all important respects.

The committee has on record the names of the many other organizations and distinguished individuals who opposed H. R. 5852 in the Eightieth Congress. It is a list which includes practically every democratic group and leader in the United States. Even Governor Dewey opposed this bill in Oregon in the primary and won the primary on his fight on this issue. Mayor O'Dwyer of New York was among those who vigorously opposed this legislation last year, taking people from both Republican and Democratic Parties.

Since this honor roll was inscribed, we have had almost a year of witch hunts and book burnings, spy hoaxes, and grand jury inquisitions—climaxed by the "dangerous thought" trial of the Communist leaders. Nevertheless, I anticipate that popular opposition to the Mundt and Ferguson bills will equal or exceed the opposition to the Mundt-Nixon bill, expressed last spring and summer in people's lobbies and mass demonstrations, in the resolutions of trade-unions

and other organizations, and in individual letters to Congressmen and Senators.

I firmly believe that hatred for fascism and war, devotion to the Bill of Rights and to peace, still imbue the vast majority of the American workers and common people. I believe, too, that there are more men than mice in these United States—and that the men—and women—of America will resolutely defend their liberties.

The committee perhaps knows, or fears that it is an accurate estimate of the temper of the American people.

At any rate, the speed with which these hearings were scheduled had the effect, if not the intent, of preventing the opposition from mustering its full strength in time to make itself effectively heard.

Moreover, using a very flimsy pretext, the committee made an unconstitutional ruling on procedure which cannot but work to the advantage of this unconstitutional legislation. I refer to the requirement that all witnesses state whether or not they are or have been Communist Party members, as a condition for the admission of their testimony.

This trick, taken over from the House Committee on Un-American Activities is designed to make it appear that only Communists are affected by this proposed police state legislation. I have already demonstrated the falsity of this pretense. This legislation is of very vital concern to all Americans who desire to live under the protection of the Bill of Rights—regardless of their political affiliation, or their fundamental economic and social views.

Understanding of this elementary truth is growing among ever wider sections of labor and the people. In many localities first-hand acquaintance with this type of legislation is increasing the opposition to so-called little Mundt and Ferguson bills that crop up in the State legislatures.

Just across the District line, in the Free State of Maryland, the Fascist Ober bill was recently passed by the legislature and signed by the Governor. The very effective and widespread opposition developed too late to prevent passage of the Ober bill, which is modeled after S. 1194 and S. 1196. But, under threat of the bill's immediate and unlawful emergency enforcement, this people's resistance movement has shown exemplary unity, courage, and determination. It has rejected the dangerous notion that non-Communist progressives can live with the Ober bill, leaving Maryland Communists to suffer all the consequences of illegalization. Maryland's democratic non-Communists have wisely elected to act along jointly with the Communist Party of Maryland—in order that all trade-unions, people's organizations, and freedom-loving individuals may live in Maryland under the protection of the Bill of Rights.

This is the spirit in which Thomas Jefferson and his followers met the challenge of the Alien and Sedition Acts of the 1790's. This is the spirit of the Virginia and Kentucky resolutions, in which Jefferson and the people declared the Alien and Sedition Acts to be "altogether void and of no force."

I believe that this is the spirit in which American labor and the people will oppose S. 1194 and S. 1196.

Before reading the concluding words of this statement, I wish to submit as part of my testimony the opening statement made to the jury by the Communist Party's general secretary, Eugene Dennis,

who is acting as his own attorney in the trial of the Communist leaders.

This statement has a direct bearing on the proposed legislation under consideration here. It answers not only the false charges made against the Communist Party in court, but also the false charges made as statements of fact in the preamble to S. 1194 and S. 1196. I submit that at this time, having given copies yesterday.

The Communist Party's fight to defeat S. 1194 and S. 1196 will continue. It will be joined with the fight of millions to assure that neither this, nor any similar Fascist legislation is ever enacted into law.

We Communists, beleaguered by attacks on many fronts, are confident that the American people will win this battle.

I conclude my statements with the concluding words spoken here on May 28, 1948, by our national chairman, William Z. Foster:

Win, lose, or draw, I am certain that the American people will never submit to Fascist enslavement, nor abandon their struggle to avert the terrible catastrophe of a Third World War. And because our party is an integral and inseparable part of the American working class, we Communists will always and forever remain in the vanguard of the people's struggles—sharing in their hardships, earning our share in their ultimate and inevitable victory.

Mr. MATHEWS. Is Mr. Joseph H. Rainey present? Will you please stand and raise your right hand? You solemnly swear or affirm that in the proceedings before this subcommittee of the Senate Judiciary you will tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. RAINEY. I do.

**TESTIMONY OF JOSEPH H. RAINEY, MAGISTRATE,
PHILADELPHIA, PA.**

Mr. MATHEWS. Would you give your name, address, and present occupation for the record, please?

Mr. RAINEY. My name is Joseph H. Rainey. I live at 1709 West Jefferson Street, Philadelphia, Pa. I am a judge in the magistrate's courts of Philadelphia for the past 12 years.

Mr. MATHEWS. You are speaking as an individual and not representing any organization?

Mr. RAINEY. I am speaking as an individual, although I am the retired president of the Philadelphia branch of the National Association for the Advancement of Colored People. I at present am the chairman of the youth committee of that organization, and of course I am a member of a number of other organizations for which I don't speak officially.

Mr. MATHEWS. Are you familiar with the policy of the subcommittee as enunciated in the first hearing; that the subcommittee considers certain information pertinent and material and relevant to this hearing; namely, these two questions.

Senator EASTLAND. Have you a written statement?

Mr. RAINEY. No; I have not. I am going to talk from notes.

Mr. MATHEWS. Are you now or have you ever been a member of the Communist Party, Mr. Rainey?

Mr. RAINEY. No; I am not a member of the Communist Party. I have never been a member of the Communist Party, but I am

answering that in protest, because I don't feel that anyone has the right to ask me what my political affiliations are. I feel that the Bill of Rights protects me, and it is a violation of my constitutional rights to ask me such. So I answer under protest.

Mr. MATHEWS. Are you now or have you ever been to the best of your knowledge a member of any organization which has been cited by governmental agencies as a Communist organization or Communist-front organization?

Mr. RAINEY. No; I have not. I answer that also under protest, with the same qualifications as stated prior.

Senator EASTLAND. You may proceed.

Mr. RAINEY. Senators, I am particularly interested in the defeat of the Mundt and Ferguson bills because I feel that they definitely violate the Constitution of the United States, and I have a personal interest more directly to the effect that it would have upon the Negro people in America. I am cognizant of the fact that there are some 15,000,000 or more Negroes in this country of ours, and that they have played a very dominant part in making America the country that it is today. I feel that the colored people have gained a great deal of the rights that are justly theirs as American citizens because of the right of expression and the right of assembly that is granted all American people through the Constitution. I feel that the Mundt and Ferguson bills are bills that put fear in the minds and in the hearts of many people in America, and certainly in the minds of the Negro people of America, particularly those who live in the South. I think this fear would place them in a position of thinking more than once before they took the platform to express themselves against some of the inequalities that exist in America today, or I think the same thing would be true in relationship to writing where Negro papers are concerned.

I think that we are all aware that for a number of years efforts have been put forth for the passage of civil-rights legislation, and we are also cognizant of the fact that one of the things, if not the most important thing, that made it possible for President Truman to be elected President of the United States at the last election was the fact that he campaigned among the Negro people in America on a civil-rights platform.

And I am also aware of the fact that when Mr. Truman went into the South on many occasions he remained rather silent—not rather silent; he remained silent about civil rights—but when he got into Harlem he talked rather loudly what he was going to do for the rights of the people of which I am a part.

The Negro people feel that, in view of the fact that they were brought here many years ago, that since having been brought here they have served their country well; there has been no war that has been fought by America that the Negro has not played his part—and I can remember very vividly the expressions and the promises that were made to the black people in America in both the First and Second World Wars; that these wars were being fought for democracy and that when the wars were over and the boys returned home they would find a better America, a more democratic America in which to live than the America they had left behind.

But that was not true, unfortunately, not for the black people in America; and so, consequently, we find ourselves in a position,

Senator, of having to continue our fight for fair employment practices. We have to continue our fight to have an antilynch law passed. We have to continue our fight for the right to vote in all parts of America. We have to continue our fight along with the laboring class of people all over America to make conditions better for the man who has to toil with his hands day in and day out in order to gain a living; and if the Mundt-Nixon bill were passed, or the Mundt and Ferguson bills, it would place not only the Negro people in America and the laboring-class people in America but it would place any individual in America in a rather embarrassing position to go forth and fight for any of the things that are generally known as liberal policies, because we have found unfortunately that in many instances where whites take the stand in the interests of the Negro people that they are immediately labeled as subversive people or a part of some subversive element; and on that basis, if the Mundt, Ferguson, or the Mundt-Nixon bills were passed, it would mean that many of these individuals who are fighting for democracy as it should be practiced in this land of ours would be labeled by this particular commission as subversive individuals, or possibly members of some front organization aligned with the Communist group, and would find themselves being possibly indicted and sent to prison, and serving terms simply because they believe in democracy.

I, too, am familiar with the Alien and Sedition Acts that were put in effect just prior to the election of Thomas Jefferson; and I know, too, then, that the common masses of people were not in sympathy with any such acts as the Alien and Sedition Acts, any more than I believe that the masses of people in America today are in accord with any Mundt-Nixon or any Mundt-Ferguson bill.

I think that we must remember that public opinion rules democracy. I think that the right to—I think that the first amendment of the Constitution of the United States denies Congress the right to enact any law which abridges the freedom of either speech or assembly.

I would like to remind you—and I am not going to talk at length, Senators; I would like to remind you, however—of the great deal of intimidation that took place during the past election, when it is my belief as an American citizen that any individual has a right to seek public office. I believe that the platform that he proposes, together with his reputation and his record, are things that the public themselves can search, and on that basis they can determine whether or not he is the suitable individual to be elected to the particular office he may seek. And I do not think it is America at all when it gets to the place where people are intimidated and threatened simply because they seek either public office or they are inclined to support some individual who does seek public office. I would not want to see a repetition of some of the things that took place during the last campaign take place with the passage of any such bill as the Mundt-Ferguson bill. I am hoping that this bill will be defeated, gentlemen. I believe that, even though I am not officially speaking for the national office of the NAACP, it is a known fact that the organization opposes this bill, and that the millions of people who are members of this association are in sympathy with the fight against the Mundt-Nixon bill, because we feel that the passage of the Mundt-Nixon bill would be a very definite step toward thought control. We know that the Mundt-Nixon bill would weaken the fight of the Negro people in

America. We know it would weaken the fight of all minority peoples in America, and I would like to bring to your attention that it is the minority peoples in America who make up the majority in America.

So, in conclusion, I am hoping that there will be no passage of the Mundt-Nixon or a Mundt-Ferguson bill; so that there shall be no forestalling of the fight against Jim Crowism; so that there shall be no curtailment where the repealing of the Taft-Hartley Act is concerned; so that there will be no stopping of the building of low-cost homes for people to live in; so that there will be no stopping of an FEPC law; that there will be an advance among the national health lines in this country of ours; that we will be able to fight to defeat the North Atlantic Pact, and that, above all things, neither the militarists nor the Wall Street trusts will be able to dictate to the millions of people who live in America as to what their future may be, but that the great masses of people in America themselves shall dictate the policies of how this country shall be run; and, finally, I feel certain that these millions of people who should dictate the policies of the United States will dictate that there must be peace here in the United States, and there must be peace in the world.

Thank you, Senator.

Senator EASTLAND. You are welcome.

Mr. MATHEWS. Raise your right hand. You do solemnly swear or affirm that the testimony you are about to give before this subcommittee of the Senate Judiciary you will tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MINTOR. I do.

TESTIMONY OF BERNARD MINTOR, NEW YORK, N. Y., REPRESENTING UNITED FURNITURE WORKERS OF AMERICA, CIO

Mr. MATHEWS. You may be seated. Give your name, address, and present occupation for the record.

Mr. MINTOR. Bernard Mintor, 35 East Seventh Street, New York City, representative of the United Furniture Workers of America, CIO.

Mr. MATHEWS. Mr. Mintor, are you now or have you ever been a member of the Communist Party?

Mr. MINTOR. Well, it is my opinion that I came here to represent my union. I spent a number of years fighting to uphold the Constitution in the services of our country.

Senator EASTLAND. Just answer the question.

Mr. MINTOR. I am answering the question, Senator, and I think that answering this question would be a violation of those constitutional rights, and would not be germane to the discussions taking place here.

Mr. MATHEWS. Are you familiar with the statement as made in the first hearing?

Senator EASTLAND. If he does not care to answer the question, he is not qualified to testify. Just call the next witness.

Mr. MINTOR. I would like to know, inasmuch as I was sent here by my union for the purpose of testifying on the bill, and I feel that that was the subject to be discussed and not my personal opinions in any matter, what should be my answer in reference to this question when I go back to my union.

Senator EASTLAND. I do not care a thing in the world about that, Mr. Mintor, and do not know anything about it. You have come here at your own request, and when you come here you are going to be subject to the rules that this committee has laid down. I just do not care to discuss it. If you answer the question and qualify yourself, you can testify. If you do not, you cannot testify.

Mr. MINTOR. Is that the interpretation—

Senator EASTLAND. You decline to answer?

Mr. MINTOR. Is that the interpretation of the committee that I can't testify on behalf of my union?

Senator EASTLAND. That is absolutely correct, sir; I do not want to argue with you.

Mr. MINTOR. It is my opinion that would be a violation of my constitutional rights.

Mr. MATHEWS. Do we have a representative of the Progressive Party present who wishes to testify at this time?

(No response.)

Mr. MATHEWS. Is there a representative of the Wholesale and Warehouse Workers Local 65 present, please?

(No response.)

Senator EASTLAND. Is Mr. Rogge here?

(No response.)

Senator EASTLAND. That is all of the witnesses so far as I know at this time.

Mr. MATHEWS. Is Mr. Winston McDaniel here?

Senator EASTLAND. Mr. McDaniel, have you a statement?

Mr. McDANIEL. Yes; very, very brief. I have a few notes here.

Senator EASTLAND. That is all right.

Mr. MATHEWS. Raise your right hand. You solemnly swear or affirm that in the proceedings before this subcommittee of the Senate Judiciary you will tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. McDANIEL. I do.

TESTIMONY OF WINSTON McDANIEL, STUDENT, UNIVERSITY OF WISCONSIN, MADISON, WIS.

Mr. MATHEWS. Identify yourself for the record.

Mr. McDANIEL. My name is Winston McDaniel. I am a student at the University of Wisconsin, and vice president of our Wisconsin Student Board. However, upon this occasion I am not representing the student board. I am here as an individual. I am going to give you some of the viewpoints expressed by the board on similar questions, registration of members of the Communist Party, and so-called Communist Party organizations.

Mr. MATHEWS. I have two questions to ask you.

Are you now or have you ever been a member of the Communist Party?

Mr. McDANIEL. I object to the question, but, no, I am not now nor have I ever been a member of the Communist Party.

Mr. MATHEWS. Are you now or have you ever been to the best of your knowledge a member of any organization which has been cited by a governmental agency as a Communist organization?

Mr. McDANIEL. I am not now—

Mr. MATHEWS. Or a Communist-front organization.

Mr. McDANIEL. Nor have I ever been.

Mr. MATHEWS. Proceed.

Mr. McDANIEL. I wish to bring to the attention of the committee the fact that the student board of the University of Wisconsin recently went on record in opposition to the two bills before the Wisconsin State Legislature, one calling for registration of members of the Communist Party, and a second calling for signing of non-Communist affidavits, which would include members of the student body.

In the vote upon the second measure there was not a single dissenting vote against our motion to take a stand and testify against this bill in the State legislature.

Fortunately the Wisconsin Legislature defeated the first bill calling for registration of the members of the Communist Party with only five votes opposed to the stand taken against this measure.

Why did we oppose these bills? I would like to just briefly explain our policy with respect to recognition of student groups and the rights granted to the students at the liberal University of Wisconsin.

First of all, we have recognized a Communist Party discussion group, and other groups, which under the proposed Ferguson bill might be classified as Communist-front organizations. We consider this right of recognition one of our most precious rights as students. When an organization comes before the student board requesting recognition, we simply request that they submit a constitution, make certain financial arrangements, and produce a faculty adviser. Once those requirements are met, our recognition becomes practically automatic.

The administration to our knowledge has never overruled our decision to recognize a student group. In considering the application of the student group for recognition we are not concerned with the purposes of the organization or campus group as long as they are consistent with principles of orderly conduct observed at the University of Wisconsin, as well as anywhere else.

I wish to bring to the attention of the committee an incident which occurred early last fall, when the administration of Wisconsin asked each organization to submit a list of its members, a complete membership list. There was an immediate uprising among student organizations and church groups, special-interest groups, and political organizations proclaimed their refusal to submit such membership lists. They were supported a very short time later by the student board at the University of Wisconsin, and after a tense 4 weeks fight, during which many of these groups were denied the use of the university facilities because they did not submit the membership lists, we finally won our battle, and maintained our freedom from intimidation and thought control.

We wish to retain these rights that we have fought for and won. We want neither the interference of the State government nor the interference in thought control of the Federal Government. We feel that we as students in a liberal community have the right and the privilege of determining which student groups shall be recognized and for preserving complete academic freedom upon the university campus.

I have not had a chance to read the Mundt bill, but the Ferguson bill would certainly encroach upon our rights at the university to

recognize student groups and to allow members of the Communist Party and other groups which have left-wing shadings to have free run of the campus, to use campus facilities. So far we have found that there has been no threat of intimidation upon the part of students against certain student groups which they may dislike. The students have been very broad-minded and have recognized these groups. They have been very anxious to receive leaflets and pamphlets handed out by members of the Communist Party upon the street corners after classes. They have been very anxious to attend rallies and meetings sponsored by the Communist Party, and other groups which you might classify under this very broad classification as Communist-front groups. There has been no thought that the Communist Party, or particularly its chapter at the University of Wisconsin, was attempting to advocate the overthrow of the Government or carry on a program of force and violence. We feel that as long as such organization or organizations are willing to recognize the principles of orderly conduct, which should be in force anywhere, that we are willing to give them recognition, and use of the university facilities, and maintain academic freedom at the university.

I feel that if the Federal Government is going to step in upon this occasion and encroach upon our rights, it is a very serious mistake. I feel that if freedom of expression and of thought, is going to be maintained anywhere, it must be maintained at the universities. Once it is violated there, once students no longer have the right to hear speakers of their own choosing, they no longer have the right to determine for themselves what their own beliefs and policies shall be. We will then have destroyed the very traditions upon which our Constitution was founded. And I feel that the Ferguson bill will do just that.

Unfortunately, since it is our policy at the University of Wisconsin of the student board not to discuss national legislation, I am not here as an official representative of this group. However, as vice president I have taken an active part in the organization, and I am sure there is no objection to my representing their viewpoints in respect to the two proposals before the Wisconsin Legislature, indicating the opinions of the student board, and the University of Wisconsin students, on such questions as discrimination against the members of the Communist Party or people connected with organizations considered to be Communist-front organizations.

Briefly, looking at this particular bill, the definition of a Communist front is very broad, and I think it would probably include a number of organizations which after thorough investigation would be found not to be connected with the Communist Party. The criterion such as the extent to which its funds or resources or personnel are used to further or promote the political objectives of any Communist political organizations, I think would be unusually difficult to determine; also, to what extent any organization is furthering the case of the Communist Party, would be difficult to determine. Would simple agreement upon a few basic issues be classified as furtherance of the cause? I do not see how the subversive activities board could clearly determine the extent to which positions taken or advanced by any group from time to time on matters of policy do not deviate from any Communist political organization. In a certain period of time there is some unification of liberals and leftists and Communists upon a few issues. There would be difficulty to find any specific deviation.

I find these criteria for determining whether any organization is a Communist front to be too broad and too difficult to apply in any specific situation.

I feel also that it is unnecessary to require the listing of names open for public inspection, for the stamping of publications with such things as "This organization is a Communist organization." I would like to bring before the committee just an example of what can happen in a situation of this nature.

An organization which may nationally be non-Communist, and there might be no question at all but that the organization is simply a political organization not controlled or dominated in any way by the Communist Party or by members of the Communist Party. However, I can very clearly see the possibility of a local chapter of such an organization coming under the domination of members of the Communist Party, perhaps simply because the only people willing to attend the meetings are Communists. Therefore, under this bill such organization might be classified as a Communist-front organization, and therefore you would be definitely discriminating against the national members of this national organization, and you leave no alternatives to those liberals in the specific area who wish to go into that chapter and bring the chapter in line with national policies. If the local members find that the organization or local chapter is classified as a Communist-front group, they certainly will have no desire to go in there and do as I think they should do represent themselves and try to assume control, and take it away from the members of the party with whom they disagree.

But I feel that under the bill you leave them no alternative. Once the organization has been stamped, people will steer clear, and I think that if you are going to stamp front organizations, the trend will be slowly in that direction until you have included anything which is slightly left of center.

I think that the result will be a stamping out of liberal traditions and rights and privileges, which American citizens have under the Constitution.

Mr. MATHEWS. May I interrupt for a moment?

Was your primary purpose in coming to Washington to offer your views on this legislation?

Mr. McDANIEL. That was one of my purposes, yes.

Mr. MATHEWS. But not your primary purpose in coming?

Mr. McDANIEL. No.

Mr. MATHEWS. Were your expenses paid by any organization in Wisconsin, or did you defray your own expenses?

Mr. McDANIEL. My expenses for coming to this particular meeting are my own, are paid by myself.

Senator EASTLAND. Is that all you have?

Mr. McDANIEL. Yes, I am through.

Senator EASTLAND. Any questions?

Senator O'CONNOR. No questions.

Senator EASTLAND. Thank you, sir.

This will close the hearings.

(Thereupon, at 11:50 a. m., the hearings were closed.)

CONTROL OF SUBVERSIVE ACTIVITIES

FRIDAY, JUNE 10, 1949

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to call, at 10:15 a. m., in room 424, Senate Office Building, Senator James O. Eastland, chairman of the subcommittee, presiding.

Present: Senators Eastland and Ferguson.

Senator Langer.

Also present: Robert B. Young and J. H. Mathews, professional staff members.

Senator EASTLAND. The subcommittee will come to order.

Mr. Baldwin, before we proceed will you stand and raise your right hand. Do you solemnly swear or affirm that in the proceedings before this subcommittee you will tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BALDWIN. I do.

TESTIMONY OF C. B. BALDWIN, SECRETARY, PROGRESSIVE PARTY

Senator EASTLAND. Proceed.

Mr. YOUNG. Will you give your name, address, and present occupation for the record, please?

Mr. BALDWIN. My name is C. B. Baldwin. I am the secretary of the Progressive Party. Before that time I was Administrator of the Farm Security Administration. I was appointed by Secretary Hull to be the Director of Economic Operations in Italy. In 1943 I came with the CIO Political Action Committee, later with the National Citizens Political Action Committee, the executive vice chairman of the Progressive Citizens of America, and now, as I said, I am the elected secretary of the Progressive Party.

Mr. YOUNG. Will you tell us whether you represent just that one organization or other organizations?

Mr. BALDWIN. No, sir; I only represent the Progressive Party.

Mr. YOUNG. Are you acquainted with the policy and the rule laid down by this subcommittee on the answering of certain preliminary questions before you make a statement?

Mr. BALDWIN. I have heard something about it, but I am not completely familiar with it.

Mr. YOUNG. In that case I think we should read to you the opening statement—

Senator EASTLAND. Just ask the question.

Mr. YOUNG. Just ask the question? All right, sir.

I would like to ask you, Mr. Baldwin, are you now or have you ever been a member of the Communist Party?

MR. BALDWIN. I would like to have this preliminary information in order to know the basis of the question.

SENATOR EASTLAND. Mr. Baldwin, it is the policy of the committee, which was decided by unanimous vote, that we desire to have the background of every witness who appears before the committee. If a person is a Communist—one of the issues is whether the Communist Party is a conspiracy to overthrow the Government of the United States controlled by a foreign power—he is better able to answer that than anybody else.

MR. BALDWIN. Was this rule approved by the Senate of the United States?

SENATOR EASTLAND. No, sir; it was not approved by the Senate. It is the policy of the subcommittee. If you want to testify, you can answer the question. If you do not want to testify—

MR. BALDWIN. Before I decide I think I am entitled as an American citizen to have some information. Mr. Chairman, I would be glad—

SENATOR EASTLAND. I do not care to argue about it.

MR. BALDWIN. I would be glad to take the oath of allegiance to the United States which you have taken, but I want the fourteenth and fifteenth amendments repeated. I would like to see whether or not you would be willing to swear to uphold—

MR. YOUNG. Stop the record. You are excused, Mr. Baldwin.

(There was further discussion off the record.)

MR. YOUNG. Is there a representative of the A. F. of L. here who wanted to leave a statement for the record?

(No response.)

We received a call from the A. F. of L. that they would like to leave a statement for the record. I told them if they would appear, they could. May I leave the record open for them?

SENATOR EASTLAND. Yes; of course.

(The statement appears in appendixes.)

SENATOR FERGUSON. Mr. Chairman, I requested at the last hearing that Mr. Donald Richberg be permitted to file a memorandum or opinion on the legal questions involved in this bill, and I contacted Mr. Richberg and asked him to prepare such an opinion. He has done that, and he has sent me the original which I want to file at this meeting. I won't read it at this time. I will just make it part of the record and give the committee the benefit of that.

SENATOR EASTLAND. That is all right.

(The document follows:)

LAW OFFICES OF DAVIES, RICHBERG,
BEEBE, BUSICK & RICHARDSON,
Washington, D. C., June 7, 1949.

HON. HOMER FERGUSON,
United States Senate, Washington, D. C.

DEAR SENATOR: Herewith I am enclosing the opinion you requested on May 21. Also, after a discussion with your office I am sending you under separate cover 150 mimeographed copies of this opinion. As I explained to Miss Duty, I shall not undertake any press distribution of my opinion, leaving that entirely to your discretion. I shall avoid giving out any copies myself until such time as you have placed this in the record of hearings or otherwise made it public.

I hope you will find the opinion helpful as I have put a good deal of time and heart into it.

Sincerely yours,

DONALD R. RICHBERG.

WASHINGTON, D. C., June 6, 1949.

HON. HOMER FERGUSON,
United States Senate, Washington, D. C.

DEAR SENATOR: In response to your request of May 21, I am submitting this commentary on the anti-Communist bills introduced by Senators Mundt and Johnston (S. 1194) and yourself (S. 1196). These bills follow closely the pattern of the Mundt-Nixon bill (H. R. 5852) which passed the House in the Eightieth Congress and was in process of revision by the Senate Committee on the Judiciary when the Congress adjourned. In both of the present bills a careful effort has been evidently made to meet certain criticisms of the former bill, which were at least sincere even though some were meticulous and highly debatable.

In 1948 I testified at some length before the committees of both Senate and House in favor of such a bill as H. R. 5852, and worked with your Senate committee on a revised bill. Hence my present comments may well be limited to a few issues and not embroidered with extended analyses and quotations of judicial opinions.

It is my opinion that the present bills can be more easily defended than H. R. 5852 from the four major attacks which any such legislation will invite. Nevertheless, those who are opposed to any restraint upon political activities, no matter how evil these are in method or objective, will always insist that any such legislation is unconstitutional. They will perpetually argue:

First, that the proposed law violates the civil rights of free speech, free press, and free assembly.

Second, that it seeks to establish "guilt by association," whereas guilt should always be "personal."

Third, that it defines a crime in such uncertain or ambiguous terms that an offender has no fair warning that he is violating the law.

Fourth, that its procedures violate "due process of law."

Not one of these objections can be validly laid against S. 1194 and S. 1196, although, of course, all are vehemently urged by Communist lawyers and Communist-front lawyers ("No man e'er felt the halter draw, with good opinion of the law"). The same objections also obtain an unfortunate support from those deluded liberals and myopic idealists who perennially lead political sheep into pastures overrun by political wolves. If the actual menace of communism is understood and the measures of national defense embodied in these bills are carefully analyzed, every one of these objections will be found to be based on either (1) ignorance of communism, or (2) misrepresentation of the provisions of the proposed law, or (3) misapplication of the legal principles and decisions which determine the constitutionality of such a law.

Perhaps I can be of most service to you by reviewing and answering briefly the four major arguments made against S. 1194 and S. 1196—those alleged "constitutional" arguments that will be made against any proposal to restrict Communist political activity by law.

First. These bills do not attempt any unconstitutional restriction of free speech, free press, or free assembly.

Even an avowed Communist lawyer will concede that Congress has a constitutional power to restrict the exercise of these freedoms to a reasonable extent when there is a "clear and present danger" that they will be used to bring about evils that Congress has a right to prevent. If, therefore, the unrestricted activities of Communists in the United States threaten a "clear and present" danger of foreign aggression, coordinated with domestic disorder, a law reasonably designed to reduce that danger would be clearly constitutional.

Thus, the entire argument against the constitutionality of the proposed law is narrowed down to two assertions—both of which are false. One, the assertion that Communist activities do not offer a clear and present danger of destruction of the freedom and security of the American people. Two, the assertion that the proposed law is not reasonably designed to reduce that danger.

It is amazing to find that today many otherwise intelligent people regard the fear of communism as a sort of hysteria, which they take pride in avoiding by shutting their eyes and ears to such facts as these:

(1) Communism is not an economic or political theory, but, is today an international conspiracy to establish a dictatorship in every nation, which is to be attained and maintained by force and ruthless terrorism and which shall be a part of a world-wide dictatorship centralized in Soviet Russia. It is utterly unimportant to assert, or even to assume, that this complete destruction of individual liberty is intended to be only a transition stage to the ultimate establishment of a free communistic society in which everyone is to be equally happy and comfortable

(or equally unhappy and uncomfortable) and equally the servant of everyone else. The promise of ultimate good or evil to himself or his descendants will not divert a rational person from defending himself against an immediate threat to kill him or to imprison him for torture.

(2) The United States of America today lives under the menace of armed attack by the only nation on earth capable of effectively making war against us—Communist Russia.

(3) The United States today finds every effort of its Government to establish international peace on a sound basis thwarted by Communist Russia.

(4) The United States this year is spending the larger part of \$21,000,000,000 in national-defense measures, which are to a great extent made necessary by the hostile, aggressive policies of Communist Russia. (See hearings, April 29, 1949, p. 15.)

(5) The aggressive policies of Communist Russia include an internal warfare against nonaggressive, friendly nations, which has no parallel in history. It has been proved beyond controversy (and indeed admitted frequently) that a Communist organization within a nation is a militant conspiracy against the existing government and against the liberties of the people. There are volumes of evidence gathered by congressional committees which provide ample justification for outlawing any Communist organization—as a criminal conspiracy against the peace and welfare of the American people.

It is, however, the primary purpose of the proposed law merely to deprive Communist organizations of one of their vicious powers—the power of secrecy—with which Communists are able to infiltrate conspirators into law-abiding organizations of loyal citizens and to mislead and betray them into aiding in their own destruction. A fundamental evil of communism is that its creed justifies the use of every form of dishonesty, treachery, depravity, and fraud. This lowers every Communist and every Communist organization to the level of a moral corruptionist—a destroyer of the faith of human beings in one another, without which faith civilization could not survive. This makes it necessary and proper to identify and to isolate Communists as moral lepers. They are no more entitled to secrete their disease and to associate freely with healthy persons than are persons afflicted with infectious and loathsome physical diseases. This is the fundamental reason for refusing to allow Communists freely to teach immature persons or freely to conduct secret organizations and activities. They are the breeders and spreaders of a moral pestilence.

Of course there is a restriction of free speech, free press, and free assembly if Communists and their fellow travelers are required to speak and to publish a few truths now and then instead of lies all the time, and are required to uncover some of the organizations and persons who are secretly planning and carrying on activities hostile to the public safety and welfare. But, it has never been suggested that thieves had a constitutional right to gather and plan their robberies and to publish a thieves' gazette to aid them in committing crimes. By what strange logic has a more serious conspiracy, to destroy the liberties and to confiscate the properties of a free people, any immunity from legal restraint?

The most plausible—and most ridiculous—argument against this legislation is that there is no "clear and present danger" to the American people from the activities of the reported 75,000 Communists in the United States. Indeed the total number of admitted and concealed Communists and their foolish sympathizers is much greater than 75,000. Witness the fact that over 1,000,000 people voted for Henry Wallace in 1948.

But, even if there were only 100,000 active Communists in the United States, what would we think of allowing Russia to send 100,000 trained spies and saboteurs into our country and giving them complete freedom to meet and plot and propagate their vicious projects in legalized secrecy?

If the danger of insurrection is not "present," as a matter of law, until the time is ripe and preparations are completed for a violent revolution, then, in the words of Mr. Bumble, "the law is an ass." Obviously the famous phrase "clear and present danger" does not mean that we must wait for an imminence of disaster before taking protective measures. It can only mean that there must be an existing danger as contrasted with a danger that may or may not develop at some future time.

Clearly there is today an existing danger of a war with Russia. If not, why are we spending billions for defense against such a war?

Clearly, there is today an existing danger of political strikes, domestic disorder, and vast public injuries, which have been and are being brought about by Communist intrigues, particularly in labor organizations. How can we distinguish between such revolutionary guerrilla warfare and lawful strikes for legitimate ends, as long as Communist plots and Communist plotters are protected by legalized secrecy?

The Congress has the power and the duty to enact laws necessary and useful to thwart foreign aggression, and to expose and to destroy conspiracies against domestic law and order. The Constitution was expressly written in order to "insure domestic tranquility" and "to provide for the common defense." It is not the function of the courts to reverse a reasoned judgment of the Congress as to when and where there is a clear and present danger threatening our Government and our institutions, from abroad or from within our borders. Whether the proposed laws are wise is a question properly to be debated. But, the constitutionality of legislation reasonably adapted to prevent evils which the Congress has a right and duty to prevent, is not debatable. It is needless for me to cite scores of decisions of the Supreme Court establishing this doctrine. They have been cited in several opinions heretofore presented to this committee.

Second. These bills do not attempt to establish guilt by association.

It can be accepted that mere association with persons engaged in unlawful acts should not be the basis for making an individual criminally responsible for acts of his associates in which he has no participation. In the trite phrase, "guilt should be personal." But this does not mean that one who participates in planning or preparing for the robbery of a bank cannot be punished as an accomplice because he stays at home during the actual robbery. Nor does it mean that one who prepares pamphlets inciting others to crime cannot be punished because he does not personally distribute the criminal documents.

It is true that a member of a political party or other loose organization should not be held responsible for personal violations of law by some officer or other member of the organization, in which he did not participate or which he did not help to conceal. But, if a man contributes money or other aid to activities which he knows to be unlawful, if he is informed of the fact that he is assisting in an unlawful course of action and is punished for that wrongdoing, he is not made guilty because of mere association, but because of what he personally does. His guilt is personal.

If the proposed legislation is carefully read it will become plain that no man is to be subjected to any punishment because of the wrongdoing of an associate in which he had no participation. It is not made a crime merely to belong to an avowed Communist organization. It is only made a crime for an individual to do certain unlawful acts, which are:

1. To conspire "to perform any act which would substantially aid" in establishing in the United States a totalitarian dictatorship under foreign control.

2. To conceal the fact, when seeking public office or employment, that he is a member of an organization which has been legally found to be a Communist political organization.

3. To hold any nonelective office or employment under the United States when such a member.

4. To apply for, or to use, a United States passport, when such a member.

5. To fail to file reports which it is his legal duty to file, if a person is an officer of a Communist organization, or to make false statements or willful omissions in such a report.

6. To become or remain a member of a Communist political organization if he knows that the organization has been legally required to register and has failed to register.

7. To mail Communist publications, or to broadcast a Communist program, for a Communist organization, without identifying their source, as required by law.

It will be seen that no individual is made guilty because of mere association with others. He must do something himself which is made unlawful. Even when he merely remains a member of a Communist political organization, if he does this knowing that the organization has not registered as required by law, he is thereby aiding the organization and its officers to keep secret the activities and membership of an organization which uses an unlawful secrecy as the means of establishing a totalitarian dictatorship under foreign control, that is, in aid of foreign aggression against the United States. He is personally guilty of helping

to conceal an unlawful conspiracy, and he is only guilty when he knows what he is doing.

Third. These bills do not define any crime in such uncertain terms that an individual will not have fair warning that he is violating the law.

The offenses listed in the preceding paragraphs numbered 1 to 7 are all clearly defined. The principal charge of "vagueness" or "uncertainty" is directed at section 4a of both bills. Here the original section 4a of H. R. 5852 has been improved, first, by making it clear that the offense is conspiracy to perform an act which will substantially aid in establishing a totalitarian dictatorship under foreign control, and, second, by defining a "totalitarian dictatorship."

The determination of whether a particular act will substantially aid a Communist revolution rests first with the individual who works with a Communist organization. Since such an organization is not outlawed it is evident that mere educational propaganda, and campaigns for political reforms or to elect candidates to public offices, are not made unlawful. (In fact, to give additional assurance of the legislative intent, it might be desirable for the committee to include in its report a statement to the effect that the bill recommended for passage does not prohibit or penalize the exercise of the constitutional right of American citizens to advocate or to organize for the advocacy of changes in economic or political institutions by methods devoid of violence or fraud which are compatible with the maintenance of law and order and the protection of the public safety and welfare.) But, these are activities that can, and should, be carried on publicly, openly, and not secretly.

Hence, when Communists or fellow-travelers undertake secret activities which create or foment disorder and lawlessness, or which bring about the paralysis of essential production or public services, or which hamper national defense, or which interfere arbitrarily with the performance of public duties by public officials, or which discredit the administration of justice or the conduct of foreign relations, then the fact that it is necessary to use secrecy, dishonesty, and treachery should provide ample warning to individuals that they, by their actions, may be rendering substantial aid to an unlawful project.

It is necessary in lawmaking, particularly in dealing with secret activities, to prohibit a great variety of acts which may sometimes be lawful but which are made unlawful if they are done for the ultimate accomplishment of an unlawful end. Combinations and conspiracies in restraint of trade are forbidden by the Sherman Antitrust Act, and, after nearly 60 years of prosecutions, it is still a matter of great uncertainty as to whether particular activities of businessmen are lawful or unlawful. But the constitutionality of the Sherman Act, and other antimonopoly laws of a similar character, has long been established.

In dealing with a political-economic conspiracy of the intricate character of the Communist movement, where not only domestic tranquility but also national defense against secretive foreign aggression require restrictive legislation, it is not only reasonable but necessary to provide that men and women desirous of promoting communism act at their peril when they engage in secret collaboration with those who are confessedly trying to overthrow our institutions and our form of government.

It is exceedingly significant that three authorized spokesmen for the Communist Party flatly asserted in sworn testimony before the Senate committee (hearings on H. R. 5852, pp. 95-141; hearings, May 20, 1949, p. 370) that if such a law as proposed were enacted the Communist Party would not register as required by law, but would "go underground." By this defiance, they conceded that they could not accomplish their ends by open political activities, which meant that they could not hope to succeed by an appeal to reason. They must continue to rely in the future as in the past on secrecy, treachery, fraud, and force.

It is absurd to give any credence to public announcements that Communists do not now plan to overthrow our Government by force and violence. It is notorious that the long-established program of Communist aggression is to create such a disorganization of industry and government, such chaotic, anarchistic conditions, and such widespread hardship, that a well-organized and disciplined minority will be able to seize dictatorial powers to reshape the industrial and political structure of our society. The pattern of a Communist revolution has been clearly revealed in Europe. Its successes give assurance that it will be followed here.

Those who are willing to play any part in this underground movement, which assures us that it will go farther underground if we attempt to bring it above ground, will certainly have fair warning that any acts of theirs which render substantial aid to this criminal conspiracy may subject them to prosecution and

punishment. They will only be punished when they are found guilty by a jury; but they will have been fairly warned of the legal consequences of their acts.

The criticism might well be made that the proposed law offers too large an avenue of escape to offenders, because juries may be inclined to underestimate the evil effect of acts which well-informed public officials would correctly appraise as giving substantial aid to the Communist conspiracy. A jury might be doubtful as to whether even such an obviously wrongful act as furnishing copies of secret Government documents would substantially aid in establishing a Communist dictatorship. What is substantial aid might be regarded as defining only an act of large and immediate effect. Also, aid in establishing a dictatorship might be regarded as including only those acts which contribute to an immediate overthrow of representative government. For these reasons the legislative intention might be more accurately expressed by prohibiting any conspiratorial act which would definitely aid in bringing about the eventual establishment of a totalitarian dictatorship under foreign control.

I do not urge such a revision of the pending bills (either with or without adding the word "eventual") because so much care has been given to the present drafting that I hesitate to suggest any change. But I do wish to point out that any uncertainty as to meaning favors offenders rather than prosecutors, because the Government may find it difficult to convict minor offenders who, by a multitude of small offenses, would be in fact, rendering substantial aid in preparing for the final Putsch—the foreign aggression and coincident civil war—that we are striving to prevent.

The rulings of the Supreme Court, quoted in other opinions furnished your committee, provide ample support for my conclusion that the pending bills define offenses with sufficient clarity and precision to meet constitutional requirements.

Fourth. These bills established procedures for the prosecutions and conviction of offenders that satisfy the constitutional requirement of "due process of law."

It is unnecessary to review here the carefully drawn provisions for administrative procedure and judicial review which give assurance that the rights of individuals to adequate notice, fair hearing, and impartial adjudication are fully protected. It is notorious that every would-be violator of a proposed law seeks, as a last refuge for the wrongdoer, to assert that he is going to be punished without due process of law. The stale and insubstantial objections raised against the pending bills on the ground of lack of due process of law are fully answered in the studies of the Legislative Reference Service of the Library of Congress which are printed in the hearings on H. R. 5852 (pp. 33-39, 425-428), which studies also deal effectively with many other objections.

Because of the adequate citation of authorities in these studies and in other legal opinions submitted to the committee, including my own previous testimony, I have avoided encumbering this opinion with such references. But, it should be understood that my views are based on studies and arguments of constitutional questions which have been my constant concern in a long, active practice of the law.

On the basis of this experience it is with the utmost respect for the judicial authority that I venture, in concluding, to refer to the independent, coordinate authority of the legislative branch of the Government. It would be improper to advise Members of Congress to enact a law which they believed to be unconstitutional, on the assumption that the Supreme Court would annul it. On the other hand, it would be a failure of duty for Members of Congress to fail to enact a law which they believed to be necessary for the common defense, and which they believed to be within their constitutional powers, because of any timid assumption that the Supreme Court might hold it to be unconstitutional.

It should be borne in mind that there is no instance in history when the Supreme Court has ventured to set aside the judgment of the Congress in enacting legislation which it regarded as essential to the national defense and the preservation of our Government. To reach such a decision a majority of the Court would have to be profoundly convinced that the Congress had either attempted to exercise a power not granted to it, or had arbitrarily and unreasonably exercised a power which has been granted.

The constitutional power of the Congress to protect the people and their Government against conspiracies to aid foreign aggression or to foment domestic disorder has been clearly granted, and sustained by the Supreme Court many, many times. The pending bills would authorize the exercise of that power within such cautious limits and with such careful protection of individual rights that it is difficult to take seriously the contention that such legislation would be held

arbitrary and unreasonable. But, the Communist position, stated officially by the national president, W. Z. Foster, in hearings on H. R. 5852 (p. 121), which is, that the Communist Party would not register if required by law and if ordered to do so by the Supreme Court, should be given serious attention. The only adequate answer to such premeditated lawlessness and to such a defiance of government is for the Congress to enact such a law and for the Supreme Court to enforce it.

Respectfully submitted.

DONALD R. RICHBERG.

Senator EASTLAND. That closes the hearing.

(Thereupon, at 10:20 a. m., the subcommittee recessed subject to call.)

APPENDIX

DISABLED AMERICAN VETERANS,
NATIONAL SERVICE HEADQUARTERS,
Washington, D. C., May 5, 1949.

HON. PAT McCARRAN,
*Chairman, Senate Judiciary Committee,
United States Senate, Washington, D. C.*

DEAR SENATOR McCARRAN: It is noted that a subcommittee of the Judiciary Committee is presently holding hearings on S. 1194, and S. 1196, bills designed to protect the United States against certain un-American and subversive activities.

The Disabled American Veterans is vitally concerned with Communist and other un-American infiltrations into our social, political, and economic way of life. At our last national convention held in New York City during the month of August 1948, the delegates unanimously adopted a resolution urging the Congress to enact appropriate legislation that will provide for the expulsion and exclusion from the United States of all persons who subscribe to political doctrines contrary to the democratic concepts of Government as set forth in our Constitution. A copy of this resolution is enclosed herewith.

It is requested that this letter, together with enclosed resolution, be made a part of the record of hearings on S. 1194 and S. 1196.

Very sincerely yours,

FRANCIS M. SULLIVAN,
Director for National Legislation.

AMERICANISM—RESOLUTION I

Whereas evidence has been revealed that certain persons in our beloved America are actively engaged in the pursuance of a philosophy of life that is based on an allegiance to a foreign power which has for its avowed purpose the destruction of our American way of life; and

Whereas this philosophy of living which is described as communism is proposed and sustained by the governing powers in the Soviet Socialist Republics; and

Whereas the Government of the United States through its legal and constituted authority has declared that the Communist Party of the United States is designed for the violent overthrow of existing governments including that of the United States: Now, therefore, be it

Resolved, That this twenty-seventh national convention of the Disabled American Veterans assembled at New York City in the State of New York, this 19th day of August 1948 urge the Congress of the United States to enact, without delay, appropriate legislation that will provide for the expulsion and future exclusion from these United States of any and all persons who have subscribed to a philosophy of life that has for its avowed purpose the destruction of our American way of life and the subjugation of our people.

THE FEDERAL GRAND JURY ASSOCIATION
FOR THE SOUTHERN DISTRICT OF NEW YORK,
New York, N. Y., May 2, 1949.

HON. JAMES O. EASTLAND,
United States Senate, Washington, D. C.

DEAR SENATOR EASTLAND: On April 26 a Federal grand jury in the Southern District of New York handed up to District Judge Sylvester Ryan an important presentment. A copy is enclosed.

The jury recommends—

1. Tightening up of laws on espionage.
2. Especially, repeal of the statutes of limitation on espionage acts.

3. Registration of all aliens trained by a foreign nation in espionage or sabotage.

4. Secrecy in investigations of espionage activities (comparable to secrecy of grand jury hearings).

The Federal Grand Jury Association for the Southern District of New York commends this presentation to your earnest consideration.

Sincerely yours,

A. VERE SHAW, *President.*

PRESENTMENT OF GRAND JURY WARNING ON ESPIONAGE

(Submitted to and accepted, approved, and ordered filed by Judge Sylvester J. Ryan April 26, 1949)

Whereas the undersigned constitute all the members of the December 16, 1948, special Federal grand jury of the District Court of the United States for the Southern District of New York, impaneled to inquire into espionage and subversive activities; and

Whereas there has been present for the past 4 months, and is being presented, before this special Federal grand jury a volume of testimony concerning activities of both foreigners and American citizens which are directed from within and without against the security of the Nation; and

Whereas this testimony and evidence have led this special Federal grand jury to certain conclusions it deems proper and imperative to be brought to the attention of the Executive, Legislative, and Judicial Departments of the United States Government for such action as may be necessary or appropriate, the undersigned members of this grand jury respectfully show and allege as follows:

1. The grand jury is of the unanimous opinion that the safety of this country and its institutions is being jeopardized because

(a) Increasing efforts, since the United States of America has been forced by events to take a dominant position in world leadership, have unlawfully been and are being made by those inimical to the Nation to obtain information relating to the national defense and security—information which could be used to the Nation's injury and to the advantage of foreign nations; and because

(b) Existing laws, applicable to activities aimed at unlawfully obtaining such information, are inadequate and unrealistic in view both of the Nation's position in world affairs and internal menaces from those zealously activating a philosophy hostile to our constitutional form of government.

2. This conviction was arrived at by the grand jury after hearing, over a period of 4 months, the testimony of a large number of witnesses who, irrespective of their widely differing relations to the problems under consideration, have been able to aid its investigations. Many of these witnesses have been summoned by the Department of Justice and some by the grand jury itself acting independently under its own authority as the anciently established representative of the people. They have been examined in that secrecy which is designed not only to determine those who may have violated Federal laws but to protect the rights and the reputations of the innocent.

Among these witnesses have been men charged with ferreting out violations of Federal laws and others who could be classed as "Government witnesses."

Others, men and women whose integrity and innocence have not been questioned but who have had valuable information to give, have proven entirely cooperative in the grand jury inquiries.

Still others—and the number has proven surprisingly large—themselves believed to be guiltless of direct violation of the law as it now exists, have invoked their constitutional rights to refuse to give information they indubitably possess concerning knowledge of violations by others. It has been a matter of grave concern to the grand jury that there are in this category of witnesses certain lawyers who, despite the fact that they are by virtue of their profession "officers of the court," have refused to answer questions put to them by the Federal attorneys and the grand jurors on the grounds that the answers "will tend to degrade or incriminate" themselves. This such witnesses have unquestionably done because they have been alerted through the publicity given by other investigating bodies to the circumstances which the grand jury must examine in secrecy.

Lastly, there have been a certain number of witnesses who, the grand jury is convinced, either by their own confessions or by the incontrovertible evidence of

others, have violated Federal laws but who are protected by the operation of the statute of limitations. The grand jury is powerless to indict such an individual so that he can be given a fair trial before a judge and jury with all the safeguards of such legal procedures.

3. The grand jury has been provided with many object lessons of the looseness with which laws governing espionage, the practical application of which it must determine, are at present drawn. In the light of the situations it has had to face it believes that the safety and welfare of this country require either the enactment of new legislation or the amendment of existing legislation.

4. The grand jury, without making detailed recommendations, is nevertheless convinced that the espionage statutes themselves should be amended and tightened without meanwhile infringing on those civil rights constitutionally guaranteed our citizens. It recommends, therefore, that laws defining espionage be designed to cover all unauthorized transmission of information relating to the national defense which could be used to the injury of the United States or to the advantage of any foreign nation. It further recommends provision be made that those engaged in such transmission can be prosecuted if they know the information may be used for such purposes.

The grand jury holds the crime of acting against one's own country is of such gravity and of such abhorrence to the American people that those so guilty should not be protected in any manner not provided by their constitutional rights. Accordingly it strongly recommends that provision be made to indict at any time any individual guilty of transgressing espionage statutes, now existing or to be enacted, without regard to any statute of limitation as in the case of treason.

Convinced that, despite the vigilance and the efficiency of the Federal Bureau of Investigation, increasing efforts will be made to acquire and transmit information injurious to the Nation, the grand jury holds that persons trained in espionage or sabotage by any foreign country should be required to register under the Foreign Agents Registration Act; and that failure to register under the act shall be considered a continuing offense for which the statute of limitations will not be operative. It recommends legislation to this end.

The grand jury is aware of the legislation on these and related subjects which has been proposed on the recommendations of Attorney General Clark. These recommendations were prepared in close consultation with the Interdepartmental Intelligence Committee, composed of representatives of the intelligence divisions of the Army, Navy, and Air Departments and the Federal Bureau of Investigation. It urges the careful study of this proposed legislation by our legislative authorities with the view that laws be passed to achieve these objectives in the proper constitutional framework.

Having seen at first-hand the difficulties in arriving at the truth concerning espionage violations when witnesses have been alerted by publicized charges and countercharges, the grand jury recommends that all investigating bodies conduct their inquiries into espionage in secret.

The grand jury further recommends that an investigation be made by the proper authorities, by bar associations and other similar bodies, to determine those measures that may be taken to disbar from practice in the courts any lawyer who, appearing before any grand jury, refuses to answer questions on the grounds of self-incrimination. It is obvious that if such grounds exist the lawyer is not of that integrity which the American people should demand of all officers of the court.

Now, therefore, the grand jury respectfully petitions the court to accept this presentment and order it filed, authorizing the foreman and the secretary of this grand jury to send copies of it to the Members of Congress and to the proper officers of the Executive Department of the Government, and to permit such other use as may properly be made of this document.

Dated: New York, N. Y., April 26, 1949.

Signed by the following members of the Special Federal Grand Jury:

John Gilland Brunini (foreman), John G. Kilbreth (assistant foreman), Hugh V. Doran (secretary), Robert L. Barrows, Joseph P. Christianson, Mrs. Evelyn Zorn Dingwall, James Sumner Draper, Raymond G. Fowler, Robert Frese, G. Leonard Gold, Henry E. Grant, Harold C. Hahn, Richard Brown Jones, Murray Kanner, Francis Keally, Samuel B. Leight, Sidney Leshen, Herman E. Nathan, Bernhard K. Schaefer, Harry Scherman, John Schreiber, Siegfried Stern, Wheeler Williams.

STATEMENT OF OSMOND K. FRAENKEL IN OPPOSITION TO THE MUNDT-FERGUSON BILLS (S. 1194 AND 1196)

Since illness prevented my appearance before the subcommittee of the Judiciary Committee of the Senate which is considering these bills, I take this opportunity to express my views.

I shall first answer the "test" questions put to all witnesses.

1. I am not now, nor have I ever been a member of the Communist Party.

2. I have no notion whether I am now or ever have been a member of an organization designated as subversive by any Government agency. I have made no effort to ascertain what organizations have been so designated. Moreover, I would not let such ex parte designation influence my own action.

I appear here as a lawyer who has for many years been interested in the guaranties of the Bill of Rights. I have written a book entitled "Our Civil Liberties" which was published in 1944 by the Viking Press and have written articles on various aspects of the subject which have appeared in law journals published in many sections of the country. I have participated in a considerable number of civil liberties cases before the United States Supreme Court. I have for many years been a member of the board of directors of the American Civil Liberties Union and counsel to its New York City committee. I have been a vice president of the National Lawyers Guild and a member (for some years chairman) of its committee on constitutional liberties. I am also a member of the civil rights committee of the New York County Lawyers Association.

My opposition to the bills proposed by Senators Mundt and Ferguson rests on two basic considerations: They will not accomplish their supposed objectives; they will do more harm than good. Also, in part at least, they are unconstitutional.

The main thesis of the supporters of this type of legislation is that Communists operate secretly and should be forced into the open. Therefore the bills require the registration of Communist organizations and establish administrative machinery for determining which organizations are of such a character. But it is fantastic to suppose that any one will ever register under these bills. For, in the light of the Government's contention that the Communist Party advocates the overthrow of the Government by force, to do so would constitute the admission of the commission of crime. Regardless of this contention, these bills make it unlawful to do anything to facilitate the establishment of a totalitarian dictatorship in the United States and so define the Communist movement as to bring it within that category. Thus, in my opinion, no one will register. And if prosecutions are attempted for failure to register the defendants can stand on the Fifth Amendment which protects them against self-incrimination. Thus the basic purpose of the legislation will fail of accomplishment.

On the other hand, there is no doubt that the administrative machinery devised for the branding of organizations as Communist will be utilized. The agency set up for this purpose will be vested with a power unparalleled in our history over the life and death of organizations engaged in political and propaganda activities. Moreover, every member of such organizations is exposed to great hazards, for he can be sent to jail for applying for a passport or even for remaining a member if the organization has not registered. Even if the organization has registered, no member may be a Government employee. Moreover, the agency is empowered to determine whether particular individuals are members or officers of the branded organizations.

It will be observed from the foregoing that although severe criminal penalties are imposed by the proposed bills the function of a criminal court in any prosecution would be very limited. For in most cases which might arise the basic facts will have been determined by the administrative agency, not by the court. Undoubtedly the Government would claim, in any prosecution for not registering after the making of a branding order, for instance, that the issue of the character of the organization could not be litigated before the jury. In this way the salutary safeguard of jury trial guaranteed by the sixth amendment would be taken away. This, in my opinion, is a violation of the Constitution.

Moreover, the terms used in the penal provisions of the bill are in many instances so vague that it is doubtful if prosecution could constitutionally be conducted under them. For instance, to subject to punishment persons who do anything which might "substantially facilitate or aid" the establishment of a dictatorship would constitute a "dragnet" in violation of the due process clause. (See *Herndon v. Lowry*, 301 U. S. 242.)

I am finally opposed to these bills because their necessary consequences would be a grave interference with expression of opinion and freedom of association.

OSMOND K. FRAENKEL.

STATEMENT OF LEWIS G. HINES, NATIONAL LEGISLATIVE REPRESENTATIVE,
AMERICAN FEDERATION OF LABOR, ON THE MUNDT AND FERGUSON BILLS

The American Federation of Labor is opposed to the Mundt (S. 1194) and Ferguson (S. 1196) bills for the same reasons that it was opposed to the Mundt-Nixon bill of 1948. The statement which the American Federation of Labor presented before the Senate judiciary committee last year in respect to the Mundt-Nixon bill is equally applicable to the present bills. Both the 1948 Mundt bill and the present bills make the same general approach to the problem of combating communism, namely, by attempting to define what constitutes a Communist organization or a Communist-front organization and then condemning such organization and membership therein by imposing various criminal, political, and social sanctions. Inherent in both the 1948 and 1949 bills is the same threat to civil liberties that the American Federation of Labor protested at last year's hearings. This threat arises inevitably from any attempt to penalize for beliefs and ideas, no matter how unorthodox or unpopular they may be, and from providing for guilt by association, as do the 1948 and 1949 bills. Rather we would suggest, as we suggested at last year's hearings, that the threat of communism can better be coped with by improving internal conditions and eliminating internal dissatisfactions upon which communism breeds and without which it cannot exist. Repeal of the notorious Taft-Hartley Act would be a long step in this direction and, to our mind, would alone do more to eliminate the Communist threat than a dozen Mundt bills. In addition, laws against espionage, against betrayal of information vital to the security of the country, or against acts treasonable in nature, could be strengthened or enacted if this was believed necessary, although it would seem that the existing laws are adequate to cope with specific acts of disloyalty.

Our legal department has informed us that all of the constitutional objections that were applicable to the 1948 bill continue to be applicable to the present bills. The present bills still constitute a serious infringement of the civil rights of speech and assembly and are still replete with vague and indefinite definitions and phrases, making it impossible for a person to determine whether his membership in any organization, some of whose objectives might happen to coincide with those of an avowed Communist organization, would subject him to the penalties and sanctions of the act. Freedom to express oppositional or unpopular views, and to assemble with others holding similar views, could not continue for long in an atmosphere such as would be created by the bills in question; yet it is on this very right to express contrary opinions that the civil liberties which the bills seek to protect against Communist usurpation are predicated.

More specifically, as respects labor organizations, the same opportunity to brand them as Communist groups or Communist-front groups that was present in the 1948 Mundt-Nixon bill continues to exist under the present bills. The criteria under which an administrative agency could determine that a particular organization is a Communist one are substantially the same under the new bills as under the 1948 bill. Thus the fact that a labor organization might, as it sometimes does, refuse to disclose its membership or the extent to which its policies and objectives might, as they sometimes do, correspond with the policies and objectives of an admittedly Communist organization, such as the advocacy of better housing, an adequate health program, the repeal of the Taft-Hartley Act, and the like, might be utilized by a hostile commission to make a finding that a particular labor organization is a Communist-front organization and subject that organization to all the penalties, sanctions, and ignominies that are visited upon actual Communist groups.

While it can be said that the present bills do offer some improvement over the 1948 bill, notably in providing for administrative hearings rather than permitting the Attorney General alone to make a determination as to whether an organization is communistically inclined, nevertheless the principal defects of the old bill, as enumerated above and as further specified in our 1948 statement, still exist. Indeed, in at least one major respect, the present bills are even more objectionable than the 1948 bill—that is, in respect to section 4 (a) of the new bill. Section 4 (a) makes it a felony punishable by 10 years' imprisonment or a fine of \$10,000, or both, for any person knowingly to conspire with any other person "to perform any act which would substantially facilitate or aid in the establishment within the United States of a totalitarian dictatorship * * *" Under this prohibition any labor organization, or its officers or members, engaging in or supporting or promoting a legitimate, bona fide strike in an important industry, might very well be found guilty of a violation of this section. Other situations, involving possible violations but arising out of bona fide labor disputes, are not difficult to imagine. It is to be noted that the conspiracy need not be with the intent to

establish any totalitarian dictatorship; on the contrary, the persons involved might be entirely innocent of such intent, yet if any of their activities in connection with any labor dispute could be said to facilitate the establishment of a dictatorship, they could presumably be held liable under the present wording of this section.

For the reasons above given, together with the reasons set forth in the statement presented by the American Federation of Labor before the committee when considering the Mundt-Nixon bill of 1948, the American Federation of Labor is strongly opposed to the enactment of the Mundt and Ferguson bills.

STATEMENT OF HARRY SEE, NATIONAL LEGISLATIVE REPRESENTATIVE, BROTHERHOOD OF RAILROAD TRAINMEN, IN OPPOSITION TO S. 1194 AND S. 1196

Mr. Chairman and members of the committee, my name is Harry See and I am national legislative representative of the Brotherhood of Railroad Trainmen, with offices at 130 Third Street SE., Washington, D. C. The headquarters of the brotherhood are located in the Standard Building, Cleveland, Ohio. We represent brakemen, yardmen, conductors, switchtenders, train baggagemen, and other classes of employees on railroads. The brotherhood has approximately 200,000 members in the United States.

Their work carries them to all parts of this great country. They are deeply concerned for its welfare. They would not advocate any legislative measure which would jeopardize its future, for they take their obligations as free-born Americans most seriously. They are likewise concerned that nothing be done that in any way tends to undermine the spirit and practice of democracy itself.

It is our belief that the measures before your committee are in the category of those proposals that undermine individual integrity and destroy those social institutions which are the very foundations of democracy.

Our way of thinking the Bill of Rights is the keystone of our free society and supports not only our constitutional government, but our most cherished social and political practices. For it is in the spirit of the Bill of Rights that Americans have achieved their great stature as independent people. Here no man is master; all men are free and equal. To remain that way we must be ever zealous that no infringement on our deep-rooted beliefs in freedom be allowed. And these measures are such infringements, no matter how they may operate, or with what care they may be employed. They are inimical to freedom.

We do not hold that a police force, traffic regulations, and other limits on freedom of individual action are undesirable. On the contrary, we believe that these forms of control are needed in even the freest of democracies to insure individual safety and reasonable freedom of movement. But it is a far cry from such restraints to the stringent provisions of these two bills.

There is all too little democracy left in the world. The United States remains one of the few sanctuaries of democratic freedom on the globe today. In no small degree our very freedom is rooted in institutions in which it has been nurtured and from which it derives its daily sustenance. These are the fullest freedom of communication, the right to say and be heard, individual responsibility for what one says and does, and institutions of the church and the home, and the school and the press, open forums, and assemblage. All of these are indispensable parts of the democratic way of life.

That is how sound Americanism operates in many organizations and groups in this country. That is the way any self-governing people should express their beliefs and establish the discipline that signifies good and loyal Americans.

But to strait-jacket the thinking of our people, to force their actions through fear, is not only anathema to any good American, it is likewise self-defeating. It will not accomplish the purposes of its proposers. For once such methods are made legal, and used widely, they will drive subversive elements still deeper underground where their nefarious acts and plottings will hatch unobserved, to breed a horror that may consume us.

Our great leader Franklin D. Roosevelt used an expression that is especially suitable here. He once said that all we Americans have to fear is fear itself. There is no more direct way of spreading fear than to endow the police of this Nation with the powers to invade our privacy, as proposed in the measures pending before your committee.

We are not opposed to applying such tests and imposing such actions on all our people as will safeguard our democracy to the utmost possible from fifth columnists,

Communists, and others who do not believe in democracy and its free institutions. We urge, on the contrary, that certain needed steps be taken to disclose their actions. We believe in disclosure consistent with democracy itself. It is a brave form of government, and it requires bravery to support and make it prosper. We would urge the committee to examine the desirability of having open rosters of membership in organizations, a careful public accounting of funds used in attempts to further political or social causes. These, in addition to the laws now on the books to apprehend and punish spies, foreign agents and criminals, are adequate in our judgment to safeguard us against such harmful influences.

What we really ought to put our minds on, all of us who are concerned with making democracy safe and sound, is the welfare of all the people in this country. Give us good government, clean and honest government, a modern defense force, and a sound economy which is devoted to maintaining full employment for our people and ever-increasing widespread high standards of living—buttress all these with free institutions that build individual character, and we have little if anything to fear from that pitiful and petty handful of people amongst us who would change our form of Government for something else.

CONSTITUTIONALITY OF H. R. 5852 (80TH CONG., 2D SESS.)

(Prepared by Legislative Reference Service, the Library of Congress)

I. IN GENERAL

H. R. 5852, in its declaration of purpose and in the definitions of "Communist political organization" and "Communist-front organization," is quite specific and detailed. It would thus seem to avoid the objection that the word "communist" has been given no definite meaning (see *Feinglass v. Reinecke* (N. D. Ill. 1942) 48 F. Supp. 438), or that the statute is so vague and indefinite that a person cannot determine the offenses penalized and, therefore, is unconstitutional as a violation of due process (*U. S. v. Josephson* (C. C. A. 2d, 1947) 165 F. (2d) 82, cert. den. (1948) 16 LW 3253). The proposed statute by defining carefully all terms used and the offenses covered is not open to the challenge that it uses undefined terms such as "gang," or the like, about the meaning of which a person must speculate. See *Lanzetta v. New Jersey* (1939) (306 U. S. 451) (citing *Connally v. General Construction Co.*, 269 U. S. 385, and others). A statute does not have to be so exact as to eliminate all possible variances of meaning. In *Nash v. U. S.* (1913) (229 U. S. 373, 377), Mr. Justice Holmes said: "* * * the law is full of instances where a man's fate depends on his estimating rightly, that is, as the jury subsequently estimates it, some matter of degree. If his judgment is wrong, not only may he incur a fine or a short imprisonment, as here; he may incur the penalty of death."

It cannot be contended successfully that the bill is unconstitutional because it invokes the principle of guilt by association (assuming for the purposes of argument that it does so). Despite Mr. Justice Murphy's concurring remarks in *Bridges v. Wixon* (1945) (326 U. S. 135), the majority opinion in that case indicated that where a person conducts himself so that he brings about a status of mutual recognition on a fairly permanent basis with the organization condemned, raising an element of dependability and mutual cooperation, he may be said to be affiliated or associated with the organization. In *Lanzetta v. New Jersey, supra*, the statute there involved was found lacking in definiteness, but was not held invalid because it invoked guilt by association. Indeed, the opinion suggests that had the statutory language been more specific, it would have been upheld.

Section 2 of the bill contains findings to demonstrate that Communist organizations are part of a world-wide conspiracy, seeking ultimate overthrow of our present form of government by violence or any other means, lawful or unlawful, and seeking to impose a dictatorship by force and against the will of the people. This meets the objection that a statute dealing with the Communist Party must do more than find merely that the party advocates a different economic or governmental system in general or supports "the political principles of foreign nations." *Feinglass v. Reinecke, supra*.

It has been said that the findings of a legislature that the public interest requires restriction of certain political or other activity will be respected by the courts. *Communist Party v. Peek* (1942) (20 Cal. (2d) 536). H. R. 5852 does not single out any specific organization which it condemns but defines generally a type of organization and activity which is to be regulated, leaving it to administrative and judicial determination whether particular parties, persons or acts come within

the provisions of the statute. The bill thus avoids the objection that the legislature by statute condemns a particular named party as violating its terms. *Communist Party v. Peek*, supra.

Any contention that H. R. 5852 violates the first amendment by restricting freedom of speech or press can be met by the proposition that even these freedoms can be curtailed where there is a "clear and present danger" which the Government seeks to meet. In *Schenck v. U. S.* (1919) (249 U. S. 47, 51-52), Mr. Justice Holmes said:

"It well may be that the prohibition of laws abridging the freedom of speech is not confined to previous restraints, although to prevent them may have been the main purpose, as intimated in *Patterson v. Colorado* (205 U. S. 454, 462). We admit that in many places and in ordinary times the defendant in saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. *Aikens v. Wisconsin* (195 U. S. 194, 205, 206). The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force. *Gompers v. Bucks Stove & Range Co.* (221 U. S. 418, 439). The question in every case 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 a right to prevent. It is a question of proximity and degree."

See also *Schaefer v. U. S.* (1920) (251 U. S. 466); *Hartzell v. U. S.* (1944) (322 U. S. 680); *Okamoto v. U. S.* ((C. C. A. 10th, 1945) 152 F. (2d) 905). In the latter case the circuit court of appeals declared:

"Freedom of speech, freedom of the press, and freedom of assembly guaranteed by the first amendment are fundamental rights. But, though fundamental, they are not in their nature absolute. These rights are not unbridled license to speak, publish, or assemble without any responsibility whatever. Their exercise is subject to reasonable restriction required in order to protect the Government from destruction or serious injury. The delicate and difficult question usually presented is whether speech, press and assembly are of such nature as would produce, or are calculated to produce, a clear, present, and imminent danger of a substantive evil which Congress has the constitutional power to prevent. *Schenck v. United States*, (249 U. S. 47, 39 S. Ct. 247, 63 L. Ed 470); *Hartzell v. United States* (322 U. S. 680, 64 S. Ct. 1233, 88 L. Ed. 1534). Ordinarily 'the substantive evil must be extremely serious and the degree of imminence extremely high' in order to warrant punishment for the exercise of speech, press, or assembly. *Bridges v. California* (314 U. S. 252, 62 S. Ct. 190, 86 L. Ed. 192); *Thomas v. Collins*, (323 U. S. 516, 65 S. Ct. 315)."

H. R. 5852 sufficiently sets out circumstances indicating the danger sought to be repelled and its immediacy. As pointed out in Chafee, *Free Speech in the United States* (1941) 31, while freedom of speech and press is of the highest importance, yet there are purposes of government, such as order and protection against external aggression, which must be balanced against the right of unlimited discussion interfering with these functions. "The essential rights of the first amendment in some instances are subject to the elemental need for order without which the guarantees of civil rights to others would be a mockery." *United Public Workers v. Mitchell* ((1947) 330 U. S. 75, 95).

It could also be argued that Congress is exercising its power under the Constitution to guarantee to the States a republican form of government. Article IV, section 4. In the *Federalist* No. 43, Madison observed that the scope and intent of this provision was to protect the States, among other things, from "experiments" produced "by the ambition of enterprising leaders, or by the intrigues and influence of foreign powers."

In addition, it should not be forgotten that the United States is still in a technical state of war. (*Fleming v. Mohawk Wrecking and Lumber Co.* (1947) 331 U. S. 111; *Woods v. The Cloyd W. Miller Co.* (1938) U. S. —, 16 LW 4165.) Although the Supreme Court has indicated that there are constitutional boundaries which even a technical state of war may not serve to extent (*Ibid.*; *Hartzell v. U. S.*, supra), yet the governmental war powers are viewed very broadly. In *Hirabayashi v. U. S.* ((1943) 320 U. S. 81), Mr. Chief Justice Stone declared:

"The war power of the national government is 'the power to wage war successfully.' See Charles Evans Hughes, *War Powers Under the Constitution*, 42 A. B. A. Rep. 232, 238. It extends to every matter and activity so related to war as substantially to affect its conduct and progress. The power is not restricted to the winning of victories in the field and the repulse of enemy forces. It embraces every phase of the national defense, including the protection of war mate-

rials and the members of the armed forces from injury and from the dangers which attend the rise, prosecution, and progress of war."

Accordingly, the war power would support on a broad scale such governmental action as Congress deems necessary to the successful prosecution of or preparation for war. And anything considered essential to the national defense is embraced within this power. *U. S. v. City of Chester* (C. C. A. 3d, 1944, 144 F. (2d) 415). "Nor can it be considered necessary that the United States must be at war in order that Congress * * * possess the constitutional sanction to prepare for it. Such an interpretation would be so unrealistic as not to warrant serious consideration." *Ibid.* "Congress * * * can invoke the war power * * * during times of peace, for the future protection of the nation." *Henderson v. Bryan* (S. D. Cal. 1942, 46 F. Supp. 682); see also *Ashwander v. T. V. A.* ((1936) 297 U. S. 288, 327-328). Testimony has been given before the Committee on Un-American Activities by an authoritative officer of the United States that the Communist Party in the United States is dedicated to force and violence for the overthrow of the United States Government, that the party maintains as a fundamental principle support of Soviet Russia, that the "Communist Party of the United States is a fifth column if there ever was one" and is "far better organized than were the Nazis in occupied countries prior to their capitulation" (House hearings on H. R. 1884 and H. R. 2122, 80th Cong., 1st sess. (1947) 35-36, 43, testimony of Hon. J. Edgar Hoover).

The argument that a bill such as H. R. 5852 invades the private or personal rights of anyone may well be answered by the statement of the court in *U. S. v. Josephson* (C. C. A. 2d, 1947, 165 F. (2d) 82, cert. den. (1948) 16 LW 3253), as follows:

"If * * * propoganda takes the form of, for example, advocacy of the overthrow of the Government by violence, it is rightfully called 'Un-American' and a sensible regard for the self-preservation of the Nation may well require its investigation, with a view to the enactment of whatever remedial legislation may be needed or to the amendment thereof. One need only recall the activities of the so-called fifth columns in various countries both before and during the late war to realize that the United States should be alert to discover and deal with the seeds of revolution within itself. And if there be any doubts on the score of the power and duty of the Government and Congress to do so, they may be resolved when it is remembered that one of the very purposes of the Constitution itself was to protect the country against danger from within as well as from without. See the *Federalist*, Nos. II-X. Surely, matters which potentially affect the very survival of our Government are by no means the purely personal concern of anyone."

II. SECTION 4

The constitutionality of section 4 of the bill may be supported by what is said in part I, *supra*.

III. SECTION 5

Section 5 of the bill provides for loss of citizenship through expatriation. "Citizenship" conveys the idea of membership of a nation. *Minor v. Happersett* ((1875) 88 U. S. 162; *Ex parte Fung Sing* (W. D. Wash. 1925) 6 F. (2d) 670). "Citizenship is a political status, and may be defined and the privilege limited by Congress." *Ex parte Fung Sing, supra.* When a person becomes a citizen of this country by birth (Nationality Act of 1940, sec. 201, 8 U. S. C. sec. 601), that citizenship must be deemed to continue unless the person "has been deprived of it through the operation of a treaty or congressional enactment or by * * * voluntary action in conformity with applicable legal principles." *Perkins v. Elg* ((1939) 307 U. S. 325, 329); see also *In re Bolter* (S. D. Cal. 1946, 66 F. Supp. 566).

Expatriation is "the voluntary act of abandoning one's country and becoming the citizen or subject of another." *U. S. ex rel. Wrona v. Karnuth* (W. D. N. Y. 1936, 14 F. Supp. 770). This right is generally recognized throughout the civilized world, and is recognized in the United States by statute. "Congress has the power to say what act shall expatriate a citizen." *U. S. ex rel. Wrona v. Karnuth, supra;* see also *Ex parte Fung Sing, supra.* Nor does the fourteenth amendment prevent citizenship acquired either by birth or naturalization from being lost by expatriation. *Reynolds v. Haskins* (C. C. A. 8th, 1925, 8 F. (2d) 473, 45 A. L. R. 759). In *Mackenzie v. Hare* ((1915) 239 U. S. 299), it was argued that Congress could not, by legislation, provide that certain acts by a natural-born citizen amounted to expatriation, in this case marriage to a foreigner. The Supreme Court denied this contention, pointing out that the United States as a sovereign may impose conditions for the maintenance of citizenship and provide that certain

situations voluntarily entered into, with notice of the consequences, may deprive one of such citizenship. Whether the acts defined by the statute have been performed in particular cases, however, must be subject to judicial determination. *Ng Fung Ho v. White* ((1922) 259 U. S. 276).

Section 5 appears to meet these tests.

IV. SECTION 6

Section 6 regulates employment by the United States. The right of the United States to regulate the political activity of its employees or to say who shall and shall not be employed is clearly supported by *United Public Workers v. Mitchell* ((1947) 330 U. S. 75). A person may or may not have an absolute right to indulge in certain political activity, but he has no constitutional right to be a public job holder. See Mr. Justice Holmes in *McAuliffe v. New Bedford* ((1891) 155 Mass. 216, 220, 29 N. E. 517).

V. SECTION 7

This section of the bill denies the issuance of passports to members of Communist political organizations. The granting of passports is not obligatory in any case and is only permitted where not prohibited by law ((1869) 13 Op. Atty. Gen. 90). Congress has always assumed the authority to prescribe the conditions under which passports may be issued. (See 22 U. S. C. secs. 211-229.)

VI. SECTIONS 8, 9, 10, AND 15

These sections require registration and the filing of annual reports by Communist organizations, prescribe penalties for failure to comply, and make it unlawful for anyone to become or remain a member of such an organization which has not complied with the statutory requirements. Similar regulations by a State have been upheld by the Supreme Court as not violative of due process or equal protection of the laws, or as not infringing on privileges and immunities or imposing unjust discrimination. *New York ex rel. Bryant v. Zimmerman* ((1928) 278 U. S. 60).

It is true that the Supreme Court has said, with respect to a speech by a union organizer, that one who is "required to register as a condition to the exercise of his right to make a public speech * * * to enlist support for a lawful order" is deprived of his rights under the first amendment. *Thomas v. Collins* ((1944) 323 U. S. 516). But this was based on the premise that "Lawful public assemblies, involving no element of grave and immediate danger to an interest the State is entitled to protect, are not instruments of harm which require previous identification of the speakers." The Court referred to *New York ex rel. Bryant v. Zimmerman, supra*, and did not overrule it but distinguished it (p. 539). And as noted in part I, *supra*, it can be argued that there is a clear and present danger of harm which H. R. 5852 is designed properly to forestall.

In *Lewis Publishing Co. v. Morgan* ((1913) 229 U. S. 288), it was held that the requirements that newspapers file certain statements with the Postmaster General and mark all paid for matter as "advertisement", as conditions for securing second-class mailing privileges, were not unconstitutional denials of the freedom of the press under the first amendment. And in *Jones v. S. E. C.*, (C. C. A. 2d, 1935, 79 F. (2d) 617, *rev'd* on other grounds 298 U. S. 1), the requirement (15 U. S. C. sec. 77f) of registration with the SEC before the mails could be used in the sale of securities was upheld as not violating the Bill of Rights or due process of law.

VII. SECTION 11

Section 11 penalizes the use of the mails or interstate commerce under certain circumstances therein set out.

Under article I, section 8, clause 7 of the Constitution, Congress is vested with the authority "to establish post offices and post roads." This power "has been practically construed, since the foundation of the Government, to authorize not merely the designation of the routes over which the mail shall be carried, and the offices where letters and other documents shall be received to be distributed or forwarded, but the carriage of the mail, and all measures necessary to secure its safe and speedy transit, and the prompt delivery of its contents." *Ex parte Jackson* ((1878) 96 U. S. 727). And while the legitimate end of the exercise of the power in question is to furnish mail facilities for the people of the United States, "it is also true that mail facilities are not required to be furnished for every purpose." *In re Rapier* ((1892) 143 U. S. 110). As a general proposition,

Congress has long exercised, and the courts have sustained, the Federal power to prevent the facilities of the mails from being used to accomplish ends deemed inimical to the general welfare. *Electric Bond and Shore Co. v. S. E. C.* (C. C. A. 2d, 1937, 92 F. (2d) 580, aff'd 303 U. S. 419). This power extends to newspapers and like publications as well as to other matter. *Ex parte Jackson, supra.* In *Badders v. U. S.* ((1916) 240 U. S. 391), Mr. Justice Holmes, speaking for the Court, declared:

"The overt act of putting a letter into the postoffice of the United States is a matter that Congress may regulate. *Ex parte Jackson* (96 U. S. 727). Whatever the limits to its power, it may forbid any such acts done in furtherance of a scheme that it regards as contrary to public policy, whether it can forbid the scheme or not."

The postal power, of course, like all other congressional powers is subject to the Bill of Rights. *S. E. C. v. Timetrust, Inc.* (N. D. Cal. 1939, 28 F. Supp. 34). But the examination and inspection of newspapers, magazines, pamphlets, and other printed matter, in a condition to be examined, is not a violation of the fourth amendment, prohibiting unlawful searches and seizures; nor is the prohibition of the circulation of such publications a violation of the first amendment, protecting freedom of speech and the press, so long as their transportation by some means other than the mails is not forbidden. *Ex parte Jackson, supra.* The Government may constitutionally decline to become itself an agent in the circulation of printed matter which it regards as injurious to the people. *In re Rapier, supra.* "The freedom of communication is not abridged within the intent and meaning of the constitutional provision unless Congress is absolutely destitute of any discretion as to what shall or shall not be carried in the mails, and compelled arbitrarily to assist in the dissemination of matters condemned by its judgment, through the governmental agencies which it controls." *Ibid.* Moreover, Congress in exerting the postal power may fix certain standards with respect to newspapers and like printed publications and impose certain conditions for their mailing, and this does not involve any unconstitutional lack of uniformity or unreasonable classification. *Lewis Publishing Co. v. Morgan* ((1913) 229 U. S. 288).

The bill is not objectionable in that it makes every mailing in violation of its terms a punishable offense. See *Badders v. U. S., supra*, where the Court said that "there is no doubt that the law may make each putting of a letter into the postoffice a separate offense."

The punishment provided by the bill for violations of its terms does not appear to be cruel or excessive. Compare *Badders v. U. S., supra*.

The only possible argument against section 11 is that it also denies the use of the facilities of interstate commerce, as well as the mails, under certain conditions. See *Ex parte Jackson, supra.* But *cf. Oklahoma-Texas Trust v. S. E. C.* (C. C. A. 10th, 1939, 100 F. (2d) 888). The propriety of this step, however, could be based, if necessary, on what has been said in part I, *supra*. Congress may regulate interstate commerce to prevent the spread of any evil or harm among States (*Brooks v. U. S.* (1925) 267 U. S. 432; *American Power and Light Co. v. S. E. C.* (1946) 329 U. S. 90, 99-100), and such regulations may have the quality of police regulations (*Caminetti v. U. S.* (1917) 242 U. S. 470).

VIII. SECTION 12

Section 12 provides, under certain circumstances, for a denial of tax deductions and exemptions. Deductions allowed in computing income taxes are matters of legislative grace. (*New Colonial Ice Co., Inc. v. Helvering* (1934) 292 U. S. 435; *Avery v. Commissioner* (C. C. A. 7th, 1936) 84 F. (2d) 905, cert. den. 299 U. S. 604.) Consequently, no right is infringed by their denial upon specified conditions.

Similarly, Congress has the right to make or withdraw exemptions as it sees fit. (*Brushaber v. Union Pacific R. Co.* (1916), 240 U. S. 1; *Flint v. Stone Tracy Co.* (1911), 220 U. S. 107, 173.)

IX. SECTIONS 13 AND 14

Section 13 provides for certain administrative determinations by the Attorney General, upon due hearing, and section 14 provides for a judicial review. It is well settled that Congress may confide to administrative or executive agencies the duty to make findings of facts and the application thereof with respect to certain statutory standards. This is not an improper grant of power; nor do the facts that penalties ultimately may be imposed and that Congress has chosen an

administrative process rather than judicial one amount to a denial of due process of law. (See, among others, *Interstate Commerce Commission v. Brimson* (1894), 154 U. S. 447; *Lloyd Sabauo Societa v. Elting* (1932), 287 U. S. 329; *Yakus v. U. S.* (1944), 321 U. S. 414; *President, Managers and Company of the Monongahela Bridge Co. v. U. S.* (1910), 216 U. S. 177; *Louisville and Nashville R. Co. v. Garrett* (1913), 231 U. S. 298.) So long as the statute is not incapable of affording those appearing before the administrative tribunal the protection of procedural due process—such as adequate notice, a right to be heard, and a fair and impartial hearing—there can be no complaint. See *Yakus v. U. S.*, supra. Due process of law does not necessarily require the interference of the judicial power. In *Public Clearing House v. Coyne* ((1904) 194 U. S. 497, 509), the Supreme Court, quoting Judge Cooley, said:

“There is nothing in these words (‘due process of law’), however, that necessarily implies that due process of law must be judicial process. Much of the process by means of which the Government is carried on and the order of society maintained is purely executive or administrative. Temporary deprivations of liberty or property must often take place through the action of ministerial or executive officers or functionaries, or even of private parties, where it has never been supposed that the common law would afford redress.”

It is not objectionable that the Attorney General is given the power of subpoena. See *Interstate Commerce Commission v. Brimson*, supra. This is a power commonly exercised by many executive and administrative agencies today. The question whether a particular search or seizure, in the exercise of this power, will be unconstitutional under the fourth amendment cannot be determined in advance of the event. That question is one to be determined judicially, in view of all the circumstances of the particular case presented. (*Mason v. Rollins* (C. C. Ill. 1869), 16 Fed. Cas. No. 9252; *U. S. v. Bateman* (S. D. Cal. 1922), 278 Fed. 231.)

As previously noted, section 14 of the bill provides a method of judicial review of the determinations of the Attorney General. The fact that a period of only 60 days is provided within which a petition for review may be filed is not objectionable. Compare *Yakus v. U. S.*, supra. And the fact that the determination of an administrative agency may become final because of failure to act within the statutory time to secure a judicial review, likewise is not objectionable. (See 1 Vom Baur, Federal Administrative Law (1942), 87; *Yakus v. U. S.*, supra.)

X. SECTION 15

The punishment stipulated in section 15 does not appear excessive. In *Badders v. U. S.* ((1916) 240 U. S. 391), the punishment imposed (under statute) of 5 years on each of five counts, the periods being concurrent, and a fine of \$1,000 on each of seven counts, was held not to be cruel, unusual, or excessive within the prohibition of the Constitution.

TESTIMONY OF BENJAMIN C. SIGAL, CHAIRMAN, WASHINGTON CHAPTER, AMERICANS FOR DEMOCRATIC ACTION IN BEHALF OF AMERICANS FOR DEMOCRATIC ACTION AND THE AMERICAN CIVIL LIBERTIES UNION IN OPPOSITION TO THE MUNDT AND FERGUSON BILLS

My name is Benjamin C. Sigal. I am chairman of the Washington chapter of Americans for Democratic Action and I am appearing here today in behalf of the National ADA and the American Civil Liberties Union in opposition to S. 1194 and S. 1196.

The ADA and the ACLU are unalterably opposed to communism but we are equally opposed to any denial of the basic civil rights and liberties. It is our conviction that the two measures pending before this committee are unconstitutional; that they seriously curtail rights of free speech and thought; that they will in effect materially aid the Communists; drive them underground and greatly enhance their chances for success.

S. 1196, introduced by Senator Ferguson, is so similar to Senator Mundt's bill, S. 1194, that it needs no separate analysis. The major points wherein it differs from S. 1194 will be indicated by footnotes. All that follows will be devoted to an analysis of S. 1194.

1. As has already been stated, the bill would have the inevitable effect of driving the Communist movement underground. Communists have already announced that they would not comply with the provisions of this bill. Such noncompliance would of course compel Communists to seek refuge in underground activities. Furthermore, we believe that there are adequate laws now on the

statute books to combat any "clear and present danger" from communism, which is all the proponents of this bill seek to safeguard against. Among these are the Espionage Act, operative only in time of war (50 U. S. C. A. 33), the Peacetime Sedition Act (18 U. S. C. A., secs. 9 to 13), the Subversive Organizations Registration Act (18 U. S. C. A., secs. 14 to 17), and the Foreign Agents Registration Act (22 U. S. C. A., secs. 611 to 621).

2. While we are strenuously opposed to the views of those who would be immediately affected by S. 1194, we must recognize the perils to which legislation of this type would expose the whole Nation.

Today, Communists are condemned as un-American because their motives are suspected; and so, if S. 1194 were to become law, those who furthered the Communists' program would be penalized. What of tomorrow? May the Congress of some future day conclude that other political faiths are equally "un-American" and "subversive" and must, therefore, be subjected to restraints and penalties? Can we safely accept the proposition that the advocacy of ideas may be forbidden, without reference to specific acts of a criminal nature? We think that our whole constitutional development shows that actions, not beliefs or ultimate goals, must be the sole tests of legality.

Chief Justice Hughes declared a decade ago: "The greater the importance of safeguarding the country from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press, and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government." *De Jonge v. Oregon* (299 U. S. 353, 365). These words have apt application to the present problem. If it be true, as S. 1194 seeks to declare, that our American institutions are threatened by advocacy of a totalitarianism alien to our traditions, we must meet the threat not by direct or indirect repression but by the "free political discussion" which is the very cornerstone of democracy. And in this connection it is well to recall Mr. Justice Jackson's observation that "freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order." *Board of Education v. Burnette* (319 U. S. 624, 642).

3. The bill has two major objectives. It imposes criminal sanctions for a large number of activities; it seeks to compel the registration of certain kinds of Communist organizations. Before considering the provisions of the bill in detail, we wish to point to two underlying aspects which in our opinion render most of its provisions unconstitutional: (1) the definitions of the bill, and (2) the fact that determination of the basic issue in regard to the character of the organization is left to the Subversive Activities Commission rather than to the courts.

There are two basic terms in the bill: "Communist political organization" (sec. 3-3) and "Communist-front organization" (sec. 3-4). Neither is defined with sufficient precision. It would appear also that a finding could be based on any one of criteria set forth in section 14. In the case of political organizations, the criterion is control by a foreign government or political organization, plus operation "primarily to advance the objectives of the world Communist movement." Either criterion can be determined on the basis of a series of considerations set forth in section 14, many of them wholly unrelated and entirely lawful. Among those mentioned are the extent of nondeviation of its views and policies from those of foreign Communist governments and organizations and the extent to which the organization resists the efforts to obtain information with regard to its membership. Included are also matters more directly connected with control by a foreign government.

In the case of "front" organizations, the criterion is either control by a "Communist political organization" or a finding that the suspected "front" is primarily operated to give aid to a "Communist political organization," a Communist foreign government, or the "world Communist movement." Either of these criteria can be established on the basis of the identity of persons active in management, the sources or use of funds, and the positions taken by the organization on matters of policy.

We submit that such catch-all definitions transgress the requirements of certainty imposed by the due-process clause and operate as a serious impairment of freedom of speech and association. See *Winters v. New York* (68 Sup. Ct. 665).

4. The foregoing is rendered even more objectionable by the fact that the Government may be able to avoid offering proof before a judge and jury that

the suspected organization comes within the category of the law. For the bill in its registration provisions (sec. 7) compels action by an organization designated as coming within the scope of the law by the Subversive Activities Commission under the administrative provisions of section 14. Moreover, failure to register is then a crime (sec. 16). (It is not clear whether it is criminal to fail to register before a formal designation is made.) Membership in an organization that has not registered is then a crime (sec. 10). Use of the mails or instrumentalities of interstate commerce or of the radio is a crime unless accompanied by a statement that a Communist organization is responsible for the utterance. (Secs. 11 and 16 (c)).

Since it is contemplated that the Subversive Activities Commission will determine which organizations are within the scope of the law, the Government may contend in a prosecution under the law that it need only show failure to register, failure to label speeches or printed matter or continuance of membership, and that the order of the Subversive Activities Commission if upheld on appeal is conclusive. That we submit is in violation of the provisions of the sixth amendment which guarantees trial by jury and a right of confrontation of witnesses (*Kirby v. United States*, 174 U. S. 47).

5. Section 4 creates criminal penalties wholly independent of the two types of organizations we have been discussing. Any conspiracy or agreement to perform any act which would substantially facilitate or aid in the establishment of a "totalitarian dictatorship" is punished by a possible fine of \$10,000 or imprisonment for 10 years, plus ineligibility for public office, provided the dictatorship is under the control of a foreign government or individual. Domestic efforts to produce totalitarianism are left untouched. The bill quite plainly is aimed at every effort in this direction and is not limited to acts of violence and to overt acts at all. For it expressly punishes an agreement to do any act which would substantially "facilitate or aid" the establishment of such a dictatorship. The last clause of this section contains the unusual provision that a prosecution under it shall never be barred by limitations.

There is now a definition as such of what constitutes a "totalitarian dictatorship," lacking in last year's Mundt bill. But beyond that, it is quite clear that this provision on its face is not applicable to acts alone, but to speech and publication as well. It is hard to imagine phrases broader than those used as a method of criminal liability, except perhaps the phrase used last year, i. e., "in any manner." In *Winters v. New York*, the Court said, "a statute so vague and indefinite, in form and as interpreted as to permit within the scope of its language the punishment of incidents fairly within the protection of the guarantee of free speech is void on its face * * *."

As to the rest of section 4, it is so vague that one would not know with any certainty what actions would subject one to criminal liability. What exactly is prohibited in the injunction against "knowingly to combine, conspire, or agree¹ with any other person to perform any act which would substantially facilitate or aid in the establishment of a totalitarian dictatorship"? If a group files a brief amicus in the trial of the Communist leaders in New York and helps secure their acquittal, is this an agreement or combination which would aid such an establishment? Note that there is not even a requirement of intent—it is sufficient if the agreement aids the establishment. Is an attorney who defends a Communist in a political trial guilty under this section? Where is the line to be drawn? As stated in the *Winters* case, supra, "where a statute is so vague as to make criminal an innocent act, a conviction under it cannot be sustained *Herndon v. Lowery* (301 U. S. 242, 259)." See also *Stromberg v. California* (283 U. S. 359, 369).

Finally, this section would even outlaw a proposal to amend the Constitution to establish a "totalitarian dictatorship."

6. Section 5 prohibits employment in the service of the United States, excepting only for elective offices, of any person who is a member of a Communist "political" organization.

We have consistently opposed the blanket proscription of persons from Government service merely because of their affiliations. They may be totally out of sympathy with the subversive policies of that organization, or may have joined because of personal reasons. We find no justice in the broad scope of this bill whatever may be the question of its constitutionality.

7. Section 6 forbids the issuance of passports to members of such a political organization. We have always been of the opinion that there should be as few restrictions as possible on travel both into and out of the United States. We see no justification for the restrictions here imposed.

¹ S. 1196 omits the words "or agree."

8. The registration requirements of section 7 require the annual listing of officers and an accounting of receipts and activities with a statement of the sources of funds. The Attorney General is authorized to specify the details. These are required of both types of organizations. "Political" but not the "front" organizations must also list annually the names and addresses of members. The Attorney General is required to notify any individual listed as a member.

Section 9 provides that the registration data is available for public inspection and that the Attorney General should annually submit to Congress a list of organizations and of the data given, including names of members.

We are of the opinion that these registration provisions, as well as the provision of section 11, which require the labeling of all material circulated by either of these organizations, are serious impairments of speech and association, and that they fall within the ban of the principles laid down in a host of Supreme Court decisions. We wish only to call specific attention to Judge Rutledge's statement in *Thomas v. Collins* (323 U. S. 516), where he said: "As a matter of principle, a requirement of registration in order to make a public speech would seem generally incompatible with the exercise of free speech and free assembly."

9. The administrative provisions call for little comment. Section 14 requires full hearing, with provision for subpoenas, before any determination by the Subversive Activities Commission. The Commission must make written findings. An organization which has registered may apply for a determination that it does not come within the law and that its registration be canceled.

Section 15 allows judicial review by the Court of Appeals of the District of Columbia with final review by the United States Supreme Court. The findings of the Commission are to be conclusive if supported by the preponderance of the evidence.² We have no criticisms of these provisions, except as indicated above. We oppose the possibility of a finding by the Commission which may be conclusive in a criminal prosecution against an individual.

10. Permeating the bill are two concepts, the unconstitutionality of which cannot be doubted.

(a) The proposed bill imposes disabilities merely on the basis of organizational affiliation and not on the basis of personal illegal acts.

In recent years, no doctrine has been more bitterly attacked than the several legislative and executive attempts to impose guilt by association. Prof. Zechariah Chafee, Jr., in his *Free Speech in the United States* (1941) poignantly illustrates the dangers and absurdities of the doctrine. Pages 470-484.

Under section 10, a member of a "Communist political organization" may go to jail for 5 years merely for belonging to such a group if it has not registered. The default of the organization in failing to comply with the law is imputed to each member, thereby resulting in the commission of a separate crime by each member for further adherence to the organization. As Mr. Justice Jackson stated, "* * * if any fundamental assumption underlies our system, it is that guilt is personal * * *" *Korematsu v. U. S.* (323, U. S. 214). Section 10 is therefore unconstitutional. See Mr. Justice Murphy in *Bridge v. Wilson* (326 U. S. 135).

(b) The proposed legislation imposes disabilities by legislative proscription rather than by judicial trial and hence is unconstitutional as a bill of attainder.

A bill of attainder is defined as a legislative act which inflicts punishment without a judicial trial *Cummings v. Mo.* (4 Wall. 277). The present bill constitutes a congressional determination that in effect all members of a "Communist political organization" are automatically subjected to certain penalties merely by the fact of membership. The bill by the registration provisions removes the right of privacy from them. They may not obtain or seek privileges, such as passports or Federal jobs, to which other persons are eligible. It is hard to see a distinction between a statute prescribing certain oaths as a condition to practice law in the Federal courts and a statute such as the one under consideration. If the Supreme Court has ruled the former unconstitutional because of some presumption of guilt which would be the basis for the denial of the privilege, then the latter, which does not merely presume guilt but finds it conclusively, must also fall *Cummings v. Mo.*, supra; *Ex Parte Garland* (4 Wall. 333), and see as particularly in point, *United States v. Lovett* (328 U. S. 303, 315, 317).

We do not doubt furthermore, that while Congress may define conspiracy, it is the responsibility of the courts alone to decide what groups fall within the definition. The definition of a "Communist political organization" is an ill-disguised method to define the Communist Party as an international conspiracy. The use of the term "Communist" brings the statute within the Lovett case's dictum that "legislative acts, no matter what their form, that apply to named individuals or

² The Ferguson bill, in effect, would require only support by "substantial" evidence.

to easily ascertainable members of a group * * * are bills of attainder." (*United States v. Lovett*, supra, 315.) [Emphasis added.]

11. We think that it is sufficiently clear that registration of an organization found by the Attorney General to be a Communist political organization, would automatically subject officers and members of the group to the criminal provisions under section 4. Thus, under the bill, compliance with the law automatically is prima facie evidence of commission of a crime. This legal paradox is merely one indication of the dangers inherent in the bill. This conclusion is reached by the following analysis.

Under section 7, Communist political organizations are required to register with the Attorney General. Such groups are defined in section 14 on the basis of some or all of the following considerations, e. g., the extent and nature of its activities, including the expression of views and beliefs or the extent to which its policies are under the "direction and control of the world Communist movement as defined under section 2 of the act." In section 2, there is a congressional finding that the "world Communist movement" exists to "establish a Communist totalitarian dictatorship in all countries of the world." Under section 4A, it is made unlawful to agree to perform any act which would facilitate or aid in the establishment within the United States of a "totalitarian dictatorship under the control of a foreign government." Thus, it is clear that registration of an organization, if not conclusive, would be at least prima facie evidence that its members are guilty of a substantive crime. Clearly, the act in this manner establishes guilt by association, a concept held illegal by the Supreme Court (see *Kotteakos v. U. S.*, 328 U. S. 750).

12. Any registration required by the Attorney General of a Communist political organization because of its views and policies (sec. 14 (e) (1)) or because of the alleged identity of its views with a foreign government or organization (sec. 14 (e) (2)) would seem to be a clear violation of the constitutional principle against prior restraints on beliefs or opinions.

(a) There would seem to be great doubt whether organizations may be subject to special treatment by law because of views alone. Certainly, it would not be maintained that a statute subjecting an organization to criminal penalties merely because of its beliefs, in the absence of any acts on its part, would be constitutional. (See *De Jonge v. Oregon*, supra, *Taylor v. Mississippi* (318 U. S. 583).) Registration which is akin to licensing would similarly seem to fall within the constitutional ban. (See various Jehovah's Witnesses leaflet cases, e. g., *Lovell v. Griffin* (303 U. S. 444), *Schenider v. Irvington* (308 U. S. 147), and *Murdock v. Pennsylvania* (319 U. S. 105).)

(b) Under section 11, organizations which are registered may not use the mails unless the material is identified. There is, thus, a double violation of the rule against prior restraints. Cf. the Collins case, mentioned on page 8 of our memorandum, which we believe, correctly states the law.

(c) Proposals for disclosure may be sustained where related to some Federal function, such as special postal rates or identification of foreign agents. But in no law covering such cases, have specific groups or organizations easily identified been singled out for special treatment. This, we believe, is not only sound public policy but good constitutional law.

LAW SCHOOL OF HARVARD UNIVERSITY,
Cambridge, Mass., June 4, 1949.

HON. JAMES O. EASTLAND,
Senate Judiciary Committee, Washington, D. C.

DEAR SENATOR EASTLAND: If you will permit me to file this statement in opposition to two bills (S. 1194 and S. 1196), both entitled bills "To protect the United States against un-American and subversive activities," I shall be most grateful.

Inasmuch as it is not infrequent to misunderstand and even misrepresent the motives of citizens who have opposed certain anti-Communist measures, I want to let you know briefly what sort of person is here objecting to these bills. A member of the Rhode Island bar, I have taught law at Harvard Law School since 1916, being now Langdell professor. My courses for many years have comprised equity, negotiable instruments and banking law, trade-marks and unfair competition. I have published many books and articles on those subjects, besides three books on freedom of speech and press, and have occasionally advised practitioners on the problems within my field of teaching. I have participated in several cases in the United States Supreme Court and elsewhere involving freedom

of speech and religion, but always as a friend of the court. Never have I been retained or paid by any individual or private organization for work involving civil liberties, because I wish to consider only the interest of the public when I speak or write on such matters. I was consultant for the National Commission on Law Observance and Enforcement, formerly a member of the United Nations Subcommittee on Freedom of Information and of the Press, and one of the United States delegates to the United Nations Conference on Freedom of Information in Geneva. Also, I was the draftsman of the Federal Interpleader Act of 1936 (now 28 U. S. C., secs. 1335, 1397, 2361), under which millions of dollars in conflicting claims against insurance companies and other corporations have been expeditiously adjudicated. My chief activity, outside of teaching and scholarship, has been serving for 40 years as a director of Builders Iron Foundry, a manufacturing business in Providence which has done important work for the Government at various times; since 1943 I have been chairman of the board.

In short, I am one of the large number of old-fashioned Americans trying to do their own jobs as well as they can, who care a good deal about our Bill of Rights and about maintaining American traditions of freedom and tolerance. We like the kind of country in which we grew up, and we want it to stay that kind of country for our children and our grandchildren. Because we detest totalitarianism, we are greatly disturbed by proposals, such as these two bills, to copy any of the methods which totalitarian nations use for keeping a tight control over the thoughts and expressions of individuals, over their political activities when they do not meet the approval of officials, and over the exchange of views among individuals in publications and meetings.

When anybody has reached my age, he has seen some pretty queer ideas running around in this country at various times, but they died out when they were left alone. We have pulled through in splendid shape without any laws remotely resembling these two bills, and are now a stronger and more united Nation than ever in our history. It is because of my eagerness for it to remain a free and brave Nation, unvexed by hordes of spies, numerous inquisitions about opinions, and drastic legal restrictions on political and social groups, that I am opposing these bills.

There is an old story of a liberated slave who met his former master on the street. The master asked "Are you as well off as before you were free?" The Negro admitted that his clothes were frayed, his house leaked, and his meals were nothing like the food on the old plantation. "Well, wouldn't you rather be a slave again?" "No, Massa. There's a sort of a looseness about this here freedom that I likes."

There is no looseness about either of these bills. Although they have cured some of the shortcomings of the Mundt-Nixon bill of 1948 (H. R. 5852 in the second session of the 80th Cong.) because they apprise organizations more clearly when they are obliged to register, they are much tighter than the old bill in controlling peaceable exchanges of views among citizens. Both of the new bills establish a wholly new Federal agency to determine what political opinions are lawful and what are unlawful. These bills are drafted with amazing efficiency. They remind me of the efficiency of a Ukrainian law for strait-jacketing presses and publications which was read to us at the Geneva Conference.

I

My main objection to these bills is that I see very little evidence to support the recital in each of them that the world Communist movement presents "a clear and present danger * * * to the existence of free American institutions." Let me begin by reviewing the acts of Congress which now protect our Government and institutions from attacks through violence or other unlawful action.

First, a statute enacted in 1861 (U. S. C., sec. 6) punishes conspiracy "to overthrow, put down, or to destroy by force the Government of the United States, * * * or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States." This was considered adequate to protect the Government when the Confederate Army was within 100 miles of Washington. In 1867 it was supplemented by another statute punishing conspiracy to commit an offense against the Government with an overt act, no force being required (U. S. C., sec. 37). These two statutes kept us safe from any serious consequences of internal disaffection in time of peace for three quarters of a century. Without any sedition act, we came through the panic of 1873, the panic of 1893, the panic of 1907, and the great depression of 1929-33. The absence of any prosecutions against revolutionists under either of these laws demonstrates that the sky has been clear of forcible revolution for a good many years.

Still, in 1940 Congress wanted more than the old conspiracy statutes. So it created two new types of criminal offenses in the Alien Registration Act. To begin with, it made the Espionage Act of 1917 applicable in time of peace, so as to punish anybody who advocated insubordination, disloyalty, and so forth, in the armed forces (U. S. C., sec. 9). This measure was urged as essential to protect the Army and Navy from Communist organizations. Yet the only reported case under it was the abortive prosecution of about 30 Fascists and anti-Semites in Washington in 1944. The fact that there is no reported case under this statute against a Communist proves one of two things. Either Communist activities to demoralize the armed forces never have amounted to much, in which event there seems to be no need for more legislation for the same purpose; or else the 1940 statute has been very successful in putting a stop to such Communist activities, and if so why do we have to have a new law to safeguard soldiers and sailors?

The other part of the 1940 statute, commonly distinguished as the Smith Act (18 U. S. C., sec. 10), makes it a serious crime to advocate the overthrow of any Government in the United States by force, or to be an organizer or a member of any group of persons which advocates such overthrow. This is the first Federal peacetime seditious law since the ill-fated Seditious Act of 1798. It goes very far toward reaching anybody who belongs to what the new bills define as a "Communist political organization." If there were really a clear and present danger in this country from world-wide communism, anybody would naturally expect that this Smith Act would have been invoked again and again during recent years. On the contrary we find just three prosecutions. The first was several years ago, *Dunne v. U. S.* (138 Fed. 2d. 137 (1943)). Although there was a good deal of wild talk by the men who were convicted in this case, their organization amounted to little more than a small outlaw labor union and being Trotskyites, they were about as far removed as possible from the Communist dictatorship of the Soviet Union, which is described in these two bills as the fountainhead of danger to our own country. The second was the abortive Washington prosecution of Fascists, already mentioned. Surely, Stalin's influence over American citizens could not have created an overwhelming peril to our Nation when the Smith Act lay dormant for 8 years before any of Stalin's admirers were thought worth prosecuting.

At last, 11 leaders of the Communist Party of America were indicted. Their trial is now going on in New York City. The Government's case has been completed, so that we can get a pretty good idea already whether these 11 men and their organization have our country in deadly danger. There has certainly been some very obnoxious behavior by the defendants in the courtroom and the witnesses for the prosecution have recounted some pretty objectionable talk at the various Communist meetings which they attended. Yet, whatever the outcome of this case, is there anything in the Government's evidence to scare any American citizen of normal guts? I have talked with scores of people of varying political and economic views while this testimony was going in. Only two or three of them even brought up the case in conversation. Nobody was the least bit scared. Nor have I happened to see alarm expressed by a single editorial or a single letter to the editor of a newspaper. It is about the least exciting news of the day.

The low temperature of this trial is significantly indicated by the accounts of the Government's case in the New York Times. It got on the front page with the opening statement on March 22, and stayed there for 8 days because Budenz is a sensational figure as the best known ex-Communist. Then even during his cross-examination, the trial dropped to a distant inner page on April 2. It occasionally returned to the front page in April, but April 28 was its last appearance in such a prominent position until the very close of the Government's case. For 14 successive reports from April 29 through May 18 the trial wandered around the inner pages of the Times. On May 19, the next to the last report, an undercover informant made the front page because he was called a "rat" by a defendant in the courtroom, and the trial stuck there when the Government rested next day. In short, out of 39 issues reporting the misdeeds of the most prominent members of the leading Communist organization, the trial was front-page news for a little less than half the time (19 out of 39 issues). This is hardly the way the chief newspaper in the country behaves when the Nation is at death's door. Possibly these 11 men or some of them will be properly found guilty, but is anybody lying awake at night a single minute from terror because of the testimony against them?

At least it would be wise for you gentlemen to wait until the verdict has come in and the Supreme Court has given its judgment on the case, before making up your minds about supplementing the Smith Act by another and much more sweeping seditious law.

Some have argued that Communist spies make a new statute necessary. Yet there is no reported decision of a Communist spy since Gorin was arrested in December 1938 (312 U. S. 329), and I know of no trials connected with spying until very recently. It is true that two such trials are now going on, one of Mr. Hiss and the other of a woman. Still, no matter how Mr. Hiss' case ends, the documents in question are 10 years old. Much better precautions against leakage now exist in Government offices. And the Nation seems to have survived the extensive leakage of 1938 documents without the slightest sign of any resulting calamity. As for the other case, we do not know yet how serious it is, and at all events there is no reason to suppose that either of the proposed bills will stop all spying. Anybody who is wicked enough to be a spy and hardy enough to brave the severe penalties of the Espionage Act will not be bothered about evading a statute requiring him to register as a Communist.

If the present statutes against spying are defective, the proper remedy lies in new legislation aimed directly at spying, and not in roaming all over the lot against thousands of people, most of whom would never dream of being spies.

The postal and interstate commerce provisions of these bills (S. 1194, sec. 11; S. 1196, sec. 10) are unnecessary to prevent the transmission of really dangerous communications, because existing statutes make matter nonmailable for violating the Espionage Act or advocating treason, insurrection, forcible resistance to a law of the United States, arson, murder, or assassination (18 U. S. C., secs. 334, 343, 344), deny the second-class mailing privilege to such matter by Supreme Court interpretation (255 U. S. 407), and make imported books, etc., of this sort seizable (19 U. S. C., sec. 1305). It would be easy to amend a present criminal statute regulating interstate commerce (18 U. S. C., sec. 396) to reach such matter if this be thought desirable.

Finally, in connection with the registration provisions in the two proposed bills, it is important to observe that we now have two statutes which require registration by anybody who acts as the agent of a foreign government (except diplomats, consuls, etc.), and by any organization "subject to foreign control" if it is engaged in political activity or if it aims to control, seize, or overthrow the Government of the United States by force (22 U. S. C., secs. 233-233g; 18 U. S. C., secs. 14-17). Whoever fails to register before acting incurs severe criminal penalties. Now, if the Communist Party of America or any other group in this country really satisfies Senator Mundt's definition of a "Communist political organization" (sec. 3 (3) in S. 1194), then he doesn't need any new law to make it register. It can be compelled to do so any day under the existing statutes just mentioned. The fact that these two statutes have not been enforced against the Communist Party or its leaders indicates that all the talk in the pending bills about American Communists creating "a clear and present danger" of a totalitarian dictatorship in the United States, is like the reports of Mark Twain's death—grossly exaggerated.

To sum up in two sentences this survey of the present United States Code:

If American Communists and fellow-travelers are as dangerous as the supporters of these bills make out, then there is enough legislation already with teeth in it to take care of these people; so no new law is needed.

If, on the contrary, existing statutes are not violated by what these people are saying or doing, then they can't be very dangerous, so no new law is needed.

II

Let us now turn from the law to the facts. How many Communists are there in the United States? The United Press said 70,000 in 1947, out of a total population of 143,382,000 (World's Almanac, 1949, pp. 544,164). Thus Communists form one-twentieth of 1 percent of all the people in our country. The odds are 1,999 to 1 in favor of free institutions. Suppose a football stadium holds 40,000 people. The chances are that 20 of them would be Communists and 39,980 would not. Remember, too, that it is not a question of 20 dynamiters or 20 men with concealed weapons, for then they could be arrested at once under the ordinary criminal laws. Just 20 unarmed persons who have not violated any existing Federal or State law or conspired to violate any existing law. But they have learned bad ideas about politics from foreigners and foreign books, they are thinking bad thoughts about these bad ideas, they are telling them to each other and to any outsiders who are willing to listen. What can we do to prevent them from harming the other 99.95 percent of us, who have on our side only the city and State police, almost every newspaper and school teacher and professor and preacher, the Federal Bureau of Investigation, the Army, the Air Force, and the Navy, never forgetting the Marines?

Such is the "clear and present danger" inside the United States which (according to sec. 2 (11) of the Ferguson bill) imperils "the existence of free institutions" and makes it "necessary" for Congress to pass a new law 30 pages long with unheard of regulations and 10-year prison sentences "in order * * * to preserve the sovereignty of the United States as an independent nation." Shades of Valley Forge and Iwo Jima. If we no longer want to be the land of the free, at least let us be the home of the brave.

I fully recognize that the Communist Party in Czechoslovakia was a danger to the freedom of Czechoslovakia, and the same is probably true of Italy and some other countries. It does not follow that the inclusion of less than one-twentieth of 1 percent of our population in a Communist Party here is a real danger to our institutions and our freedom under the very different conditions in this country. We have a very strong government equipped with existing legislation and efficient Federal police. Our Government does not need any such novel bill as this in order to deal effectively with any actual conspiracy against its existence or any actual effort toward violent revolution. Where inside this country are the facts which justify the establishment of unheard of regulatory machinery, the expenditure of large sums of money in its operation and the severe punishment of American citizens because somebody or other has not filled out a piece of paper?

It is now nearly 30 years since my work as a student of freedom of speech led me to pay considerable attention to the activities of Communists in this country. Although I still dislike them very much, it is my considered opinion that they are far less dangerous today than they were in 1919-20, soon after the Russian Revolution. During those early years that revolution was to many Americans the symbol of a better world. It was assumed to be a heaven on earth. To many idealists it at least appeared possible that men might build a fruitful society without having to seek their own profit. Few of those who now dream of a city of God can ignore the ugly facts in Moscow. Radicals of my acquaintance who used to speak of Russia as a land of hope are now reduced to saying that it is no worse than any other country. Also social and economic conditions in this country have vastly improved since 1919. The reasons for revolutionary discontent which then existed have greatly been lessened by the legislation under Mr. Roosevelt, the high wages paid during the war and since, the realization that Americans of every sort fought and suffered side by side during the war. The spiritual health of the Nation is far better than in 1919. We have a much greater immunity to revolutionary radicalism.

III

Sometimes I wonder whether the supporters of measures like these bills have been worrying so much about Communists that they have forgotten what freedom-loving Americans are like. They are the last people to fall easy victims to the ideology of a country where nobody can speak his own mind unless he agrees with the ruling class, where there is only one party convention and only one man to vote for at an election, where labor unions are state-run bureaus, where men can be grabbed out of their beds in the dead of night with no charge against them and be hidden away from their families for weeks, where hordes of people are moved from their old homes at the will of some official and ordered to live and work in some barren place two thousand miles away. Although communism now has behind it a powerful nation, which was not the case 30 years ago, this makes military problems more serious but I believe it decreases whatever attraction it has had for American citizens. If there is one thing American history teaches, it is that most of our citizens intensely detest any possible foreign influences over our own political policies. The very fact that joining the Communist Party means constantly taking sides with a foreign government against our own Government is enough to keep most American radicals from having anything to do with that party. And then there are more material considerations, though by no means sordid. Think of the billions of dollars invested in life insurance and savings banks, the pride a man has in knowing that he is giving his children a better start in life than he had himself, the satisfaction of acquiring a home, a car, a motor boat, a little cottage on the beach. These bulwarks against communism are infinitely stronger than all the inquisitions and prosecutions that could ever be devised.

The only possibility of communistic control of this country, leaving aside the chance of foreign conquest, would come, I believe, from the destruction of this confidence which the great mass of our citizens now have in their own future and that of their children and their community. Imagine a prolonged period of enormous unemployment, the dollar buying what a dime buys now, and perhaps worth a nickel next week, who knows, ever-mounting taxes, the national revenue

heavily mortgaged for decades by unwise commitments to groups of the aged at the expense of active men and women and their children, voters hating and despising the men they themselves have put in office because they had nobody better to choose from. That is when communism might grow by leaps and bounds, not because of what 70,000 Communists say but because of what the hopeless facts say. Maggots live in rotten meat.

A friend of mine met a Communist in France. He was a man of considerable wealth, and my surprised friend asked him, "Then why on earth are you a Communist?" "Because any government is better than the kind we have been having for years and years." It is that sort of spirit which, if it should be widespread in this country, might lead us into communism.

It is up to you gentlemen in the Senate and the House of Representatives to make sure that no such blinding discouragement and financial demoralization shall ever threaten us. Better yet, it lies in your power to do many things which will constantly lessen disaffection and strengthen the confidence of citizens in the future and in their institutions. The cure for internal disaffection is not sedition bills, but all sorts of statutes within the normal tasks of the Congress and the State legislatures. The safeguard against communism and any other sort of loyalty is to make this steadily a better country to live in.

A further objection to these pending bills is that, while they purport to be necessary to preserve "free American institutions," they gravely impair some of the most precious of those institutions, freedom of speech and press and assembly, which our ancestors put at the very head of our Bill of Rights. Without bothering you with an extensive discussion of the meaning of those freedoms, I merely point out what will be illustrated later by passages from several great exponents of the first amendment, that the American tradition of freedom of speech and press and assembly is that words as such shall not be punished or restricted, however objectionable the ideas they express. Peaceable language should be left alone by law, for the proper remedy for it is peaceable language on the other side. An especially strong claim to immunity is possessed by speeches and publications concerning political issues and candidates for office, because they are an essential part of the process of self-government. The only words which may properly be made unlawful are either (1) immediately injurious like libel and obscenity, or (2) closely connected with commonly recognized wrongful acts, e. g., an incitement to murder or to desert from the armed forces.

Now, there is no limitation to the two exceptional situations just mentioned in either of the pending bills. Let me run through the Mundt-Johnston bill (S. 1194) to bring out this point.

Section 4 punishes any person who agrees with another to perform "any act" which would "substantially facilitate or aid" in the establishment of a totalitarian dictatorship in this country. There is no requirement of the use of force or other unlawful methods at any time. The "act" may be wholly peaceable. It may be one of the commonest political activities, like nominating a candidate for office who is pledged to the specified policy.

Section 5 imposes upon a member of proscribed organization a special requirement in running for elective office, which is not imposed upon candidates of other parties and which is not necessarily related to any unlawful acts by himself.

Section 6 keeps a man within this country because of his association with men of specified political views, with no consideration of his own unfitnes to travel abroad and with no reference to any unlawful act. The denial of a passport may amount to a severe penalty on a person with bona fide reasons for going abroad.

All the registration provisions relating to a "Communist political organization" restrict normal political processes without regard to any unlawful act.

The registration provisions for "Communist-front organizations" have no relation to any unlawful act, but are imposed because of the expression and exchange of opinions.

The burdens in section 11 on use of the mails for letters as well as printed matter have no relation to any unlawful acts or to the character of the language sent by mail.

In case any of your committee should conclude that the pending trial of Communist leaders in New York shows sufficient unlawful acts to take them and the Communist Party of America outside the traditional protection for freedom of speech, I would respectfully direct your attention to the fact that neither of these bills is limited in its application to that particular party. For example, if there had been such a law passed a year ago, the Progressive Party headed by a former Vice President of the United States might, for all we know, have been ruled to be a "Communist political organization," and the same thing may happen in 1952 if either bill be enacted. Moreover, the "Communist-front" provisions obviously

extend to other organizations than the Communist Party of America. It is impossible to justify the sweeping provisions of either bill by saying that it reaches only particular groups who don't deserve to have any freedoms anyway. You never know whom a sedition bill is going to hit until the authorities start shooting with it.

So the provisions just summarized and many others in both bills should be placed alongside the following selected statements by four exponents of the American tradition of freedom of speech and press and assembly, two of them great Democrats, two others great Republicans.

Thomas Jefferson said in his first inaugural in 1801, during the apprehensions caused by the French Revolution:

"If there be any among us who wish to dissolve this Union, or to change its republican form, let them stand undisturbed, as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it. I know indeed that some honest men have feared that a republican government cannot be strong; that this Government is not strong enough. But would the honest patriot, in the full tide of successful experiment, abandon a government which has so far kept us free and firm on the theoretic and visionary fear that this Government, the world's best hope, may, by possibility, want energy to preserve itself? I trust not. I believe this, on the contrary, the strongest government on earth."

Justice Holmes said in a famous dissenting opinion in 1919 (250 U. S. 616) during the period of great excitement about Russians in this country who ardently supported the Russian Revolution:

"But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that the truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment as all life is an experiment. Every year if not every day we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country * * *. Only the emergency that makes it immediately dangerous to leave the correction of evil counsels to time warrants making any exception to the sweeping command, 'Congress shall make no law abridging the freedom of speech.'"

A few months later, Charles Evans Hughes objected to the refusal of seats in the New York Assembly to five duly elected Socialists, who were (as I recall) considerably less radical than Communists. That situation is closely parallel to the pending bills, for, although they do not actually bar Communists from being candidates for elective office, the burdensome registration provisions and the possibility of prosecutions under section 4 of both bills will make it very difficult for any member of a "Communist political organization," and probably a "Communist-front organization" to participate in normal political processes. So Hughes' condemnation of any proposal to disenfranchise men merely for belonging to a group is highly relevant to the bills you are considering. He said (New York Times, January 10, 1920):

"If there was anything against these men as individuals, if they were deemed to be guilty of criminal offenses, they should have been charged accordingly. But I understand that the action is not directed against these five elected members as individuals but that the proceeding is virtually an attempt to indict a political party and to deny it representation in the legislature. This is not, in my judgment, American government * * *."

"I understand that it is said that the Socialists constitute a combination to overthrow the Government. The answer is plain. If public officers or private citizens have any evidence that any individuals, or groups of individuals, are plotting revolution and seeking by violent measures to change our Government, let the evidence be laid before the proper authorities and swift action be taken for the protection of the community. Let every resource of inquiry, of pursuit, of prosecution be employed to ferret out and punish the guilty according to our laws. But I count it a most serious mistake to proceed, not against individuals charged with violation of law, but against masses of our citizens combined for

political action, by denying them the only resource of peaceful government; that is, action by the ballot box and through duly elected representatives in legislative bodies."

Hughes, as Chief Justice, uttered principles equally relevant to the pending bills. In 1931 he said (283 U. S. 359):

"The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system. A statute which upon its face, and as authoritatively construed, is so vague and indefinite as to permit the punishment of the fair use of this opportunity is repugnant to the guaranty of liberty contained in the fourteenth amendment."

And in 1937 he released a man who had spoken at a meeting of the Communist Party, where no unlawful conduct was urged by anybody. He was convicted merely because the Communist Party was held to advocate criminal syndicalism and sabotage. Hughes said (299 U. S. 353):

"The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means."

Finally, Alfred E. Smith spoke out against the expulsion of the Socialist assemblymen in 1920 (see his *Progressive Democracy*, 273):

"Our faith in American democracy is confirmed not only by its results, but by its methods and organs of free expression. They are the safeguards against revolution. To discard the methods of representative government leads to the misdeeds of the very extremists we denounce—and serves to increase the number of the enemies of orderly free government."

After you have read these extracts by four of the men who did most to make "free American institutions" what they are today, I respectfully request you to reread either of the pending bills and see how far it departs from the principles cherished and declared by Jefferson, Holmes, Hughes, and Al Smith.

V

My next objection is drawn from the past experience of the Nation. This is not the first time when fears of the infiltration of revolutionary radicalism from Europe has led earnest men to demand drastic laws against speeches and publications. A hundred and fifty years ago patriots terrified of the French Revolution got your predecessors to enact the Sedition Act of 1798. It is commonly regarded as one of the greatest follies in our history. Happily it expired in 2 years by its own terms. Again, after the First World War, Congress was repeatedly urged to pass a new peacetime sedition law. Revolutionary groups were much more vocal than now. Violent acts occurred like a bomb exploded near the house of the Attorney General. Still Congress refused to do anything, and nobody now regrets that refusal. The years that followed proved that the law which eminent men said was indispensable to save the country was not needed at all. The names of the men who supported the bills of 1798 and 1919-20 have long ago slipped into oblivion, but we remember Jefferson, Holmes, Hughes, and Al Smith for their courageous insistence that we must trust open discussion to bring us safely through.

That courage, we are now told by proponents of bills like these, is out of date. The United States never had to face Stalin before. But in 1798-1801 it had to face the French Revolution and Napoleon. And in 1919-20 it had to face Lenin. His army was not so big as Stalin's, but he was a far abler master of revolutionary tactics. The lawyers who drafted the Sedition Act of 1798 and the judges who enforced that law were firmly convinced that they were stamping out a foreign menace fully as dangerous as the foreign menace which confronts us today. Indeed, they used much the same arguments as those urged for these bills now, with France the villain instead of Russia and Switzerland replacing Czechoslovakia as the victim to forecast the fate of our own Republic if we do not save ourselves by passing a sedition law.

Listen to the dire prophecies with which, in 1799, a committee of the House of Representatives urged the continuance of the Sedition Act for 2 years more (9 *Annals of Congress*, 2991-2992):

"If it be asserted * * * that our security arises from the form of our Constitution, let Switzerland, first divided and disarmed by perfidious seductions,

now agonized by relentless power, illustrate the consequences of similar erudility * * *.

"France appears to have an organized system of conduct toward foreign nations; to bring them within the sphere, and under the dominion of her influence and control. It has been unremittingly pursued under all the changes of her internal polity. Her means are in wonderful coincidence with her ends; among these, and not the least successful, is the direction and employment of the active and versatile talents of her citizens abroad as emissaries and spies."

As late as January 1801, after the Federalists had lost the Presidency, one of them was still trying to get the House to prolong the statute, by charging French agents with buying several American newspapers with foreign money for the purpose of spreading disaffection (10 Annals of Congress, 957-958).

In 1919-20 you can find the same kind of fears as today eloquently expressed in House and Senate hearings, by the Lusk committee reports in New York, and in the New York Assembly where the outline of the case against the five Socialists described their party as "having the single purpose of destroying our institutions and Government and substituting the Russian-Soviet government * * * an antinational party whose allegiance is given to the Internationale and not to the United States." This corresponds almost word for word with passages in section 2 of the pending bills.

Everybody agrees now that the fears of subversive organizations in 1798-1801 and 1919-20 were much exaggerated. Probably this is just as true of the fears expressed today by the supporters of these bills. Section 2 (11) in both bills may sound as queer in the future as the passages I have been quoting.

Every great war, especially a war accompanied by revolutions, is followed by a difficult settling-down period. The anxieties and strains of war do not die out the moment hostilities stop. People go on being worried because they have been worried so long, and all sorts of economic and social adjustments caused by the dislocations of war bring new reasons for anxiety. It took over 10 years for us to get back to normal after our own Civil War. The constant tension breaks out in all sorts of queer ways, and one frequent manifestation of it is fear of internal disaffection. The English went through a terrible period of this sort after the long Napoleonic wars; they enacted any number of suppressive statutes and soldiers shot down workmen who were attending a peaceful meeting at Peterloo. We experienced the same kind of thing in a milder form after the First World War during the so-called "Red menace." In such times of disturbance and anxiety, sedition laws were demanded as indispensable, but soon the tension began to relax, the fears proved unwarranted, and the country went on safely with its traditional freedoms.

We are going through such a settling-down process today. It is particularly difficult for all sorts of causes—the magnitude of the devastation, the delay in the peace treaties, the diverse character of the victorious nations, the unprecedented formation of a world-wide permanent union, and so on. We have plenty of real worries, and it is quite natural that they should be reflected in some false worries as well. All the more reason for keeping our heads.

It is like waking up at two in the morning and trying to solve all your problems at once. A wise man tells himself that some of those problems won't amount to much in daylight. He faces the immediate tangible tasks squarely, and stops tearing himself to pieces over vague, remote, conspiratorial perils. Usually they vanish next morning. If not, they shrink into concrete problems which can be taken up when they actually arise as part of the ordinary course of life.

We may be getting well along in this uneasy settling-down process by now. Relations with the Soviet Union are noticeably less strained than when these bills were introduced late in February. Many delicate negotiations with the Russians are under way. This is a poor time to outlaw Communists when we have some real hopes of doing business with the Kremlin. What harm will it do to wait and see how things work out?

I have read a good many regrets that particular sedition laws were passed. Never, given the lapse of 2 or 3 years, have I known anybody to regret that a sedition law was rejected.

The principles which Jefferson used to allay apprehensions in his time are equally valid in our time. Meet unlawful action with action; proceed against real spies and real plotters as he prosecuted Aaron Burr and approved the dismissal of Genet. Meet objectionable ideas from abroad by living up to our own ideas—give increased drawing-power to our great traditions of democracy and freedom.

VI

My final point before I take up these bills in detail is very important. The enactment of either of them would disastrously impair our influence over other freedom-loving peoples.

If we leave aside military considerations, the best way to combat the spread of communism in western Europe and elsewhere is to give increased drawing power to the great traditions of democracy and freedom. These war-torn countries want more than weapons, more than food and machinery. They are eager for ideals to strengthen the spirit and make life worth living. Communism, we are told, operates like a religion; it is presented as the vision of a better world. Yet Jefferson and Lincoln had a great vision. During the nineteenth century it possessed the appeal of a religion to bring millions to our shores. In order to hearten the discouraged peoples of the twentieth century, we must keep that vision bright—not, this time, to attract them to America but to enable them to rebuild their lives in their own homes, so that the freedom which Jefferson and Lincoln did so much to give us will be a reality in many parts of the world.

More than words is needed. Unless our acts show that we believe in our democratic ideals, we lessen the chance of winning wavering men to democracy.

In my experience with foreigners in the United Nations, I have been constantly impressed by the way our prevailing adherence to the ideals of our Bill of Rights helps to close up the ranks of freedom-loving countries in opposition to undesirable measures. On the other hand, I have seen how much harm is done whenever we conspicuously depart from our professed basic principles. It lays us open to damaging charges of hypocrisy and pretense, which are hard to meet. There is no doubt that such attacks based on concrete facts do impress men from many countries whose support we need, and sometimes they are thus pried apart from the United States delegation on critical votes.

Now, freedom of information is one of the big issues in the United Nations at the present time. A treaty of great value to facilitate the work of foreign correspondents, which was originally projected by our State Department, has been put in final form by the general assembly. Over and above this, freedom of speech and press is an American ideal which means a very great deal to the citizens of countries where censorship and every sort of gross suppression have prevailed in recent years. So the way we maintain freedom of speech and press or the way we depart from it is bound to have a tremendous effect, for good or bad, upon delegates from countries like Holland, Norway, India, and Australia.

Consequently, if we enact a new sedition law like either of these bills, it will do us great harm among our natural friends in the United Nations. They know well how much suppression is made possible by the vague definitions in these bills. We just can't defend such a sedition law against the bitter attacks of our opponents, and still less against the distrust of our friends. Our professions of love for open discussion will ring hollow in their ears. And matters will be much worse when enforcement starts, with numerous inquisitions by the Subversive Activities Commission, mail opened, nonregistrants prosecuted, lists gone through with a fine-toothed comb, and all the rest of it. Frenchmen, Belgians, Dutchmen, Norwegians, Danes have had years of experience with that sort of thing under totalitarian occupations and it leaves a stench in their nostrils.

The way for us to spread abroad freedom of speech is to live up to it ourselves. The rejection of these bills will be a telling demonstration that we are governed by the principles of Thomas Jefferson.

VII

ANALYSIS OF THE ACTUAL OPERATION OF THE MUNDT-JOHNSTON BILL

It is time to examine one of these bills in some detail and see how it is likely to work. Since the two bills are much alike, I shall mainly confine this analysis to one of them, the Mundt-Johnston bill (S. 1194). Occasionally reference will be made to some significant difference in the Ferguson bill (S. 1196).

The Mundt-Johnston bill may conveniently be studied under five different aspects: (1) The purely criminal provisions in section 4; (2) the general registration machinery; (3) registration of a "Communist political organization"; (4) registration of a "Communist-front organization"; (5) practical considerations about various enforcement provisions.

1. *The purely criminal provisions of section 4.*—The bill is much more than a registration measure although it is sometimes represented to be merely that.

It imposes many serious penalties upon the expression of opinions and upon membership in organizations which are stigmatized because of their opinions. Notably, section 4 has no connection with the registration requirements. It punishes any sort of participation in the novel and very vague crime of establishing a totalitarian dictatorship in the United States. Whatever this crime means it goes far beyond the speech which is punishable under the Smith Act. The statute of limitations does not apply, so that a mature man can be punished for what he did as a college student. Yet all sorts of very wicked crimes have some limit on the possibility of prosecution. There is something barbarous about classing this vague and entirely novel offense with capital crimes like murder and treason (18 U. S. C., as amended in 1948, sec. 3281).

Nobody knows how unexpectedly a sedition law can be construed unless he has studied into such matters. The draftsman and the legislators have certain particular situations in mind, but its actual use may be against some kind of conduct which they never dreamed of. Thus a New York statute which was passed after the assassination of President McKinley to punish anarchists has never been used against an anarchist, but it was drastically enforced against Gitlow and other Communists, who are at the opposite pole of political thought from anarchists (234 N. Y. 159 (1922); 234 N. Y. 132, 539 (1922); 268 U. S. 652 (1925)). A still more striking illustration is an existing Federal statute, which looks absolutely clear. It punishes with imprisonment up to 5 years a willful "threat to take the life of the President * * *" (18 U. S. C. sec. 89). What could be plainer? At once we think of the need of shutting up the man who writes the President that he will be shot unless a certain bill is vetoed. But that is not the way this statute has worked out. A man in Beaumont, Tex., got into a violent argument about Wilson's war policies and exclaimed "I wish Wilson was in hell, and if I had the power I would put him there." He was convicted under this law, and the appellate judges held his revolting language was punishable as a threat to kill the President, because how could he be in hell unless he were dead? (250 Fed. 449).

So, if this bill passes, you cannot tell what sort of people will ever be punished for agreeing to aid in establishing a totalitarian dictatorship, but you can be sure that they will be very different people from anybody that you have in mind in the summer of 1949.

I have already pointed out that these provisions do not involve any use of force or unlawful acts. It will be a crime for two men to agree that one of them will run for Congress on a platform which a particular jury considers to involve a totalitarian dictatorship.

A further serious difficulty about section 4 (a) arises from the fact that it probably overlaps the definition of a "Communist political organization" in section 3 (3). The language is different but the substantial elements of the two passages in the bill are much the same. Therefore, it seems very possible that any active participant in a "Communist political organization" is guilty of the vague crime which is punishable under section 4. In other words, the registration provisions virtually compel them to confess their own guilt of aiding to establish a totalitarian dictatorship. Thus, besides impairing the policy of freedom of speech under the first amendment, the bill cuts into the privilege against self-incrimination under the fifth amendment.

Subsection (b) of section 4 relates to acts of disclosing secret information, something most people regard as wicked now. Hence, this provision is entirely different from the rest of the bill. If we need any new law against such wrongful acts, it seems to belong in a separate amendment to the Espionage Act, and not in a sedition bill. Moreover, if a secret is worth classifying as such, why hide it only from Communists and let it out to Fascists, columnists, and ladies at large? This country contains many more blabbers than conspirators. Here as elsewhere in the bill, I find provisions which only an emergency can justify, and which consequently have no place in a permanent statute such as this is intended to be.

Even if you do not agree with me that the whole of these bills should be rejected, I hope that you will strike out section 4 at all events. It is a straight sedition law of the most reprehensible sort. We came through the months between the fall of France and Pearl Harbor without needing any such protection against the much more powerful totalitarian dictatorship of Hitler, and we certainly do not need any such extraordinary statute now.

2. *The general registration machinery.*—This is mainly described in sections 13-15 and 17 of the bill. We can expect that if the bill becomes law, the procedure will operate in three successive stages:

First. Some organizations may register voluntarily or may do so after receiving some sort of notice that a proceeding for registration is to be begun. Some individuals within section 8 may also register of their own accord. There will also probably be defaults by organizations and individuals in cases before the Subversive Activities Commission. In all these situations the administration of the law will really begin and end in the office of the Attorney General.

Second. Contested cases will be heard and decided by the Subversive Activities Commission, to which I shall return in a moment.

Third. Either the Government or an organization (or individual) required by the Commission to register may get judicial review in the Court of Appeals in the District of Columbia and perhaps in the Supreme Court under section 15 (a).

It is my well-considered opinion that by far the most important of these three stages is the second stage, before the Commission. Except for purposes of passing on questions of constitutionality, judicial review may not play an important part for at least two reasons. In the first place, going to court is expensive and the financial resources of organizations under fire will often be small anyway; they will be further crippled by the denial of income-tax advantages under section 12, which is likely to scare off contributors as soon as proceedings start against an organization, without waiting for the final order. A recent Treasury ruling denying exemption for gifts to organizations which the Attorney General has listed as subversive is already demoralizing to the financial condition of such organizations, several of which have gone out of existence. In the second place all the evidence against an organization or on its behalf will be taken before the Commission. The reviewing court has no power to receive any new evidence. Now, any lawyer knows that the way in which testimony shapes up depends considerably upon the competence, experience, and fairness of the person or persons presiding at the trial. It is true that the court can send a case back for additional evidence and further findings, but all this will happen in the same Commission. If its attitude is definitely hostile to an organization or an individual, he may well feel that it is not worth his time and his money to seek judicial review on an unsatisfactory record. At all events, whatever the frequency of resort to the courts, it is plain that the bill gives very important powers to the Commission.

Therefore the operation of this statute depends very largely on the three persons composing the Subversive Activities Commission, set up by section 13 (a). Who are they, what will be their experience, are there any safeguards to induce them to behave like judges rather than law enforcers and policy makers, are they independent of executive control or congressional control, does the compensation attract men of unusual ability?

To any person familiar with the proceedings of administrative bodies, the answers which the bill furnishes to such questions as these is nothing short of astonishing. The bill states no qualifications whatever except that the three members are to be appointed by the President, one from the State Department, one from the Commerce Department, and one from the Army or Navy or Air Force. It is not certain whether they have to be confirmed by the Senate. There is nothing about length of service. Hence they can doubtless be removed at will, and what is worse, there is no assurance whatever of continuity of service through which men gain ripe judgment in the performance of difficult duties. So far as the bill shows, one underling after another may be shoved into this Commission for such time as he can spare from his normal work. If any decision he makes does not satisfy his superiors, off he goes. Surely this is not the way to encourage competent and impartial decisions in a novel and very controversial field.

Especially disturbing is the provision that one of these three men is to come from the armed forces. A general or an admiral in uniform is empowered to tell civilians what political parties they ought not to join and what other organizations of civilians are to exist under crippling burdens. Did I say a general or an admiral? It may very well be a major or a lieutenant (senior grade), for all the bill says. Such a military man may easily come to dominate the Commission and shape its decisions according to the wishes of those who control the armed forces. Thus an important part of the exchange of political views among citizens can be shaped by the Military Establishment. Nothing like this has ever been proposed in the history of the United States. This conception of "free institutions" would have staggered the men who drafted our Constitution at Philadelphia in 1787.

The Ferguson bill, section 12 (a) and (d), removes some of these difficulties by providing for a salary of \$12,500, a term of 3 years, nonremoval except for cause, and confirmation by the Senate. There is no characterization of members as in

the other bill, and I hope the Senate would not confirm a member of the armed forces for this judicial task.

However, the Ferguson bill has a bad snag of its own. The three members of the Commission (or Board) "shall not engage in any other business, vocation, or employment" (sec. 12 (d), p. 20, lines 9-10). What sort of men will be willing to do nothing except examine the affairs of suspected subversive organizations, all day long, week in and week out, for 3 years? Sifting the good from the bad requires historical and sociological training and insight plus judicial capacity of a high order, but there is none of the variety which makes a judge's work appealing. The danger is that nobody who is really fit for this task will touch it with a 10-foot pole. What you are likely to get is either political hacks attracted by one of the highest-paid jobs in Government service, or else persons fired by a zeal to save the country from communism.

Tremendous powers over the lives of private citizens will be possessed, under either bill, by the three men on this Commission. They can shape political action, blast reputations, make Government employees and workmen lose their jobs with small hope of getting other employment. Even if organizations condemned by the Commission get judicial review, they will not have much of a chance to reverse its decision. On the assumption that these bills are constitutional, their definitions of a "Communist political organization" and a "Communist-front organization" are so wide, that it will be hard for judges to say that the Commission was wrong in bringing an organization within those definitions. As usually happens in court review of administrative decisions, the judges may be reluctant to substitute their own judgment in place of the judgment of the officials, except in cases where the officials were plainly mistaken.

Only a terrible danger to the Nation could justify Congress in placing these enormous powers in the hands of three men who do not have the training and experience of judges or the life tenure which the Constitution considers essential to assure the independence of men who make vital decisions. Once more I ask your committee: does such a terrible danger really exist?

3. *The registration of "Communist political organizations."*—Perhaps something can be said for requiring all political parties and all organizations which are somehow associated with politics to register, but these bills do nothing like that. They impose on particular political parties or organizations very serious burdens from which other political parties, etc., are wholly free. Section 7 of the Mundt-Johnston bill (to which I again confine the discussion) requires some but not all parties to file the names and addresses of all members (perhaps 70,000 for the Communist Party), to repeat this full list every year, to keep accurate records of such names and addresses and of moneys received and expended, to file an annual financial statement. And every omitted name or address, every inaccuracy, may mean 2 years in prison for the party officers. Imagine what this would mean if it had to be done by the Republican Party or the Democratic Party?

But those are good parties, the supporters of the bill may say, and the bill hits only bad parties. Sifting bad parties from good parties is the job of the voters, by the American tradition, and not the job of Congress or Government officials. We have had confidence that most of the voters would recognize a bad party when they saw it and keep away from it. The fate of the Know-Nothing Party, which incited prejudice against recent immigrants, and the failure of the Communist Party to win any important office anywhere or even a single Presidential elector, show that this confidence in the voters is amply justified.

Only once hitherto has Congress tried to take over the job of sifting out a bad political party. That was when the Federalists passed the Sedition Act of 1798, under which the owners and editors of the four chief Jeffersonian newspapers in the country were indicted, and several other editors and well-known Jeffersonian politicians were convicted and sent to prison. (See F. M. Anderson, *The Enforcement of the Alien and Sedition Laws*, Ann. Rep. of Am. Historical Assn. (1912) 115.) This example proves that the definition of what is a "bad" political party may depend on the ideas of the particular people in power, who can shape the definition to cripple the adversaries they would like to get rid of.

The Mundt-Johnston bill uses a different method to sift out a "bad" party. It is a method much more likely to succeed in breaking up an opposition party than the Sedition Act of 1798, which gave the vital decision to 12 jurymen, whereas this bill puts the control in the hands of three officials selected by the party in power.

The basic idea in this method is to pick out characteristics of an objectionable sort which are possessed by some members of the party you want to smash, then brand the whole party with those objectionable characteristics, and consequently make it carry a heavy load in the political race against competing parties which run unburdened.

Now, this may seem very clever when it is used against parties with a communistic tinge, but it is a game two can play at. Once Congress passes this bill and gets people accustomed to the method of having officials sift out "bad" parties instead of letting the voters do it themselves, other laws can be drafted with new definitions of badness to hit some party which has nothing to do with communism. There is no logical limit to the possibility of thus proscribing an opposition party, for every party has some members with qualities capable of arousing intense and widespread detestation.

Let us imagine that the method of this bill had become familiar by the time the Republican Party was founded. Among its members were many prominent Abolitionists, who had urged or even participated in violations of the fugitive slave law. So in 1858 the Democratic Congress passed a statute defining a "disloyal political party" as one which "is dominated or controlled by persons who advocate resistance to or disobedience of any law of the United States duly enacted." The statute compelled such a party to register, with all the consequent disabilities now contained in S. 1194. A "Disloyal Activities Commission" appointed by President Buchanan and comprising two Democrats and one Southern Whig, determined that the Republican Party was dominated by law-breaking Abolitionists. This decision was affirmed by a majority of the Supreme Court which had lately refused to free Dred Scott. So the Republican Party had to register, list the names and addresses of all its members every year, mark all its mail "Disseminated by the Republican Party, a disloyal organization," and no Republican could hold any Federal office. Would Lincoln have been willing to run on the Disloyal ticket? Would he have been elected?

What is the need of introducing such a method of political proscription among free American institutions in order to get rid of the Communist Party of America, which is so nearly dead already as a political party that it hasn't nominated a candidate of its own for President for at least two elections? As Senator Carter Glass remarked, "What's the use of wasting dynamite when insect powder will do?"

The reply may be made that, although the Communist Party amounts to nothing in elections, it still exists as an organization making policies and spreading propaganda of a bad sort, and hence this bill is necessary to break it up completely. How much good will that really do? No doubt, if this bill be enacted, there will no longer be any organization called the Communist Party. My guess is that it will not register, but simply go out of existence within 30 days after the President signs this bill. See section 7 (c) (1). Then nobody can be punished for failure to register. The present 70,000 Communists will very likely join other political parties. They will be no less harmful than they are now, because they will continue to have the same ideas and probably be more resentful than ever, on account of this new law. And there is no reason to expect that they will stop meeting together in some way or other. Anybody who has studied the history of Irish societies which were working to give Roman Catholics the vote, in the days of Daniel O'Connell, can tell pretty well what will happen. Every time a particular society was declared unlawful, it was promptly dissolved and its former members started a new society to do exactly the same thing. The same process was repeated under Parnell. (See my Free Speech in the United States, 473-474.) So we can expect the formation of a large number of Shakespearean societies, Dante institutes, chess clubs, indoor baseball associations, etc. Meanwhile you will no longer know whether there are 70,000 Communists at heart or 700,000. In short, if we are scared about the possibility of Communists under the bed, let us cling hard to the existing system which encourages most of them to get on the bed where we can see them.

Finally if you drive the present Communists into other political parties, they may be able to do much more damage than now. Candidates will be found in those lawful parties who will promise extreme measures in order to satisfy their new left-wing members. As for the former Communists who will not vote at all after the party vanishes, we shall be wise to remember that the prime cause of all dangerous political agitation is discontent and that outlawing Communists is likely to double their discontent. So long as they are a lawful political party, they can say, "This isn't such a bad country after all, for at least it does give us a chance to vote for the man we want to." But if you outlaw their party, then they can say, "This country won't let us earn a decent living and now it won't even let us vote. So let's try something else."

We ought not to discuss this bill as if it affected only one political party—the Communist Party of America. That is the chief target of the bill, but its enforcers do not have to stop there. How about following up the large number of former Communists who join the Progressive Party, which they supported at the 1948

election? A good many Democrats have excellent reasons for wanting to cripple the Progressive Party; it is common knowledge that Mr. Wallace drew many votes away from Mr. Truman last November. So there may be strong pressure in favor of proceeding against the Progressive Party under the Mundt-Johnston law before the 1952 election.

Suppose that the Progressive Party convention is held early in July 1952, and renominates Mr. Wallace. A few days later the party learns that it is charged with having become a "Communist political organization" or at least a "Communist-front organization," which seems reasonably possible under the provisions of sections 3 (4) and 13 (f) of the bill. Hence section 7 (c) (2) requires it to register within 30 days after the convention. If it does register, the Progressive Party and its members will operate under all the disabilities in the statute. Of course, it has a right to get the registration canceled under section 14 (b), but such a proceeding will probably drag out till after election day. The court may vindicate the Progressive Party, but what good will that do when it had to run its whole campaign under the stigma of being a "Communist organization" with all the disadvantages imposed on it by this bill.

So the officers decide not to register the Progressive Party with the Attorney General, but to fight the issue through the Commission and the courts until the final order is handed down under section 15 (b). Mr. Wallace and the officers of the party know that they will have to conduct the campaign with the opprobrium caused by Government evidence in contemporaneous hearings before the Commission, but at least, so they think, they will escape all the disabilities and penalties in this bill.

But are they right about escaping the penalties of fines and imprisonment under section 16 (a)? I don't believe so. The bill has a joker in it. Of course, if the final order is in favor of the Progressive Party, nobody can be punished. The trouble will come if they contest without registering, and then the final order goes against them. Let us suppose that the court decides early in December, 1952, that the Progressive Party is a "Communist political organization" and became such at its Presidential convention early in July. This decision reaches back to its initial failure to register. The statute required it to do so within 30 days after the convention. You can't ignore section 7 (e) (1) and (2), in spite of clause (3) immediately afterward. That means that the officers of the party had "the duty," by section 7 (h) to register early in August and also to file a statement listing the names and addresses of every member of the Progressive Party. Since a million people voted for Wallace in 1948, this is quite a job to do in 30 days. Well, they didn't do it, and so the officers are liable to the penalties provided by section 16 (a) (2): "each individual having a duty" under section 7 (h) "to register or to file any registration statement * * * on behalf of such organization, * * * shall, upon conviction of failure to so register," etc., "be punished for each such offense by a fine of not less than \$2,000, * * * or imprisonment for not less than two years * * *, or by both." I do not see how the officers can get away from this punishment, if they lose the registration case.

Furthermore, 4 months or over 120 days must elapse between early August and early December when they do actually register in accordance with the court's decision. The bill says (p. 34, lines 5-7) that "each day of failure to register * * * shall constitute a separate offense." Therefore any officer of the party who had a duty to register is liable to a fine of not less than \$240,000 or imprisonment of not less than 240 years, or both.

It is my well-considered opinion that any good lawyer who was consulted by the officers of the Progressive Party in July would have to advise them that they ran a very serious risk of this enormous punishment unless they registered early in August. Human nature being what it is most of these officers would probably resign at once. It would be pretty hard to get anybody to direct the campaign after the end of July. The Progressive Party would be broken up right away by fears of losing the registration contest. Even if it won that contest in court in December, it would be just as broken up in August.

To sum up this matter of "Communist political organization." Probably the Communist Party of America does have some links with Moscow, and certainly some of its members engage in talk and organizational activities which are very repulsive to most Americans. But even if anything is gained by breaking up a party which comprises only one-tenth of 1 percent of our population, the Smith Act of 1940 is amply sufficient. So is it wise, for the sake of getting rid of the Communist Party, to enact still another sedition law, which can easily be used to break up some other party to which many honest patriotic citizens belong and to warp and demoralize the normal processes of self-government?

To pass one of these bills in order to hit Communists is like using a hammer to swat a wasp on a baby's head.

4. *The registration of a "Communist-front organization."*—Most of what has just been said is applicable to these organizations, except that only officers and not members have to be listed in registration statements and annual reports. Inasmuch as this part of the bill is likely to reach many more groups, whose purposes are often cultural as well as political and who are engaged in exchanging ideas rather than winning elections, the interference with the lives of private citizens is much more extensive than in the case of "Communist political organizations."

Here again, there is something to be said for a general registration law requiring all groups, which attempt to influence public opinion, to disclose the pertinent facts about themselves through systematic procedures. The harmfulness of nondisclosure is by no means confined to "Communist-front organizations." For instance, virulent anti-Semitic circulars and pamphlets falsely and libellously accusing long lists of well-known decent citizens with being disloyal are often widely mailed by organizations with high-sounding names, which take good care not to mention their authors and the men who put up the money. A broad statute to break through this vicious anonymity of defamers of every sort is recommended in the 1947 report of the President's committee on Civil Rights (To Secure These Rights, 51-52, 164). On the other hand, my book on Government and mass communications (vol. II, 489-494) presents some serious doubts whether such a statute will be a desirable remedy for vicious anonymity; it is likely to be enforced inefficiently and in a haphazard way, and to stifle more good views than bad views.

At all events, if Congress thinks a compulsory disclosure law for propaganda is needed, then it is needed for all sides of political, racial, and religious controversies. Such a law should seek to force into broad daylight all the enemies of democracy and not just a particular portion of them as in this bill, leaving the rest to remain in the darkness they love, because their ways are evil.

We can guess what sort of groups will be classed as "Communist-front" from the list of subversive organizations made by Attorney General Clark (New York Times, December 5, 1947), and he said that other groups might be added. The restriction on the use of the mails under section 11 (1) will probably be a burdensome limitation on several organizations which serve very desirable purposes, even if they include Communists among their supporters. Thus the Joint Anti-Fascist Refugee Committee, which on the Attorney General's list has been largely backed by Dr. Walter Gannon, a great physiologist, and by his medical friends in order to rescue from tyranny, misery, and disease thousands of refugees from Franco Spain. It is ironical that men who profess to be engaged in an attack on totalitarian dictatorship should do their best to discourage help for the victims of one of the cruelest of totalitarian dictatorships. The ease with which a desirable organization can be condemned as communistic on the basis of very thin evidence is shown by Professor Walter Gellhorn of Columbia in an article relating to the wholly unfounded blacklisting (or Red listing) of the Southern Conference for Human Welfare by the House Un-American Committee (60 Harvard Law Review 1193, October 1947). Although the southern conference is not yet on Attorney General Clark's list, it is possible that the Un-American Committee may bring about its condemnation by the Commission set up by this bill. Then that organization would have to describe itself on all its publications as a "Communist organization." This novel stigma recalls the practice of medieval princes to require Jews to wear special marks on their coats.

5. *The practical considerations about various enforcement provisions.*—The various penalties provided by this bill for organizations which are registered or ought to register are very severe and will interfere greatly with the lives and liberties of American citizens who have committed no acts of force or violence and most of whom have not been proved to be dangerous individuals.

The first penalty is fine or imprisonment, with the oppressive cumulative provisions already mentioned. In addition to what has been said, it should be noted that under section 8 an individual, who has done nothing in the way of wrongful conduct or wicked words except that he is adjudged to be a member of a "Communist political organization" without having his name listed, will be fined \$2,000 or imprisoned for 2 years for every day he neglects to register. He will be punished worse than any counterfeiter, not because he is bad, but because of the activities of other people. This conception of guilt by association is abhorrent in a free country. (See the article by John Lord O'Brian in 61 Harvard

Law Review 592, April 1948; and my book on Free Speech in the United States, pp. 472-484.)

The second penalty is exclusion from Federal employment, under section 5 (a) (2), of any member of a "Communist political organization." This is not just a question of not employing Communists in Government jobs. The bill may (as already pointed out) bar any supporters of Henry Wallace. This prohibition includes teaching in the Washington public schools. Furthermore, prospective employees who are open to any possible suspicion may easily be kept out of such teaching and other Government work without any determination by the Commission (or a court) that they really are member of a proscribed organization. This will happen because section 5 (d) punishes any official who knowingly employs a member of such an organization (p. 35, lines 3-9.) Consequently, if the official in charge of employment has any doubts, he will turn the suspected applicant away in order to save his own skin. He will not want to run any chances of going to prison himself.

In view of the President's loyalty order, it is hard to see the slightest need for this fresh combing-over of Government employees. The completion of the loyalty check resulted in the discharge of one-three-hundredths of 1 percent of Federal employees. Only one-tenth of 1 percent resigned while under suspicion, many of them probably because they preferred private jobs where they were treated like honest men. Not one among the millions of employees subjected to the loyalty test has been indicted for a crime (New Yorker, May 21, 1949, p. 37). The loyalty review boards are composed of men with experience in important work, who are more likely to be competent and impartial than the Commission set up by this bill.

The third penalty is the denial of a passport under section 6 to members of a "Communist political organization." We are constantly blaming the Russians for not allowing anybody whom their government dislikes to travel abroad, and yet we are now proposing to do much the same thing ourselves. Of course the existing law allows anybody who is personally dangerous to be refused a passport. Why isn't that enough to keep the country safe?

The fourth penalty is the exclusion from mails and express under section 11, of publications relating to the affairs of a "Communist political organization" or of the numerous bodies which are likely to be classed as "Communist-front." This includes letters as well as printed matter, by section 3 (6), so long as the letter is intended to be read by more than one person. How can any enforcement official tell that the contents of a sealed letter violate this bill without opening the letter? Therefore section 11 involves breaking into private correspondence, one of the most odious forms of petty tyranny.

Taking an over-all view, I see that many other kinds of prying besides opening letters will be necessary if this bill is to be effectively enforced. The Commission hearings cannot help being inquisitions into men's "dangerous thoughts." Conversations will be reported by participants, so that men will begin wondering whether it is safe to say anything to supposed friends. People will eavesdrop on their neighbors. Secret police will be multiplied, to catch all these new crimes. Spies will be introduced undercover into suspected organizations in the hope of collecting evidence. This has already been going on extensively in the Communist Party, and the Government evidence in the pending trial in New York City reveals that at least three undercover agents of the United States were actually engaged in persuading men to become Communists and take part in what their official employers considered to be a criminal conspiracy against the United States (New York Times, April 13, 1949, p. 22, column 2; May 3, p. 3, column 7; May 18, p. 19, columns 4-5). It is only a step to agents provocateurs, spies who incite organizations to commit unlawful acts for the sake of getting damaging evidence against those organizations—the sort of thing which the La Follette Committee showed to be going on inside labor unions. (See what Oliver, a spy planted in English radical groups after Waterloo, used to do. Hammond, The Skilled Labourer, 341-376). You get a man changing so often from revolutionist to spy and back again that he does not know himself which he is. It is like Russia under the Czars. (See Joseph Conrad, Through Western Eyes.) It is bad enough to have numerous undercover spies inside the Communist Party. The passage of this bill will spread them into a whole new flock of suspected organizations, many of them much more legitimate than that party. No doubt, all sorts of queer devices are sometimes necessary to catch really dangerous criminals, like gangsters and violent revolutionists, but the enforcement methods which this bill requires are a terribly high price to pay for tracking down nothing except objectionable ideas.

In 1920 Gov. Alfred E. Smith of New York vetoed a bill which authorized the attorney general to conduct investigations of violations of the State sedition law. He said (*Progressive Democracy*, p. 275):

"There is no just cause for providing any different method for enforcing the criminal anarchy statute from that employed in enforcing the other penal laws of the State—through the agencies of the grand jury, the magistrate and the district attorneys of the respective counties of the State. The traditional abhorrence of a free people of all kinds of spies and secret police is valid and justified and calls for the disapproval of this measure."

VIII

In this statement I have not gone into questions of constitutionality. The main question before your committee is the wisdom of these bills and not their validity. Such an extraordinary measure can be justified only by a tremendous danger within our Nation. Are these novel penalties, is this novel machinery, required to save the country? It is not enough that Communists are pestiferous people or indulge in big talk about taking over our Government. The question is whether they are within a million miles of doing so. Jefferson said in 1801: "I believe this the strongest Government on earth." Because I confidently share his belief, I hope very much that your committee will reject these unheard of bills.

Sincerely yours,

ZECARIAH CHAFEE, Jr.

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