

by the Supreme Court until, in *Dennis v. United States*,<sup>688</sup> it considered the convictions of eleven Communist Party leaders on charges of conspiracy to violate the advocacy and organizing sections of the statute. Chief Justice Vinson's plurality opinion applied a revised clear and present danger test<sup>689</sup> and concluded that the evil sought to be prevented was serious enough to justify suppression of speech. "If, then, this interest may be protected, the literal problem which is presented is what has been meant by the use of the phrase 'clear and present danger' of the utterances bringing about the evil within the power of Congress to punish. Obviously, the words cannot mean that before the government may act, it must wait until the *putsch* is about to be executed, the plans have been laid and the signal is awaited. If Government is aware that a group aiming at its overthrow is attempting to indoctrinate its members and to commit them to a course whereby they will strike when the leaders feel the circumstances permit, action by the government is required."<sup>690</sup> "The mere fact that from the period 1945 to 1948 petitioners' activities did not result in an attempt to overthrow the Government by force and violence is of course no answer to the fact that there was a group that was ready to make the attempt. The formation by petitioners of such a highly organized conspiracy, with rigidly disciplined members subject to call when the leaders, these petitioners, felt that the time had come for action, coupled with the inflammable nature of world conditions, similar uprisings in other countries, and the touch-and-go nature of our relations with countries with whom petitioners were in the very least ideologically attuned, convince us that their convictions were justified on this score."<sup>691</sup>

Justice Frankfurter in concurrence developed a balancing test, which, however, he deferred to the congressional judgment in applying, concluding that "there is ample justification for a legislative judgment that the conspiracy now before us is a substantial threat to national order and security."<sup>692</sup> Justice Jackson's concurrence was based on his reading of the case as involving "a conviction of conspiracy, after a trial for conspiracy, on an indictment charging conspiracy, brought under a statute outlawing conspiracy." Here the government was dealing with "permanently organized, well-financed, semi-secret, and highly disciplined organizations" plotting to overthrow the Government; under the First Amendment "it is not forbidden to put down force and violence, it is not forbidden to punish

---

<sup>688</sup> 341 U.S. 494 (1951).

<sup>689</sup> 341 U.S. at 510.

<sup>690</sup> 341 U.S. at 509.

<sup>691</sup> 341 U.S. at 510–11.

<sup>692</sup> 341 U.S. at 517, 542.