

*Opening Statement on Behalf of Defendants, Stachel
and Winter*

(T-1198) must have created certain illusions in your mind with respect to this case long before you heard the indictment read, I think it is necessary to point out to you precisely what this indictment charges by indicating what it does not charge.

Nowhere in this indictment, and I hope that before we proceed much further each of you will have a copy of the indictment to read for yourselves, nowhere in this indictment will you find my clients charged with being agents of any foreign power, even though there has been some reference in the United States Attorney's statement to the effect that they have visualized bringing the Russian system to America. Nowhere in this indictment will you find my clients charged with spying.

Mr. McGohey: If the Court please, I object to a statement of what is not in the indictment. We are here for the purpose of trying what is in it.

The Court: Yes, that is right, and I don't quite understand this negative approach, Mr. Crockett.

Mr. Crockett: Your Honor, the negative approach seems to me pertinent because of what, I pointed out before, what has gone on before, I think the jury is entitled to know specifically what there is in the indictment.

The Court: These defendants are not charged with being spies. What do you bring that in?

(T-1199) Mr. Crockett: That is true, but there was some reference to the Smith Act, and the Smith Act was tacked on to the Alien Registration Act, and that constitutes a body of law covering spying and so forth.

The Court: They are not charged with that at all. There is no use of pointing out imaginary men of straw and laboring them. Now, the question is what is the charge here.

Mr. Crockett: I wish to remind the Court that I did not build the imaginary men but, as a matter of fact, I didn't draft the indictment.

The Court: No, but you brought in the question of whether they were charged with being spies, and they aren't so charged.

*Opening Statement on Behalf of Defendants, Stachel
and Winter*

Mr. Crockett: Finally, I think it is important, in your consideration of this indictment, that you realize that what we are trying here is a political party. That appears in the second paragraph of the indictment. We are trying the right of a group of people to organize as the Communist Party.

It seems strange, and the United States Attorney has made mention of the fact, that we would be engaged in trying this party in the absence of its leader, who is, of course ill, as Mr. McGohey told you, but he knows more about this party, more about what it stands for, (T-1200) and more about what it has done in recent years than any of these other defendants. So it is my hope that before this case is over, I will be able to lay before you his testimony. In the event, the very unlikely event, he is unable to be here in person, I sincerely hope that the Court will indulge me in taking his deposition.

Mr. McGohey: I object to that. Certainly this is no part of the opening statement.

The Court: Isn't that the motion you made a couple of times, and I denied, Mr. Crockett?

Mr. Crockett: Your Honor, I would like to point out the importance of having the testimony of Mr. Foster before the jury in order that I might complete the proof of the innocence of my clients.

The Court: Well, you know, questions of law ought not to be argued to the jury. It is supposed to be a factual matter. Now, as far as applying to me again to take a deposition, you will remember that I wrote that opinion last November in which I indicated what you should do about that. Months went by and you did nothing; and then you waited until after these proceedings began, and then made these motions to take the deposition, which would only have disrupted this proceeding, and I denied the motion the first time, and I denied it the second time. And I have an idea, if it is made again, (T-1201) I am going to deny it again. I don't think you ought to refer to such matters.

Mr. Crockett: I have no desire, your Honor, nor do I think it would be proper—

*Opening Statement on Behalf of Defendants, Stachel
and Winter*

The Court: You did.

Mr. Crockett: —to argue the necessity of the Court granting a motion which I haven't as yet made to take the deposition of Mr. Foster.

The Court: You have already had a pretty good indication of the Court's reaction to the motion by having it mentioned last November in my opinion, and then by having a motion made and denied, and renewed and denied again. I should have thought that you would have had a pretty good notion as to what my position was on that matter, which is one of law and with which the jury has no concern.

Mr. Crockett: There is an old saying, your Honor, that hope beats eternal in the human breast. I still have hopes your Honor will consider and permit us to bring before the jury the testimony of Mr. Foster.

The Court: You know, when you refer to things that you should not refer to, it only leads to complications. I don't think there has been any harm done at all, but I think it is well if you would stick to what you are going to prove.

(T-1202) Mr. McGohey: Pardon me. I move, your Honor, that there be stricken from the record the last observation of Mr. Crockett's, that he still hoped that you would permit this testimony to be brought before the jury. Whenever the ruling—

Mr. Crockett: Haven't I the right to hope that, your Honor?

The Court: Well, I don't like striking things out and I don't like to be unpleasant in any way; and I had indicated, however, for the benefit of Mr. Crockett and his associates, as I have already indicated, that I am not going to direct the deposition of Mr. Foster to be taken. Now, I have said that twice, I have said it a couple of more times now, and I imagine, when it comes up again, I will say it again. So, whatever Mr. Crockett's hope may be, I really think it is illusory.

Mr. Crockett: I should like to conclude my remarks at this time, members of the jury, with the thought that I am aware that you are anxious to do your duty as jurors in

Opening Statement on Behalf of Defendant, Winston

this case. Doing your duty, of course, necessitates that you listen carefully to all of the testimony presented by both sides. It might very well be that we will be precluded from presenting some of the testimony that we would like to bring before you. However, I can assure that we will do our best to bring before you everything (T-1203) that we believe has a bearing on the innocence of our clients.

* * *

The Court: Very well.

(Short recess.)

(T-1204) Mr. McCabe: May it please your Honor, members of the jury, my name is McCabe, by the way, Louis McCabe. You may not have heard of me. I represent Henry Winston, the defendant there.

(Defendant Winston rises.)

Mr. McCabe: You have heard something about Winston in the remarks of Mr. McGohey. You will hear a great deal more about him as this case develops.

For the moment I'll say no more than that Winston was drawn into the struggles against bigotry, oppression, discrimination, at a very early age—perhaps, as you will see, through personal experiences. He was attracted to the Communist Party through the struggles of that Party, to prevent the legal lynching of a young Negro out in Texas, and from his experience grew a close relationship with leaders of the Party—Mr. Foster, Dennis and others of whom you have heard. Through his interest, through his ability, through his hard work, he has risen to a position of leadership in the Communist Party, which would probably have been denied him in many other parties or organizations.

You have heard a forthright and detailed denial of the existence of any conspiracy and any planned or advocated use of force or violence against the Government of the United States. You have heard that eloquently (T-1205) from the lips of Mr. Dennis. You heard it repeated by Mr. Crockett.

Opening Statement on Behalf of Defendant, Winston

I shall not dwell upon the details of the defense, but there are some things I think it may be well for you as jurors to hear now, because it is going to be a considerable length of time before you hear all these things that we have said the defendants are going to prove; it will be a considerable time. Meanwhile, you will be sitting there hearing day after day—I hope it won't go on week after week, but you will be hearing testimony on the part of the prosecution.

Now Mr. McGohey has said that he will show by documents and by oral testimony the evidence which he hopes to base a final demand for conviction of these defendants, and I would like to say a word now as to what our attitude will be towards that evidence. Obviously, as you have heard already, I cannot go into detail as to the documentary evidence beyond the mention of some literature which Mr. McGohey has named, but let me say this, as to some of the literature which will be produced here, I haven't the slightest doubt that Winston and his fellow workers will proudly claim authorship and sponsorship.

(T-1206) As to other documents, so-called historical documents, Mr. Dennis has adverted briefly to those.

We all know that in the history of any country, of any religion, of any movement which has persisted throughout many years there develops a body of so-called historical literature, literature which at the time under the circumstances when it was written in the face of the evils or conditions to which it was directed, had absolute and complete validity but which with the passage of time, the development of civilization, the arising of new ideas, assumes a sort of venerable air without being applicable to the present situation. We don't have to go any further than the Declaration of Independence. If we read the Declaration of Independence, as I hope all of you have, and I am sure you have, you will find that a great deal of material in the Declaration of Independence would be inappropriate today, just as our National Anthem under certain circumstances it was found even advisable in deference to one of our late Allies in the war to refrain from singing certain portions of that anthem which has stirred the minds, the hearts, the patriotism of so many Americans for so many years. Yet what would we say of anyone who would at-

Opening Statement on Behalf of Defendant, Winston

tempt to prevent the introduction of the Declaration of Independence in all its glorious (T-1207) vigor? So it is with some of these historic documents.

You will find that the Communist Party published them, espoused, sponsored them, distributed them as widely as possible not only for their historic value but also for the habits of thought, the instruction which they had. So that by judging what the founders of modern socialistic doctrine thought by substituting how they approached the situations of their day, how we may better approach and analyze the situations confronting us today.

As to some documents I don't know—I hope that won't arise—there may be an outright denial of the authenticity of the documents. That will be a matter for you to decide whether these defendants are responsible for those documents or not.

As to other documents the authenticity may very well be admitted but the responsibility of the defendants or the Communist Party for that literature may be denied.

Let me quote for a moment from the Constitution to which Mr. McGohey has referred, and it is a brief quotation.

The final article, Article 14, yes, says, "The Communist Party is not responsible for any political (T-1208) document, policy, book, article or any other expression of political opinion except such as are issued by authority of this and subsequent National Conventions and its regularly constituted leadership."

We all know that no political party is responsible for every word uttered by a member, an officer or a candidate. No church is responsible to adopt or sponsor as its official program the words, the letter of every sermon preached from Sunday to Sunday.

So as I say I don't know what documents you will have before you but I do say that you will have before you the Constitution, the program of the Communist Party.

We will show you that that program was adopted not in a smoke-filled room, it was adopted not because of the vote-catching quality of some of its phrases, not for the purpose of putting before the public, not for the purpose of saying we are for lower taxes, we are for more and better housing, we are for lower prices and then having it forgotten after an election.

Opening Statement on Behalf of Defendant, Winston

We will show you that the program of the Communist Party was adopted after the most thorough democratic discussion, a program dictated and adopted by Americans for Americans.

Mr. McGohey has said that he will show you what the defendants did in furtherance of what the indictment (T-1209) calls a conspiracy. We will show you that too. We will show you that what they did was to spend every bit of energy, brains they had in furthering the progressive program of the Communist Party not by force and violence, but we will show you that they did that in the halls of Congress trying to get progressive legislation passed. We will show you that they did it in the Assemblies of State Legislatures. We will show you that they did it in the Councils, deliberative bodies of cities and boroughs, an unwavering devotion to that program which did not even stop with the legislative bodies, because we will show you that they tried to put that in action down to the level of the community, the family and the individual.

We will show you their struggles to protect the bewildered family facing eviction, or the innocent inexperienced lad accused of a crime that he didn't commit.

These things we will show you. We will ask you if you can read out of any of these actions any conceivable possibility that the persons who were engaged in those actions were spending all their time to simulate.

We will show you that it would be impossible for these defendants to do what they did and still be prowling around in the background as Mr. McGohey has said the witnesses will tell you, using this as a front and hiding behind the (T-1210) facade of all these actions to overthrow the Government by force and violence.

There again we come to other kinds of testimony which Mr. McGohey says will be introduced, that is, the oral testimony, and I dwell on this a bit because long before you hear from the defendants you will hear what may well be a procession of witnesses from the stand glibly saying what Mr. McGohey indicated would be said, that all of this was a front, that this Constitution was a mere sham. These people, who I must assume, if they are going to be able to tell you or to pretend to tell you what went on in the conference room which Mr. McGohey has said was a closed

Opening Statement on Behalf of Defendant, Winston

meeting and kept for members only, I must assume that you will be greeted with certain persons who will say that they themselves were members and they will say "this was all said; I will tell you just what went on."

Now I say to you that the credibility of a witness, as his Honor has told you, is entirely for you. That is one of your most difficult tasks. You and you alone have the right to brand testimony coming from that stand as a lie. You have served as jurors before; you may have developed your own tests.

Mr. McGohey: If the Court please, I object to (T-1211) this instruction on the law which I think your Honor is quite adequate to give. I don't see that this is an outline of what the defendants propose to prove at all.

The Court: Well, I think it is proper for Mr. McCabe to refer to the fact that the jury will pass on the credibility of witnesses. I see no harm in it. It is a legal point in a way, but I did repeatedly mention that fact to the jury. I think I will allow him to do that.

Mr. McGohey: Very well.

Mr. McCabe: I think his Honor may have said and may say it again, that where a jury finds that a witness has been false in one respect they do not necessarily have to find that he is false in all respects, but they may, they are entitled to disregard his testimony.

So I say to you that if you find a witness who will come before you and say "Yes, I lived with these defendants, I have pretended to be one of them. I fooled them. Now I come forward and I purport to tell you what they actually believed and said."

(T-1212) I'll say that there is one thing, you know, about that witness; you may not know much about him but you do know that he is an accomplished liar. You do know that he has been capable of living a lie, and I say that now because the ordinary means of cross-examination don't always expose to the jury the fictitious quality of a witness's testimony. It is very seldom that a witness, after being cross-examined, will get up and admit that he was lying. He is not going to do that, but sometimes he gives himself away. When I say you have a witness who has testified that he has lived a lie, then watch him carefully, scrutinize his testimony very carefully. And there again

Opening Statement on Behalf of Defendant, Winston

we all know that the person who abandons a group, a society, a church, who falls away, he is not always a reliable witness about that group or society or church. He has been a back-slider. He is not going to admit that it was his fault, that he drifted away; oh no; the church betrayed him; the group betrayed him. That is what is going to happen. The fault was anybody's but his own, and in order to justify his own action he has to belabor his former comrades. I suppose you have heard, some of you, from your parents or grandparents about the Protocols of Zion, the famous Maria Monk stories which were supposed to be stories of escaped nuns—

(T-1213) Mr. McGohey: If your Honor please, I submit that this is not part of the indictment in this case at all.

The Court: It is not.

Mr. McGohey: And I object to it.

The Court: Mr. McCabe, you know when I try to give counsel a little latitude, don't take advantage of that. Now I just don't know what the stories are that you refer to, but you know the opening is supposed to be an indication to the jurors of what you are going to prove, and, as I said, I think counsel ought to have a little latitude. You need to warm up a little bit, but you have been through a warming-up process here and I think you had better get down to tell them what you are going to prove, and that is what the opening statement is supposed to be for. I think you had better cut out the stories about the nuns.

Mr. McCabe: If your Honor does recall them, and I think that is why Mr. McGohey rose—

The Court: Well, I have heard so many things at this trial that I never heard of before, and those are among the things that I never heard of before; they are probably interesting to you and to your friends, and probably to other people, but I never heard about them before, and frankly I have an extremely remote (T-1214) interest at the moment, so just leave out the stories about the nuns and get to work.

Mr. McCabe: Now having scrutinized the testimony coming from that stand, you will at length come to the point somewhere along the line where you will have to apply that testimony directly to the indictment which you

Opening Statement on Behalf of Defendant, Winston

will have before you. Now some of the ideas which will be related to you by the defendants as the program of the party, the program of Socialism itself may seem to some of you to be terribly radical; the program itself, apart from any hint of force or violence, which I am sure you will not find in it, but just some of the economic principles espoused may seem to you to be—to cause a little head-shaking and pretty radical.

I say to you, and I am sure his Honor will say to you, that your attitude towards these economic principles is not in any way to prejudice you against these defendants or in any way to weigh with you, inclining you towards a verdict of guilty rather than a verdict of not guilty.

After all, the progress of our country has been furthered by radical ideas. We are, as a nation, people who are never quite satisfied. It is well that we are not. If a thing is bad, we want to make it better. If it is pretty good, we still want to make it better. (T-1215) If it is almost perfect, well, we will want to improve on it.

That should not be applied merely to making better automobiles, or better washing machines, or better television sets. There is no reason why it should be confined to items of our civilization, items of our daily life, which affect not all of us, and be kept out of that element of our life which affects every one of us. Not all of us may enjoy a television set but every one of us has the problem of food and clothing and shelter.

Investigation, experimentation regarding the proper form of economic and political government did not end with Washington, Jefferson, Madison, Lincoln; did not end with Franklin D. Roosevelt. It goes on today as it should go on.

Henry Winston, William Foster, these other defendants, as you will see, firmly, honestly, decently believe that in the principles that they are espousing they have found the best answer to the problems which confront every one of us every day. They believe they have found the answer to the person who faces unemployment, they believe they have found the answer to the woman who looks at her son and wants to know whether he is going to be able to grow up without experiencing the terrors of another war, and wants to know that if he comes back from that war and

*Opening Statement on Behalf of Defendants, Davis, Jr.,
Gates and Potash*

has any difficulties, he is going to be (T-1216) treated as a first class citizen and not as a second class citizen.

These men, members of the jury, as you will see, believe that as honestly and firmly as any one of us believes in doctrines or dogmas to which he is attached.

I say to you, hear the testimony of the Government, hold your minds open, as his Honor has told you time and time again, don't at any time say to yourself, "Now I have the answer," "Now I know what the answer is," "Now I know how I am going to decide about this," but keep your mind open and be true to your oaths.

At the conclusion, I think I will be able to repeat to you what I say now, that you will find that Henry Winston is guilty only of devotion to his country—to the American people.

The Court: Ladies and gentlemen, by the request of counsel, we will now adjourn for the day, and we will meet tomorrow at 11. The openings of counsel will run into the middle of the afternoon and then we will adjourn again and the taking of testimony will begin at 10.30 o'clock Wednesday morning.

So that you may now leave to return tomorrow morning at 11.

(Adjourned to March 22, 1949, at 11.00 a.m.)

(T-1217)

New York, March 22, 1949;
11.00 o'clock a. m.

TRIAL RESUMED.

Mr. Sacher: May it please the Court, ladies and gentlemen of the jury, may I with your permission at this time introduce the three gentlemen whom I have the honor to represent in this case. First I should like to introduce Mr. Benjamin J. Davis, Jr., member of the Council of the City of New York since January 1944.

*Opening Statement on Behalf of Defendants, Davis, Jr.,
Gates and Potash*

(Defendant Davis stood up.)

Mr. Sacher: Next I should like to introduce Mr. John Gates, editor of the Daily Worker and the Worker.

(Defendant Gates stood up.)

Mr. Sacher: Finally I should like to introduce Mr. Irving Potash, who is international vice-president of the Fur and Leather Workers Union CIO.

(Defendant Potash stood up.)

Mr. Sacher: Now, ladies and gentlemen, I think it is essential that as you sit on the threshold of this case that you should have some knowledge of (T-1218) the people who are on trial here, and I will therefore try as rapidly and as briefly as I can to give you something of a thumbnail sketch of the origins, so to speak, of the life of each of these men and try so far as I can to indicate to you what the evidence will show as to the circumstances, the occasions, the causes and promptings which brought each of these three men, coming from different parts of the country, born in different sets of circumstances, to join the Communist Party and to become members of its National Board.

I should in the first place like to say a few words to you about Mr. Davis. Mr. Davis is the grandson of a woman who was born into slavery in the South.

(T-1219) His father, through hard struggle, and notwithstanding the oppressions of the area in which he lived, succeeded in accomplishing two things that are quite remarkable for any Negro in the South. In the first place, he became at one time a National Committeeman of the Republican Party from Georgia. And by dint of great sacrifice, by both Mr. Davis's father and mother, Mr. Davis was enabled to receive a most unusual opportunity in the form of education.

The evidence will show that Mr. Davis attended Amherst College, and after his graduation from that outstanding college he studied law at Harvard University, Cambridge, Massachusetts. He is a member of the bar, he is a member of the bar of the Federal Court in Georgia,

Opening Statement on Behalf of Defendants, Davis, Jr., Gates and Potash

and in receiving the testimony here concerning Mr. Davis, I shall ask you, throughout the trial, not only to give him the benefit of the presumption of innocence which every person who is charged with the commission of a crime receives, but I ask you to bear in mind that, as a lawyer, Mr. Davis has sworn to uphold the laws of his State and of his country. I ask you to bear that in your minds throughout the case.

Perhaps the course which Mr. Davis ultimately took, in joining the Communist Party, was foreshadowed, as the evidence will show, in his professional activities (T-1220) as a young lawyer. Away back in the early Thirties, as the evidence will show, Mr. Davis undertook the defense of a Negro boy, who was charged with something not very different from what Mr. Davis is himself charged with today in this court, for leading unemployed workers to ask for relief; and Angelo Herndon was charged with attempted insurrection against the State of Georgia. And it fell to Mr. Davis's lot, fell not by accident but by choice, the choice of a man who, notwithstanding the great advantages which he had enjoyed, never forgot the duty that he owed to his own people—to make that education and those talents of his available to his people.

And you will hear from his own lips, the humiliation, the suffering, the threats and the maltreatment at the hands of a Southern white judge which Mr. Davis received in the course of his effort to defend his people and to discharge his duties as a member of the bar in the defense of a man who is charged with crime.

Perhaps most of you will recall that ultimately Mr. Davis's efforts were crowned with success when the Supreme Court of the United States reversed the vicious conviction of Angelo Herndon and sent him to his freedom.

The Herndon case did open up Mr. Davis's eyes to evils much greater than those which, as a Negro, he experienced both in the North and in the South.

(T-1221) So we find that not long after his successful efforts in behalf of Angelo Herndon, Mr. Davis once again raised his powerful voice, and placed his high talents at the disposal of nine boys who were being railroaded by perjury and false testimony to a premature death. I refer,

*Opening Statement on Behalf of Defendants, Davis, Jr.,
Gates and Potash*

of course, to the case of the Scottsboro boys. And if then Davis never did another good thing in his life, he must forever remain immortal in the hearts of the American people for the contribution which he made to democracy and the administration of justice by the role that he played in the defense of the Scottsboro boys.

I suspect that most, if not all of you, are Northerners. I also suspect that, perhaps, most of you, like myself, have made very few trips or excursions into the so-called fair Southland, but we have all read of that section of the country. We know what it means to be a Negro in the South, and needless to say, these two historic efforts which Mr. Davis made on behalf of his people, on behalf of democracy, were most distasteful to the overlords of the South, and so Mr. Davis had to move North. The South was no longer a safe place for him.

When he came North he enlarged, he expanded the field and area of his activities.

(T-1222) By this time, having experienced the contribution which the Communist Party had made in the defense of Angelo Herndon and the Scottsboro boys, he came to the realization that the Communist Party was the Party which it was incumbent upon him to join, to identify himself with, and to work for, if he was to serve the best interests of his people.

At this juncture, ladies and gentlemen, I think I ought to make one or two observations. I think you ought to understand throughout this trial that you are not being asked to embrace Communism or Socialism. We do not ask a single juror to change his opinions concerning politics or economics or religion. All we are trying to do is explain to you that these men, each in their own way, each guided by the light which was given to him, has come to see in a certain political party the vehicle for the peacetime democratic realization of the hopes and aspirations which each of us has, the hope and aspiration to live in freedom and equality—not just formal freedom and formal equality, but genuine freedom and equality, equality which is social equality, equality which is political equality, equality which is economic equality.

*Opening Statement on Behalf of Defendants, Davis, Jr.,
Gates and Potash*

Each of us will seek the Kingdom of Heaven in our own way, but let not any of us be so bold, or so (T-1223) arrogant, or so conceited as to believe that his own way is the only way.

Mr. Davis, as I said a moment ago, came to New York and he immediately identified himself with activities which served, not only the interests of his own people, but the interests of all. So that we find, within a few years after he came to New York, in the fall of 1943, Mr. Davis was elected for the first time as a member of the Council of the City of New York, a most unusual distinction and tribute.

(T-1224) Notwithstanding all of the attacks which were leveled at him and which all of us in all frankness have heard leveled at Communists, he was elected.

I believe he was the only Negro member of the Council.

Then after two years of distinguished service in the Council of the City of New York he was re-elected to a four-year term commencing as of January 1946 and expiring at the end of this year, and in the course of that time he introduced many, many bills, many pieces of legislation which are now on the statute books of New York, legislation which has benefited not only the Negro people in the City of New York but all of the people, legislation designed to eliminate discrimination against Jews and Negroes and all minority national and racial groups in our city, legislation designed to promote and advance the democratic rights of the people of our city and of our nation.

Force and violence so far as Ben Davis is concerned? Ladies and gentlemen, when you hear the story from his own lips you will come away with the conviction, as I have, that the only relationship that Ben Davis has had to force and violence throughout his life has been the effort to combat the use of force and violence against his own people, against (T-1225) working men and women who seek a better living standard, against the children of our own city and against all and sundry.

By proposing Federal anti-lynch laws, by fighting for the enactment of laws which will repeal the poll tax laws, by insisting upon the enactment of a national fair employ-

*Opening Statement on Behalf of Defendants, Davis, Jr.,
Gates and Potash*

ment practices committee, by making great contributions right within our own city to the growth and development of unity and understanding between colored people and white people Ben Davis has made a contribution which has contributed to the stabilization and the preservation from force and violence of the anti-democratic forces in our society, and if anything, I respectfully submit, ladies and gentlemen, that when the evidence is all in you will send Ben Davis back to his people to continue to perform during the rest of his life as he has up to now and that you will say, "Well done, Ben Davis, continue to build a better and ever better America filled with democracy, filled with social and political and economic equality for all its sons and daughters without regard to race, creed, color, political affiliation or any other cause."

This leads me, ladies and gentlemen, to speak next of Mr. Gates. Mr. Gates is quite a (T-1226) young man. He is 35 years old today. He joined the Communist Party I believe some time in the early '30s. I hope I give no offense if I say that John Gates was recruited to the Communist Party through the efforts of that great engineer in the White House, Herbert Hoover.

John's father had worked through the years prior to 1929 saving, scrimping, working hard day and night. He managed to buy himself a little candy store and in those days I guess those candy stores were a little bit different from some of the huge emporiums that we see now selling ice cream, sodas and all sorts of fancy things. John's mother and father and John himself spent long hours in that little candy store and through all the saving and scrimping and hard work they finally managed to save a few dollars and buy another candy store or ice cream parlor as it was known, and then came the great crash of 1929. There were no stocks and bonds and securities in the Gates family. This little store or two. And as the depression came, as unemployment came, children were unable to buy their little penny candy and adults were unable to buy as many cigarettes and chocolate bars, and all that had come to John's parents through years of hard work just melted away (T-1227) in this great depression that

*Opening Statement on Behalf of Defendants, Davis, Jr.,
Gates and Potash*

came with the collapse or began with the collapse in the latter part of 1929 and went through the '30s.

John had been a brilliant student. He graduated from Public School 42, I think it was, up in the Bronx, and at the age of 12 or 12½ he was a valedictorian of his class and he still carries proudly, and with justification, the gold medal which was awarded to him for general excellency. He went to high school, DeWitt Clinton High School in this city, completed the usual four-year course in three and a half years and proceeded into City College in this city, and while he was in City College he saw all the fond dreams which boys like him and me who come from our Lower East Side in New York entertain—dreams of study, dreams of hard work and perhaps some little measure of success whereby we will pull ourselves out of the poverty and degradation into which we were born.

All that, however, went aglimmering with that crash. Hoover assured John Gates, as he assured the millions and millions of Americans, that prosperity was around the corner. John was young and he ran around many a corner but nary a little bit of prosperity anywhere for long years.

He therefore turned to the Communist Party, (T-1228) turned for some solution, for some thought, for some idea as to how he as well as millions of other Americans were to lift themselves by the bootstraps out of the mire into which they had fallen through no fault of their own. Yes, we speak of the great American virtues of thrift and hard work and saving and here were millions upon millions of Americans, yes, at the height of the depression there were more than 17 million unemployed men and women in America, all these looking for some light.

And then you will hear as the evidence develops how John Gates devoted himself constantly to the furtherance of the interests of his fellow man.

You will recall that during those early '30s a madman by the name of Hitler came to power in Germany and dictators sprang up—Italy of course before Hitler, Franco in Spain after Hitler—and John Gates came to realize that if democracy was injured in any part of the world it might be mortally wounded everywhere else in the world. And

*Opening Statement on Behalf of Defendants, Davis, Jr.,
Gates and Potash*

you will hear from the testimony that is given here how there was elected a democratic government in Spain and how General Franco by force and violence, by making civil war upon the legally elected government of Spain sought by force and violence to overthrow that legally elected (T-1229) government.

And so you find that through different paths, from different places Ben Davis and John Gates fought against force and violence and fought on the side of democracy and the rights of the people.

What did Gates do about it? He joined a band of men, a band of American men who shared with him the understanding that if Franco triumphed in Spain it would mean not only the death of democracy in Spain and an injury to democracy everywhere, but because of the intervention of Hitler and Mussolini on the side of Franco against the democratic government of Spain, Gates and the men who joined with him understood that the triumph of Franco in Spain, which meant the triumph of Hitler and Mussolini in Spain, was a curtain-raiser to World War II, that even greater force and violence would engulf the people of the world. And so John Gates volunteered as a member of the Abraham Lincoln Brigade, joined as a private, and John Gates is tall and as slight as I am, managed through his heroism and his devotion to achieve a rank in the Brigade that is the equivalent of Lieutenant Colonel in the American Army. And when several years later the infamous Mikado launched his infamous attack on Pearl Harbor, John Gates did not wait to be (T-1230) called to the colors; within a week of the attack on Pearl Harbor John Gates volunteered, enlisted in the armed forces of the United States.

Yes, he was prepared then to use force and violence, to use force and violence for you and for me, force and violence for your children and my children for the preservation of our country and its democratic institutions.

He became an instructor, he became a teacher in the United States Army and he sought out the most dangerous, the most dangerous branch of the service, paratroopers. And when he completed his initial period of enlistment

Opening Statement on Behalf of Defendants, Davis, Jr., Gates and Potash

he re-enlisted in the Reserve Corps and ironically enough it was on the 17th day of January, 1949, on the day when the proceedings in this case opened, that John Gates received a certificate from the Government of the United States certifying that he was discharged from the armed forces of the United States honorably and with the thanks of the Government for the loyal service he had rendered over a period of six years.

Yes, when we talk of irony, ladies and gentlemen, there is an awful lot of irony in this case. Think of it—Ben Davis and the millions of his fellow Americans who have been subjected to 300 years of force and violence (T-1230-A) in our country, Ben Davis now stands here to defend a charge that he conspired to form an organization to teach and advocate the use of force and violence for the overthrow and destruction of the United States Government.

(T-1231) Is it not ironical that John Gates, ready to give and pay the fullest measure of devotion to his country, so recently, just 60, 70 days ago discharged from service, stands here under indictment on the same count?

And, finally, I would like to say a few words in regard to Mr. Potash. He too joined the Communist Party by a route different from that which Mr. Davis and Mr. Gates found. Mr. Potash, as a furrier, suffered all of the cruelties and all of the hardships, and all of the denial of basic human rights, as a needle trades worker.

So he worked to the end that his fellow workers be organized into a labor union, so that they might engage in collective bargaining, so that they might have a voice, a democratic voice, in the determination of their wages, their hours and their working conditions.

And through the years Mr. Potash made contributions of a most historic character, contributions not only to the well being of the members of his own union, but contributions to the well being of the working men and women everywhere through this country, because the union of which he is now International Vice-president has worked in a field or area where employers have been particularly unmindful of the men and women (T-1232) who work

*Opening Statement on Behalf of Defendants, Davis, Jr.,
Gates and Potash*

for them and of the families who depend on these men and women for their wages.

There came a time when Mr. Potash made contributions far greater than those that I have referred to. They came in the following form: the union of which he is so high an officer, and the industry in which that union operates were besieged by gangsters, by hoodlums, notably Lepke and Gurrah. I suppose some of you have read of those men in the papers. At the risk of his own life, and that is literally true, at the risk of his own life, Mr. Potash testified in the courts in this area to the criminal activities of Lepke and Gurrah, and his testimony was in large measure responsible for the conviction of those enemies of society and their consignment to jail. So important was that contribution that the press throughout the nation paid tribute to the part which Mr. Potash had played in that situation.

So, if I were to sum up the roles of the three men whom I represent, I would have to say, ladies and gentlemen, that each in his own way and all collectively have combatted force and violence throughout their lives; that they have been on the side of decency; that they have been on the side of democracy; that they have been on the side of the good things of life.

(T-1233) It is, therefore, ironical in the highest degree to speak of these men as men who have engaged in a conspiracy to teach and advocate force and violence. And in that connection let me make the observation that conspiracy, or the charge of conspiracy has long been a device whereby those who oppose the march of progress seek to stop those who are engaged in marching progressively. As a labor lawyer I have long known that when an employer wants to deny the right of his workers to self-organization, when he wants to deny them the right to a well earned wage increase, and when he wants to deny them shorter working hours, he invariably invokes a charge of conspiracy as the basis on which to defeat those lawful efforts.

In this case, my friends, I wish to make a few observations concerning the charge which has been leveled, not only against my clients, but against all of the defendants in this case. Yesterday in his opening, Mr. McGohey said, "I ask you ladies and gentlemen to remember that phrase

*Opening Statement on Behalf of Defendants, Davis, Jr.,
Gates and Potash*

‘Marxism-Leninism.’ You will hear it frequently throughout this trial.”

Now, I dare say that most of you haven’t heard the phrase “Marxism-Leninism” very often in your lives before, and there is nothing of which we are (T-1234) ordinarily so fearful as that which we know nothing about, and particularly when a man hisses out the words “Marxism-Leninism,” you begin to think it is a real bogey-man around here, something to be afraid of, and as I heard Mr. McGohey speak, I got a strange feeling, I got the feeling that he was something of a character out of Dickens. There is a character in Dickens whose sole pastime in life was expressed in the words, “I wants to make your flesh creep,” and that is what I suspect Mr. McGohey wanted to do. He wants to make your flesh creep.

We don’t want to make your flesh creep. We want to appeal to your minds. We want you to have ideas. We want you to think. We want you to analyze what we have to lay before you. We don’t want your flesh to creep. And there is no need for it to creep. None at all. Because, when all is said and done, my friends, you will find that what the prosecution charges here is that the defendants talked, that they occasionally published or circulated a book, that they held meetings. In a word, that they exercised the rights which are guaranteed to every American regardless of what he thinks, regardless of what he believes or does not believe. I refer, of course, to the First Amendment of the Constitution of the United States, which says that the Congress shall (T-1235) make no law respecting an establishment of religion, or prohibiting free exercise thereof, or abridging freedom of speech or press, or the right of the people civilly to assemble and to petition the Government for redress of grievances.

We say to you, ladies and gentlemen, that when the evidence is all in, you cannot and you will not be convinced beyond a reasonable doubt that these defendants have violated any law. On the contrary, I believe that when the evidence is in you will be obliged to say that these defendants did nothing more than exercise their constitutional rights.

*Opening Statement on Behalf of Defendants, Davis, Jr.,
Gates and Potash*

And while I am on the subject of constitutional rights, let me say categorically that whoever says that the words in the Constitution of the Communist Party concerning the Bill of Rights, concerning the democratic rights of the people, are there as a blind, and as a snare, or a delusion for purposes of making a pretense at legality, lies in his beard, and lies in his bowels.

Mr. McGohey said yesterday that his theory of the case here is that the Communist Party and these defendants in particular aim to bring about a violent and forcible revolution in this country in either of the following events, either in the event of war or depression.

Ladies and gentlemen, you will see from the (T-1236) very draft resolution adopted by the National Committee or Board of the Communist Party in June 1945 and from the resolution as adopted by the Convention of the Communist Party in July 1945, that if there were two things against which that Party and its leaders placed its face as if it were flint, it was that it bespoke its opposition to and asked the American people to oppose war. And we say on the basis of the theory of the prosecution that the heroic efforts made by these defendants and their party in the last three and a half years to enlist the aid and support of the American people against war and for the preservation of peace is the most eloquent answer to the charge that Mr. McGohey makes.

And, as for depression, ladies and gentlemen, I invite you, when that resolution is offered here in evidence, to look at those sections of the resolution which deal with the economic, political and social proposals made by that resolution, and you will find that what is asked for there is to make the right to work, and the Roosevelt Bill of Rights, economic Bill of Rights, the law of the land. You will find a demand that the purchasing power of all people be increased to promote maximum employment, and that there be no reduction in weekly take-home pay when overtime (T-1237) is eliminated. Among other things you will find is a demand that rents, price controls and rationing be maintained and rigorously enforced, and that the law enforcement provisions of the OPA be strengthened, and that the black market be smashed.

Opening Statement on Behalf of Defendants, Williamson and Green

What are all these proposals and the many others which you will find in this resolution? Are they proposals designed to lead to the advent of another depression, with its unemployment and its suffering for millions of people? Or is it not, rather, the program of a Party which is primarily concerned with the well-being of every man, woman and child in this country so that depression won't come?

And if I were to sum up the significance of this resolution as a lawyer, I should say that it amounts to this, that it advocates peace without depression and prosperity without war. And if that be the end result of this resolution, as I submit it uncontroversially is, I tell you that the theory of the prosecution is grounded in sand.

Ladies and gentlemen, there is more, so much more to be said against the baselessness of these charges, and the rectitude, the idealism, the devotion of my clients and the rest of the defendants to the best in American life, but I prefer that you should hear these things from the (T-1238) record of performance, from the deeds of these men, from their contributions to American life.

I express the hope, ladies and gentlemen, that when you have heard all the evidence, regardless of what your own religious or political or economic ideas may be—we ask you, in this period when the need for peace in the world and prosperity in our own country are overriding necessity, to remain good Americans, to respect that Constitution for which those who came before us fought and won a forcible and violent revolution.

I ask you to demonstrate by your verdict that you are worthy, yes, that you and we, that all of us are worthy of the great heritage of Washington, Jefferson, Paine, Lincoln and Franklin D. Roosevelt.

* * *

(T-1239) Mr. Isserman: May it please the Court, and members of the jury, as you know I am one of the lawyers in this case. My name is Isserman, and I represent the defendants John B. Williamson, who will stand up for you—

Opening Statement on Behalf of Defendants, Williamson and Green

(Defendant Williamson stood up.)

Mr. Isserman: —and Gilbert Green—

(Defendant Green stood up.)

Mr. Isserman: —who is also standing now.

We will show, as the case develops, that both of these men, both Mr. Williamson and Mr. Green, were brought up in working class families and both of them, like so many American people and American workers, had to earn their living with their hands. Mr. Williamson was a pattern-maker and worked in shipyards during the period of the first World War. Mr. Green was at times a metal worker, a machinist, and for a short time he worked in the Post Office as a letter carrier. Both of these men are family men. Mr. Williamson has a wife and two children, and Mr. Green has a wife and three children. Both of these men have devoted themselves to the welfare of American workers and the common people of this country for many years—Williamson for well over a quarter of a century, and Mr. Green almost for that time.

Now I think it is important at the outset of this case to understand that it is not the function of (T-1240) this jury to approve of the work which Mr. Williamson or Mr. Green has done through the years. That is not the question here. They have worked for the welfare of the American people according to their likes and according to their rights —just as you and myself and all of us have a right in these troubled times to study situations, to study our economic conditions, to study our politics, to study the things that go on around us and then make our decision, and to carry on our activities pursuant to that decision as the Constitution says we have a right to do. In fact, that is the essence of our democracy, the right to be different, the right to experiment, the right to have new ideas whether they be of a new type of skyscraper or a new piece of telephone apparatus or a new form of transportation, or a new idea in politics. And the new ideas in politics have been one of the mainsprings of American life. As a matter of fact, our country started with a new idea in politics, a new idea which resulted in the American Revolution and

Opening Statement on Behalf of Defendants, Williamson and Green

in the establishment of our Constitution. We can see the changing world rather easily in the physical things around us. We talk of the horse-and-buggy days, but I am frank to confess that perhaps many of us haven't seen a horse and buggy for a long time, and we accept the changes in our physical environment, and sometimes (T-1241) we call these changes drastic changes, fundamental changes, but we say that transportation has been revolutionized by a new device on a sleeping car sometimes. And most recently we all cannot forget the old concepts in chemistry and physics which said that a molecule was the smallest particle—I am sorry, which said that the atom was the smallest particle of matter and nothing could be smaller, that concept which for years guided our chemists in their thinking and was used by them was shattered with the development of nuclear physics which says that the atom can be smashed and has been.

We say that brings us to a new age, that discovery has revolutionized science, that discovery is fundamental and drastic and we don't know yet what benefits will spring from that revolution in science. We don't yet know what new ideas will develop out of nuclear physics for the benefit of man we hope, and possibly, yes, possibly even for the destruction of man. But we do live in a changing world. That we know. And in that changing world nothing stands still and nothing is static.

We are not so clear about that when it comes to political conceptions, but if we think about it for a moment we can think about the time when chattel slavery was one of our institutions, we can think about (T-1242) the time when men went to jail for advocating the eight hour day, we can think of the time when men were charged as these defendants are in this case with a conspiracy because actually they dared to form a labor union. And yet these things have been developed, our system has grown, we have taken them in stride, and one reason why we have taken them in stride is because our Supreme Court has said that even our basic constitutional principles are flexible and must be adapted to a changing world because if we don't we have a Constitution which is unworkable, we have something which is not

Opening Statement on Behalf of Defendants, Williamson and Green

keeping up, we have something if we apply it dogmatically or strictly will not serve the purpose of this growing nation.

Now we are also clear from the difficulties that we face in our community, from the wars and from the depressions that the last word hasn't been said in our politics. It develops day by day and changes day by day and some people think that some very fundamental changes will have to be made sometime to fit our political society to all these new things in the world, not only nuclear physics, but the concentration of wealth, but the harnessing of the forces that make for war, many things of that kind are problems which we know exist and which we know must be solved if the world is to continue, and we must in the course of our history (T-1243) develop our forms of political thinking and action and our institutions as we do develop them to meet the changing times.

Now when you are discussing nuclear physics and a lot of scientists get together they have their differences. When you discuss any new mechanical gadget there are differences that develop. Is it good or bad? Is it the best thing or not? And we all know that in politics people differ very strenuously and seriously on many, many issues. Sometimes small issues. Sometimes the election of a local councilman or alderman. And sometimes the issue is a very fundamental issue which will take this country either towards peace or towards war.

And we have taught ourselves the right to be different in politics and we must keep that right before us or we lose something vital in American life.

Now all of this has a direct application to this case because whether we will it or not when we examine the indictment, and I hope I won't be too repetitious in doing that, we will see that we have to deal here, because of that indictment, with political issues, with political concepts, with principles of philosophy and principles of science and principles of polities, and we must remember at all times that it is not the question whether we agree or disagree but at all times it is the (T-1244) question of the right that people have in their own way with their own ideas to work together with others and to try in their way to lead the people of this country, to influence the people of this

Opening Statement on Behalf of Defendants, Williamson and Green

country to exercise their democratic rights in a way which is best for them.

Now I said that both of my clients have devoted a quarter of a century or almost that to their belief of what is good for the welfare of the American people, and both of them in pursuing their beliefs, as they had a right to do, have been members of the Communist movement and the Communist Party for that period of time and have risen to leadership in that party. This leadership has resulted, as the evidence will show, from their hard work, from their struggle on behalf of American workers, and from self-sacrifice on their part.

Mr. McGohey, with the Court's permission, has already gone back of 1945, which is the date mentioned in the indictment when this alleged conspiracy began. He said in order to explain what happened in 1945 after April of that year it was necessary to go back of that time, and the Court ruled that under the circumstances, because intention plays an important part in the consideration of this case, he could go back of 1945 to show intention.

(T-1245) We will show that both of these defendants have demonstrated their intention long before 1945. You cannot work in a movement for 25 years and not show what you intend by your actions. And we will show you that their actions through that period make it very clear as to what they meant by the principles of Marxism-Leninism. We will show how they put those principles into the living fabric of their lives. We are not talking now about their actions in respect to social matters or other matters with their family or with their friends, but we are talking about those actions which were the expression of Marxism-Leninism as they believed it. You cannot judge what they believed and what they taught and what they advocated without judging those actions which were the direct result of and commanded by that teaching and that advocating.

I think it boils down to the simple expression that deeds speak louder than words and by your actions you shall know them. And I say the review of their actions over that period, half of a useful lifetime, will make it very clear that what they meant was not the overthrow of the United States Government by force and violence.

Opening Statement on Behalf of Defendants, Williamson and Green

And while we are talking about the year 1945 (T-1246) another point should be made clear. Even though the evidence may take you back of 1945 no defendant here is charged with doing anything before April of 1945; so that while the back evidence may show something on intention no action committed before that time—and I am sure the Court will so charge—can be attributed to the defendants and can be the basis of any judgment on your part of their guilt or innocence.

The critical period in this case is from April 1945 to the date of the indictment in July 1948. That will be the focus of your attention and we will try to place within that focus exactly what the defendants taught and advocated, exactly what they meant and what they preached about these principles of Marxism-Leninism that everybody has to bring into this because if they were not brought into this case there would be no case at all.

(T-1247) We will show that the defendant Williamson very early in his work in the Communist Party assisted in organizing the unemployed during the period of the great depression. You will remember that unemployment, which was not the responsibility of any single unemployed person—it wasn't shiftlessness or idleness or unwillingness to work, but simply want of jobs.

Mr. Williamson worked with the unemployed to get for them the right to a job and the right to some relief, to some support, to some right to work, whatever it might have been called through the years, while jobs were not available, out of circumstances over which they had no control, and out of that movement many of you will recall grew the movement for unemployment compensation and social insurance, a movement which has not yet covered its full sweep, and which will be, and the laws concerning which we hope will be, changed more and more to fit the needs of persons who do lose their employment because we cannot control our crises and our depressions.

We will show that Gilbert Green became interested in working in the Communist movement, not by reason of anybody who made a speech to him, not by reason of reading a single paper or pamphlet, but again out of the growth of his own experience. He was a young man when the last

Opening Statement on Behalf of Defendants, Williamson and Green

war, the First War, was over, and he grew up (T-1248) in the years that were called the years of disillusionment. The war that we thought was a war to end all wars didn't prove to be that, and in that period, as you will remember, there were crises of unemployment and various maladjustments in our economy which affected many of our people and led them to a study of those things which make our economy tick, and those things which throw monkey-wrenches into the works from time to time so that our economy does not function in the way to benefit the people and those who want and need work.

He became interested in the struggle for justice with the Sacco-Vanzetti case, about which many of you must have heard, and in which justice was never done, and the recognition of injustice came too late.

We will show you that he worked in the Tom Mooney case where after many years Tom Mooney unjustly convicted was finally released in the State of California.

We will show you that he worked in the Scottsboro cases which resulted in the freedom of some of the Negroes who were unjustly convicted in that case, and we will show you that a consideration of those matters led him, as Williamson was led, to support the basic struggle of American labor, and then we come into the period (T-1249) out of the last depression when the New Deal started and the organization of labor was protected by law, and the CIO developed and rose and got to its strength, and the AF of L increased its strength, and labor was organized so that labor could get a better share out of the economy and take that concerted action for its own welfare without which the Supreme Court itself has said our economy would collapse.

Now, in the forefront of that movement—it wasn't easy to work for labor in those days—you will find the defendant Williamson working and the defendant Green working.

An amazing thing happened to both of these men, a shocking thing, a monstrous thing. They were working in the Communist movement and Communist Party for almost a quarter of a century, believing in the doctrines of Marxism-Leninism, not concealing their belief those doctrines, not concealing their relationship to the Communist

Opening Statement on Behalf of Defendants, Williamson and Green

Party, and working open and aboveboard, engaging in many of the struggles of American workers year in and year out, and basing their beliefs and their actions upon what I might call Marxism-Leninism in action. They did it not only in the years before 1941, when the Smith Act, which brings us into court here, was passed, but in the (T-1250) years following the passage of this law. And it was only in that brief period, as Mr. McGohey described it, from 1944 to 1945, that there wasn't a Communist Party and that there was a Communist Political Association, a difference which really should not concern any of us at any time unless we are interested in the history of the Communist Party, but it has been brought to us, and that political change, whether it was good or bad, is not our concern, but that political change has become one of the issues in this courtroom. After 25 years of work, there is an indictment. After 25 years of espousal of principles, an indictment purports to say those principles are against the law because, as this case develops, the thing that will become increasing clear is that these defendants just happen to be on trial because they happened to be members of the National Board of the Communist Party at a particular time. If one had gotten off before that time and another person had taken his place, that other person would be here on trial.

They are on trial, as Mr. McGohey indicated, because the Communist Party adopted certain principles, the principles of Marxism-Leninism, or reconstituted itself in the year 1945. Now Mr. McGohey says that these principles were contained in some books. He mentioned four of the books. But, as this trial develops, you will learn, (T-1251) as you will have to, that the principles of Marxism-Leninism are found, not in four books, not even in a hundred books, but in hundreds of books that have been written well over a period of a hundred years.

And more than that, he mentioned the Communist Manifesto, you will remember, as one of the four books. That book was published in 1848. It is now one of the classics of all times, and that book itself did not start simply out of somebody's mind or brain, but that book was the result of the study of the histories, philosophies,

Opening Statement on Behalf of Defendants, Williamson and Green

social writings and philosophical writings of that period and the periods before, and resulted when Marx and Engels—Engels, I think, being called the most educated man in Europe at the time—devoted their lives to the study of the problem of what makes society tick, what are the forces which move society one way and another, what are the forces which cause unemployment, what are the forces which create depressions, and out of that study and out of that profound thinking came this book.

And the book has not stood still. Marxism and Leninism have not stood still because one of the very basic principles of that science is that it develops itself and must be developed as conditions change as new things happen, because old theories sometimes have to be changed to meet new situations. We have had that in our mathematics. (T-1252) We thought that Newton had said the last word on mathematics, when he developed the laws of gravity. Then we found, with Einstein, that those laws had to be developed further or changed, if you please, because new thinking had been done.

And I say here, too there has been new thinking in the light of new conditions and in later years we have the contribution that Lenin made to this science of Marxism. The substantial contribution he made was the result of his studies of history, and philosophy and social science, and the conditions in the world around him, and making that contribution in a new period, which he called the epoch or period of imperialism, and his contribution was so substantial to that science that it is sometimes called Marxism-Leninism, though you will find, as the case unfolds, that sometimes it is called Marxism-Leninism and sometimes it is called Marxism, but it is still the same thing, and it has done the same thing which we ourselves do, changed constantly around certain basic principles and in pursuit of certain principles.

It is in the light of these problems that we have to look at the indictment. Paragraph 2 of the indictment, which I have covered, is the paragraph, you remember, which says that the principles of Marxism-Leninism (T-1253) were the principles of the overthrow of the Government of the United States by force and violence. That the defendants

Opening Statement on Behalf of Defendants, Williamson and Green

in this case emphatically deny and say that any effort to interpret Marxist-Leninist principles to mean that these defendants, in the period covered by this indictment, from April 1948 to July—1945,—to July 1948, advocated any principle which advocated the overthrow of the Government of the United States by force and violence simply is unthinkable and untrue, and it never happened and could not have happened.

One thing Mr. McGohey said in connection with paragraph 2 of the indictment and the rest of the indictment is very important. He said he would show you proof in this case that the defendants taught that Marxism was not merely dogma but is a guide to action. A guide to action! The defendants say that too, and the defendants say that the only way you can understand the application of the principles of Marxism-Leninism is to consider it as a guide to action, and the action with which you must be concerned in this case is the action of the defendants from the first day, or in April 1945, to the day of the indictment in 1948. There is no other way. You cannot take a principle and treat it by itself in a vacuum. I think the United States Supreme Court in a case some years ago said, "Philosophies cannot be (T-1254) considered in a vacuum."

You must consider the words with the actions because, under the principles of Marxism-Leninism, the words blend with the actions and the actions with the words.

You will find, as the case develops, that the activities of the defendants and what they taught and advocated by way of words are so intertwined that any effort to separate them becomes impossible.

In fact, the indictment shows that. We go on to the indictment—we go on to the last part of the paragraph 2, which says that a certain draft resolution was adopted. Now, you have heard about this draft resolution but you haven't seen it. You will see it before this case is over.

Paragraph 3 says there was a meeting of the National Committee of the Communist Party on June 18th and there they considered this same draft resolution. And Mr. McGohey told you that that resolution was published in the Daily Worker, which is a newspaper which you can buy

Opening Statement on Behalf of Defendants, Williamson and Green

on the stands of this city and elsewhere, and that the resolution was widely discussed, and that during the period of discussion, said Mr. McGohey, the defendants decided, or I think he said decreed, that the resolution would govern the policies and the practical mass work (T-1255) of the Communist Political Association, which was then considering that resolution.

Then the next paragraph says there was a Convention, and there was more discussion, and that draft resolution, as amended, as it would be after democratic discussion, was adopted, and that thereafter a Constitution was adopted, and that is all in this indictment. So the draft resolution and the Constitution are before you.

What is in the draft resolution? It covers some 15 pages of printed text. It hasn't got a word in it about force and violence except violence against the American people, against workers and against the Negro people and against others who are being discriminated against, and that violence which the axis powers were inflicting on the United Nations of the world. There is not a line or word in it about the overthrow of the Government of the United States.

And I will not trouble you now with telling you everything that is in this draft resolution, but it is in the indictment and it cannot be kept out of this case.

And that draft resolution, if I may summarize it briefly, explains why Mr. Dennis spent so much time in talking to you about ending the Axis war, and about fighting Japanese imperialism, and about building a durable peace, because that is what the resolution dealt with. (T-1256) That is out of the language and text of this resolution.

And just briefly, to give you the headings of its sections, without even going into it, it dealt with the problems which were before the American people, and with the need for strengthening the democratic forces the whole world over in order to make sure of the defeat of Fascism, which almost engulfed this country. This resolution analyzed the role of the trusts, and cartels, and monopolies, and showed the need of curbing their anti-democratic activities, which would lead to Fascism and war, pointing out that within the United States there were also reactionary forces who

Opening Statement on Behalf of Defendants, Williamson and Green

were trying to secure anti-labor legislation, who were blocking the repeal of the poll tax, who were preventing fair employment practice legislation from being enacted.

This resolution called for the broadest strengthening of the people of this country in a united movement which would keep this country going in a direction for the welfare of its people. That is in the resolution. That is in the action which this indictment seems to describe as illegal, and here we are trying a case in which political ideas and political opinions are before you for judgment. And again I say, it doesn't matter if you are for or against the repeal of the poll tax, but that is one of the problems that the Communist Political Association dealt with and (T-1257) considered when it decided to regroup itself and reconstitute itself as the Communist Party of the United States.

As I said, there isn't a line in it about force and violence—not a line, not a word. It did have this to say: "As class conscious American workers and as Marxists, we Communists will do all in our power to help the American working class and its Allies to fight for and realize this program," of which I have only given you a few of the points. At the same time, we will systematically explain to the people that substantial gains for the masses secured under capitalism are inevitably precarious, unstable and only partial, and that Socialism alone can finally and completely abolish the evils of capitalist society, including economic insecurity, unemployment and the danger of war and Fascism. That is what these people believe in. That is what they do believe in. That is what they want to teach the American people and what they did teach them and what they did advocate.

Again, I must warn you, it is not whether you approve or disapprove, but it is their right to propose these ideas, to teach and educate the American people which is at stake. And really, if you think about it, it goes even deeper. It is not only the right of the (T-1258) defendants, two defendants or eleven, to say these things. It is the right of the American people to hear them. And are we to say that in a free competition of ideas in the market place, a jury will say that the American people cannot hear the

Opening Statement on Behalf of Defendants, Williamson and Green

principles of Marxism-Leninism? It is unthinkable, and you will agree before this case is over that it is unthinkable that we will block from the American people a body of thinking, which has developed over a hundred years on the ground that they are not smart enough and wise enough to choose their own destiny, hearing every side of the story.

Now, Mr. McGohey also—I am sorry. The indictment also talks about the Constitution of the Communist Party, and you will remember Mr. McGohey said that there are sections in the Constitution which urge the support of American democracy, and he said those sections are there for only legal purposes. He described them, and I am quoting, now, as "mere talk," and also, as "empty phrases." And then he said this, which I think is very significant. He says that these phrases—this language is inconsistent with the Marxist-Leninist doctrine of the overthrow of the Government of the United States by force and violence.

(T-1259) I only disagree with Mr. McGohey on one point. It is an important one. I say there is no such Marxist-Leninist principle but we do say that advocating the defense of the Bill of Rights as the Communists do in their constitution, and the defense of the Constitution of the United States, if that is lived up to and worked on is inconsistent with any idea that they were advocating the overthrow of the Government by force and violence. Therefore we have to meet that issue squarely. Mr. McGohey says these are empty words. He will prove it. We say that these words are part of the living fabric of the day-to-day activities of these defendants. That is one of the issues that is before you, and not only does the constitution of the Communist Party do so, not only does the draft resolution say so, not only does their program of action say it, but day by day they worked on it and lived it, and if they did, then we agree that it is inconsistent that they should have at the same time advocated the overthrow of the Government of the United States by force and violence. That is one of the essential issues of the case, and we cannot keep out of this case the activities of the defendants in the three-year period which we are talking about.

Opening Statement on Behalf of Defendants, Williamson and Green

Now we go on to paragraph 7 of the indictment. (T-1260) Paragraph 7 of the indictment says that these defendants assumed or became leaders of the Communist Party and were responsible for carrying out its policies and activities. They had the responsibility. They will, as Mr. Dennis said, offer no alibis. They were responsible for that activity as in any organization; as the elected leaders of the organization they were responsible to the members of the organization and they had that responsibility, and the thing that becomes important is whether in carrying out that responsibility did they or did they not—and I am sorry if I sound repetitious but that is the question—did they or did they not, from April 1945 to July 1948, advocate the overthrow of the Government of the United States by force and violence, or did they carry out the principles and pledges in their Constitution and in their resolutions and in their publications?

Now there is something in the Constitution of the Communist Party about conspiracy, and that Constitution will certainly be before you, and what it says is that any person or any member who is engaged in any clique or party or group which conspires to overthrow or to do violence upon any of America's democratic institutions is not eligible for Party membership, and if he joins such a party or group or clique or conspiracy at a later time, he is subject to expulsion, and we will show again that (T-1261) these were not empty words and phrases but that these were the Constitution which bound the leaders to their membership, like every or any Constitution does, and we will show that they lived up to the word and spirit of that section of their own Constitution, and rejected any idea of force and violence by any group, clique or conspiracy of that nature.

Now paragraph 8 of the indictment refers to these clubs, they formed clubs, the Communist Party had clubs and had units in the State and district, and so on—as any organization that has national scope would have branches or departments or lodges, or whatever they might be called in the fraternal, religious or business or political worlds. Certainly they had clubs, and Mr. McGohey then poses the question—he says, these leaders supervised the activities

Opening Statement on Behalf of Defendants, Williamson and Green

of these clubs, as would the leaders of any organization, and he said, "What are these activities?"—and I am quoting his words—"What are these activities?"

You will learn as the trial progresses that these activities were in the line of the resolutions of this Party and of its Constitution, and that the activities of the leaders were reflected in the activities of the membership, again whether you liked or did not like everything they supported—and many things you did. That is (T-1262) not the question. The question is whether they didn't have a right to carry on their political activity in a club or lodge, or whatever it might have been called.

Paragraphs 9 and 10—I am almost through—deal with books and classes and publications and newspapers. Mr. McGohey mentioned one of the newspapers as well as the four books that he mentioned to you, and that was the Daily Worker and the Sunday Worker. We are prepared to produce before you every single edition of the Daily Worker on every single week day that it was published from April 1945 to July 1948, and every edition of the Sunday Worker, and you will look high and low for words of force and violence, again except those words of force and violence which are embraced in lynchings, which the Communist Party was against, in brutality sometimes by police officers, which the Communist Party was against; in force and violence by Fascists which the Communist Party was against, and you will see in there consistent efforts to work not for force and violence but for a strengthening of our democracy, for a betterment of the welfare of the people and for building that which will eliminate all force and violence out of this world—an endurable peace. (T-1263) That is what you will find in the publications, that is what you will find the defendants and the Communist Party taught and advocated.

Now in closing I would like to refer briefly to a remark that Mr. Dennis made. He said it was unthinkable that a jury of twelve people in this country should be called upon under the Constitution to judge a set of principles and to really decide whether or not these principles should be allowed to be advocated to the American people. That is the real question here and upon verdict depends

*Opening Statement on Behalf of Defendants, Hall
and Thompson*

whether or not the First Amendment to the Constitution is to continue to mean that in our democracy people can expound and try every idea and that in our democracy we allow those decisions to be made not in a courtroom before twelve jurors but before the American people after they listen and consider and decide and go and act with their fellow men on the issues of the day. I cannot believe that this jury is going to say that that phase of American life is over, that the Constitution and the First Amendment does not mean what it says, and on that belief, upon which rests not only the fate of these defendants, but the rights of the American people, I am convinced that there can only be one verdict in this case, and that is a verdict of not guilty.

* * *

(T-1265)

AFTERNOON SESSION

* * *

Mr. Gladstein: Yes, your Honor.

May it please the Court, and ladies and gentlemen: I am the fifth of the defense attorneys and the last to present to you an opening statement concerning particularly the two men who are here that I represent and to speak to you about some of the evidence and the outline of proof that we will have occasion to introduce here before you.

My name is Gladstein, Richard Gladstein, and I come from San Francisco. I represent Mr. Gus Hall. Will you stand up, Mr. Hall, please?

(Defendant Hall rises.)

Mr. Gladstein: Thank you.

And also Mr. Robert Thompson.

(Defendant Thompson rises.)

Mr. Gladstein: Mr. Thompson (indicating).

You will want, quite naturally, in passing judgment upon these men or any men, to know something about them, where they come from, what they have done, what their lifetime of activities has been, what they have said,

*Opening Statement on Behalf of Defendants, Hall
and Thompson*

and what they have contributed. You will not want to pass judgment in a vacuum. You will want to know who the men are that you are called upon to judge here.

(T-1266) Mr. Hall, the first of the two defendants who stood a moment ago is an American of Finnish descent. His parents came to the United States and settled in the State of Minnesota, near one of the great iron ranges of the world, the Mesaba range, where his father worked as an iron worker and where the family was brought up.

In the ancestry of Mr. Hall, the tradition for freedom has always been strong. One of his great grandfathers served a term of life imprisonment for activities on behalf of a free Finland against the Czar of the old Russias.

Mr. Hall had no benefit of higher education but was compelled because of the family circumstances to begin work early in life. Because of the area in which he lived, it was only natural that he would take up work in the lumber camps of that State; and in those days the conditions that existed in those lumber camps were things that are really indescribable.

He went through those conditions just as many Americans have gone through such conditions, striving to earn a living to help supplement the income of his father. He left school early but, nevertheless, because of the prompting and the help of his father, continued to educate himself, continued to read, continued to learn.

(T-1267) He held many jobs, in timber, on railroads, in the pulp mills, and in the steel mills. Through that work, through that experience, he came to grips with all of those things that working people of necessity have to come to grips with and when, therefore, the great depression of 1929 and the early Thirties hit our country, this was something that had great meaning and a full content for Gus Hall.

He was in a part of our country where many of our citizens were compelled out of the realities of life because of the compulsion to seek food and shelter to engage in those things that I hope your memory has not effaced completely because they are important phases of our history, the hunger marches of the unemployed, the marches of the farmers of the country who, as you may remember, were

*Opening Statement on Behalf of Defendants, Hall
and Thompson*

foreclosed, losing their farms, and the demonstration of farmers—of marchers, of those who could not find work.

Going through that experience meant to Mr. Hall that he had to dedicate his life to doing something about these conditions and he became an organizer, a trade union organizer in the steel industry, and, as a matter of fact, became one of the best organizers of that organization which is now known as the United Steel Workers of America, headed by Mr. Philip Murray, and (T-1268) then known as the Steel Workers Organizing Committee.

He was at that time a Communist and had been for some time. As a matter of fact, as he is here today, he has been a Communist for more than 20 years.

During this period in the Thirties you may remember some important incidents that took place in our country when efforts were made to organize what was called Little Steel, and you will probably recall some of the massacres, actual massacres that took place of men and women who were seeking no other thing than the right to have recognition from the steel owners of their trade union organizations.

During Mr. Hall's work as a labor organizer and as a member of the Communist Party one thing and one thing particularly sustained him in his endeavors. All men need some inspiration and he derived most of his from the story of a great American, a man named William Z. Foster, who except for the fact that he sustained a heart attack some months ago and is therefore unable to be here would otherwise be seated right here as one of the twelve defendants in this case.

And the reason why William Z. Foster was a symbol in the mind and in the heart of Mr. Hall was because it was Foster who had led the first great national effort on the part of American workers to organize the (T-1269) steel industry. It was Foster who as a leader of the American Federation of Labor in 1919 led the strike of those workers in the steel mills in an effort to establish the 8-hour day. And it was the life, the contributions and the sacrifices that Foster had made that represented a symbol, a guide and an inspiration to Gus Hall in his organizing efforts.

Opening Statement on Behalf of Defendants, Hall and Thompson

Mr. Hall has known the bite of that infamous thing known as the black list because he has been fired from his job simply because of his politics. Not for any reason of demerit, not for disqualification for the job, but only because of the ideas that he found in his head and spoke to his fellow workmen.

His father had a similar experience in 1917 when, as an iron miner, because of his politics—and they were Communist polities also, his father also having been a member of the Communist Party of the United States of America, his father was blacklisted and found it impossible to find a job with which to support his family because he was a Communist. (T-1270) And Mr. Hall has also known the fate that has befallen many a labor organizer in the history of our country—many of those who now hold a high position and enjoy great prestige in the national scene; men like Philip Murray, John L. Lewis, William Green and all of the others who in their younger and more active days knew what it was to have efforts made by employers to frame them, to frame them on one charge or another, to plant things in their automobiles and to seek to dispose of their efforts and their activities in that manner. That has been the life of Mr. Hall, except for the period during the war when he was with the United States Navy and served overseas in the Pacific as a machinist's mate. He is a man of family; he is married, and he has two children.

My other client is Mr. Robert Thompson. His family came to the United States many generations ago. His great-grandfather was the first agent of the United States Government to be placed in charge of an Indian reservation in the territory of Oregon before that area became a State. His family worked there in the wheat fields, on cattle ranches; others went into logging and farming, and the other industries that are located in that area. Robert Thompson was born in Oregon, on the West Coast, where I come from. He grew up (T-1271) in a poor home, and he had only the benefit of a grammar school education.

At the age of 13 he was required to go to work, and he worked in the logging camps. He took probably all the jobs beginning at the bottom and working himself up

*Opening Statement on Behalf of Defendants, Hall
and Thompson*

during a period of five years. There were no unions in the logging camps of the Northwest in those days. You will hear in this case something about the conditions under which the men lived and labored in those logging camps. You will hear about the food they were given, about the insecurity of their jobs and of their very lives, and you will also hear about the types of tricks, the dishonest tricks that were played on them by employers who held back portions of wages and then disappeared when the ultimate pay day came. That was a sort of tradition among employers in the northwest until at long last the men were able to organize into trade unions.

In 1933 Mr. Thompson's family moved down to my State, California. He went through a period of unemployment. Jobs were hard to get in those days. He began to work as a machinist. He was a good machinist, an excellent one, and the company for which he was employed began soon to send him from place to place in the State as an inspector. During this period of time he became interested in the labor movement of America. He (T-1272) became interested in the machinist's union, which was only natural, and indeed he became an organizer for the trade union movement. That was a period of time in California when workers in many, many industries were seeking to create labor unions and obtain recognition of those unions and obtain collective bargaining at the negotiations table. Mr. Thompson worked as an organizer for the machinists and in the railroad yards. It was during that period of time that he became acquainted with the people who were members of the Young Communist League. From his discussions with them, from the literature that he read, he became interested and joined that organization, and he began to study the literature, not only of the trade unions of America but of the Communist Party of the United States.

In 1936, an event took place, not in this country but which had a very, very great impact on the life of this man. It was mentioned earlier today. It was the war of Franco, Mussolini and Hitler against the people of Spain. You may remember the people of that country had been living under a form of monarchy and despotism, and that they had legally, peacefully elected a government which was pat-

*Opening Statement on Behalf of Defendants, Hall
and Thompson*

tered pretty much after our own and had adopted a constitution that was borrowed in part from our own, with a couple of important (T-1273) exceptions: among others, the Spanish people found it important—

Mr. McGohey: If your Honor please, this is objected to. The Spanish situation is not an issue in this case.

The Court: Yes. It seems to me to be a little remote, Mr. Gladstein. You know, you get into the war in Spain there and all the Spanish politics, and I suppose it is rather anticipatory of something that is going to come up about your client, Mr. Thompson, perhaps.

Mr. Gladstein: I am about to explain, your Honor, what a portion of Mr. Thompson's life is about.

The Court: You see, for instance, Mr. Gladstein, you have just made a couple of statements, and if that issue were in this case and we had to decide, let this jury receive evidence about who was right in Spain and whether the republican government in Spain really was the genuine expression of the majority of the Spanish people, and other historical facts there, perhaps this trial might get off on a tangent instead of it deciding whether these defendants conspired to do what the indictment charges them with, about overthrowing the Government of the United States by force and violence; we might be spending a great deal of time on Spanish politics and things that would be extremely difficult ever to know (T-1274) the truth of, and I don't, as I have said before, I don't like to curtail people in their openings. I am particularly anxious that this jury here should get a notion right from the start of these individuals as separate individuals, one apart from the other, so as the proof comes in, they may notice what there is in the proof about one or another.

So, perhaps, if you will bear in mind what I have just said and make your references brief, and of as little a political character, as to foreign countries, as you may, I think perhaps you may serve your own clients' interests and that we will have less to contend with.

Mr. Gladstein: Very well, your Honor.

The Court: Don't you think you can do that, Mr. Gladstein?

*Opening Statement on Behalf of Defendants, Hall
and Thompson*

Mr. Gladstein: I will abide by the Court's instructions.

The Court: I really haven't given you any instructions there. I have tried merely to indicate that you could perhaps shorten that part and cover it adequately nevertheless.

See if you can do that, and if you feel that you cannot, you may address yourself to me and I will, perhaps, be able to add something.

(T-1275) I haven't forbidden you as yet to make any reference to the subject because I don't like to do that, and I think in this instance it is certainly not necessary.

Mr. Gladstein: Very well, sir.

I have mentioned, ladies and gentlemen, the war in Spain because Robert Thompson went to that war. He went to Spain. Let us put it this way: however the facts may be, Robert Thompson believed and was convinced and satisfied that, as an American who believed in democracy, it was his job to heed the call of the Spanish people for help, and you and I know, from our study of history, that we have had people come from foreign lands to help us too; and the most famous example that comes to mind is the case of Lafayette, who came here from France to help us win our war.

Well, Thompson joined, with other Americans, an organization known as the Abraham Lincoln Brigade, and he fought as a commander of troops in that Brigade, and fought at the front, and was wounded. After being wounded, he was returned to this country.

In 1939, just ten years ago, Mr. Thompson was married. He now has two children.

In 1941, just before Pearl Harbor, he joined the United States Army. He was with our troops in New Guinea. He was a leader in one of the most difficult (T-1276) and important campaigns that our troops in the Pacific ever experienced, the Buna Campaign; and you will hear from the evidence in this case, from the documents that we produce you will see, what that situation was like and what Robert Thompson did to assist his country.

*Opening Statement on Behalf of Defendants, Hall
and Thompson*

He led combat troops on dangerous patrols and missions. He was given operational command of task forces. He developed new and theretofore unheard of manner of using mortars as barrage weapons, for which he was highly commended.

Now Mr. Thompson has received, as a reward for that life, his being here on trial for his ideas, on trial for his thoughts and his activities; and, more than that, because of the publicity that attached to this case after the indictment was returned last July, because of that, and because of things that you and I know to exist, fear, hysteria, since that indictment the reward that Robert Thompson received—

Mr. McGohey: I object to this, your Honor.

The Court: Yes, I don't see what happened to him after the indictment has any bearing on whether he did or did not do what is charged in the indictment. How is that you claim that is relevant, Mr. Gladstein?

Mr. Gladstein: Why, your Honor, I am speaking now of force and of violence, and I want the jury to (T-1276-A) know that, as a result of his having been indicted, Mr. Thompson was assaulted by three men.

Mr. McGohey: I object to that, your Honor. There is no proof of that here or anywhere else, that it was the result of this indictment.

The Court: I certainly think that should be eliminated.
(T-1277) Mr. Gladstein: Very well.

But before the indictment was returned, ladies and gentlemen—

The Court: The jury will disregard the comments about that so-called attack.

Mr. Gladstein: But before that indictment was returned and long before the occurrence of the events which I started to allude to our country before, before the period that we now find ourselves in, did express itself in terms of recognizing the efforts of Mr. Thompson.

You and I know that the manner in which we give recognition to those of our citizens who have given beyond the call of duty, who have given valiantly and with heroic efforts is to bestow a medal of honor, the second highest honor within the power of our country to bestow is the Distinguished Service Cross. Mr. Robert Thompson is

*Opening Statement on Behalf of Defendants, Hall
and Thompson*

the recipient of that cross for his efforts on behalf of this country.

It is of Mr. Thompson and of Mr. Hall, as well as their colleagues, that Mr. McGohey has said to you that he is going to show that they have advocated, they have conspired to advocate the overthrow of our Government by force and violence. I deny that. I deny it unequivocally without reservation absolutely and without any slightest qualification, and when the evidence is introduced (T-1278) in this case and when you will judge, as I know you will, by the record, by the deeds of these men, for, as the adage says, by their deeds shall ye know them, you will then see these are not men who ever plotted to overthrow our Government, they are not men who planned to turn over or destroy our Government, they are not men who urged others to do that. They have never tried, they have never made an effort in the direction of overthrowing our Government, and indeed none of those things are charged against them.

There is not even a charge in the indictment that the books, the documents, the newspapers, the literature that they have circulated or distributed, that any of that was done with the intention of overthrowing the Government of the United States by force or violence. Yet we know there are instances of force and violence in this country. Some of them have been mentioned to you. It is just as much a destruction of law and order as it could possibly be for people like the Ku Klux Klan to take the law into their own hands. It is just as much a destruction of law and order as it could possibly be for anti-Semitic movements to take place, for activities of that kind to occur, for Synagogues to be desecrated. It is a forceful and violent destruction of law and order and of our (T-1279) forms of democracy for company thugs to use weapons against workers who are trying to organize or who are picketing for recognition.

Mr. McGohey: If the Court please, this is objected to. Here again we are talking about something that is not charged in the indictment.

The Court: Now Mr. Gladstein, the Ku Klux Klan is not on trial.

*Opening Statement on Behalf of Defendants, Hall
and Thompson*

Mr. Gladstein: But the defendants—

The Court: There are no company thugs on trial. There are no persons being charged for violent doings. There is a charge against these defendants for conspiring in the manner and form stated in the indictment.

Now it only changes the subject and adds confusion, it seems to me, to bring up how violent some other people were who aren't on trial here. It just turns the whole thing around so that instead of these defendants defending themselves against the charge by the Government they seem by your statement to be taking the affirmative and accusing somebody else. Now you are not going to try in this court anybody accused by the defendants. They are the ones that are accused and they are the ones that are going to be tried. So you might just as well have that clear from the beginning.

(T-1280) Mr. Gladstein: I understand that, but I am saying to the jury that I hope to prove that these men have spent a lifetime combatting those forms of violence.

The Court: I know, but I am familiar with what I have been hearing in this case for some weeks about how easy it is to get the thing twisted around so that instead of the defendants defending themselves, they become the accusers. That is over now. We are just going to try the charge against these individual defendants and we are not going to try any individuals or groups that they may accuse; so please leave that part out.

Mr. Gladstein: Ladies and gentlemen, when you have heard the evidence you will be called on to make up your minds as to whether or not it is reasonable to think that these men ever conspired to advocate the overthrow of the Government by force and by violence, and when you find out what the facts are about these men, when you find out about the lives they have led, the things they have said and the things they have done, I have no doubt that you will weigh those facts very heavily in your determination because basically, fundamental to any determination of that question is your ascertainment of the facts regarding the kind of people that are here on trial.

*Opening Statement on Behalf of Defendants, Hall
and Thompson*

Now, of course, just like you and me, they (T-1281) are human beings, no different. They have families, they have children, they are intelligent. And you will be called on to decide whether men like that could possibly hope for or urge or could possibly bring about violence which would be visited upon them just as it would be on anyone else. And you will see from the evidence, from the witnesses and from your reasoned judgment that it is not possible to conceive that these men hoped for or urged or advocated the overthrow of our Government by force and violence. And if to any extent you find that these men differ in any respect from anybody else, I think the only respect will be this: that they have led selfless lives, they have lived lives which they have dedicated to a cause in which they believe, lives in which they have made many sacrifices. There are no material gains for them in the Communist Party of the United States. There is not anything for them except the satisfaction that comes to a man who believes in a cause and works for it, whether he believed in the cause of banishing racial inequality or political inequality, or religious discrimination or whatever it may be. The satisfaction is that which comes from working for that belief and that cause.

They do believe that the party that they belong to has advocated that and their reward is simply the (T-1282) knowledge that they have brought their beliefs to the American people.

Mr. McGohey says that it will be shown here from some books that they have advocated or conspired to advocate the overthrow of our Government by force and violence. You recall that he mentioned four books. One was the Communist Manifesto, and as you were told earlier today that book has been in existence for over 100 years and is studied in colleges and in schools and is to be found in libraries and bookstores and everywhere. And the same is true about the other three documents that Mr. McGohey has named. You will find, and the evidence will show, that the book entitled "State and Revolution" is about 30 years old or more. You will find the same thing is true about the booklet called "Foundations of Leninism." And you will

*Opening Statement on Behalf of Defendants, Hall
and Thompson*

also find that the History of the Communist Party of the Soviet Union is itself more than ten years old.

All of these therefore antedate the period in 1945 when Mr. McGahey says the Communist Party reconstituted itself, and all of these books and pamphlets are available as we shall see from the evidence in every library, in bookstores and wherever books and pamphlets may be had for reading.

(T-1283) Now let me say a word about the contents of those books because, as the Court has told you—I am sorry, I have a cold, but I hope it does not annoy you as much as it annoys me.

Judge Medina has told you that until all the evidence is in it is your job, it is your duty to keep your minds open and receptive to all the evidence. I know you are going to bear that in mind but I want to point out something rather specific that calls for application of that injunction from the Judge. There will be passages read to you from books in which words like "revolution" appear; "Class struggle"; "Smashing the State apparatus" or "Forcibly destroying social conditions." When you hear those words or when you read those words, please bear in mind the admonition of the Court. Don't accept the surface appearance for the reality. Wait till the facts are in because many times, as you know from your own human experience, a thing that looks like one thing at the start turns out to be something quite different when you know the whole story.

You will find that the word "revolution" in those books is used in a particular sense, and it doesn't contemplate a group of men armed with clubs or weapons going to commit violence upon anyone. You will find (T-1284) that the term "revolution" is used in such books and documents to indicate a social change, a social change,—just as the word "revolution" in industry—we all know about the industrial revolution in England—is used to indicate the innovations of new machinery, technological advances. We call them a revolution because a deep-going change in society takes place. Bear in mind when you read or

*Opening Statement on Behalf of Defendants, Hall
and Thompson*

hear the word "revolution" to wait for all the facts and the evidence to see in what sense, in what way that word is used.

You will also hear the expression "class struggle." When you hear people talking about "class struggle," don't jump to the conclusion that that means they want a class struggle, that they want to see fighting, that they want to see people committing violence on each other in struggling. That is not so. The expression "class struggle" refers to what many observers, not only now but for decades and decades have used to express their understanding of what takes place in our economic society, that is, an effort on the part of one group and an effort on the part of the other group engaged in what is called a combat or a struggle between classes. It is just as much a class struggle between employers and workers as anything could be, as when they sit down at a (T-1285) negotiations table and try to negotiate in an agreement, because one is struggling for a higher wage rate and the other is struggling in the opposite direction. Don't hastily jump to any conclusion concerning that term or any of the terms because I say this, it may be weeks before you will have an opportunity to hear from the defense and to get the full picture in which these words have been used. And, moreover, bear another thing in mind, if you will: there is a difference between predicting that something may happen and actually advocating it. There is a difference between you, myself, saying that we think or we expect or we believe something of a certain sort may happen next week, next year or under other circumstances. There is a difference between that and actually wanting that to occur.

(T-1286) You will have occasion here to contemplate the real and basic distinction between prediction that there might be violence, on the one hand, and the actual advocacy of that violence, on the other.

These things you will read about in the books, and you will hear about in the books. In effect—in effect, ladies and gentlemen—those books are going to be on trial because, don't you see, to the extent that these defendants are here before you on trial for having in any way pub-

*Opening Statement on Behalf of Defendants, Hall
and Thompson*

lished or made available those books or any books, in effect, the authors of those books, now many years dead 'some of them, will be on trial for their ideas, for their thoughts, and you will, I know, want to hear the evidence from the defense as to who those authors were. You will want to learn whether or not the authors of those books that will be placed on trial here were criminals, were conspirators, or whether they were great thinkers, philosophers and men who contributed to the knowledge of the human race.

Mr. McGohey has said that one of the things he relies upon is the change from the Communist Political Association to the Communist Party, and he has, in effect, said to you that that change indicated a change from a policy of peacefully seeking Socialism to a policy of wanting it by violence. We deny that and we will (T-1287) disprove it, and we will show you why the change from the Communist Political Association to the Communist Party did take place, and we will show you that it had nothing whatsoever to do with the question of force or the question of violence.

Mr. McGohey has said to you that they will show you something about the structure of the Communist Party, the clubs through which it is organized and functions, and the activities in which it engages, and the classes which are held. We will show you about that structure and about the activities of that organization. We will show you that it is an organization, like any other, and that it is democratically operated. It is true that the members study and read just as the members of any organization study and read. We will show you that this organization, like any other organization, seeks to win members through trying to persuade them to the views of the organization, which is just as natural and logical for the Communist Party to do as for any organization of any kind to do.

We will show you that the Communist Party participates in political campaigns, that it runs candidates for office, and that where it doesn't run candidates, it supports other candidates of other parties with whom it is in entire

*Opening Statement on Behalf of Defendants, Hall
and Thompson*

or partial agreement (T-1288) on some progressive platform.

And we will show you that in the political arena of our country, on the national level, on the state level, in counties and in cities, the Communist Party engages, as any political party engages, in the initiation of one measure or another which it feels is in the interests of the people of our country.

It is true that the Communist Party is a party of the working class primarily but its program, as you will see, its platforms, as you will see, when they appear in evidence, are broad and have appeal to many parts of our country and many sections of our people—indeed, to every person who feels a sense of insecurity under our system of economy. So you will find that that program, although primarily appealing to workers, also appeals to people who are in the professions, people who are in the clerical fields, small merchants, farmers and other sections of the people of the United States, because those programs, as we develop the evidence in this case, as you will see, are designed to be and are in the interests of the people and against the trusts, and the monopolies, and the huge corporations who control the means of production in our country.

You will know, at the end of this case, by judging from the evidence, the testimony and the (T-1289) record of activities of the Communist Party, far from being a conspiratorial group, ladies and gentlemen, it is an open political party, always has been, and is now and hopes to continue to be, and you will know from the evidence of the work that the members and leaders of that party have done in and about the trade union movement of our country. You will learn of the sacrifices and the contributions that have been made by members and leaders of the Communist Party for all the working people of this country and, thereby, for all the people because I have yet to see any material gain ever made by workers that did not also inure to the benefit of the rest of the people.

Those are the men, those are the 11 men, who, as you have seen, as you have been told, drawn from different

*Opening Statement on Behalf of Defendants, Hall
and Thompson*

walks of life, have come into the Communist Party of the United States. They are on trial here, not for any criminal conduct, not for any malicious conduct, not for any conduct that is bad. They are on trial, as Mr. Dennis said to you yesterday, for what are denominated dangerous thoughts.

Well, we have all kinds of historical examples of what used to be dangerous thoughts. We deny the characterization that the Government places upon those thoughts but we assert the right to express those (T-1290) thoughts and express the right of you and of all Americans to hear those things because you decide, the people decide, whether those thoughts be good or whether they be bad.

There was a time when men thought the world was flat. Undoubtedly it was regarded as a dangerous thought when a man first said, "No, the world is round." There was a time when it was dangerous, regarded as a dangerous thought, for anyone in our southern states to say a word against the institution of slavery. We know that. That is no longer true.

What you will need in this case is to have historical perspective, to lift yourself out of the very page to which your attention may be drawn and to take into your hands a grasp of the full meaning of this case.

This is a trial of your right to hear what these men have to say. You may not agree—you don't agree, let us say. You know what is right. Let us assume that you know what you believe in is right. You don't have to agree with them but would you deny them the right to say what they think and to believe in what they believe, any more than you would have me deny you the right to know which is the correct manner and the correct method? That is the issue that is (T-1291) involved in this case, question of thoughts and question of spoken thoughts.

Here in this country, here in the United States, which was founded upon the basic notion that the people are the sovereign, the people, because it is a government of, by and for the people, you and I decide it. We are not told what we can hear, what we can listen to, what we must do, yet

*Opening Statement on Behalf of Defendants, Hall
and Thompson*

that is the issue in this case. The highest court in our land, the Supreme Court of the United States, said something. I want to read one sentence because it represents a viewpoint that I hope you will bear in mind throughout this case.

Mr. McGohey: I am going to object to any reading of Supreme Court decisions or other decisions.

Mr. Gladstein: I am not addressing it as law; just an expression.

The Court: Just what is it you are going to read? I was reading the indictment here and my mind wandered for a brief moment. Probably I better have the reporter read me the part to which Mr. McGohey objects.

(Record read.)

The Court: You want to read one sentence?

Mr. Gladstein: No; I have one sentence that I want to express; but, if I may, may I adopt it (T-1292) as my own and not attribute it as law? I am not trying to instruct the jury on the law.

The Court: That is most ingenious. That is most ingenious. You go ahead. Having worked it out that way, you should deserve some reward, so you may go now and repeat it as yours and as coming from the Supreme Court as well.

Mr. Gladstein: Very well.

The Court: I hope it is good.

Mr. Gladstein: It is very important, your Honor. It is so important that I think when you have heard this sentence, you will realize to the very depths, and I hope you will, members of the jury, that there is no occasion for lightness or levity about this sentence.

You and I believe in our Constitution, we believe in our Government, we believe in our Bill of Rights. That means something because our people fought for it, and we have it, and we are not going to give it up.

This is the sentence I want to read to you: "If any provisions of the Constitution can be singled out as requiring unqualified attachment, they are the guarantees of the Bill

*Opening Statement on Behalf of Defendants, Hall
and Thompson*

of Rights and especially that of freedom of thought contained in the First Amendment."

I know that you will listen to both sides before (T-1293) you make up your minds. I know that you will be aware of the fact that Mr. McGohey has an advantage on us because his witnesses come first and make first impressions. I hope you will realize that in the trial of a criminal case it is your job not to permit first impressions to be lasting impressions. It is, under the mandate of the Court's instruction, your job to keep your minds open and free to receive other and all of the evidence before any decision is made. I know that you will do that because you are dealing here with a most important case. Many people in this country may regard this case as the most important civil liberties issue in this generation.

Mr. McGohey: I object to this, your Honor. Certainly not any part of the issue.

The Court: Maybe Mr. Gladstein merely means that he and his co-counsel and others believe that. However—

Mr. Gladstein: I subscribe to that, your Honor. I do, indeed, subscribe to that, and I believe and hope that many others do as well.

I will speak only a moment more in closing. I believe when the evidence is all in, members of the jury, when you have weighed the character of these defendants against witnesses who are produced against them, when you have waited to hear the full exposition and (T-1294) discussion of whatever literature is brought to you, not just the portions that the Government's finger points out, when you have waited for the entire record to be brought before you, when you have held yourself judiciously waiting for the final word to be spoken in this case, when you have done that, I am confident that you will not find it in your minds, and you won't find it in your hearts to return any verdict of guilty.

God save us all in this country if any political administration, even though it represents the majority of the people, should ever, through bigotry or anything else, suppress or outlaw any minority group—any minority group —be it political or anything else.

Further Statement by the Court to the Jury After Openings

(T-1295) The Court: Now ladies and gentlemen of the jury, I have some supplemental comments to make to you. You have heard in the course of these openings a considerable amount of discussion about ideas, new ideas, old ideas, thoughts, and things of that kind. This indictment charges that "the defendants herein, unlawfully, wilfully and knowingly, did conspire with each other, and with divers other persons to the Grand Jurors unknown, to organize as the Communist Party of the United States of America a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence."

Now whether that is an old idea or a new idea or any other kind of an idea, such a conspiracy is against the law of the United States.

And it continues: "and knowingly and wilfully to advocate and teach the duty and necessity of overthrowing and destroying the Government of the United States by force and violence."

There again whether it is an old idea or a new idea or any kind of an idea, if people conspire as charged there, that contravenes the statutes of the United States and constitutes a crime. So you bear that in mind.

(T-1296) Now this is a conspiracy case, and fortunately it is a one-count indictment so that you don't have to bother about a whole lot of complicated counts. There is just this one charge of this conspiracy. In a conspiracy case it is sometimes a little confusing to jurors because the evidence as it comes in ultimately does or does not form a pattern or make a showing that would warrant a finding of conspiracy or not, and as the evidence comes in it is a little confusing, and I ask you to bear in mind that if you are patient, then you later on will be able, with the assistance of counsel and with assistance from me, to put things together. In the meantime, I can't stress too much what I have told you several times that these eleven defendants, not as a group, not as a Party, but eleven separate human beings are being tried by you. If I ultimately submit the case to you, and the evidence justifies it, on which I do not pass now, you may find them all guilty you may think them all not guilty, you may find some of them guilty and

Further Statement by the Court to the Jury After Openings

some of them not guilty, and I want you to follow the proof and see how it connects each of these individuals. You must bear in mind that it isn't the group. It is these separate men that are on trial here, and so if you do that, watch as the evidence comes in, see how it connects up as to each of them. Now that is peculiarly (T-1297) important on this question of intent. This is a crime involving a specific intent, as I have told you, and a person isn't guilty without that intent.

Now you have heard a lot of discussion here about things of the past as to each of these men, and their lives and what they did, and what their hardships were, and so on. You will hear a number of other things that I will allow here in evidence, merely as bearing on this question of intent. So bear that in mind and try to be individual as your minds are open throughout the trial in receiving these impressions from time to time; let those impressions as they proceed affect these men as individuals.

Never forget that because that is your sworn duty here. Now you may be excused until tomorrow morning at 10.30. We will now continue court for a moment or two in connection with a motion or two.

Mr. Sacher: Just one moment before the jury leaves.

In the light of what your Honor has just said I respectfully request that you inform the jury once again that each and every one of these eleven defendants is clothed with a presumption of innocence. At this moment the law says that each and every one of the defendants in the light of what your Honor has read from (T-1298) the indictment are presumed to be innocent and that presumption continues throughout the trial.

The Court: I have instructed the jury before and I am glad to repeat it now.

* * *

(At 3.30 p.m. the jury retired.)

Mr. Gladstein: Your Honor, I desire the record to show my objection to the Court's directions and statements to the jury immediately after the close of my opening statement. I submit that your Honor's remarks con-

Colloquy of Court and Counsel After Openings

stitute nothing less than a rebuttal argument that might have been made by Mr. McGohey.

The Court: I didn't want there to be any misunderstanding about the law.

Mr. Gladstein: This is not a time to charge the jury with the law and if your Honor wishes that there may be no misunderstanding about the law it is incumbent then upon your Honor to give them a full charge. Your Honor omitted the rather important instruction dealing with the presumption of innocence and there were many others that your Honor omitted to give them. I submit it was improper, that it was wrong and it was designed and cannot help but have the effect—I don't say it was intentional—but it had the result reasonably (T-1299) and logically of informing the jury to discount or discard most of what counsel for the defendants said.

The Court: It seemed to me that the defendants' counsel in their openings tried to convey to the jury that such a conspiracy as charged here was perfectly all right.

Mr. Gladstein: I submit that remark is uncalled for. I want to complete my objection. I submit that what your Honor did in making those comments to the jury constitutes prejudicial misconduct on the part of the Court, I assign it as such, and I ask the Court to declare a mistrial.

The Court: Well, I won't do it. I deny the application. If you think I am going to sit here like a bump on a log throughout this trial you are making a big mistake.

Mr. Gladstein: I don't know what occasions the remark that you should sit like a bump on a log. To the contrary—

The Court: It seems to me the statute is clear. The indictment charges a violation of that law. If you expect throughout this trial to go on from day to day practically telling the jury in one form or another that that is perfectly all right, that isn't any violation of the law at all, they are going to be straightened out and they are going to be told just as I told them (T-1300) now that that statute is violated if they do the things that are charged in this indictment.

Colloquy of Court and Counsel After Openings

Mr. Gladstein: And if your Honor insists on doing that I serve notice that I will assign such instance as misconduct and ground for a mistrial, the complete effect of which is to leave the jury with the impression that your Honor desires a conviction in this case regardless of what the evidence may be.

The Court: I don't think there is any occasion for saying I desire a conviction. I desire that justice be done and justice cannot be done if the jury be got to think that this is not the law. I am here to charge them on the law. That is precisely what I am doing.

Mr. Sacher: May it please the Court, I do think that your Honor has overstepped the bounds of propriety this afternoon. Coming as your remarks did after three openings each of which denied that the defendants or any of them had been guilty of the charge contained in the indictment, and bearing in mind that each of the counsel who spoke this morning as well as each of the counsel who spoke yesterday spoke on the facts and in support of that which he was going to prove, I submit that the only effect of your Honor's observations upon this jury could have been to negate each and every factual statement that was made.

(T-1301) The Court: That is a pretty broad statement.

Mr. Sacher: That is a broad statement but I would like to make it a little broader.

I have sat here and watched your Honor scratch his head and smile incredulously at statements made by counsel and resort to a number of things each of which must have had the effect on the jury of negating—

The Court: I may have scratched my head, I don't recall, but as far as the other things it is positively not so.

Mr. Sacher: It is very strange that on the occasions when you scratched your head and pulled your ear, we were speaking and not Mr. McGohey.

The Court: Maybe you were not watching me.

Mr. Sacher: I just want to say that your conduct at all times—you see, you are doing it again.

Colloquy of Court and Counsel After Openings

The Court: I know, you are going to say I am corrupt and I am disqualified. You called me all those things before. Now you can run the catalogue again and I will listen patiently. Make it just as bad as you can.

Mr. Sacher: Your Honor, I am certainly aware of the fact that if I bear false witness against your Honor in anything I have said that I am subject to disciplinary measures and I am not inviting disciplinary measures by making false statements.

(T-1302) The Court: You mean that I will take disciplinary measures against you because you said I scratched my head? Don't be absurd, Mr. Sacher. Don't be absurd.

Mr. Sacher: The point I am making is that in every available means your Honor is conveying to the jury your lack of sympathy if not hostility to the defendants, their counsel's presentation of the case, and in these circumstances I want certainly to note on behalf of my clients a vigorous objection to your Honor's conduct and I wish to join Mr. Gladstein in the motion to declare a mistrial by the withdrawal of a juror.

The Court: Motion denied.

Mr. Crockett: If the Court please, I submit that the statement of the Court given to the jury and considered in the context and the circumstances in which it was given, and the emphasis evident in the Court's tone of voice, and your Honor's facial expressions, necessarily prejudiced the minds of the jury against my clients and makes it impossible for my clients to have a fair trial before an impartial jury as guaranteed to them in the Fourth and Fifth Amendment of the United States Constitution. Because of this I join in the motion made by Mr. Gladstein and adopted by Mr. Sacher to the effect that this Court declare a mistrial at this time.

The Court: I used no particular tone of voice (T-1303) and no unusual facial expressions, and the motion is denied.

Mr. McGohey: May I be permitted to make an observation?

The Court: Yes, you may.

Mr. McGohey: I wish the record to show that I sitting at this first counsel table have been watching your Honor

Colloquy of Court and Counsel After Openings

throughout the opening statements by counsel for the defendants and by the defendant Dennis himself, and on my honor as a member of the bar of this court I have observed nothing that would indicate an opinion of the Court one way or the other, and certainly, in so far as objections which I made to statements which were made by counsel for the defense and by the defendant Dennis himself, I am certainly not satisfied that your Honor has been as accurate as I think you ought to have been. I thought you were more liberal than I thought the defense were entitled to for you to be. And I want the record to note that I deny any action, any facial expression, any tone of voice, any gesture on the part of the Court which could reasonably by any stretch of the imagination have been interpreted to indicate a trend of mind by the Court one way or the other.

And furthermore, observing the jury I represent that in so far as I could understand and interpret the (T-1304) expressions of the jury, nothing that the Court did had any effect upon the jury's thinking.

The Court: Now you have some motions to make.

Mr. Isserman: If the Court please, I have, and in connection with that motion I would like to present it to your Honor and present Mr. McGohey with a copy if I may (handing to Court and Mr. McGohey).

The Court: I want you gentlemen to understand that when I scratch my head I am just plain scratching my head. I don't intend to stop doing that because you made these statements here. I have a habit of doing that. I am not going to stop just because you make these remarks.

Mr. Isserman: If the Court please, this is a matter which has been before the Court before on several occasions, that is, at least informally before the Court in the course of an opening address by Mr. Dennis. I ask the Court notwithstanding that to give it complete and full consideration because of the gravity of the matters contained in it which, on the one hand, deal with the right of the defense to the full presentation of the evidence in their favor and, on the other, deal, whether we will it or not, with the health and welfare and life of the defendant William Z. Foster whose trial has been severed from this case.

Colloquy of Court and Counsel After Openings

This motion is a motion for this Court to reconsider (T-1305) the application made by the defendants heretofore to take the deposition of William Z. Foster under such circumstances as, one, will not interfere with the conduct of this trial and, two, that will not unduly jeopardize his health. We have specifically requested heretofore that that deposition be taken by way of written interrogatories and answers thereto as provided for in the rules of Civil Procedure that are applicable in this kind of case. There is a new fact in addition to the others which we urge, which we ask the Court to consider on this essential question, that the absence of Mr. Foster's testimony is of such nature and such character that it will result on behalf of these defendants, or is likely to result in a failure of justice. We have on previous occasions set forth in general the reasons why Mr. Foster's testimony was unique and special and important in this case. We have said, described that testimony necessarily, only in general, for two reasons. One was that the indictment is not specific. We have not gotten the particulars we asked for. And secondly, because there are matters in that testimony which appropriately should be made and stated only after the Government's case is in.

Now the new matter which we call especially to the Court's attention is contained in the affidavit of Carl Winter, which is next. And it refers to the references (T-1306) made by Mr. McGahey in the opening statement in respect to Mr. Foster. Those are found on page 2.

The Court: Now just a second. Let me read that.

Mr. Isserman: Pages 2 and 3 of the affidavit.

The Court: Starting at the bottom of page 2?

Mr. Isserman: That is correct, your Honor.

The Court: Very well.

Mr. Isserman: There can no longer, your Honor, be any question about the materiality and relevancy of the testimony of Mr. Foster because we cannot let the opening statement stand where it is. It is merely an indication by the Government of what it intends to prove in this case. The numerous references to Mr. Foster as a leader and a chairman of the Communist Party are such that make it abundantly clear that his testimony is necessary, relevant and material to the issues in this case.

Colloquy of Court and Counsel After Openings

But more than that, the defendants, all of them, feel and their counsel feel that the absence of that testimony will result in a failure of justice.

Now I call to the Court's attention also the petition which Mr. Winter who made the affidavit has incorporated in his affidavit.

The Court: Yes, I just noticed that. I am not going to receive that. You know, the other day, one of (T-1307) the defendants got up and said he has a petition which he said the other defendants signed but that they had not consulted with their lawyers about. I wasn't sufficiently advised at the time as to what the law was, so I took it and examined it. I have since examined the law and it is my interpretation of the decisions that when defendants are represented by counsel, and this is a joint petition signed by the defendants, that it is a matter within the discretion of the Court as to whether or not it will be received, and in the exercise of that discretion I refuse to receive that petition. I will consider the motion, however.

Mr. Isserman: In connection with the motion the petition—

The Court: What did you need to have the petition by the defendants for? You have got the lawyers all here.

Mr. Isserman: Exactly. The point I make here is that the defendants out of the urgency of the case and out of their needs have felt the need of addressing your Honor in this way. The point I make is that the allegations of the petition and forgetting for a moment its form have been incorporated in the affidavit and there the fact is stated, which is important, that Mr. Foster is an eminent world authority—

(T-1308) The Court: Where does it say the petition is incorporated in the motion?

Mr. Isserman: That is found in paragraph 3 of the affidavit which says that the statement is attached and made part of the affidavit.

The Court: Wait till I find it.
3, you are talking about? Page 3?

Colloquy of Court and Counsel After Openings

Mr. Isserman: I am talking about paragraph 3, on the last page of the Winter affidavit. The mimeographed copy I have is a little blurred on the page number. Paragraph 3.

The Court: Well, you see, that is rather repetitive language. It is described as a joint statement and petition and then you have this language: "Further indicated and supported by the joint statement and petition signed by each of the defendants herein, including myself, which said statement is attached hereto and made a part of this affidavit."

Of course, the petition is also attached.

Mr. Isserman: It is true, but the petition is not a fact; that is a form in which the statement is in. The statement contains the fact.

The Court: I don't consider that an appropriate way to present sworn evidence. The petition is unsworn evidence. The petition is unsworn. If you want to make a motion and have that petition as part (T-1309) of it I will not consider it. You will have to take the papers back and reframe that.

Mr. Isserman: If your Honor please, I present the papers as they are and, if your Honor refuses to consider the matter in the petition even as to the factual allegations, I will take exception to that.

The Court: I will take the motion as made orally on the basis of the oral statements you have made as an official of this court and a member of the bar and I will consider in connection with that your argument thus made. I will give the matter reconsideration. In fact, I have given the matter reconsideration and the motion is denied and I pass back the written papers.

Mr. Isserman: Before your Honor rules, I did want to make another statement as an officer of this court which I take to be true and that is that Mr. Foster is an eminent world authority on Marxism-Leninism and as such has played a unique and fundamentally important part in the development of the Communist Party of the United States, and for that reason his testimony is essential, and I would like to make one more statement, your Honor, and that is this:—and this I know of my personal knowledge—

Colloquy of Court and Counsel After Openings

Mr. Foster is most anxious to be a witness in this case and is contemplating taking that step against the orders of his doctor, and he is contemplating taking (T-1310) a step which I know from his doctors will jeopardize his life.

The Court: Then he better not do it.

Mr. Isserman: And therefore we ask the Court to consider very carefully his right to submit his testimony by deposition and again I say in a way that can be worked out which will not interfere with this trial or unduly jeopardize his health. The defendants believe and counsel believe—

The Court: Just let me say something. Mr. Isserman, I wrote my opinion in that matter last November anticipating that some such question might come up and somebody might say, "You are practically forcing him on in his ill condition." Nobody is forcing him. You had the chance since my opinion was handed down last November to take his deposition in the interval. My opinion practically invited you to do that in the interval between the time my opinion came down in November to January 17th, but you didn't decide to do it. If he decides to be a witness it will be nobody's fault but his own and that of various counsel for the defendants.

Mr. Isserman: If the Court please, there is one fact I would like to call to the Court's attention, and that is there is no way of taking the deposition of a defendant and Mr. Foster is a defendant and was not severed until (T-1311) January 17th. And we ask the Court to consider this fact that it is entirely possible to take such a deposition and that the ends of justice would be served if it is taken, that the ends of justice require it, that this Court should desire that every fact, including Mr. Foster's participation in the acts covered by the indictment should be presented to the jury, and we ask the Court to consider very seriously the taking of his testimony in such a way that it will be before the jury and will not be of jeopardy to his health.

The Court: I have considered it. His deposition will not be taken.

Colloquy of Court and Counsel After Openings

Mr. Isserman: If your Honor please, I object to the ruling on the ground that the denial of the right to take his deposition is a denial of due process to the defendants.

The Court: Very well.

Defendant Dennis: May I be heard very briefly?

The Court: Yes, you may.

Mr. Dennis: With respect to the petition of the twelve defendants, it is unfortunate that your Honor has not seen fit to read it, let alone receive it. I want to state to the Court that we did not draw this up as a perfunctory matter.

(T-1312) We took this step because of the very profound and deep concern and conviction of all of us that it is necessary to petition for a redress of a very deep injury and an injustice to each of the defendants individually and to all of us joined in the trial. In respect both to the petition, which speaks for itself, and to the motion submitted by Mr. Isserman, I think the Court should give further consideration to the fact that not only is this not an ordinary trial, an ordinary trial, but that Mr. Foster is not an ordinary man or an ordinary member of our party. He is the National Chairman of our party. He is one of the founders and a leader of our party since its existence. He is the foremost Marxist in these United States, and certainly he has played a key and a very central role in respect to all of the issues which are joined in this trial, and therefore we consider particularly, and in addition since Mr. Foster in effect is being tried in absentia, that to refuse to grant a deposition would deprive both myself and my co-defendants and Mr. Foster of due process of law of our most elementary constitutional rights. I think your Honor would grant that this would be a different situation, or certainly most people would, that it would be really unthinkable in these United States if any other political (T-1313) party or any national organization were involved in any court case, no matter how petty, how minor, where the chairman or the president of that organization would be prohibited from being a witness, be it through oral testimony or through a deposition.

The Court: You say I have prohibited him from being a witness.

Colloquy of Court and Counsel After Openings

Defendant Dennis: In effect, and I will just conclude, your Honor, on this point.

The Court: Well I deny that; I haven't prohibited him at all.

Defendant Dennis: I wish to make it clear that I and my co-defendants consider that the testimony of Mr. Foster is so indispensable that at all costs in one way or another it must be presented and submitted to the jury, and therefore it seems to me that the Court is faced with a very grave and serious alternative, whether to grant the taking of a deposition under expeditious conditions or to compel Mr. Foster to be a witness where his appearance in this court could only result in fatal consequences, and that is not just my personal opinion or of his personal physician; it is also the opinion, your Honor, of physicians appointed by the Court.

(T-1314) And I respectfully urge that your Honor reconsider the motion and give due and earnest consideration to the petition which we 11 defendants have submitted.

The Court: As to the petition, Mr. Dennis, is not particular important now, you didn't think I read it because it is hard for people to realize how experienced judges and lawyers can glance through papers readily, and I saw enough of it to see that it was on the same subject matter as the motion papers. That is not particularly important now. I made the ruling that I did about the petition because I wanted to serve notice on all the defendants here that if during the trial one or another of them got up and began handing me petitions, that in all probabilities I would not receive them. I will exercise my discretion in every such instance, but I am not likely to receive it.

I don't see any use in that. If you have lawyers here, the lawyers can present the arguments in writing or otherwise; and if you have people represented by lawyers themselves continually offering petitions, next thing they will want to do is to make oral argument and we will have a lot of unnecessary confusion here.

As to the merits of the motion itself, I don't remember exactly how many times that motion has (T-1315) been made. One might suppose, to listen here this afternoon,

Colloquy of Court and Counsel After Openings

that it was the first time. But, oh no, that has been coming up again and again, and arguments have been made and I have listened to them, I have given the matter thought, and I gave it a lot of thought way back last November when I first heard that Mr. Foster was ill. And it isn't from any lack of consideration or any hasty action on my part, but the decision I made has been made after the most mature thought and consideration and deliberation on the matter.

And I am not going to have the deposition of Mr. Foster taken, nor do I consider myself to be in any such dilemma as Mr. Dennis has indicated.

Now, Mr. McCabe, have you something to add?

Mr. McCabe: Yes, your Honor. Of course, I suppose your Honor had in mind that Mr. Dennis, as he was just addressing your Honor, was doing it also in the capacity as an attorney.

The Court: Yes.

Mr. McCabe: And I believe his name was signed to the motion.

The Court: If it had been a petition signed by him alone, why, I might have given some consideration to it. I suppose we will begin having those things in a little while. But don't forget that we had a long (T-1316) talk in my chambers this afternoon, for ten or fifteen minutes, on this same subject and I stated I would deny the motion. And you went over the whole thing, backwards and forwards, and you come out here in open court and each one of you wants to have something to say all over again.

Mr. McCabe: I see, your Honor, the motion to reconsider repeated the motion which had heretofore been made on March 7, 1949, at the time I represented Mr. Dennis, and through an inadvertence, I suppose, contains my name as attorney for Eugene Dennis and Henry Winston. I think that is a detail—

The Court: You needn't worry about that.

Mr. McGohey: I would like to call your Honor's attention to the fact that this inadvertence must have occurred today because this paper that he is talking about is dated March 22. It is not a paper that is dated on March 7, before he was discharged as Mr. Dennis' counsel. It is today's date.

Colloquy of Court and Counsel After Openings

The Court: Even so, it is an inadvertence and of no moment.

Mr. McGohey: Like the citations, perhaps.

The Court: I don't think that it will ever be argued here that by such means Mr. McCabe has been (T-1317) reinstated as Mr. Dennis's lawyer or anything of the kind.

I think it was an inadvertence, Mr. McGohey.

Mr. McCabe: As Mr. Foster's counsel, I recall your Honor's admonition, that your Honor has recalled on several occasions, of last November, stating that if we wished to take the deposition of Mr. Foster we should take some steps in that direction. Let me say that, apart from Mr. Dennis's position as a defendant at that time, that I, as his counsel, would have been at loss then to formulate depositions or interrogatories in the light of the information which we then had.

The Court: You mean, after Mr. McGohey's opening to the jury, now you know all the things you would have asked about?

Mr. McCabe: No, no. No, as I say, the information contained in the bill of indictment might have permitted some general questions which inevitably would have brought in matter which was irrelevant, which inevitably would, in the light of the testimony adduced by the Government, have to be repeated or revised or amplified.

Now, testimony on the part of a defendant is given, normally, certainly, universally, in reply to testimony given by the Government, given by the (T-1318) prosecutor. What were we to do then? Were we to explore every possible bit of testimony which we could conceive of the Government's introducing and answer that?

Your Honor denied our request for a bill of particulars on Mr. McGohey's highest protestations that we were demanding his evidence—we were asking for his evidence. Your Honor said, "No, that wasn't right." Well now—

The Court: What I really said was that Judge Hulbert has already denied the motion and I was going to follow his lead.

You know, you, Mr. McCabe, you and your colleagues, you make a motion once and it is denied. And then you make it again just as though you had never made it be-

Colloquy of Court and Counsel After Openings

fore. Then if it is denied again, the next time it comes up, you all look up as though you had never heard anything about it before. When a motion is made and considered and denied, that usually disposes of the matter.

Mr. McCabe: Except this, your Honor, that as the situation develops, it happens that the motion becomes more and more appropriate. I anticipate renewing this motion, if your Honor denies it this time, I anticipate renewing it after certain of the Government's testimony or after all the Government's testimony because, were (T-1319) we to put in writing now all the testimony which Mr. Foster would give, obviously we would be doing just what Judge Hulbert, and in the position which your Honor adopted, said would be giving us the Government's case, we would be giving the Government every possible bit of information which we have. And certainly your Honor will agree that the Government is not entitled to know in advance every jot and tittle of our defense.

The Court: Who said they were?

Mr. McCabe: Well, I say, compelling us to take the deposition of Mr. Foster, had we started out as was implicit in your Honor's instructions to take deposition of Mr. Foster last November, we would have had to cover the entire field of his knowledge and his acts, and the Government was certainly not entitled to have that prior to the preparation and presentation of this case.

I submit that justice will require that Mr. Foster's evidence, testimony, be got before this jury. The jury is entitled to have that testimony. It would be asking a jury to decide upon less than all of the available testimony, if they walk out of this box finally without having heard the testimony of a man whose actions, whose name will loom large in the Government's case.

(T-1320) The Court: If that is another motion, it is denied.

Is there anyone else to add something?

Mr. McGohey: If the Court please.

The Court: Yes.

Mr. McGohey: It was Mr. Dennis, I think, who made the observation, made the statement that Foster was being tried in absentia.

Colloquy of Court and Counsel After Openings

The Court: Oh, yes.

Mr. McGohey: Now, of course, we all know that Mr. Foster is not being tried at all. This indictment has been severed as to him and nobody is prohibiting Mr. Foster or anybody else from being a witness, if the defense want to call them.

This is not the first case, of course—it seems carrying coals to Newcastle, certainly, to be talking about practice to your Honor who taught it for so many years—certainly this is not the first case in which a deposition has had to be taken and, of course, it is always usual, when you know in advance that a witness may not be available, to take his deposition.

It was represented to the Court that Foster's health was such that he might not live long enough to be available, and that has happened before. And it happens so many, many times that some witness that somebody (T-1321) would like to have offered in a case is unable to be there, and if it happens at a time when his deposition cannot be taken, well, it is just too bad. But this is certainly something that has happened many, many times in litigation, and I urge your Honor—I think your Honor has denied the motion?

The Court: Yes.

Let me clear up this business about Mr. Foster being tried in absentia.

Defendant Dennis: May I say—

The Court: I should have disregarded that statement, if it had not been made two or three times before but, as Mr. McGohey said, Mr. Foster is now not being tried at all, he is not being tried in absentia or in any other way, and I should suppose that that was sufficiently obvious to require no further comment.

Yes, Mr. Dennis?

Defendant Dennis: May I make a brief rejoinder to the remarks of the District Attorney?

The Court: Yes, you may. There isn't anything up for determination but the jury is gone, and I think this is a good time to do it.

Defendant Dennis: Formally, juridically speaking, Mr. Foster is not on trial but, in effect, de facto he is being

Colloquy of Court and Counsel After Openings

tried in absentia. Formally, juridically, there are (T-1322) 11 individuals who are now on trial, but in effect de facto the Communist Party is on trial.

The Court: Well, that I cannot agree with. If there is any conviction here, why, then it will be plain, I think, that those who are not being tried are going to be in a different position than those who are being tried, and there is no use in keeping on talking that it is the Communist Party on trial when I have stated, again and again, to the jury and otherwise that the only persons on trial are these 11 individuals, not including Mr. Foster. Now, of course, I cannot stop people from getting up and telling me just the opposite, and I suppose that is just one of those things you have to bear with, but the fact is as I have just stated.

Now, I think we had better adjourn.

Mr. Gladstein: May I say one word?

The Court: Yes.

Mr. Gladstein: A little bit more than one word because one—

The Court: You did not mean literally one word.

Mr. Gladstein: The first thing I want to suggest, your Honor, is this: I am a little bewildered by the speed with which, on passing on our motions, you pass from the future tense to the past perfect tense (T-1323) and to the present. A little while ago, in passing—

The Court: Which one?

Mr. Gladstein: —in passing on the motion, here is what you did: you said, “I will reconsider the motion. I have reconsidered the motion. The motion is denied.”

The Court: That is just what happened.

Mr. Gladstein: It is exactly what happened, and it happened just that fast.

Your Honor must recall this: we are presenting this petition today, this application, this motion, however it is to be denominated, under circumstances which are different from any which have heretofore obtained.

The Court: That I deny.

Mr. Gladstein: It may be so, you may deny it, but the record is there, and one of the things—yes, the record is the one the transcriber has and that includes many men-

Colloquy of Court and Counsel After Openings

tions on the part of Mr. McGohey in his opening statement to the jury of the involvement of William Z. Foster in this case as a defendant.

Now, what was it Mr. McGohey said? For example, and you will find this in the transcript, whether your Honor denies it or not, Mr. McGohey said—

The Court: I don't think that I intended to deny certain statements appearing in the transcript. (T-1324) What I intended to say, when I said I denied that, was that there have been lots of other cases similar to this. This is not the first time some man became ill and a case was severed. I have had many such experiences right in my own practice.

Mr. Gladstein: I am not talking about other cases, and I want to talk about this one.

The Court: All right.

Mr. Gladstein: And I don't know what happened in the other cases after the opening statement, but I do know what happened in this case. Mr. McGohey said the defendants in this case, the 11 defendants, conspired with William Z. Foster as alleged in the indictment. That is the record. He said that William Z. Foster is a defendant to the indictment on trial but his trial has been severed, but he is a defendant; he said William Z. Foster was present at the Convention which allegedly dissolved the Communist Party in 1944 and created the Communist Political Association; was named to the National Committee and so forth and so on. At that time, as Mr. McGohey said to the jury, apparently he intended to introduce evidence on it, William Z. Foster did not object to certain remarks which are supposed to have been made by Earl Browder. This is in the opening statement of Mr. McGohey. Mr. McGohey goes ahead (T-1325) and he says, William Z. Foster, the defendant, was elected head of the Communist Party in July 1945, when the party was allegedly—

The Court: I am just scratching my head now. Do not pick me up on that, for goodness sake.

Mr. Gladstein: Well, your Honor, I would—

The Court: That is what happened before and you said it was very significant and I just—

Colloquy of Court and Counsel After Openings

Mr. Gladstein: I did not say it was significant, but I hope some day it becomes as significant as my father's used to be because, when he scratched his head, he was doing some thinking and he usually came out with something very good.

The Court: I seldom do it, but once in a while.

Mr. Gladstein: I will wait and the first time you do, your Honor, I will get up and congratulate you for the result of the scratching.

The Court: I hope you do.

Mr. Gladstein: However, then it is charged—it is said by Mr. McGohey in the statement to the jury that on a certain date Mr. William Z. Foster accepted the view—accepted the view—of Jacques Duclos, leader of the Communist Party of France. This is even more—this is more than anything that has possibly been indicated to us at any time heretofore as to the possible (T-1326) involvement of William Z. Foster because now Mr. McGohey is telling the jury that he is going to prove that Mr. Foster personally accepted a certain viewpoint.

Now, isn't it important for us to have the right, not just for Mr. Foster to have the right, but for all of us, I for my clients, to have the right to challenge that statement as to whether Foster accepted somebody else's views? And elsewhere there was even talk by Mr. McGohey about—I read the record last night—about compliance—compliance, he said; obedience and compliance with somebody else's views.

Now, Judge, you cannot overlook for one second the insidious purpose of that kind of statement to the jury, and it is this: it is to try to get across by innuendo to that jury the idea that the mystery man who isn't here, William Z. Foster, and these 11 defendants who are here, were taking some kind of orders from somewhere else, something that they are not charged with, but that is what Mr. McGohey was, in effect, trying to cultivate in the minds of the jury.

Now, the least we are entitled to, apart from a direction to the jury to disregard that kind of—

The Court: You really improvise, Mr. Gladstein. You start with one thing and then you—

Colloquy of Court and Counsel After Openings

Mr. Gladstein: Foster is the only man who, (T-1327) in the nature of things, because of the manner in which Mr. McGohey formulated that assertion, can deny the false character of that statement, because only Foster can state whether he did or did not accept somebody else's prior view. Now, that is just one example, that is just one example, but that example alone should illustrate the importance of due process for these defendants, and your Honor has said many, many times how concerned you are to see that the defendants get a fair trial.

The Court: Well, I am too.

Mr. Gladstein: Then I trust that your Honor's concern will lead the Court to grant that which is not unusual, and nothing unorthodox about it, and which we request, namely, that a person who is ill, a person who has been stricken so that he unfortunately cannot be here to personally defend his life and his activities, will at least have the right to have his words brought from his sickbed to the jury, so they can know what the truth is. There is nothing unusual about that request and we make it, and we ask the Court to really give some consideration to it.

The Court: You know, that word "really," there, that is the way you do. You put that little sly insinuation in, as much as to say that heretofore I haven't really given the matter any consideration.

(T-1328) Mr. Gladstein: What does your Honor expect me to think when, for example, you announce, "I will give this consideration, I have given it consideration, and I now deny it"? You say that so fast.

The Court: If you think that you were going to get me to forget what I was going to say by your going on, you are mistaken, because I can remember what I was going to say, and it is that, making insinuations like that is not proper or fitting, and it is not a worthy thing for you to do. Now, you do it all the time, and perhaps you take advantage of the fact that I don't take any stringent steps about it, but I hope you won't continue that sort of thing.

Mr. Gladstein: I meant no offense by that, and what I really meant was that the Court should reconsider this

Colloquy of Court and Counsel After Openings

application in the light of what I have said, in the light of the new developments since yesterday.

Mr. Sacher: Will your Honor indulge me just a moment?

The Court: Yes.

Mr. Sacher: It seems to me, Judge, that even if this were a most ordinary criminal case that in a trial which putatively, at least, is an inquiry into the truth and the whole truth, there ought not only to be no reluctance, but there ought to be eagerness on the (T-1329) part of, not only the Court, but of the prosecution as well, to receive the testimony of one of the persons charged with being a member of an alleged conspiracy.

Now what is it we are talking about—

The Court: We are talking about taking Foster's deposition.

Mr. Sacher: There is the first point I am getting at, your Honor, that what we are essentially discussing is the question as to whether the jury shall have the benefit of all the facts in the case. Now I ask your Honor, can you conceive that an instruction by your Honor that the jury is to draw no unfavorable inference from the failure of Mr. Foster to testify can possibly take the place of a deposition by Mr. Foster? That cannot certainly take the place because all you are doing then, if you did that, and as I believe you will agree with me, you would be obliged to make that statement—all that your Honor would be doing would be to say, you cannot punish these people for not having Mr. Foster's testimony, but by the same token you haven't given either the defendants or Mr. Foster the opportunity to lay before the jury the facts in the case, and it seems to me that all the fine talking we may do about American traditions and American notions of fair play I think will be belied if despite the innumerable efforts by the defense the prosecution (T-1330) opposes and the Court denies applications to have Mr. Foster's testimony. In that connection I would like to make the following observation also, that no matter how often your Honor may say that all that is involved here is the trial of 11 defendants, the fact of the matter is that this indictment specific-

Colloquy of Court and Counsel After Openings

ally charges the Communist Party with being the teacher and advocate of certain doctrines alleged to be proscribed by the statute, and what is more, the so-called criminality of the defendants or the alleged violation of law is purely derivative, derivative from the fact that it is alleged they conspired—

The Court: You see, Mr. Sacher, it is Katy did and Katy didn't. You keep saying "Katy did" and I keep saying "Katy didn't," and you keep that up, and the funny part of it is you don't seem to realize that I always have the last say.

Mr. Sacher: I realize that.

The Court: Now I am the one who is deciding this thing here. You and your colleagues think that when you talk it is a voice from Heaven, because the lawyers say so. This is the first time I ever heard of such a doctrine, and what I decide can be reviewed, but lawyers talk, insisting on this and that and the other thing, as you do here, it proves nothing.

(T-1331) Mr. Sacher: Your Honor, I am simply—I am not trying to prove anything right now. I am inviting—

The Court: But you bring the subject each time as though we have never heard of it before, and as I am saying, it is like Katy did and Katy didn't, and then we keep it up, and then let it go by, to be resumed at a later time.

Mr. Sacher: But it seems to me that as the case has progressed it has reached a point since Mr. McGohey's opening of yesterday which indicates how flagrantly unjust it must be, first to the defendants on trial, because that is the primary consideration for everybody involved in the trial, to deny them the benefit and the assistance of testimony by the man who was basically the architect of the change that is complained of by the prosecution. And, secondly, it seems to me in the interests of ascertaining the truth and the whole truth it is absolutely essential—

Mr. McGohey: Will your Honor please excuse me? I have to get to the doctor with an infected gum.

The Court: Yes, you may go.

Colloquy of Court and Counsel After Openings

(Mr. McGohey left the courtroom.)

Mr. Sacher: It is absolutely essential as a matter of, well—what shall I say?—decency to Mr. Foster, decency (T-1332) to permit a man who occupies the position, the status and the role in the life of this Party to give his testimony. Now it is not a question of reducing this thing to this amusing little ditty that your Honor speaks of, of Katy did and Katy didn't. It seems to me rather that what we are speaking of is something that constitutes—

The Court: Well, the context in which I made that is not what you are now talking about but what you were talking about a few minutes ago, namely, that you insisted that others were on trial than these eleven defendants; that you have kept asserting, your colleagues have kept asserting, and I have asserted on the contrary that the only persons on trial are these eleven individuals, and that is what I said the Katy did and Katy didn't about. So don't transfer that to some other subject and go on in that way.

Mr. Sacher: Now I am encouraged to believe, your Honor, that in the light of these new considerations, that is, the new considerations being the developments coming out of Mr. McGohey's opening, that it would be nothing more than fitting and proper for your Honor to give this matter further consideration and to weigh the justice of the matter and to give us the benefit of your deliberations, perhaps at a time when you are not (T-1333) as agitated as you are now.

The Court: I am not a bit agitated. Now Mr. Sacher, what is the use of making ridiculous remarks like that? You tried to make it look like when I am scratching my head I am signaling to the jury, and now I am in a most agitated way, and I never was in a more gentle mood than I am this minute.

Mr. Sacher: Then I request your Honor to reconsider the matter and grant the application.

Mr. Gordon: May I be heard briefly, your Honor?

The Court: I think, Mr. Gordon, if you will just resume your seat I will dispose of the matter—unless there is something important that you want to add.

Colloquy of Court and Counsel After Openings

Mr. Gordon: Just to urge, your Honor, that the motion does not show the legal requirement that this testimony is exclusive and necessary. There has been a lot of talk but no motion, really, claiming the vital necessity of this testimony, and for that reason we urge that if your Honor does reconsider it, that you again deny the motion.

Mr. Isserman: If the Court please—

The Court: I knew that, Mr. Gordon.

Mr. Crockett: I can assure the Court it is not merely because Mr. Gordon has just resumed his seat that (T-1334) I want to be heard, but Mr. Gordon makes the point that the motion does not meet the legal requirements. As I read the Federal Rules of Criminal Procedure, there are two requirements, neither of which requires that there be a showing that the testimony is exclusive to the particular witness. There is a requirement that the testimony be material, that is one, and, two, that it be necessary to prevent a failure of justice.

In the preparation of the former motion papers, which your Honor has seen fit not to receive, particular attention was paid to satisfying those two requirements. Those papers, I respectfully submit, are in proper order. The affidavit attached thereto was an affidavit of my client. It was incorporated in the motion, and therefore becomes a part of the motion. The so-called statement or petition which was attached to the affidavit was incorporated in the affidavit, was also signed by my client, and therefore becomes a part of the motion.

I submit that the Court should really receive that former motion. Before continuing on with what I have to say, however, in order to be technically in order on the record, I should like to move now for a reconsideration of the motion to permit us to take the deposition of Foster. In that connection I want to point out just one thing: the Court has mentioned on (T-1335) several occasions, and Mr. McGohey has mentioned at least here today, that there seemingly has been some unseemly delay on our part in applying for permission to take this deposition. Your Honor is aware, I am sure, that in criminal cases the rule regarding depositions is slightly different than from what

Colloquy of Court and Counsel After Openings

it is in civil cases. In civil cases no previous application to the Court, no formal order by the Court is necessary to take a deposition. In a criminal case we would, of course, be out of order if we proceeded to take the deposition of Mr. Foster without first getting an order from your Honor permitting us to take it and requiring Mr. Foster to give us that testimony.

Now the point that I wish to emphasize is this: Up until January 17th of this year, and certainly at the time that your Honor's opinion came down—the opinion to which you recently referred—

The Court: Yes; that was in November.

Mr. Crockett: Yes; Mr. Foster was a defendant in this case, and under the Federal Constitution not even this Court could compel Mr. Foster to give us any testimony by deposition or otherwise.

Mr. Gordon: You still cannot, your Honor. He is still a defendant. This is just talk.

Mr. Crockett: It was not until after the Court (T-1336) entered the order severing Mr. Foster, so far as the trial of this case is concerned, that it became possible, legally possible for your Honor to grant us permission to take his deposition.

The Court: How is it possible now? He hasn't said anything, has he?

Mr. Crockett: It is possible if we can get the order from your Honor. Now if Mr. Foster refuses to give us testimony—and I have no reason to assume that he wouldn't; on the contrary, I am sure he will be glad to do so

The Court: Why should I assume that he would have objected in November? The natural assumption is that he would do everything he could to help the other defendants; isn't that so?

Mr. Crockett: That is exactly so, and so much so that I do not see why the Court does not grant us permission to take his deposition.

The Court: Well,—

Mr. Crockett: Let me make my second point, if I may.

The Court: All right.

Colloquy of Court and Counsel After Openings

Mr. Crockett: There are two points. In the first instance, you decide whether you are going to allow us to take the deposition. That doesn't necessarily (T-1337) place Mr. Foster's deposition before the jury. You still have an opportunity at the time we offer to read that deposition to the jury to decide then whether or not Mr. Foster's testimony should be presented to the jury.

The Court: Now Mr. Crockett, I am not going to direct the deposition of Mr. Foster to be taken, and go on here, after being represented to me in the conference in chambers to let the jury go because it will just take a minute or two in here. We have been three-quarters of an hour on it. Now I tell you I am not going to direct his deposition to be taken.

Mr. Crockett: I don't recall telling your Honor that it will take only a few minutes. On the contrary, my understanding was that your Honor indicated even before the motion was made to us in chambers that we would be permitted to make the motion but that you would deny it.

The Court: That is right. That is just what I said.

Mr. Crockett: But you also indicated that there have been occasions when you changed your mind even within a short period of time.

The Court: Yes, that is right, and the more you argue the more determined I am that I am not going to permit the deposition to be taken, so this is one time that in a short time I did not change my mind.

* * *

(T-1337-A) (Adjourned to March 23, 1949, at 10.30 a. m.)

Louis Francis Budenz--for Government—Direct

(T-1338)

New York, March 23, 1949;
10.30 o'clock a. m.

TRIAL RESUMED.

* * *

LOUIS FRANCIS BUDENZ, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. McGohey:

Q. Mr. Budenz, before I start to question you I am going to ask you to make an effort, if it be an effort—I am going to ask you to keep your voice loud enough so that all of the jurors here in this last row of jurors, counting from you to me, can hear you plainly in everything you say.

Q. What is your present occupation, Mr. Budenz? A. Assistant professor of economics at Fordham University.

Q. And how long have you held that position? A. For several years now. I am in my third year.

Q. And prior to your becoming a member of the faculty (T-1339) at Fordham were you on the faculty of any other college or university in this country? A. Yes, sir, Notre Dame.

Q. And prior to—and you were a member of the faculty, I understand, at Notre Dame? A. Yes, sir, I was teaching at Notre Dame University.

Q. And prior to that what was your occupation? A. I was doing newspaper editorial work, managing editor.

Q. And what paper were you working for? A. The Daily Worker.

Q. What is the Daily Worker, Mr. Budenz? A. The Daily Worker is the official daily organ of the Communist Party—

Mr. Sacher: I object to that, if your Honor please, and move to strike it out as representing a conclusion of the witness.

The Court: Objection overruled; motion denied.

Mr. Sacher: Exception.

Q. And how long—

Louis Francis Budenz—for Government—Direct

Mr. Gordon: Wait a minute. I do not think the answer was completed.

Mr. McGohey: May I have the answer read, your Honor? I am not sure whether it was obscured from the jury by the objection.

(Answer read.)

(T-1340) Q. How long were you on the Daily Worker, Mr. Budenz—well, let me withdraw that and ask you this: You said you had been managing editor. How long were you managing editor? A. For several years. I was also president of the corporation conducting the Daily Worker. I was appointed president in 1940, and some time thereafter, I should say, approximately a year, I was named officially managing editor although I participated in the executive editorial duties from the time I was president of the corporation.

(T-1341) Q. That would be in 1940? A. That is correct.

Q. And how long did your activities of that kind continue from 1940,—until when? A. October 1945.

Q. Now prior to 1940 were you also employed by or associated with the Daily Worker? Prior to 1940? A. I was with an interim, when I went out to Chicago as editor of the Midwest Daily Record, also a Communist controlled and owned publication.

Mr. Sacher: I move to strike that out as not responsive and representing the conclusions of the witness.

The Court: Objection overruled and motion denied.

Mr. Sacher: Exception.

The Court: May I have the name of that paper?

(Record read.)

Q. When did you first go to work for the Daily Worker? A. October 1935.

Q. And you continued to work on the Worker until the time you went to Chicago, is that correct? A. That is right, until 1937.

Louis Francis Budenz—for Government—Direct

Q. And in 1937 you went to Chicago? A. In November 1937 I went to Chicago to be editor of the Midwest Daily Record.

(T-1342) Q. And how long did you occupy that position in Chicago? A. Until I returned to New York for the Daily Worker.

Q. And that was when? A. In the early part of 1940.

Q. Now during the time that you were employed by the Daily Worker and the paper in Chicago were you a member of the Communist Party of the United States? A. Yes, sir, I was, all that time.

Q. And during part of that time were you also a member of the Communist Political Association? A. Yes, sir, during the period that the Communist Political Association was in existence.

Q. And that was from 1944 to 1945? A. Correct.

Q. Now will you tell us just approximately when it was that you first joined the Communist Party? A. I joined the Communist Party first in August 1935 but became an open member in October 1935. I—

Q. Pardon me.

Mr. Sacher: I submit the question was answered, your Honor.

The Court: I think it was.

Mr. McGohey: I haven't objected to the answer.

The Court: I know.

(T-1343) Q. Prior to the time that you joined the party did you know or were you acquainted with any members of the Communist Party, without stating the names of any members? A. Oh, yes, I was acquainted with members of the Communist Party.

Q. Were you acquainted with any of the defendants here on trial prior to the time you became a member of the Party? A. With some of them.

Q. Who, for instance? A. Jack Stachel.

Q. Do you see him here in the courtroom? A. Yes, I do.

Mr. McGohey: Mr. Stachel, will you please stand up?

(A man stands up in the courtroom.)

Louis Francis Budenz—for Government—Direct

Q. Is that the gentleman you have referred to? A. I knew him.

Q. Who else of the defendants did you know before becoming a member? A. Potash—Irving Potash.

Mr. McGohey: Mr. Potash, would you please stand?

(A man stands up in the courtroom.)

Q. Is that the gentleman you refer to? A. That is correct.

Q. Who else? A. Carl Winter.

Mr. McGohey: Mr. Winter, would you please stand?

(A man stands up in the courtroom.)

(T-1344) Q. Is that the gentleman you refer to? A. That is the man. Until prior to joining the Party those are, among the defendants, the ones whom I knew.

Q. What was your activity prior to joining the party, Mr. Budenz? What was your work?

Mr. Isserman: I object to that, if the Court please, on the ground that it goes back to a period prior to 1935 and long before any of the periods covered by the indictment.

The Court: Objection overruled.

A. I was engaged in labor organization.

Q. Was it in connection with that work that you met these defendants? A. Yes, sir, partly; also in regard to the meeting of certain political conventions of a labor or socialist character, such as the Continental Congress and the United May Day Committee of 1934.

Q. At the time you joined the Communist Party did you have a conversation with any of the defendants, any one of them? A. I had a conversation with Jack Stachel in regard to my—

Q. Mr. Budenz, you had a conversation with him? A. That is correct.

Q. Will you tell us, in substance, as well as you can recall, what was said in that conversation?

Louis Francis Budenz—for Government—Direct

The Court: Let us fix the time and place.

(T-1345) Mr. McGohey: Oh, I beg your pardon. I thought the witness said that it was at the time he joined the Communist Party.

The Court: Well,—

Mr. McGohey: And that was, as I understand the testimony, some time in the fall of 1935.

The Court: I think he should testify to that.

Mr. Gladstein: Yes.

Mr. McGohey: I thought he did, your Honor.

The Court: No, it isn't clear to me, and it will take but a moment.

Mr. McGohey: I have no objection.

Mr. Gladstein: Would your Honor direct Mr. McGohey to not lead the witness? Many of the questions have been leading and suggestive, and I suggest that the foundation be laid without asking leading questions.

The Court: Well, I am accustomed to permit leading questions on matters that lead up to the principal events. When it comes down to some matter of what appears to be any consequence, I certainly will permit no leading of the witness whatsoever, and I will also require, and doubtless Mr. McGohey contemplates doing this, that when any conversations are brought out, it should first be clearly established as to the time, the place and who was present.

(T-1346) Mr. McGohey: I thought that had been done, but I will be precise about it at this moment.

The Court: It isn't clear to me.

Q. I understand your testimony to be that you did have a conversation with the defendant Jack Stachel? A. I had a conversation—

Q. The answer to that, I think, would be yes or no. You did have a conversation? A. Yes, I did.

Q. Without, and again looking for a yes or no answer—telling us the conversation, was it at or about the time you joined the Communist Party? A. That is correct.

Louis Francis Budenz—for Government—Direct

Q. Now, will you please tell us where that conversation was had and when it was had? A. That conversation was had on the ninth floor of the Communist Party headquarters in August 1935, upon Jack Stachel's return from the Seventh Congress of the Communist Internationale in Moscow.

Mr. Gladstein: I move that the last part of that be stricken. It is not responsive, and not material. I move it be stricken from the answer.

The Court: It seems to me—

Mr. Gladstein: He was asked where, your Honor, the conversation occurred, and then you will notice the last portion of the answer has nothing to do with the locale of the conversation. I move that it be stricken for that reason.

(T-1347) Mr. McGohey: I intend to bring that out in the conversation.

The Court: Yes, I will permit it to stand.

Where was this Communist Headquarters?

The Witness: Communist Headquarters is at 35 East 12th Street or 50 East 13th. It is a building which has two entrances. It is referred to either by one or the other of these addresses. In New York City.

The Court: That is very well.

Q. Will you tell us, as well as you can from your recollection, what Mr. Stachel said to you and what you said to Mr. Stachel at that conversation that you have described?

Mr. Gladstein: I object to that question upon the ground that it calls for hearsay so far as my clients are concerned. I haven't heard the witness say either of my clients was present at this conversation; and whatever may have been said, I have no knowledge of that, but whatever may have been said would not be binding on either of my clients, particularly since the occurrence that the witness is asked about is supposed to have taken place in 1935.

The Court: In these conspiracy cases it is essential to receive the evidence subject to a certain

Louis Francis Budenz—for Government—Direct

amount of connection and subject to my instructions to the jury (T-1348) as to which defendants it may be admissible against.

Mr. Gladstein: Will your Honor bear in mind that the charge in the indictment is that the conspiracy, the alleged conspiracy, commenced in April 1945? And I therefore not only submit that the hearsay objection that I am making goes to my clients and is well taken, but also that what is being said here is hearsay of a remote character, that is also not even within the issues framed by the indictment.

The Court: This may be received at the moment only against the defendant Stachel.

Q. Now will you tell us the conversation? A. Mr. Stachel told me that I would have to wait until Earl Browder returned from the Seventh Congress in Moscow, as to the character of my membership. It would either be concealed or underground, on the one hand, or open, on the other, and the decision as to that would have to wait until Mr. Browder returned. He also said that later on he would give me certain literature in regard to the Communist movement, but that was the main point at that moment.

Q. Did Mr. Stachel in that conversation say where he had been shortly before he had this conversation with you?

(T-1348-A) Mr. Gladstein: This is leading and suggestive, your Honor. I think the proper way of asking questions—

The Court: Overruled.

A. Yes, sir, he stated he had just returned from the Seventh Congress of the Communist Internationale in Moscow.

(T-1349) Q. Is that the same Congress—

The Court: Just a second. I want to get it in my notes.

Will you give me that name, Mr. Reporter.

(Answer read.)

Louis Francis Budenz—for Government—Direct

Q. Is that the description of it, Mr. Budenz? A. That is the way it is referred to in the Communist Service.

The Court: Is that what he said?

Q. Is that what he said? A. That is what he said, yes, sir.

Mr. Isserman: If the Court please, I would like to object to the answer and ask that it be stricken because it does not refer to any issue in the indictment. It is in a time period outside of the scope of the indictment and in no wise is related to any matter in the indictment. I also wish to plead surprise in connection with it, and note that in our requests for a bill of particulars that that request was not given, and I ask that it be stricken on that ground.

The Court: Overruled. It is only being received at the present time against the defendant Stachel.

Mr. Crockett: If the Court please, I should like to object to further examination of the witness along this line on the grounds that it is completely outside of the scope of the allegations of the indictment.

(T-1350) The Court: Overruled.

Q. Now did there come a time thereafter when you had a conversation with another—I withdraw that.

Q. Subsequent to this, you were received as a member of the Party, were you, Mr. Budenz? A. I was, and made a public statement.

Q. Now just a minute, please.

Mr. Gladstein: Could I hear the answer?

The Court: He says "I was and I made a public statement."

Mr. Gladstein: Thank you, your Honor.

Q. Now prior to your reception into the Communist Party but subsequent to this conversation with the defendant Stachel, which you have described, did you have a subsequent conversation with the defendant Stachel just prior to your coming into the Party? A. Yes, sir, I did.

Louis Francis Budenz—for Government—Direct

(T-1351) Q. And was Earl Browder present at that conversation? A. He was, yes, sir, the two were present.

Q. Will you tell us what was said at that conversation?

Mr. Sacher: Is the date fixed of that conversation?

Mr. Crockett: I should like to object not only on the ground that no proper foundation has been laid; the date of the conversation and who was present has not been fixed.

Mr. McGohey: I will withdraw the question and reframe it.

Q. You say you did have a conversation? A. Yes, sir.

Q. Will you tell us where that conversation was held?

A. On the 9th floor of the same building I referred to, 35 East 12th Street, the National Headquarters of the Communist Party.

Q. And when approximately was it held? A. It was approximately in September of 1935 upon Earl Browder's return from Moscow.

Q. Now will you tell us what was said at that conversation?

Mr. Isserman: If the Court please, I would like to object to this question on the same grounds I urged in respect to the prior question.

The Court: Same ruling.

Mr. Gladstein: May the record show I have a (T-1352) continuing objection as far as my clients are concerned on the ground of hearsay, and am I correct in my understanding that you are only allowing it with respect to Mr. Stachel?

The Court: That is right.

Q. Will you tell us the conversation, Mr. Budenz? A. At that conversation it was stated I would become an open member of the Party.

Mr. Sacher: I object to this inasmuch as there were two people present and the witness does not say who said what.

Louis Francis Budenz—for Government—Direct

Q. Will you tell us, if you recall, who it was that said that, Mr. Budenz? A. Mr. Browder said that I would be an open member of the Party and that I would be on the Daily Worker.

Mr. Isserman: If the Court please, I move to strike the answer on the following ground: The indictment refers to the organization of the Communist Party in 1945. This conversation relates to becoming a member of a party which was in existence in 1935. I ask that it be stricken on the grounds previously urged and on the additional ground that it is irrelevant, remote, and refers to no issue in the indictment.

The Court: Same ruling.

Mr. Isserman: Refers to a party not mentioned (T-1353) in the indictment.

The Court: Same ruling as before.

Q. Now at or about the time that you had this conversation did you prepare a statement for publication in the Daily Worker? A. I did, yes, sir.

Q. Did you submit that statement to anybody for approval or examination? A. I submitted it to Mr. Stachel for approval and it was published in the Daily Worker in October.

Mr. McGohey: May I have this marked for identification.

(Marked Government's Exhibit 1 for identification.)

The Court: Did Mr. Stachel approve of it?

The Witness: Yes, sir, he approved it. I had to submit it to him first.

Mr. McGohey: I think the witness testified to that.

The Court: I thought he said he submitted it, but I didn't understand he had approved, but he now says he did approve it and it was published.

Mr. McCabe: I would like to ask your Honor to caution the witness about volunteering statements. About four different occasions he has added some-

Louis Francis Budenz—for Government—Direct

thing. In this particular case he was asked whether he submitted it to Mr. Stachel and he added the expression that he had to submit (T-1354) it to him. I ask that that answer be stricken as not responsive and in view of the witness's habit of adding I ask that he be instructed—

The Court: I will ask the reporter to read the answer.

(Record read as follows: "Q. Did you submit that statement to anybody for approval or examination? A. I submitted it to Mr. Stachel for approval and it was published in the Daily Worker in October.'')

The Court: I think that is your imagination, Mr. McCabe.

Mr. McCabe: I am glad the stenographer didn't get it. I hope the jury didn't.

The Court: I didn't hear it myself.

Mr. McGohey: I move to strike that remark out.

The Court: I didn't hear it. What did you say?

Mr. McGohey: He said that he is very glad the stenographer didn't get it and he hoped the jury didn't either. The stenographer is sitting right alongside of him.

The Court: Apparently it didn't happen.

Mr. McGohey: That is the point of my protest and my request that this observation be stricken.

The Court: Yes, strike it out.

(T-1355) You know, attorneys, can make statements but that doesn't make things so.

Mr. McCabe: I am so sure that I would ask the stenographer to examine his notes, examine his record.

Mr. McGohey: I am closer to the witness than Mr. McCabe and I didn't hear it.

The Court: Yes, I am fairly close to him and I didn't hear it.

Q. Mr. Budenz, prior to the time that you prepared this statement did you have any conversation with Mr.

Louis Francis Budenz—for Government—Direct

Stachel about the statement? A. I did. I had a conversation with Mr. Stachel in regard to the character of the statement and what should go in it.

Mr. Gladstein: If your Honor please, I object to that. The witness has answered the question by saying he did. He starts to tell about the nature—

The Court: I didn't hear a word about the nature. He could have simply said yes, but what else he added seemed to me to be merely rhetorical. He didn't say anything of substance at all.

Mr. Gladstein: Your Honor appreciates your rulings have been that you are allowing this in so far as it relates to people who were present and you are not allowing it in so far as it relates to people who are not present.

(T-1356) The Court: That is right.

Mr. Gladstein: That is why I want to make the objections that any lawyer should and is required to at the right time. I haven't objected to the question whether the conversation was held but when the question is put what was the conversation that is the proper time to object.

The Court: I don't think he has given the conversation. Perhaps he misunderstood it. In any event he hasn't. He is about to give it and I am about to allow it on the same terms that I allowed the previous conversation; so it seems to me it doesn't get us anywhere.

Now, Mr. Budenz, just answer the question and pay careful attention because if you add anything it just makes for conversations of this kind. If there is something that goes from step to step Mr. McGahey will follow that along and all you have to do is listen to the question and answer it.

The Witness: Yes, your Honor.

Q. You did have a conversation with the defendant Stachel about an article, this article? A. Yes, sir.

Q. And where did that conversation take place and when? A. The 9th floor again in the same building.

Louis Francis Budenz—for Government—Direct

Q. When you say the same building do you mean the headquarters of the Communist Party? A. Yes.

(T-1357) Q. At the address you told us before? A. 35 East 12th Street and around this time following the conversation with Mr. Browder.

Q. And then subsequent to this conversation did you prepare the article? A. Yes, sir.

Q. Did you submit it to Mr. Stachel? A. Yes, sir.

Q. At the time you submitted it to him did you have a conversation with him? A. Yes, sir.

Mr. Crockett: I want to object, your Honor, to any further questioning along this line until we know what article is being referred to.

The Court: This has been marked for identification.

Q. Did you—

Mr. McGohey: Will the reporter read that question I asked.

(Record read.)

Q. During that conversation was the article before him? A. Yes, sir.

Q. Will you tell us what he said with respect to that article?

Mr. Isserman: If the Court please, I rise to object on the grounds previously urged, I mean in respect to prior questions put to this witness.

The Court: The same ruling.

A. He stated that in general the article was approved (T-1358) and for the time being it would be acceptable. He stressed that I might have emphasized more Stalin's role in the International Communist movement and in guiding it.

Q. And thereafter was the article published? A. It was.

Q. Did you—

Mr. Isserman: If the Court please, I move to strike out the answer on the ground that it is ir-

Louis Francis Budenz—for Government—Direct

relevant and immaterial to any issue in this case, referring to a conversation held back in 1935, on no issue in this indictment, out of the four corners of the indictment. There is no issue in it and none has been established.

The Court: Now you know I have reasonable intelligence and when you make an objection once and you make it twice and you make it three times I may be assumed to understand the first time. Now when you object and you are overruled, you have an exception, as you understand, and I don't think you need to go into those long discussions on it—it wasn't very long, really, but I understood your point the first time and I make the same ruling.

Mr. Isserman: But, your Honor, my first objection was to the question. Now I move to strike out the answer which clearly indicates no relevancy at all, so I am really making a different motion at this time. I feel I must make it to defend my clients.

(T-1359) The Court: If it is a different application, I will deny the motion.

Mr. Sacher: Will your Honor be kind enough to state for the record that in the course of the trial the benefit of objections and exceptions made by any individual counsel on behalf of his clients will accrue to all of the defendants?

The Court: Yes. I have already said that several times and I repeat it now: any objection made or any exception noted will inure to the benefit of all of the defendants unless the counsel for some particular defendant states on the record that he does not wish to take advantage of the exception or objection so that it may thus be entirely unnecessary for the counsel for the various defendants to get up and say that they also join in the objection.

Q. Mr. Budenz, this was published, this article that we have just been discussing was published in the Daily Worker, was it not? A. That is correct.

Q. Now I show you Government's Exhibit 1 for identification and ask you if that is a photostatic copy of the

Louis Francis Budenz—for Government—Direct

Daily Worker in which that article was published, and if the article that appears there is a true and correct copy of the article which you prepared and submitted to Mr. Stachel (handing)? (T-1360) A. The answer to the question is yes, sir.

Mr. McGohey: I offer it in evidence.

Mr. Isserman: I should like to examine it, if the Court please.

The Court: Certainly.

Mr. McGohey: Of course.

Mr. Isserman: Is there a copy available, Mr. McGohey?

Mr. McGohey: No, that is all I have.

Mr. Isserman: We will have to make some arrangement to have copies made.

* * *

Mr. Sacher: Your Honor, it seems to me that perhaps we can have some arrangements made whereby we can move in regard to examining these exhibits rather than piling in on one another. Can we suggest something, perhaps?

The Court: Well, if it was a book and there were large portions of the book being offered I could see some occasion for some arrangement, but with that particular paper it seems to me there is no physical difficulty in counsel examining it.

Mr. Crockett: If the Court please—

The Court: If you need some arrangement—you need not trouble yourself about the question of taking a few (T-1361) moments to examine exhibits so that you may note your objections.

(Defense counsel examines proposed offer.)

Mr. McGohey: Your Honor, perhaps I ought to make it clear that what I am offering on that paper that I just offered in evidence was not every article in the paper but only the article by the witness which has been under discussion.

Mr. Crockett: That is what I want the record to indicate.

The Court: Yes.

Colloquy of Court and Counsel

Mr. McGohey: I assumed that was clear, but I see that it might not since I just offered the paper.

The Court: Well, it is clear now.

Mr. McGohey: But I am offering only the article.

The Court: It is clear now.

Mr. Gladstein: May I make a suggestion? This purports to be a photostatic copy of a page of the newspaper which includes, among it, other articles which Mr. McGohey has stated are not material, and he is not offering that portion in evidence, and I am just wondering whether, in anticipation of what your Honor may rule, some copy of this may be stricken off because we will have it—

The Court: Well, Mr. Gordon has a pair of scissors there and I gather that he is trying to indicate (T-1362) that the scissors may be used to cut off the portions of the paper that are not being offered.

Mr. McGohey: We were about to suggest that, your Honor.

Mr. Isserman: Now if the Court please, I object on the grounds previously urged in respect to remoteness and not coming within the four corners of the indictment, and on the additional ground that this article refers to an organization not mentioned in the indictment whatsoever, to an organization which was in existence in the year 1935 and is in no wise related to any issue in this indictment, and I move therefore—

The Court: It seems to me that I heard you lawyers for the defendants talking about these very times that are under discussion here, when you were telling about when the various defendants joined the party, some of them had been in there for so many years and all this and that. Am I wrong about that?

Mr. Isserman: If the Court please, we are concerned now not with the defense but with the Government's case, and my objection is based on the fact that the Government chose to pitch its case as set forth in the indictment, and this is matter

Colloquy of Court and Counsel

which has no relation whatsoever to any issue in the indictment. I plead surprise as well and ask that the document be not (T-1363) received.

The Court: Well, I will have to look at it first.

Mr. Gladstein: In passing on this, will your Honor bear in mind the objections and consider that I do make the same objections on behalf of my clients to the offer of this paper, on the grounds that I made objections to the conversations heretofore?

The Court: Very well.

(Mr. Gordon cuts off portions from the photostat and hands to the Court.)

The Court: (After examining.) I will receive it.

(Government's Exhibit 1 for identification received in evidence.)

The Court: Now, Mr. McGohey, it is the desire of the Court that as the documents come in they be read rather fully, with the reporter taking down the reading because I desire to have this case develop all in the open so that we do not reach a time, perhaps weeks from now, when some things are brought out that haven't been spoken of at the time the exhibits were entered into. I would like to open this thing wide up as we go along so that everybody can understand that.

Mr. McGohey: That I understand to be your Honor's wish and ruling, and I was about to ask leave now to read this exhibit to the jury.

(T-1364) The Court: Yes, you may do so, and it is my desire even though it may take a little time as we go along, I think it will amply repay us by keeping everybody up with what is going on as the exhibits and things of one kind or another are brought out; I want to have them fully read, and if at some time one side or the other may desire opportunity to characterize some part, for the purposes of saving time, I suggest that that always be

Government's Exhibit 1, Read into Record

done by some application to the Court so that it may receive consideration before it is done.

(T-1365) Mr. McGohey: Yes, sir.

The Court: And that applies to the lawyers for both sides. So there may be no misunderstanding, the papers as they come in will be read but nobody is going to do any characterizing or commenting or summarizing without special leave from the Court to do so and without explaining to me just what is to be the nature of the summary or comment or whatever it may be.

Mr. McGohey: Yes, your Honor.

Ladies and gentlemen, the article appears in this exhibit, Government's Exhibit 1 in evidence, photostatic copy of the article as taken from the Daily Worker, New York, Wednesday, October 2, 1935. I will show it to you when I have finished reading it, I will pass it around so you may see it.

The headline is, "Louis Budenz joins Communist Party. Labor organizer in statement repudiates the policy of Trotsky and Muste"—

Q. Is that the proper pronunciation, Musty? A. Correct.

Mr. McGohey (Continuing): "—endorses reports and decisions of the C.I. Congress.

"Louis F. Budenz, well known labor organizer and veteran of many strike struggles, yesterday announced his affiliation with the Communist Party of the U.S.A.

(T-1366) "Budenz was executive secretary of the American Workers Party (Musteites) until it merged with the Trotskyites last year, when he severed his connection with the organization.

"In a public statement Budenz declared that the Communist Internationale constitutes 'The sole challenge to the capitalist world,' and appealed to all workers, especially Socialist Party members, to unite their ranks in the struggle against Fascism and imperialist war.

Government's Exhibit 1, Read into Record

"His statement follows in full: For him who proposes to advance the workers' revolution there is but one road to follow, the path of the Comintern. That definite conclusion leads me to announce my affiliation with the Communist Party of the United States. The announcement of this step is made today so that I may appeal to non-Communist workers to take similar action. The Communist Internationale stands out sharply as the sole challenge to the capitalist world. It fights relentlessly against imperialist war and works indefatigably for world peace. It alone has raised on high the banner of Socialist construction in the astounding achievements of the Soviet Union under the leadership of Stalin. In the midst of capitalist chaos, with Fascism rearing its filthy head, it is the Communist International which calls for the most (T-1367) needed of all measures, the unity of the working class and points to the people's front in France as an outstanding immediate example of what it means.

"The Seventh Congress, recently concluded, was a triumph of revolutionary realism. No militant who has read Dimitroff's magnificent speech and the resolutions of the Congress can fail to be stirred to new assurances of victory of the working class, the advance 'bourgeois democratic rights' as a weapon against Fascism, and as a mantle for the advance of the revolution. The use of national revolutionary traditions for the driving forward of Socialism and internationalism, the development of unity while combatting the ideology of Social-Democracy, these measures have rearmed the working class for the conflict at its door-step.

"For me, the merger of the American Workers Party with the Trotskyites gave conclusive proof of the intrinsic weakness of the former grouping. That development eloquently confirmed the criticism of such alliances made by the Communist Party, criticisms which in time have corrected my own mistakes.