FEDERAL BUREAU OF INVESTIGATION

SUPREME COURT

PART 13 OF 14

CROSS REFERENCES

FILE DESCRIPTION

BUREAU FILE

SUBJECT Supreme Court

FILE NO. 111 References

Release 5

CIO BACKS LEWIS IN HIGH COURT PLEA

Brief on Eve of Contempt Case Argument Denounces Action Taken Against Coal Union

Special to THE NEW YORK TIMES.

WASHINGTON, Jan. 13 — On the eve of the argument in the Supreme Court on the contempt conviction of John L. Lewis and the United Mine Workers of America, the Congress of Industrial Organizations filed today a brief with the Supreme Court challenging the Government's contentions.

Prepared by Lee Pressman, CIO general counsel, and his assistants, the brief submitted by the organization as a "friend of the court," stressed several cases to prove that the entire history of the Norris- La Guardia Anti-Injunction Act of 1932 barred injunction proceedings against unions by the Government as well as those started by employers.

The Government's view has been that it could, in its "sovereign" capacity, seek to enjoin an act by a union which would mean "irreparable" injury to the country.

"The entire record in this case is pervaded with what can only be called a callous disregard of the procedural and constitutional rights of the defendants," the brief asserted.

Constitutional "Issues" Seen

"Proceedings of the type here have historically raised grave constitutional questions. The court below deemed content to gloss over the problems presented by the Constitution on the basis of its own personal assurance that whatever constitutional implications were present in the order were being misconstrued since the court had no intention of giving the injunction an undue scope."

The restraining order issued by Judge T. Alan Goldsborough in the Federal District Court, according to the brief, would have compelled Mr. Lewis "to violate his oath of office."

The brief quoted numerous citations by Justice Felix Frankfurter of the Supreme Court to show views on injunctions, notably his co-authorship of "The Labor Injunction" and a paper written by him in 1939 entitled "Law and Politics."

It was urged that Mr. Lewis was asked by the lower court to "act as a strikebreaker" and "to do that which he may deem fatal to the best interests of the organization which he is charged with leading and protecting."

"If any type of compulsion is more obnoxious to all that is held dear in a democratic society we do not know what it is," the brief added.

The brief traced the use of the injunction in labor disputes from 1893 to 1932. The Norris-La Guardia Act was adopted by Congress in the latter year.

During the thirty-nine year period it was maintained that there was developed a "pattern" in the use of injunctions in labor disputes.

Injunctive "Patterns"

The brief listed fourteen aspects of the "pattern" including "ex parte" action without notice of hearing, proof by affidavit and "arbitrary" punishment.

Then the brief said that virtually "every unwholesome aspect of the injunctive process described above was duplicated in the instant proceeding."

Judge Goldsborough was further criticized on the grounds that "his conduct of the trial betrayed a bias which in many respects is an exaggerated counterpart of the attitude displayed by American judges during the days in which the accretion of the injunction evil assumed a pattern to which the Clayton and Norris-LaGuardia Acts were directed."

"It is our view," the brief said, "that government activity in connection with labor disputes prior to the Clayton Act and the Norris-LaGuardia Act was of such a character as to make inescapable the conclusion that these acts were intended to apply to the government and that the abuse of equity jurisdiction which gave rise to these statutes was an abuse which the Attorney-General, the Executive, had sponsored and popularized."

EX-35

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157-300-A

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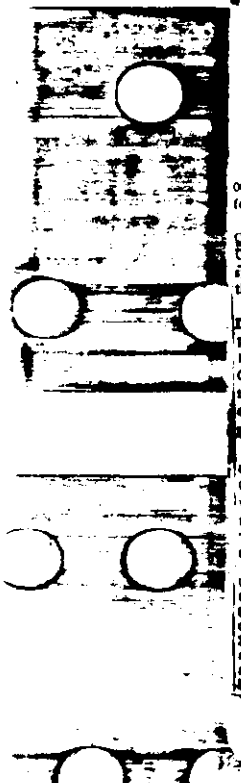
HINGTON: FRIDAY, MARCH 7, 1947

Supreme Court Upholds U. S. In Coal Dispute With Lewis; D. C. to Get $426,000 of Fine



Law Gives City 60% Share of $710,000 in Fines Assessed in Case

A prospective bonanza of $426,000 is about to drop into the coffers of the District Government.

It's a gift from the Supreme Court, John L. Lewis, and the United Mine Workers—a major split of the fines levied against the union and union leader.

Under the 1939 Revenue Act, the District Government receives 60 per cent of fines levied and collected by the Federal District Court in criminal actions. The District pays 60 per cent of the costs of running the court.

Lewis' Share $6000

The fine of $700,000 levied against the UMW will bring $420,000 to the District. John L. Lewis will personally present $6000 to the District on his fine of $10,000.

There won't be any more for the District in this case, although the UMW faces a civil fine of $2,800,000 unless it obeys the court order within five days after March 31. The District isn't entitled to any part of the civil fine. All of any civil fine would go to the Federal Government as the plaintiff.

The Supreme Court, in its decision, clearly labeled the $710,000 in fines as criminal penalty and the threatened $2,800,000 fine as civil penalty.

The $426,000 collection will be the biggest for the District under the 1939 act. For the entire fiscal year of 1946, Washington collected [illegible].

Pope Appeals To U. S. Catholics

High Points in Coal Ruling By U. S. Supreme Court

Here are the major points in the Supreme Court's coal decision yesterday:

1. The Government can fight strikes with court orders. The Clayton and Norris-LaGuardia Acts say that the Federal courts shall not issue injunctions or restraining orders in cases that grow out of labor disputes, but the court found that these acts do not apply when it is the Government that asks the court to act.

Chief Justice Vinson and Justices Black, Reed, Douglas and Burton made this ruling.

Dissenting were Justices Frankfurter, Murphy, Jackson and Rutledge.

2. John L. Lewis must pay his $10,000 fine for criminal contempt of court for calling the Nation-wide coal strike last fall and his union—the United Mine Workers of America—must pay a $700,000 fine in any case. That will be all, if the court order against the strike is obeyed in all ways within five days after the Supreme Court mandate goes out. What the union must do is withdraw its notice of last November 15 calling off its agreement with the Government. Unless this is done, the union must pay another $2,800,000—the whole fine imposed by District Court Justice T. Alan Goldsborough.

Chief Justice Vinson and Justices Reed, Frankfurter, Jackson and Burton joined in this ruling.

Dissenting, for various reasons, were Justices Black, Douglas, Murphy and Rutledge.

THE COURT also held that Lewis and the UMW were bound to obey Justice Goldsborough's order against the coal strike, even though the justice has no right to issue it; that errors in the contempt of court trial did no harm to Lewis and the UMW and so did not matter; and that the Government had a right to a civil judgment in the coal case. The Government will not get one, however, unless the UMW fails to obey the decree and, for doing so, is fined the extra $2,800,000.

$25 Minimum Is Urged Here In Retail Jobs

Women and Minors Embraced by Wage Conference Report

A $25 minimum weekly wage for women and minors employed in retail trades within the District of Columbia was recommended here yesterday by the Retail Trade Occupation Wage Conference.

Washington's present minimum, by order dating from February, 1938, is $17 per week. The new minimum would be the highest set for the retail trades classification anywhere in the United States.

Tips may in no event be counted as part of the minimum wage, the conference decreed.

Recommendation for the $25 standard was contained in the conference report to the District Minimum Wage and Industrial Safety Board, which organized the conference on January 21.

Acceptance Predicted

Lewis Faces Senate Labor Group Today

Stiff Examination Of Mine Chief Due To Start at 10 A. M.

John L. Lewis, who yesterday lost his battle before the Supreme Court, today will face the questioning of the Senate Labor Committee.

Lewis will take the witness chair in the historic Senate caucus room at 10 o'clock this morning to face what is expected to be the stiffest examination yet confronting any labor witness.

The committee had granted the UMW chieftain's request not to testify until the Supreme Court had handed down its decision as to whether or not he was guilty of criminal contempt of court in failing to obey the order of Justice Goldsborough against a coal strike.

Appearance Was Due Today

Lewis was scheduled as a witness for today, and in an almost unprecedented Thursday session the court handed down its decision just in time for the scheduled appearance.

Divided Tribunal Rules Strike Of UMW Last Fall Was Illegal; Vinson Writes Majority Opinion Affirming Contempt Conviction

(Chronology of coal fight, Page 3.)

By Dillard Stokes
Post Reporter

President Truman won his "fight to the finish" with John L. Lewis in the Supreme Court yesterday.

Lewis' coal strike of last fall was outlawed. He and his United Mine Workers must pay $710,000 in fines for calling it—and the union will have to pay $2,800,000 more if it does not obey the courts at once.

There were only three things left for Lewis to do:

1. Defy the Supreme Court, which nobody believes he would think of for a second.

2. Take his flimsy chances of getting a rehearing, and a different ruling.

3. Give up the idea of striking as long as the Government is running the coal mines and make the best terms he can with the private operators who are due to get them back on June 30, at the latest, unless Congress prolongs Government control.

The last two choices probably add up to the same thing, for the Supreme Court does not often grant rehearings. Lewis has 25 days to ask for one, but even his asking will not keep the court's mandate from going out on March 31—the very day he *himself* set for the end of the coal strike truce he called last December 7.

Lewis still has a chance to win a ruling from District Court Justice T. Alan Goldsborough to the effect that he had a right to call off his agreement with the Government.

The Supreme Court did not decide that point. But the old UMW leader has lost upon the biggest issue of all—the right to strike, even against Government operation, without being blocked by the courts.

The court's far reaching ruling broke the power of the miners—and of all other labor—to go on strike when the Government has taken over their mines or plants, or at any other time, if the Government gets a court to order them to stay on the job.

Courtroom Half Empty

The justices split 5 to 4 on the vital point in the case—the right of the courts to give the Government injunctions in labor cases, even though the law says no court shall issue them.

This, and the other big questions that were at stake, brought five opinions—127 pages in all—which it took the judges 2½ hours to read.

For many years the court has handed down its decisions on Mondays, and only a few cases have been decided upon other days of the week. No reason was given out for springing the coal opinions upon a half empty courtroom yesterday. The only reason that could be plausibly guessed was that yesterday was exactly 25 days from the end of the Lewis truce.

As it was, the rulings caught the Nation by surprise, and the greatest declaration of labor law in the court's history was read to a handful of tourists, a cluster of lawyers there to be sworn in, the counsel in yesterday's cases and a

See COAL, Page 2, Column 1.

Congress Hails Coal Decision; Bills Speeded

Legal Situation Cleared, Taft Declares, Making Early Action Possible

By the Associated Press

Congress members hailed the Supreme Court decision in the John L. Lewis case yesterday, but pressed ahead regardless to write new laws covering labor unions.

"The decision will tend to clarify the legal situation and assist us in drafting labor legislation," commented Senator Taft (R., Ohio), chairman of the Senate Labor Committee. He said a labor bill may be ready for the Senate within two weeks.

"It doesn't stop in the way of our intention to consider legislation dealing with strikes that affect the health, safety and economy of all the people," said Representative Hartley (R., N. J.), chairman of the House Labor Committee.

Hartley added, "It remains to be seen whether the decision obviates the necessity for a new law stating that the Government can end such strikes by court injunction."

Lewis Has Nothing to Say

Hartley also raised a question as to how the decision might be used in the case of unions which conceal slack funds, unless Congress passes a law taking away "some of the privileges unions now enjoy under the National Labor Relations Act."

John L. Lewis, who spoke up easily when he was originally

COAL

From Page 1

phalanx of newspaper reporters who bustled into the press boxes after the Chief Justice began.

Story of Coal Strike

Mr. Vinson began his opinion by summing up the story of the coal strike.

Last spring the miners struck for higher wages. As the strike dragged on and the Nation's coal piles fell and fell, President Truman took over the mines. Secretary of Interior Julius A. Krug and UMW President Lewis made an agreement which gave the miners raises and other benefits.

This agreement was to run for the period of Government control. It picked up many clauses of the old agreement between the miners and the private operators.

Lewis Calls Off Contract

One of the old clauses said that either side might ask for a new agreement, that bargaining must begin in 10 days and that if no deal was made in 15 days after that either side might give five days notice that the contract was off.

Last October 21 Lewis called on Coal Administrator Nathan H. Collisson for a new agreement—with higher wages and other benefits. Meetings were held, but no agreement was reached, and on November 15 Lewis gave notice that the Krug-Lewis agreement was off.

Lewis sent out copies of this notice to all locals of the UMW. That meant that 400,000 soft coal miners would walk out of their pits at midnight on November 20—for the old rule of the UMW is "no contract—no work."

Truman Challenges Lewis

President Truman promptly challenged Lewis' right to call off the Krug-Lewis agreement. The Government's position was that the clause providing for calling off contracts was not one of those picked up from the old agreement.

Assistant Attorney General John F. Sonnett on November 18 went before District Court Justice Goldsborough and got a temporary restraining order against the strike that was coming up.

Justice Goldsborough ordered Lewis and the UMW to take back their notice that the agreement was off, and to go on digging coal, living up to all parts of the agreement.

The Justice further ordered Lewis and his miners not to call any strike, not bring on any strike in any other way, not to do anything to hamper Government operation of the coal mines, and not to do anything to interfere with the District Court's jurisdiction.

Strike Develops Anyway

Lewis and the UMW—as their lawyers put it—"did not act and said no word" and the strike came on. The Justice Department at once asked that they be held in contempt of court.

Lewis and the UMW claimed the court order was void because the Clayton and Norris LaGuardia Acts had taken away from all Federal Courts the power to issue injunctions in labor cases.

But Goldsborough found them guilty and fined Lewis $10,000, the union $3,500,000. Upon appeals from these fines the case went to the Supreme Court.

Meanwhile, the strike had dragged on, closing down factories and stopping trains for lack of coal. Big cities browned out, movies and other amusements closed, sports stopped, to save coal. Chaos threatened the whole economy if the strike went on.

As the Government got ready to ask the Supreme Court to hear the case at once—within a few days—Lewis suddenly called off the strike, ordering his miners to go back to work and stay until March 31.

Having gone over this record, Mr. Vinson ruled that the Clayton and Norris-LaGuardia Acts did not prevent the courts from granting antistrike injunctions when the Government asked for them.

There could not have been an injunction in the coal case, Mr. Vinson said, if the dispute had been between the miners and private employers. But the Chief Justice found that Congress never meant the acts to apply to the Government.

There is a rule of law that no act can take away any of the rights and powers of the sovereign unless it does so directly. General words—no matter how broad—will not reach the Government.

House Debate Backs Views

Congress must have known of this rule, Mr. Vinson said, so that if it had meant the Clayton and Norris-LaGuardia Acts to apply to the Government it would have said so. And since it did not say so, the acts do not apply.

He found backing for this view in what Congressman LaGuardia (R., N. Y.) and Michener told the House in debate. They said their bill would not apply to the Government and its employes.

The Chief Justice went on:

"The defendants contend, however, that workers in mines seized by the Government are not employes of the Federal Government; that in operating the mines thus seized, the Government is not engaged in a sovereign function; and that, consequently, the situation in this case does not fall within the area which we have indicated as lying outside the scope of the Norris-LaGuardia Act.

War Labor Act Cited

It is clear, however, that workers in the mines seized by the Government under the authority of the War Labor Disputes Act stand in an entirely different relationship to the Federal Government with respect to their employment from that which existed before the seizure was effected. That Congress intended such was to be the case is apparent both from the terms of the statute and from the legislative deliberations preceding its enactment.

"Section 3 of the War Labor Disputes Act calls for the seizure of any plant [illegible]

[illegible] which might be conceived, whether, for the purposes of this case, the incidents of the relationship existing between the Government and the workers are those of governmental employer and employe."

Mr. Vinson said also: "We do not find convincing the contention of the defendants that in seizing and operating the coal mines the Government was not exercising a sovereign function and that, hence, this is not a situation which can be excluded from the terms of the Norris-LaGuardia Act.

In the executive order which directed the seizure of the mines, the President found and proclaimed that "the coal produced by such mines is required for the war effort and is indispensable for the continued operation of the national economy during the transition from war to peace; that the war effort will be unduly impeded or delayed by . . . interruptions (in production); and that the exercise . . . of the powers vested in me is necessary to insure the operation of such mines in the interest of the war effort and to preserve the national economic structure in the present emergency . . ."

Operation Held Vital

Under the conditions found by the President to exist, it would be difficult to conceive of a more vital and urgent function of the Government than the seizure and operation of the bituminous coal mines. We hold that in a case such as this, where the Government has seized actual possession of the mines, or other facilities, and is operating them, and the relationship between the Government and the workers is that of employer and employe, the Norris-LaGuardia Act does not apply.

This ruling was the heart of the court's opinion—the broad statement of labor law that is sure to stand like a wall before the workmen of any industry that may be taken over by the Government from now on.

And unless there is some act of Congress to change it, the ruling probably will be cited again and again whenever the Government finds itself taking part in labor disputes.

Four Justices Disagree

From this ruling four of the nine Justices disagreed.

Justice Frankfurter said the Congress had taken away from the courts the power to grant injunctions in labor cases, except under circumstances that did not figure in the coal case. The question up to the court then, Frankfurter said, was whether the coal case grew out of a labor dispute. He quoted the Norris-LaGuardia Act:

"The term 'labor dispute' includes any controversy concerning terms or conditions of employment . . . regardless of whether or not the disputants stand in the proximate relation of employer and employe."

From these words, Frankfurter said, it was plain that the coal case was a labor dispute.

Interpretation Is Questioned

"The court deems it appropriate to interpolate an exception regarding labor disputes to which the Government is a party," he commented. "It invokes a canon of construction according to which the Government is excluded from the operation of general statutes unless [illegible] turns on the character of the parties."

[illegible] Coal Deci[illegible]

By the Associated Press

President Truman yesterday expressed gratification at the Supreme Court's decision in the John L. Lewis-United Mine Workers contempt case, Charles G. Ross, presidential press secretary, told reporters.

Mr. Truman was advised of the court's action while in Waco, Tex. Ross said Mr. Truman was "gratified that the Supreme Court had sustained the Government's position."

Frankfurter said he concurred in the rest of the opinion and joined in the judgment under the compulsion of the majority holding that the restraining order in the coal case was proper.

Justice Rutledge did not suggest that the great public interest in the case has swayed the majority, but he did open his long dissenting opinion with the admonition that the judgment of the court ought not to be affected by such a thing.

Rutledge backed up Frankfurter's views and gave other reasons of his own for holding that the Norris-LaGuardia Act bars all injunctions in labor cases. In closing, he said:

"No man or group is above the law. All are subject to its valid commands. So are the Government and the courts. If, as I think, Congress has forbidden the use of labor injunctions in this and like cases, that conclusion is the end of our function. And if modification of that policy is to be made for such cases, that problem is for Congress, in the first instance, not for the courts."

Justice Murphy's Opinion

Justice Murphy said the implications of yesterday's decision cast a dark cloud over the future of labor relations in the United States.

Murphy said the court was right in taking account of the crisis in which the coal case was tried, but he said that factor did not justify "the conversion of the judicial process into a weapon for misapplying statutes."

He said also that "a judicial disregard of what Congress had decreed may seem justified in view of the crisis which gave birth to this case. But such a disregard may ultimately have more disastrous and lasting effects upon the economy of the Nation than any action of an aggressive labor leader in disobeying a void court order."

Jackson's Opinion Not Filed

Justice Jackson, too, believed the Norris-LaGuardia Act forbade injunctions being issued the Government in labor cases, but he did not file a dissenting opinion.

Having held that the Government might fight strikes with court orders, Mr. Vinson went on to discuss the duty of Lewis and the UMW to obey the District Court's order, even if it had been void.

He held—and here Frankfurter agreed with him—that the lower court certainly had jurisdiction to decide whether the case came under the Norris-LaGuardia Act or not. And the miners were bound to obey the orders that were issued while this point was being decided.

[illegible] few lines to hold that the Government had a right to a civil judgment in the coal strike case, just as any private party would.

Of the fines, Justice Vinson said:

"Sentences for criminal contempt are punitive in their nature and are imposed for the purpose of vindicating the authority of the court. . . . The interests of orderly government demand that respect and compliance be given to orders issued by courts possessed of jurisdiction of persons and subject matter.

"One who defies the public authority and willfully refuses his obedience, does so at his peril. In imposing a fine for criminal contempt, the trial judge may properly take into consideration the extent of the willful and deliberate defiance of the court's order, the seriousness of the consequences of the contumacious behavior, the necessity of effectively terminating the defendant's defiance as required by the public interest, and the importance of deterring such acts in the future. Because of the nature of these standards, great reliance must be placed upon the discretion of the trial judge.

Contempt Rulings Proper

"The trial court properly found the defendants guilty of criminal contempt. Such contempt had continued for 15 days from the issuance of the restraining order until the finding of guilty. Its willfulness had not been qualified by any concurrent attempt on defendants' part to challenge the order by appropriate procedures. Immediately following the finding of guilty, defendant Lewis stated openly in court that defendants would adhere to their policy of defiance.

"This policy, as the evidence showed, was the germ center of an economic paralysis which was rapidly extending itself from the bituminous coal mines into practically every other major industry of the United States. It was an attempt to repudiate and override the instrument of lawful government in the very situation in which governmental action was indispensable.

"The trial court also properly found the defendants guilty of civil contempt. Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained. . . . Where compensation is intended, a fine is imposed, payable to the complainant. Such fine must of course be based upon evidence of complainant's actual loss, and his right, as a civil litigant, to the compensatory fine is dependent upon the outcome of the basic controversy. . . .

Lewis Fine Upheld

"In the light of these principles, we think the record clearly warrants a fine of $10,000 against defendant Lewis for criminal contempt. A majority of the court, however, does not think that it warrants the unconditional imposition of a fine of $3,500,000 against the defendant union. A majority feels that, if the court below had assessed a fine of $700,000 against the defendant union, this, under the circumstances, would not be excessive as punishment for the criminal contempt theretofore committed; and feels that, in order [illegible] court's order, it would have been effective to make the other $2,800,000 of the fine conditional on the defendant's failure to purge itself within a reasonable time.

"Accordingly, the judgment against the defendant union is held to be excessive. It will be modified so as to require the defendant union to pay a fine of $700,000, and further, to pay an additional fine of $2,800,000 unless the defendant union, within five days after the issuance of the mandate herein, shows that it has fully complied with the temporary restraining order issued November 18, 1946, and the preliminary injunction issued December 4, 1946.

"The defendant union can effect full compliance only by withdrawing unconditionally the notice given by it, signed John L. Lewis, president, on November 15, 1946, to J. A. Krug, Secretary of the Interior, terminating the Krug-Lewis agreement as of 12 o'clock midnight, Wednesday, November 20, 1946, and by notifying, at the same time, its members of such withdrawal in substantially the same manner as the members of the defendant union were notified of the notice to the Secretary of the Interior above-mentioned; and by withdrawing and similarly instructing the members of the defendant union of the withdrawal of any other notice to the effect that the Krug-Lewis agreement is not in full force and effect until the final determination of the basic issues arising under the said agreement.

Strike a 'Serious Threat'

"We well realize the serious proportions of the fines here imposed upon the defendant union. But a majority feels that the course taken by the union carried with it such a serious threat to orderly constitutional government, and to the economic and social welfare of the Nation, that a fine of substantial size is required in order to emphasize the gravity of the offense of which the union was found guilty. . . .

"Loyalty in responding to the orders of their leader may, in some minds, minimize the gravity of the miners' conduct; but we cannot ignore the effect of their action upon the rights of other citizens, or the effect of their action upon our system of government.

"The gains, social and economic, which the miners and other citizens have realized in the past are ultimately due to the fact that they enjoy the rights of free men under our system of government. Upon the maintenance of that system depends all future progress to which they may justly aspire. In our complex society, there is a great variety of limited loyalties, but the overriding loyalty of all is to our country and to the institutions under which a particular interest may be pursued."

Rutledge Criticizes Fine

The Chief Justice did not say how the majority got its figure of $700,000 as a proper fine for the UMW. Rutledge found even this [illegible]

[illegible] inal penalties [illegible] he said. It is the District Court's job to fix the punishment for criminal contempt and all the Supreme Court is supposed to do is to say whether the fine imposed is excessive.

Rutledge reminded the majority that if Lewis and the UMW had been indicted and tried by a jury for striking against the War Labor Disputes Act, the most they could have been fined was $5000 apiece, although in that case Lewis might have been jailed for a year.

Justice Goldsborough said in open court that he would have jailed Lewis in this case if the Government had not asked him not to.

Any Fine Opposed

Black and Douglas based most of their long dissenting opinion on the fines. They agreed with Rutledge that the $700,000 fine was far too high. But they felt that the court ought to have released both Lewis and the UMW from paying any fines at all, on condition that they fully obeyed Goldsborough's order.

The Supreme Court decision leaves it up to Goldsborough to hold hearings and say whether Lewis did have a right to call off his agreement with Krug. If he finds that Lewis did, then the temporary injunction now in effect will be canceled. If he finds that [illegible]

Bargaining for a new [illegible] between the UMW and the owners has been held [illegible] for the Supreme Court [illegible]

It now appears that [illegible] until June 30—when the Government's power to hold the mines will run out—to reach a new agreement. Then—unless Congress acts in the meantime—the mines go back to their owners and the miners will be free to take up their strike against them where they left off last spring.

MAR 7 1947
WASHINGTON POST
Page 1

its. Meetings were held, but no agreement was reached, and on November 15 Lewis gave notice that the Krug-Lewis agreement was off.

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between the miners and private employers. But the Chief Justice found that Congress never meant the acts to apply to the Government.

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Congress must have known of this rule, Mr. Vinson said, so that if it had meant the Clayton and Norris-LaGuardia Acts to apply to the Government it would have said so. And since it did not say so, the acts do not apply.

He found backing for this view in what Congressman LaGuardia (R., N. Y.) and Michener told the House in debate. They said their bill would not apply to the Government and its employes.

The Chief Justice went on:

"The defendants contend, however, that workers in mines seized by the Government are not employes of the Federal Government; that in operating the mines thus seized, the Government is not engaged in a sovereign function; and that, consequently, the situation in this case does not fall within the area which we have indicated as lying outside the scope of the Norris-LaGuardia Act.

War Labor Act Cited

It is clear, however, that workers in the mines seized by the Government under the authority of the War Labor Disputes Act stand in an entirely different relationship to the Federal Government with respect to their employment from that which existed before the seizure was effected. That Congress intended such was to be the case is apparent both from the terms of the statute and from the legislative deliberations preceding its enactment.

"Section 3 of the War Labor Disputes Act calls for the seizure of any plant, mine, or facility when the President finds that the operation thereof is threatened by strike or other labor disturbance and that an interruption in production will unduly impede the war effort.

"Congress intended that by virtue of Government seizure, a mine should become, for purposes of production and operation, a Government facility in as complete a sense as if the Government held full title and ownership. Consistent with that view, criminal penalties were provided for interference with the operation of such facilities. Also included were procedures for adjusting wages and conditions of employment of the workers in such a manner as to avoid interruptions in production.

Relationship of Miners

"The question with which we are confronted is not whether the workers in mines under Govern-

We hold that in a case such as this, where the Government has seized actual possession of the mines, or other facilities, and is operating them, and the relationship between the Government and the workers is that of employer and employe, the Norris-LaGuardia Act does not apply.

This ruling was the heart of the court's opinion—the broad statement of labor law that is sure to stand like a wall before the workmen of any industry that may be taken over by the Government from now on.

And unless there is some act of Congress to change it, the ruling probably will be cited again and again whenever the Government finds itself taking part in labor disputes.

Four Justices Disagree

From this ruling four of the nine justices disagreed.

Justice Frankfurter said the Congress had taken away from the courts the power to grant injunctions in labor cases, except under circumstances that did not figure in the coal case. The question up to the court then, Frankfurter said, was whether the coal case grew out of a labor dispute. He quoted the Norris-LaGuardia Act:

"The term 'labor dispute' includes any controversy concerning terms or conditions of employment . . . regardless of whether or not the disputants stand in the proximate relation of employer and employe."

From these words, Frankfurter said, it was plain that the coal case was a labor dispute.

Interpretation Is Questioned

"The court deems it appropriate to interpolate an exception regarding labor disputes to which the Government is a party," he commented. "It invokes a canon of construction according to which the Government is excluded from the operation of general statutes unless it is included by explicit language.

"The Norris-LaGuardia Act has specific origins and definite purposes and should not be confined by an artificial canon of construction. The title of the act gives its scope and purpose, and the terms of the act justify its title. It is an act "to define and limit the jurisdiction of courts sitting in equity."

"It does not deal with the rights of parties but with the power of the courts. Again and again the statute says "no court shall have jurisdiction", or an equivalent phrase. Congress was concerned with the withdrawal of power from the Federal courts to issue injunctions in a defined class of cases. Nothing in the act remotely hints that the withdrawal of this power

gress has forbidden the use of labor injunctions in this and like cases, that conclusion is the end of our function. And if modification of that policy is to be made for such cases, that problem is for Congress, in the first instance, not for the courts."

Justice Murphy's Opinion

Justice Murphy said the implications of yesterday's decision cast a dark cloud over the future of labor relations in the United States.

Murphy said the court was right in taking account of the crisis in which the coal case was tried, but he said that factor did not justify "the conversion of the judicial process into a weapon for misapplying statutes."

He said also that "a judicial disregard of what Congress had decreed may seem justified in view of the crisis which gave birth to this case. But such a disregard may ultimately have more disastrous and lasting effects upon the economy of the Nation than any action of an aggressive labor leader in disobeying a void court order."

Jackson's Opinion Not Filed

Justice Jackson, too, believed the Norris-LaGuardia Act forbade injunctions being issued the Government in labor cases, but he did not file a dissenting opinion.

Having held that the Government might fight strikes with court orders, Mr. Vinson went on to discuss the duty of Lewis and the UMW to obey the District Court's order, even if it had been void.

He held—and here Frankfurter agreed with him—that the lower court certainly had jurisdiction to decide whether the case came under the Norris-LaGuardia Act or not. And the miners were bound to obey the orders that were issued while this point was being decided.

The criminal rules say that a charge of criminal contempt of court must speak of the contempt as "criminal." Justice Vinson pointed out that the charge against Lewis and the UMW did not use the word "criminal" anywhere.

But he said this did not matter, because Lewis and the UMW knew quite well they were charged with criminal contempt of court, and used the word "criminal" themselves during the proceedings.

No Error Is Found

Throughout the trial, Vinson said, the defendants enjoyed all the protection that is due to those on trial for crime. So he found

mediately following the finding of guilty, defendant Lewis stated openly in court that defendants would adhere to their policy of defiance.

"This policy, as the evidence showed, was the germ center of an economic paralysis which was rapidly extending itself from the bituminous coal mines into practically every other major industry of the United States. It was an attempt to repudiate and override the instrument of lawful government in the very situation in which governmental action was indispensable.

"The trial court also properly found the defendants guilty of civil contempt. Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained. . . . Where compensation is intended, a fine is imposed, payable to the complainant. Such fine must of course be based upon evidence of complainant's actual loss, and his right, as a civil litigant, to the compensatory fine is dependent upon the outcome of the basic controversy. . . .

Lewis Fine Upheld

"In the light of these principles, we think the record clearly warrants a fine of $10,000 against defendant Lewis for criminal contempt. A majority of the court, however, does not think that it warrants the unconditional imposition of a fine of $3,500,000 against the defendant union. A majority feels that, if the court below had assessed a fine of $700,000 against the defendant union, this, under the circumstances, would not be excessive as punishment for the criminal contempt theretofore committed; and feels that, in order

"We well realize the serious proportions of the fines here imposed upon the defendant union. But a majority feels that the course taken by the union carried with it such a serious threat to orderly constitutional government, and to the economic and social welfare of the Nation, that a fine of substantial size is required in order to emphasize the gravity of the offense of which the union was found guilty. . . .

"Loyalty in responding to the orders of their leader may, in some minds, minimize the gravity of the miners' conduct; but we cannot ignore the effect of their action upon the rights of other citizens, or the effect of their action upon our system of government.

"The gains, social and economic, which the miners and other citizens have realized in the past are ultimately due to the fact that they enjoy the rights of free men under our system of government. Upon the maintenance of that system depends all future progress to which they may justly aspire. In our complex society, there is a great variety of limited loyalties, but the overriding loyalty of all is to our country and to the institutions under which a particular interest may be pursued."

Rutledge Criticizes Fine

The Chief Justice did not say how the majority got its figure of $700,000 as a proper fine for the UMW. Rutledge found even this

Supreme Court Rejects Appeal By Ward From WLB Ruling

By Edward H. Higgs
Associated Press Staff Writer

The Supreme Court declined again yesterday to interfere with a lower court decision that courts can neither review nor enforce War Labor Board orders.

Without comment, the tribunal turned down an appeal of Montgomery Ward & Co. from a ruling by the District of Columbia Court of Appeals. The latter court held that WLB actions are administrative and "at most" simply advisory to the President.

The WLB, in case its orders are disregarded, turns cases over to the President for action.

The mail order firm contended the WLB exceeded its Statutory powers in issuing orders involving union maintenance, dues check-off and grievance machinery for CIO employes at four Ward stores in Detroit, and one each in Jamaica, N. Y., and Denver.

NRLB Case Also Rejected

The Supreme Court previously at this term had rejected an appeal by a group of trucking companies from a similiar decision by the Court of Appeals.

Also for the second time, the court yesterday declined to review a case which posed the question whether the National Labor Relations Act applies to a "local retail department store." The M. E. Blatt Co., Atlantic City department store, raised that issue in appealing from a lower court decision that the company was guilty of unfair labor practices in posting a notice advising employes that they did not have to join a union.

Kent Appeal Again Rejected

In other actions yesterday, the court:

Agreed to review Federal Power Commission orders directing four companies to reduce their interstate wholesale rates on natural gas. The cases involve the Colorado Interstate Gas, the Canadian River Gas, and Panhandle Eastern Pipeline companies.

Consented to look into an Interstate Commerce Commission order directing an increase of about 33 1-3 per cent in intrastate railroad passenger coach fares in Alabama, Kentucky, Tennesset and North Carolina. The ICC contended that the lower intrastate fares discriminated against interstate travelers paying higher rates.

Rejected, for the second time, an appeal of Mrs. Ann H. P. Kent of Washington for court intervention in the case of her son, Tyler Kent, who was convicted and imprisoned in Great Britain on a charge of violating the British Official War Secrets Act. Kent was formerly a code clerk in the American Embassy in London.

THE WASHINGTON POST
Tuesday, Nov. 14, 1944

Mr. Glavin
Mr. Nichols
Mr. Tracy
Mr. Carson
Mr. Rosen
Mr. Coffey
Mr. Gurnea
Mr. Tamm

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Will Alleged Seditionists Get Off Scot Free?

By ART SHIELDS

WASHINGTON.—There are disturbing indications that the 26 defendants in the eight-month Nazi plot trial, that was interrupted by the death of Justice Edward C. Eicher last November, may not be retried.

The effect of such failure in encouraging anti-Semitism, anti-Negro propaganda and other forms of Hitlerism will be felt everywhere.

Months have passed since former Attorney General Francis Biddle said, in response to a call for action from CIO President Philip Murray, that efforts were being made to find a judge to conduct a new trial.

Biddle, who had shown little enthusiasm about the case, was already on the way out when he gave these assurances. No public suggestion of a speedy new trial has come from the new Attorney General, Tom Clark, since.

DILLING BUSY

Meanwhile some of the former defendants are working again in their old Nazi groove. The shrill Elizabeth Dilling, author of the Red Network, for instance, is campaigning for a soft peace for Germany, while she crusades against the Jewish people.

This quote from the last issue of New Bulletin, which she sends through the mails from Chicago, speaks for itself:

"Now that Germany is occupied and defeated," says the Dilling screed, "tremendous atrocity setups, allegedly in Germany, are being featured in the press on a scale that only Jewish power can achieve. The Jewish, Communist press, and their commentators like Winchell, are under full steam ahead for a vengeful peace for the extermination of every living Gentile of German blood."

The woman who distributes these wild accusations does not stand alone. She has worked closely with the Chicago Tribune and reactionary members of Congress, and her links with the German American Bund and various native fascists came out at the recent trial.

JOE McWILLIAMS

Joe McWilliams, former Fuehrer of the Christian Mobilizers of New York, has been collecting funds in Cleveland for former U. S. Sen. Robert R. Reynolds' American Nationalist Party, a pro-fascist front. A signed letter from Reynolds himself, enodrsing McWilliams' activities, was recently published.

And former German American Bundists are still operating among German Americans in New York, Chicago and other cities.

The United States Supreme Court has some responsibility for the Bundist activity and for the trial delay. The court's reversal of the conviction of Fuehrer Wilhelm Gerhard Kunze (who was also a sedition trial defendant) and other Bundists has obviously been a body blow to the forces within the Department of Justice, who want a new trial, though none of them will comment.

Reporters noted at the trial last summer that prosecutor O. John Rogge's case against the native fascists was partly built on the evidence against the Bund, whose leaders had already been convicted.

Many Nazi documents placed in the record backed up the testimony of former Bund leaders, such as Kurt Luedecke, that the Bund had been set up here at Hitler's orders for the purpose of Nazifying America, as well as of softening Americans toward Germany.

Nazi instructions to the Bundists were to split the American people with anti-Semitic and anti-Communist propaganda. Native fascists were to be their tools in this campaign.

The Supreme Court's reversal of the Bundists' conviction on technical grounds and on what seems to be a strained interpretation of "free speech" is a serious matter. However, some of the native fascists had direct connections with Berlin, by-passing the Bund. Their prosecution is imperative.

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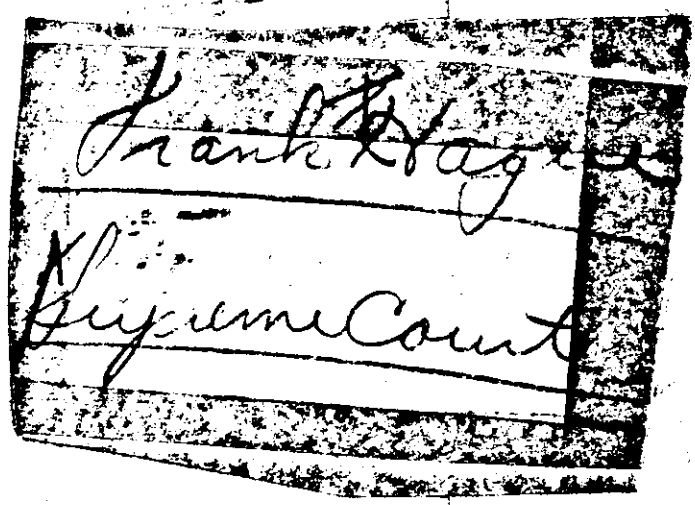
Gerald L. K. Smith



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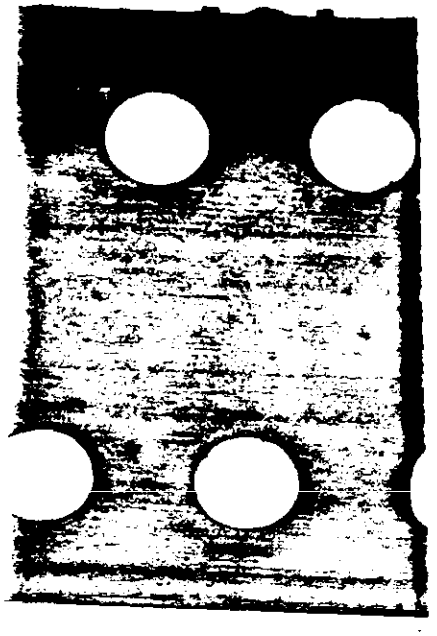
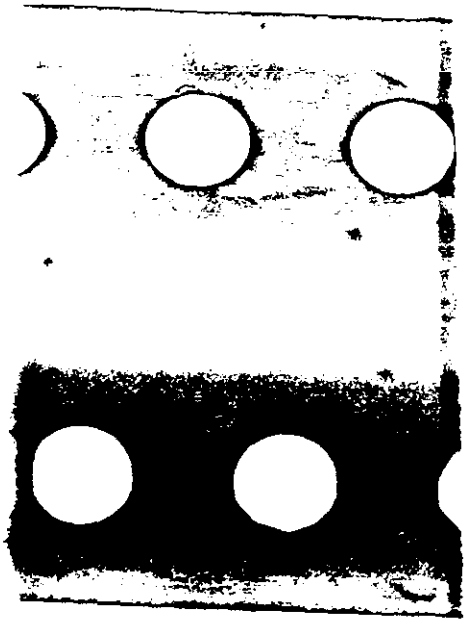




SUPREME COURT OF THE UNITED STATES.

No. 651.—October Term, 1938.

Frank Hague, Individually and as Mayor of Jersey City, et al., &c., Petitioners,
vs.
Committee for Industrial Organization, et al.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[June 5, 1939.]

Mr. Justice Butler:

The judgment of the court in this case is that the decree is modified and as modified affirmed. Mr. Justice Frankfurter and Mr. Justice Douglas took no part in the consideration or decision of the case. Mr. Justice Roberts has an opinion in which Mr. Justice Black concurs, and Mr. Justice Stone an opinion in which Mr. Justice Reed concurs. The Chief Justice concurs in an opinion. Mr. Justice McReynolds and Mr. Justice Butler dissent for reasons stated in opinions by them respectively.

Mr. Justice Roberts delivered an opinion in which Mr. Justice Black concurred.

We granted certiorari as the case presents important questions in respect of the asserted privilege and immunity of citizens of the United States to advocate action pursuant to a federal statute, by distribution of printed matter and oral discussion in peaceable assembly; and the jurisdiction of federal courts of suits to restrain the abridgment of such privilege and immunity.

The respondents, individual citizens, unincorporated labor organizations composed of such citizens, and a membership corporation, brought suit in the United States District Court against the petitioners, the Mayor, the Director of Public Safety, and the Chief of Police of Jersey City, New Jersey, and the Board of Commissioners, the governing body of the city.

The bill alleges that acting under a city ordinance forbidding the leasing of any hall, without a permit from the Chief of Police, for a public meeting at which a speaker shall advocate obstruction of the Government of the United States or a state, or a change of government by other than lawful means, the petitioners, and their subordinates, have denied respondents the right to hold lawful meetings in Jersey City on the ground that they are Communists or Communist organizations; that pursuant to an unlawful plan, the petitioners have caused the eviction from the municipality of persons they considered undesirable because of their labor organization activities, and have announced that they will continue so to do. It further alleges that acting under an ordinance which forbids any person to "distribute or cause to be distributed or strewn about any street or public place any newspapers, paper, periodical, book, magazine, circular, card or pamphlet", the petitioners have discriminated against the respondents by prohibiting and interfering with distribution of leaflets and pamphlets by the respondents while permitting others to distribute similar printed matter; that pursuant to a plan and conspiracy to deny the respondents their Constitutional rights as citizens of the United States, the petitioners have caused respondents, and those acting with them, to be arrested for distributing printed matter in the streets, and have caused them, and their associates, to be carried beyond the limits of the city or to remote places therein, and have compelled them to board ferry boats destined for New York; have, with violence and force, interfered with the distribution of pamphlets discussing the rights of citizens under the National Labor Relations Act; have unlawfully searched persons coming into the city and seized printed matter in their possession; have arrested and prosecuted respondents, and those acting with them, for attempting to distribute such printed matter; and have threatened that if respondents attempt to hold public meetings in the city to discuss rights afforded by the National Labor Relations Act, they would be arrested; and unless restrained, the petitioners will continue in their unlawful conduct. The bill further alleges that respondents have repeatedly applied for permits to hold public meetings in the city for the stated purpose, as required by ordinance,[1] although they do not admit the

[1] "The Board of Commissioners of Jersey City Do Ordain:

"1. From and after the passage of this ordinance, no public parades or public assembly in or upon the public streets, highways, public parks or public buildings of Jersey City shall take place or be conducted until a permit shall be obtained from the Director of Public Safety.

"2. The Director of Public Safety is hereby authorized and empowered to grant permits for parades and public assembly, upon application made to him at least three days prior to the proposed parade or public assembly.

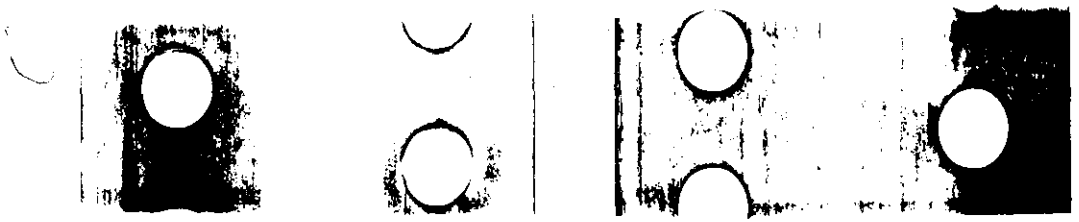
"3. The Director of Public Safety is hereby authorized to refuse to issue said permit when, after investigation of all of the facts and circumstances pertinent to said application, he believes it to be proper to refuse the issuance thereof; provided, however, that said permit shall only be refused for the purpose of preventing riots, disturbances or disorderly assemblage.

"4. Any person or persons violating any of the provisions of this ordinance shall upon conviction before a police magistrate of the City of Jersey City be punished by a fine not exceeding two hundred dollars or imprisonment in the Hudson County jail for a period not exceeding ninety days or both."

validity of the ordinance; but in execution of a common plan and purpose, the petitioners have consistently refused to issue any permits for meetings to be held by, or sponsored by, respondents, and have thus prevented the holding of such meetings; that the respondents did not, and do not, propose to advocate the destruction or overthrow of the government of the United States, or that of New Jersey, but that their sole purpose is to explain to workingmen the purposes of the National Labor Relations Act, the benefits to be derived from it, and the aid which the Committee for Industrial Organization would furnish workingmen to that end; and all the activities in which they seek to engage in Jersey City were, and are, to be performed peacefully, without intimidation, fraud, violence, or other unlawful methods.

The bill charges that the suit is to redress "the deprivation, under color of state law, statute and ordinance, of rights privileges and immunities secured by the Constitution of the United States and of rights secured by laws of the United States providing for equal rights of citizens of the United States" . . . . It charges that the petitioners' conduct "is in violation of their [respondents] rights and privileges as guaranteed by the Constitution of the United States." It alleges that the petitioners' conduct has been "in pursuance of an unlawful conspiracy . . . to injure oppress threaten and intimidate citizens of the United States, including the individual plaintiffs herein, . . . in the free exercise and enjoyment of the rights and privileges secured to them by the Constitution and laws of the United States." . . . .

The bill charges that the ordinances are unconstitutional and void, or are being enforced against respondents in an unconstitutional and discriminatory way; and that the petitioners, as officials of the city, purporting to act under the ordinances, have deprived



respondents of the privileges of free speech and peaceable assembly secured to them, as citizens of the United States, by the Fourteenth Amendment. It prays an injunction against continuance of petitioners' conduct.

The bill alleges that the cause is of a civil nature, arising under the Constitution and laws of the United States, wherein the amount in controversy exceeds $3,000, exclusive of interest and costs; and is a suit in equity to redress the deprivation, under color of state law, statute and ordinance, of rights, privileges and immunities secured by the Constitution of the United States, and of rights secured by the laws of the United States providing for equal rights of citizens of the United States and of all persons within the jurisdiction of the United States.

The answer denies generally, or qualifies, the allegations of the bill but does not deny that the individual respondents are citizens of the United States; denies that the amount in controversy "as to each plaintiff and against each defendant" exceeds $3,000, exclusive of interest and costs; and alleges that the supposed grounds of federal jurisdiction are frivolous, no facts being alleged sufficient to show that any substantial federal question is involved.

After trial upon the merits the District Court entered findings of fact and conclusions of law and a decree in favor of respondents.[2] In brief, the court found that the purposes of respondents, other than the American Civil Liberties Union, were the organization of unorganized workers into labor unions, causing such unions to exercise the normal and legal functions of labor organizations, such as collective bargaining with respect to the betterment of wages, hours of work and other terms and conditions of employment, and that these purposes were lawful; that the petitioners, acting in their official capacities, have adopted and enforced the deliberate policy of excluding and removing from Jersey City the agents of the respondents; have interfered with their right of passage upon the streets and access to the parks of the city; that these ends have been accomplished by force and violence despite the fact that the persons affected were acting in an orderly and peaceful manner; that exclusion, removal, personal restraint and interference, by force and violence, is accomplished without authority of law and without promptly bringing the persons taken into custody before a judicial officer for hearing.

[2] 25 F. Supp. 127.

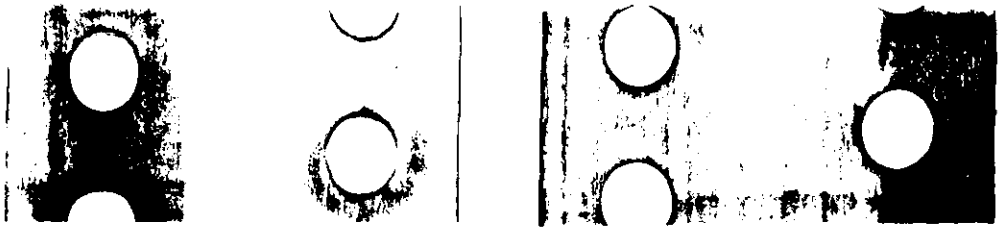
The court further found that the petitioners, as officials, acting in reliance on the ordinance dealing with the subject, have adopted and enforced a deliberate policy of preventing the respondents, and their associates, from distributing circulars, leaflets, or handbills in Jersey City; that this has been done by policemen acting forcibly and violently; that the petitioners propose to continue to enforce the policy of such prevention; that the circulars and handbills, distribution of which has been prevented, were not offensive to public morals, and did not advocate unlawful conduct, but were germane to the purposes alleged in the bill, and that their distribution was being carried out in a way consistent with public order and without molestation of individuals or misuse or littering of the streets. Similar findings were made with respect to the prevention of the distribution of placards.

The findings are that the petitioners, as officials, have adopted and enforced a deliberate policy of forbidding the respondents and their associates from communicating their views respecting the National Labor Relations Act to the citizens of Jersey City by holding meetings or assemblies in the open air and at public places; that there is no competent proof that the proposed speakers have ever spoken at an assembly where a breach of the peace occurred or at which any utterances were made which violated the canons of proper discussion or gave occasion for disorder consequent upon what was said; that there is no competent proof that the parks of Jersey City are dedicated to any general purpose other than the recreation of the public and that there is competent proof that the municipal authorities have granted permits to various persons other than the respondents to speak at meetings in the streets of the city.

The court found that the rights of the respondents, and each of them, interfered with and frustrated by the petitioners, had a value, as to each respondent, in excess of $3,000, exclusive of interest and costs; that the petitioners' enforcement of their policy against the respondents caused the latter irreparable damage; that the respondents have been threatened with manifold and repeated persecution, and manifold and repeated invasions of their rights; and that they have done nothing to disentitle them to equitable relief.

The court concluded that it had jurisdiction under Sec. 24(1) (12) and (14) of the Judicial Code;[3] that the petitioners' official policy and acts were in violation of the Fourteenth Amendment, and

[3] 28 U. S. C. § 41(1), (12) and (14).



that the respondents had established a cause of action under the Constitution of the United States and under R. S. 1979, R. S. 1980, and R. S. 5508, as amended.[4]

The Circuit Court of Appeals concurred in the findings of fact; held the District Court had jurisdiction under Section 24(1) and *(14) of the Judicial Code; modified the decree in respect of one of* its provisions, and, as modified, affirmed it.[5]

By their specifications of error, the petitioners limit the issues in this court to three matters. They contend that the court below erred in holding that the District Court had jurisdiction over all or some of the causes of action stated in the bill. Secondly, they assert that the court erred in holding that the street meeting ordinance is unconstitutional on its face, and that it has been unconstitutionally administered. Thirdly, they claim that the decree must be set aside because it exceeds the court's power and is impracticable of enforcement or of compliance.

First. Every question arising under the Constitution may, if properly raised in a state court, come ultimately to this court for decision. Until 1875,[6] save for the limited jurisdiction conferred by the Civil Rights Acts, *infra*, federal courts had no original jurisdiction of actions or suits merely because the matter in controversy arose under the Constitution or laws of the United States; and *the jurisdiction then and since conferred upon United States courts* has been narrowly limited.

Section 24 of the Judicial Code confers original jurisdiction upon District Courts of the United States. Subsection (1) gives jurisdiction of "suits of a civil nature, at common law or in equity, . . . where the matter *in controversy exceeds, exclu*sive of interest and costs, the sum or value of $3,000" and "arises under the Constitution or laws of the United States."

The wrongs of which respondents complain are tortious invasions of alleged civil rights by persons acting under color of state authority. It is true that if the various plaintiffs had brought actions at law for the redress of such wrongs the amount necessary to jurisdiction under Section 24(1) would have been determined by the sum claimed in good faith.[7] But it does not follow that in a

[4] 8 U. S. C. §§ 43 and 47(3), 18 U. S. C. § 51.

[5] Hague *v.* Committee for Industrial Organization, 101 F. (2d) 774.

[6] See Act of March 3, 1875, c. 137, 18 Stat. 470.

[7] Wiley *v.* Sinkler, 179 U. S. 58; Swafford *v.* Templeton, 185 U. S. 487. Compare St. Paul Mercury Indemnity Co. *v.* Red Cab Co., 303 U. S. 283, 288.

suit to restrain threatened invasions of such rights a mere av ment of the amount in controversy confers *jurisdiction.* In su brought under subsection (1) a traverse of the allegation as *the amount in controversy*, or a motion to dismiss based upon absence of such amount, calls for substantial proof on the part the plaintiff of facts justifying the conclusion that the suit invol the necessary sum.[8] The record here is bare of any showing the value of the asserted rights to the respondents individu and the suggestion *that, in total,* they have the requisite valu unavailing, since the plaintiffs may not aggregate their inter in order to attain the amount necessary to give jurisdiction.[9] conclude that the District Court lacked jurisdiction under Sect 24(1).

Section 24(14) grants *jurisdiction of suits* "at law or in eq authorized by law to be brought by any person to redress *deprivation*, under color of any law, statute, ordinance, reg tion, custom, or usage, of any State, of any right, privilege, or munity, secured by the Constitution of the United States, o any right secured by any law of the *United States providing* equal rights of citizens of the United States, or of all pers *within the jurisdiction* of the United States."[10]

The petitioners insist that the rights of which the respond say they have been deprived are not within those describe subsection (14). The courts below have held that *citizens of* United States possess such rights by virtue of their citizens that the *Fourteenth Amendment* secures these rights against vasion by a state, and authorizes legislation by Congress to force the Amendment.

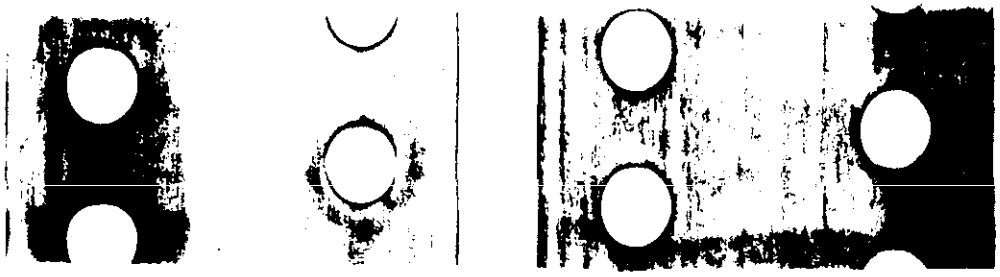
Prior to the Civil War there was confusion and debate a the relation between United States citizenship and state citi ship. Beyond dispute, *citizenship* of the United States, as s existed. The Constitution, in various clauses, recognized it[11]

[8] McNutt *v.*, General *Motors* Acceptance Corp., 298 U. S. 178; com KVOS, Inc. *v.* Associated Press, 299 U. S. 269.

[9] Wheless *v.* St. Louis, 180 U. S. 379; Pinel *v.* Pinel, 240 U. S. 594, *Scott v.* Frazier, 253 U. S. 243.

[10] The section is derived from R. S. 563, Section 12, which, in turn, origi in Section 3 of the Civil Rights Act of April 9, 1866, 14 Stat. 27, as reen by Section 18 of the Civil Rights Act of May 31, 1870, 16 Stat. 144, an ferred to in Section 1 of the *Civil Rights* Act of April 20, 1871, 17 Sta

[11] See Art. I, Sections 2 and 3; Art. II, Section 1.



nowhere defined it. Many thought state citizenship, and that only, created United States citizenship.[12]

After the adoption of the Thirteenth Amendment a bill, which became the first Civil Rights Act,[13] was introduced in the 39th Congress, the major purpose of which was to secure to the recently freed negroes all the civil rights secured to white men. This act declared that all persons born in the United States, and not subject to any foreign power, excluding Indians not taxed, were citizens of the United States and should have the same rights in every state to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to enjoy the full and equal benefit of all laws and proceedings for the security of persons and property to the same extent as white citizens. None other than citizens of the United States were within the provisions of the Act. It provided that "any person who, under color of any law, statute, ordinance, regulation, or custom, shall subject, or cause to be subjected, any inhabitant of any State . . . to the deprivation of any right secured or protected by this act" should be guilty of a misdemeanor. It also conferred on district courts jurisdiction of civil actions by persons deprived of rights secured to them by its terms.

By reason of doubts as to the power to enact the legislation, and because the policy thereby evidenced might be reversed by a subsequent Congress, there was introduced at the same session an additional amendment to the Constitution which became the Fourteenth.

The first sentence of the Amendment settled the old controversy as to citizenship by providing that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." Thenceforward citizenship of the United States became primary and citizenship of a state secondary.[14]

The first section of the Amendment further provides: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;" . . .

[12] See Scott *v.* Sandford, 19 How. 393.

[13] Act of April 9, 1866, c. 31, 14 Stat. 27.

[14] Selective Draft Cases, 245 U. S. 366, 389.

The second Civil Rights Act[15] was passed by the 41st Congress. Its purpose was to enforce the provisions of the Fourteenth Amendment, pursuant to the authority granted Congress by the fifth section of the amendment. By Section 18 it reenacted the Civil Rights Act of 1866.

A third Civil Rights Act, adopted April 20, 1871,[16] provided "That any person who, under color of any law, statute, ordinance, regulation, custom, or usage of any state, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, any such law, statute, ordinance, regulation, custom, or usage of the state to the contrary notwithstanding, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress; . . ." This with changes of the arrangement of clauses which were not intended to alter the scope of the provision became R. S. 1979, now Title 8, § 43 of the United States Code.

As has been said, prior to the adoption of the Fourteenth Amendment, there had been no constitutional definition of citizenship of the United States, or of the rights, privileges, and immunities secured thereby or springing therefrom. The phrase "privileges and immunities" was used in Article IV, Section 2 of the Constitution, which decrees that "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

At one time it was thought that this section recognized a group of rights which, according to the jurisprudence of the day, were classed as "natural rights"; and that the purpose of the section was to create rights of citizens of the United States by guaranteeing the citizens of every State the recognition of this group of rights by every other State. Such was the view of Justice Washington.[17]

While this description of the civil rights of the citizens of the States has been quoted with approval,[18] it has come to be the settled view that Article IV, Section 2, does not import that a citi-

[15] May 31, 1870, 16 Stat. 140. The act was amended by an Act of February 28, 1871, 16 Stat. 433.

[16] 17 Stat. 13, § 1.

[17] Corfield *v.* Coryell, 4 Was. C. C. 371, 6 Fed. Cas. No. 3230.

[18] The Slaughter-House Cases, 16 Wall. 36, 76; Maxwell *v.* Dow, 176 U. S. 581, 588, 591; Canadian Northern Ry. Co. *v.* Eggen, 252 U. S. 553, 560.

zen of one state carries with him into another fundamental privileges and immunities which come to him necessarily by the mere fact of his citizenship in the state first mentioned, but, on the contrary, that in any state every citizen of any other state is to have the same privileges and immunities which the citizens of that state enjoy. The section, in effect, prevents a state from discriminating against citizens of other states in favor of its own.[19]

The question now presented is whether freedom to disseminate information concerning the provisions of the National Labor Relations Act, to assemble peaceably for discussion of the Act, and of the opportunities and advantages offered by it, is a privilege or immunity of a citizen of the United States secured against State abridgment[20] by Section 1 of the Fourteenth Amendment; and whether R. S. 1979 and Section 24(14) of the Judicial Code afford redress in a federal court for such abridgment. This is the narrow question presented by the record, and we confine our decision to it, without consideration of broader issues which the parties urge. The bill, the answer and the findings fully present the question. The bill alleges, and the findings sustain the allegation, that the respondents had no other purpose than to inform citizens of Jersey City by speech, and by the written word, respecting matters growing out of national legislation, the constitutionality of which this court has sustained.

Although it has been held that the Fourteenth Amendment created no rights in citizens of the United States, but merely secured existing rights against state abridgment,[21] it is clear that the right peaceably to assemble and to discuss these topics, and to communicate respecting them, whether orally or in writing, is a privilege inherent in citizenship of the United States which the Amendment protects.

In the *Slaughter-House Cases* it was said, 16 Wall. 79: "The right to peaceably assemble and petition for redress of grievances,

[19] Downham *v.* Alexandria, 10 Wall. 173; Chambers *v.* B. & O. R. Co., 207 U. S. 142; LaTourette *v.* McMaster, 248 U. S. 465; Chalker *v.* Birmingham & N. W. Ry. Co., 249 U. S. 522; Shaffer *v.* Carter, 252 U. S. 37; United States *v.* Wheeler, 254 U. S. 281; Douglas *v.* N. Y., N. H. & H. R. Co., 279 U. S. 377; Whitfield *v.* Ohio, 297 U. S. 431.

[20] As to what constitutes state action within the meaning of the amendment, see Virginia *v.* Rives, 100 U. S. 313; Ex parte Virginia, 100 U. S. 339, 347; Home Tel. Co. *v.* Los Angeles, 227 U. S. 278; Mooney *v.* Holohan, 294 U. S. 103, 112; Lovell *v.* Griffin, 303 U. S. 444, 450.

[21] The Slaughter-House Cases, 16 Wall. 36, 77; Minor *v.* Happersett, 21 Wall. 162; Ex parte Virginia, 100 U. S. 339; In re Kemmler, 136 U. S. 436, 448.

the privilege of the writ of *habeas corpus*, are rights of the citizen guaranteed by the Federal Constitution.

In *United States* v. *Cruikshank*, 92 U. S. 542, 552-553, the court said:

"The right of the people peaceably to assemble for the purpose of petitioning Congress for a redress of grievances, or for any thing else connected with the powers or the duties of the national government, is an attribute of national citizenship, and, as such, under the protection of, and guaranteed by, the United States. The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances. If it had been alleged in these counts that the object of the defendants was to prevent a meeting for such a purpose, the case would have been within the statute, and within the scope of the sovereignty of the United States."

No expression of a contrary view has ever been voiced by this court.

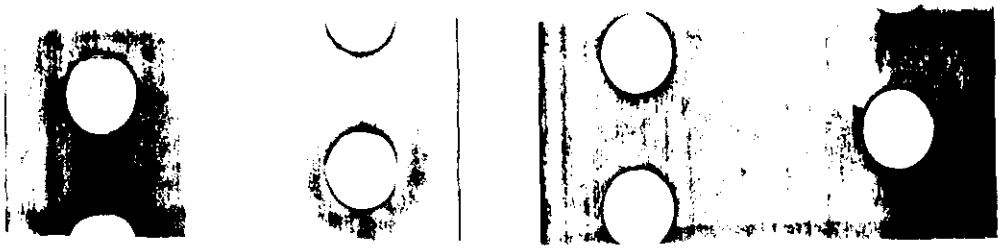
The National Labor Relations Act declares the policy of the United States to be to remove obstructions to commerce by encouraging collective bargaining, protecting full freedom of association and self-organization of workers, and, through their representatives, negotiating as to conditions of employment.

Citizenship of the United States would be little better than a name if it did not carry with it the right to discuss national legislation and the benefits, advantages, and opportunities to accrue to citizens therefrom. All of the respondents' proscribed activities had this single end and aim. The District Court had jurisdiction under Section 24(14).

Natural persons, and they alone, are entitled to the privileges and immunities which Section 1 of the Fourteenth Amendment secures for "citizens of the United States."[22] Only the individual respondents may, therefore, maintain this suit.

Second. What has been said demonstrates that, in the light of the facts found, privileges and immunities of the individual respondents as citizens of the United States, were infringed by the petitioners, by virtue of their official positions, under color of ordinances of Jersey City, unless, as petitioners contend, the city's ownership of

[22] Orient Insurance Co. *v.* Daggs, 172 U. S. 557; Holt *v.* Indiana Manufacturing Co., 176 U. S. 68; Western Turf Association *v.* Greenberg, 204 U. S. 359; Selover, Bates & Co. *v.* Walsh, 226 U. S. 112.



streets and parks is as absolute as one's ownership of his home, with consequent power altogether to exclude citizens from the use thereof, or unless, though the city holds the streets in trust for public use, the absolute denial of their use to the respondents is a valid exercise of the police power.

The findings of fact negative the latter assumption. In support of the former the petitioners rely upon *Davis* v. *Massachusetts*, 167 U. S. 43. There it appeared that, pursuant to enabling legislation, the city of Boston adopted an ordinance prohibiting anyone from speaking, discharging fire arms, selling goods, or maintaining any booth for public amusement on any of the public grounds of the city except under a permit from the Mayor. Davis spoke on Boston Common without a permit and without applying to the Mayor for one. He was charged with a violation of the ordinance and moved to quash the complaint, *inter alia*, on the ground that the ordinance abridged his privileges and immunities as a citizen of the United States and denied him due process of law because it was arbitrary and unreasonable. His contentions were overruled and he was convicted. The judgment was affirmed by the Supreme Court of Massachusetts and by this court.

The decision seems to be grounded on the holding of the State court that the Common "was absolutely under the control of the legislature", and that it was thus "conclusively determined there was no right in the plaintiff in error to use the common except in such mode and subject to such regulations as the legislature in its wisdom may have deemed proper to prescribe." The Court added that the Fourteenth Amendment did not destroy the power of the states to enact police regulations as to a subject within their control or enable citizens to use public property in defiance of the constitution and laws of the State.

The ordinance there in question apparently had a different purpose from that of the one here challenged, for it was not directed solely at the exercise of the right of speech and assembly, but was addressed as well to other activities, not in the nature of civil rights, which doubtless might be regulated or prohibited as respects their enjoyment in parks. In the instant case the ordinance deals only with the exercise of the right of assembly for the purpose of communicating views entertained by speakers, and is not a general measure to promote the public convenience in the use of the streets or parks.

We have no occasion to determine whether, on the facts d closed, the *Davis Case* was rightly decided, but we cannot agr that it rules the instant case. Wherever the title of streets a parks may rest, they have immemorially been held in trust for t use of the public and, time out of mind, have been used for pu poses of assembly, communicating thoughts between citizens, a discussing public questions. Such use of the streets and pub places has, from ancient times, been a part of the privileges, i munities, rights, and liberties of citizens. The privilege of a citi of the United States to use the streets and parks for communicati of views on national questions may be regulated in the interest all; it is not absolute, but relative, and must be exercised in sub dination to the general comfort and convenience, and in consonan with peace and good order; but it must not, in the guise of regu tion, be abridged or denied.

We think the court below was right in holding the ordina quoted in Note 1 void upon its face.[23] It does not make comfort convenience in the use of streets or parks the standard of offi action. It enables the Director of Safety to refuse a permit on mere opinion that such refusal will prevent "riots, disturbances disorderly assemblage." It can thus, as the record discloses, made the instrument of arbitrary suppression of free expressio views on national affairs for the prohibition of all speaking will doubtedly "prevent" such eventualities. But uncontrolled offi suppression of the privilege cannot be made a substitute for duty to maintain order in connection with the exercise of the ri

The bill recited that policemen, acting under petitioners' inst tions, had searched various persons, including the respondents, had seized innocent circulars and pamphlets without warran probable cause. It prayed injunctive relief against repetitio this conduct. The District Court made no findings of fact cerning such searches and seizures and granted no relief respect to them. The Circuit Court of Appeals did not enl the terms of the decree but found that unreasonable searches seizures had occurred and that the prohibitions of the Fo Amendment had been taken over by the Fourteenth so as to tect citizens of the United States against such action.

The decree as affirmed by the court below does not restrain searches or seizures. In each of its provisions addressed to i

[23] Lovell v. Griffin, *supra*. See the construction of the ordinance b Supreme Court of New Jersey in Thomas v. Casey, 121 N. J. L. 185.

ference with liberty of the person, or to the conspiracy to deport, exclude, and interfere bodily with the respondents in pursuit of their peaceable activities, the decree contains a saving clause of which the following is typical: "except in so far as such personal restraint is in accordance with any right of search and seizure." In the light of this reservation we think there was no occasion for the Circuit Court of Appeals to discuss the question whether exemption from the searches and seizures proscribed by the Fourth Amendment is afforded by the privileges and immunities clause of the Fourteenth, and we have no occasion to consider or decide any such question.

Third. It remains to consider the objections to the decree. Section A deals with liberty of the person and prohibits the petitioners from excluding or removing the respondents or persons acting with them from Jersey City, exercising personal restraint over them without warrant or confining them without lawful arrest and production of them for prompt judicial hearing, saving lawful search and seizure; or interfering with their free access to the streets, parks, or public places of the city. The argument is that this section of the decree is so vague in its terms as to be impractical of enforcement or obedience. We agree with the court below that the objection is not well founded.

Section B deals with liberty of the mind. Paragraph 1 enjoins the petitioners from interfering with the right of the respondents, their agents and those acting with them, to communicate their views as individuals to others on the streets in an orderly and peaceable manner. It reserves to the petitioners full liberty to enforce law and order by lawful search and seizure or by arrest and production before a judicial officer. We think this paragraph unassailable.

Paragraphs 2 and 3 enjoin interference with the distribution of circulars, handbills and placards. The decree attempts to formulate the conditions under which respondents and their sympathizers may distribute such literature free of interference. The ordinance absolutely prohibiting such distribution is void under our decision in *Lovell* v. *Griffin*, *supra*, and petitioners so concede. We think the decree goes too far. All respondents are entitled to is a decree declaring the ordinance void and enjoining the petitioners from enforcing it.

Paragraph 4 has to do with public meetings. Although the court below held the ordinance void, the decree enjoins the petitioners as to the manner in which they shall administer it. There is an initial command that the petitioners shall not place "any previous restraint" upon the respondents in respect of holding meetings, provided they apply for a permit as required by the ordinance. This is followed by an enumeration of the conditions under which a permit may be granted or denied. We think this is wrong. As the ordinance is void, the respondents are entitled to a decree so declaring and an injunction against its enforcement by the petitioners. They are free to hold meetings without a permit and without regard to the terms of the void ordinance. The courts cannot rewrite the ordinance, as the decree, in effect, does.

The bill should be dismissed as to all save the individual plaintiffs, and Section B, paragraphs 2, 3 and 4 of the decree should be modified as indicated. In other respects the decree should be affirmed.

SUPREME COURT OF THE UNITED STATES.

No. 651.—October Term, 1938.

Frank Hague, Individually and as Mayor of Jersey City, et al., &c., Petitioners,
vs.
Committee for Industrial Organization, Steel Workers Organizing Committee of the Committee for Industrial Organization, et al.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[June 5, 1939.]

Mr. Justice Stone.

I do not doubt that the decree below, modified as has been proposed, is rightly affirmed, but I am unable to follow the path by which some of my brethren have attained that end, and I think the matter is of sufficient importance to merit discussion in some detail.

It has been explicitly and repeatedly affirmed by this Court, without a dissenting voice, *that freedom of speech and of assembly* for any lawful purpose are rights of personal liberty secured to all persons, without regard to citizenship, by the due process clause of the Fourteenth Amendment. *Gitlow* v. *New York*, 268 U. S. 652; *Whitney* v. *California*, 274 U. S. 357; *Fiske* v. *Kansas*, 274 U. S. 380; *Stromberg* v. *California*, 283 U. S. 359; *Near* v. *Minnesota*, 283 U. S. 697; *Grosjean* v. *American Press Co.*, 297 U. S. 233; *De Jonge* v. *Oregon*, 299 U. S. 353; *Herndon* v. *Lowry*, 301 U. S. 242; *Lovell* v. *Griffin*, 303 U. S. 444. It has never been held that either is a privilege or immunity peculiar to citizenship of the United States, to which alone the privileges and immunities clause refers, *Slaughter-House Cases*, 16 Wall. 36; *Duncan* v. *Missouri*, 152 U. S. 377, 382; *Twining* v. *New Jersey*, 211 U. S. 78, 97; *Maxwell* v. *Bugbee*, 250 U. S. 525, 538; *Hamilton* v. *Regents*, 293 U. S. 245, 261, and neither can be brought within the protection of that clause without enlarging the category of privileges and immunities of United States citizenship as it has hitherto been defined.

As will presently appear, the right to maintain a suit in equity to restrain state officers, acting under a state law, from infringing the rights of freedom of speech and of assembly guaranteed by the due process clause, is given by Act of Congress to every person within the jurisdiction of the United States whether a citizen or not, and such a suit may be maintained in the district court without allegation or proof that the jurisdictional amount required by § 24(1) of the Judicial Code is involved. Hence there is no occasion, for jurisdictional purposes or any other, to consider whether freedom of speech and of assembly are immunities secured by the privileges and immunities clause of the Fourteenth Amendment to citizens of the United States, or to revive the contention, rejected by this Court in the *Slaughter-House Cases, supra*, that the privileges and immunities of United States citizenship, protected by that clause, extend beyond those which arise or grow out of the relationship of United States citizens to the national government.[1]

[1] The privilege or immunity asserted in the Slaughter-House cases was the freedom to pursue a common business or calling, alleged to have been infringed by a state monopoly statute. It should not be forgotten that the Court, in deciding the case, did not deny the contention of the dissenting justices that the asserted freedom was in fact infringed by the state law. It rested its decision rather on the ground that the immunity claimed was not one belonging to persons by virtue of their citizenship. "It is quite clear", the Court declared (p. 74), "that there is a citizenship of the United States, and a citizenship of a State, which are distinct from each other, and which depend on different characteristics in the individual." And it held that the protection of the privileges and immunities clause did not extend to those "fundamental" rights attached to state citizenship which are peculiarly the creation and concern of state governments and which Mr. Justice Washington, in Corfield *v.* Coryell, 4 Wash. C. C. 371, 6 Fed. Cas. No. 3230, mistakenly thought to be guaranteed by Article IV, § 2 of the Constitution. The privileges and immunities of citizens of the United States, it was pointed out, are confined to that limited class of interests growing out of the relationship between the citizen and the national government created by the Constitution and federal laws. Slaughter-House Cases, 16 Wall. 36, 79; see Twining *v.* New Jersey, 211 U. S. 78, 97, 98.

That limitation upon the operation of the privileges and immunities clause has not been relaxed by any later decisions of this Court. In re Kemmler, 136 U. S. 436, 448; McPherson *v.* Blacker, 146 U. S. 1, 38; Giozza *v.* Tiernan, 148 U. S. 657, 661; Duncan *v.* Missouri, 152 U. S. 377, 382. Upon that ground appeals to this Court to extend the clause beyond the limitation have uniformly been rejected, and even those basic privileges and immunities secured against federal infringement by the first eight amendments have uniformly been held not to be protected from state action by the privileges and immunities clause. Walker *v.* Sauvinet, 92 U. S. 90; Hurtado *v.* California, 110 U. S. 516; Presser *v.* Illinois, 116 U. S. 252; O'Neill *v.* Vermont, 144 U. S. 323; Maxwell *v.* Dow, 176 U. S. 581; West *v* Louisiana, 194 U. S. 258; Twining *v.* New Jersey, *supra*; Palko *v.* Connecticut, 302 U. S. 319.

The reason for this narrow construction of the clause and the consistently exhibited reluctance of this Court to enlarge its scope has been well understood since the decision of the Slaughter-Houses Cases. If its restraint upon state action were to be extended more than is needful to protect relationships between the citizen and the national government, and if it were to be deemed to extend to those fundamental rights of person and property attached to citizenship by the common law and enactments of the states when the Amendment was adopted, such as were described in Corfield *v.* Coryell, *supra*, it would enlarge Congressional and judicial control of state action and multiply restrictions upon it whose nature, though difficult to anticipate with precision, would be of sufficient gravity to cause serious apprehension for the rightful independence of local government. That was the issue fought out in the Slaughter-House Cases, with the decision against enlargement.

Of the fifty or more cases which have been brought to this Court since the adoption of the Fourteenth Amendment in which state statutes have been assailed as violating the privileges and immunities clause, in only a single case was a statute held to infringe a privilege or immunity peculiar to citizenship of the United States. In that one, Colgate *v.* Harvey, 296 U. S. 404, it was thought necessary to support the decision by pointing to the specific reference in the Slaughter-House Cases, *supra*, 79, to the right to pass freely from state to state, sustained as a right of national citizenship in Crandall *v.* Nevada, 6 Wall. 35, before the adoption of the Amendment.

The cases will be found collected in Footnote 2 of the dissenting opinion in Colgate *v.* Harvey, 296 U. S. 404, 445. To these should be added Holden *v.* Hardy, 169 U. S. 366; Ferry *v.* Spokane P. & S. R. Co., 258 U. S. 314; New York ex rel. Bryant *v.* Zimmerman, 278 U. S. 63; Whitfield *v.* Ohio, 297 U. S. 431; Breedlove *v.* Suttles, 302 U. S. 277; Palko *v.* Connecticut, 302 U. S. 319.

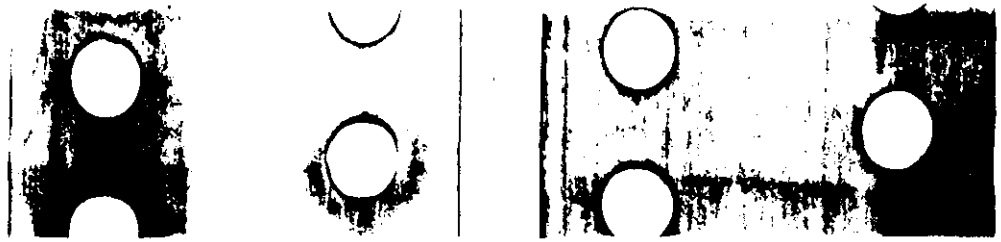
That such is the limited application of the privileges and immunities clause seems now to be conceded by my brethren. But it is said that the freedom of respondents with which the petitioners have interfered is the "freedom to disseminate information concerning the provisions of the National Labor Relations Act, to assemble peaceably for discussion of the Act, and of the opportunities and advantages offered by it", and that these are privileges and immunities of citizens of the United States secured against state abridgment by the privileges and immunities clause of the Fourteenth Amendment. It has been said that the right of citizens to assemble for the purpose of petitioning Congress for the redress of grievances is a privilege of United States citizenship protected by the privileges and immunities clause. *United States* v. *Cruikshank*, 92 U. S. 542, 552-553. We may assume for present purposes, although the step is a long and by no means certain one, see *Maxwell* v. *Dow*, 176 U. S. 581; *Twining* v. *New Jersey, supra*, that the right to assemble to discuss the advantages of the National Labor Relations Act is likewise a privilege secured by the privileges and immunities clause to citizens of the United States, but not to others, while freedom to assemble for the purpose of discussing a similar state statute would not be within the privileges and immunities clause. But the difficulty with this assumption is, as the record and briefs show, that it is an afterthought first emerging in this case after it was submitted to us for decision, and like most afterthoughts in litigated matters it is without adequate support in the record.

The respondents in their bill of complaint specifically named and quoted Article IV, § 2, now conceded to be inapplicable, and the due process and equal protection clauses of the Fourteenth Amendment as the provisions of the Constitution which secure to them the rights of free speech and assembly. They omitted the privileges and immunities clause of the Fourteenth Amendment from their quotation. They made no specific allegation that any of those whose freedom had been interfered with by petitioners was a citizen of the United States. The general allegation that the acts of petitioners complained of violate the rights of "citizens of the United States, including the individual plaintiffs here", and other allegations of like tenor, were denied by petitioners' answer. There is no finding by either court below that any of respondents or any of those whose freedom of speech and assembly has been infringed are citizens of the United States, and we are referred to no part of the evidence in which their citizenship is mentioned or from which it can be inferred.

Both courts below found, and the evidence supports the findings, that the purpose of respondents, other than the Civil Liberties Union, in holding meetings in Jersey City, was to organize labor unions in various industries in order to secure to workers the benefits of collective bargaining with respect to betterment of wages, hours of work and other terms and conditions of employment. Whether the proposed unions were to be organized in industries which might be subject to the National Labor Relations Act or to the jurisdiction of the National Labor Relations Board does not appear. Neither court below has made any finding that the meetings were called to discuss, or that they ever did in fact discuss, the National Labor Relations Act. The findings do not support the conclusion that the proposed meetings involved any such relationship between the national government and respondents or any of them, assuming they are citizens of the United States, as to show that the asserted right or privilege was that of a citizen of the United States, and I cannot say that an adequate basis has been laid for supporting a theory—which respondents themselves evidently did not entertain—that any of their privileges as citizens of the United States, guaranteed by the Fourteenth Amendment, were abridged, as distinguished from the privileges guaranteed to all persons by the due process clause. True, the findings refer to the suppression by petitioners of exhibits, one of which turns out to be a handbill advising workers they have the legal right, under the

Wagner Act, to choose their own labor union to represent them in collective bargaining. But the injunction, which the Court now rightly sustains, is not restricted to the protection of the right, said to pertain to United States citizenship, to disseminate information about the Wagner Act. On the contrary it extends and applies in the broadest terms to interferences with respondents in holding any lawful meeting and disseminating any lawful information by circular, leaflet, handbill and placard. If, as my brethren think, respondents are entitled to maintain in this suit only the rights secured to them by the privileges and immunities clause of the Fourteenth Amendment—here the right to disseminate information about the National Labor Relations Act—it is plain that the decree is too broad. Instead of enjoining, as it does, interferences with all meetings for all purposes and the lawful dissemination of all information, it should have confined its restraint to interferences with the dissemination of information about the National Labor Relations Act, through meetings or otherwise. The court below rightly omitted any such limitation from the decree, evidently because, as it declared, petitioners' acts infringed the due process clause, which guarantees to all persons freedom of speech and of assembly for any lawful purpose.

No more grave and important issue can be brought to this Court than that of freedom of speech and assembly, which the due process clause guarantees to all persons regardless of their citizenship, but which the privileges and immunities clause secures only to citizens, and then only to the limited extent that their relationship to the national government is affected. I am unable to rest decision here on the assertion, which I think the record fails to support, that respondents must depend upon their limited privileges as citizens of the United States in order to sustain their cause, or upon so palpable an avoidance of the real issue in the case, which respondents have raised by their pleadings and sustained by their proof. That issue is whether the present proceeding can be maintained under § 24(14) of the Judicial Code as a suit for the protection of rights and privileges guaranteed by the due process clause. I think respondents' right to maintain it does not depend on their citizenship and cannot rightly be made to turn on the existence or non-existence of a purpose to disseminate information about the National Labor Relations Act. It is enough that peti-



tioners have prevented respondents from holding meetings and disseminating information whether for the organization of labor unions or for any other lawful purpose.

If it be the part of wisdom to avoid unnecessary decision of constitutional questions, it would seem to be equally so to avoid the unnecessary creation of novel constitutional doctrine, inadequately supported by the record, in order to attain an end easily and certainly reached by following the beaten paths of constitutional decision.

The right to maintain the present suit is conferred upon the individual respondents by the due process clause and Acts of Congress, regardless of their citizenship and of the amount in controversy. Section 1 of the Civil Rights Act of April 20, 1871, 17 Stat. 13, provided that "any person who, under color of any law, statute, ordinance . . . of any State, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall . . . be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress". And it directed that such proceedings should be prosecuted in the several district or circuit courts of the United States. The right of action given by this section was later specifically limited to "any citizen of the United States or other person within the jurisdiction thereof", and was extended to include rights, privileges and immunities secured by the laws of the United States as well as by the Constitution. As thus modified the provision was continued as § 1979 of the Revised Statutes and now constitutes § 43 of Title 8 of the United States Code. It will be observed that the cause of action, given by the section in its original as well as its final form, extends broadly to deprivation by state action of the rights, privileges and immunities secured to persons by the Constitution. It thus includes the Fourteenth Amendment and such privileges and immunities as are secured by the due process and equal protection clauses, as well as by the privileges and immunities clause of that Amendment. It will also be observed that they are those rights secured to persons, whether citizens of the United States or not, to whom the Amendment in terms extends the benefit of the due process and equal protection clauses.

Following the decision of the *Slaughter-House Cases* and before the later expansion by judicial decision of the content of the due process and equal protection clauses, there was little scope for the operation of this statute under the Fourteenth Amendment. The observation of the Court in *United States* v. *Cruikshank*, 92 U. S. 542, 551, that the right of assembly was not secured against state action by the Constitution, must be attributed to the decision in the *Slaughter-House Cases* that only privileges and immunities peculiar to United States citizenship were secured by the privileges and immunities clause, and to the further fact that at that time it had not been decided that the right was one protected by the due process clause. The argument that the phrase in the statute "secured by the Constitution" refers to rights "created", rather than "protected" by it, is not persuasive. The preamble of the Constitution, proclaiming the establishment of the Constitution in order to "secure the Blessings of Liberty", uses the word "secure" in the sense of "protect" or "make certain". That the phrase was used in this sense in the statute now under consideration was recognized in *Carter* v. *Greenhow*, 114 U. S. 317, 322, where it was held as a matter of pleading that the particular cause of action set up in the plaintiff's pleading was in contract and was not to redress deprivation of the "right secured to him by that clause of the Constitution" [the contract clause], to which he had "chosen not to resort". See, as to other rights protected by the Constitution and hence secured by it, brought within the provisions of R. S. § 5508, *Logan* v. *United States*, 144 U. S. 263; *In re Quarles and Butler*, 158 U. S. 532; *United States* v. *Mosley*, 238 U. S. 383.

Since freedom of speech and freedom of assembly are rights secured to persons by the due process clause, all of the individual respondents are plainly authorized by § 1 of the Civil Rights Act of 1871 to maintain the present suit in equity to restrain infringement of their rights. As to the American Civil Liberties Union, which is a corporation, it cannot be said to be deprived of the civil rights of freedom of speech and of assembly, for the liberty guaranteed by the due process clause is the liberty of natural, not artificial, persons. *Northwestern Life Insurance Co.* v. *Riggs*, 203 U. S. 243, 255; *Western Turf Ass'n* v. *Greenberg*, 204 U. S. 359, 363.

The question remains whether there was jurisdiction in the district court to entertain the suit although the matter in controversy cannot be shown to exceed $3,000 in value because the asserted

rights, freedom of speech and freedom of assembly, are of such a nature as not to be susceptible of valuation in money. The question is the same whether the right or privilege asserted is secured by the privileges and immunities clause or any other. When the *Civil Rights Act of 1871 directed* that suits for violation of § 1 of that Act should be prosecuted in the district and circuit courts, the only requirement of a jurisdictional amount *in suits brought in the* federal courts was that imposed by § 11 of the Judiciary Act of 1789, which conferred jurisdiction on the circuit courts of suits where "the matter in dispute" exceeded $500 and the United States was a plaintiff, or an alien was a party, or the suit was between citizens *of different states*; and it was then plain that the requirement of a jurisdictional amount did not extend to the causes of action authorized by the Civil Rights Act of *1871*. By *the Act* of March 3, 1875, c. 137, 18 Stat. 470, the jurisdiction of the circuit courts was extended to suits at common law or in equity "arising *under the* Constitution or laws of the United States" in which the matter in dispute exceeded $500. By the Act of March 3, 1911, c. 231, 36 Stat. *1087, the circuit courts were abolished* and their jurisdiction was transferred to the district courts, and by successive enactments the jurisdictional amount applicable to certain classes of suits was raised to $3,000. The provisions applicable to such suits, thus modified, appear as § 24(1) of the Judicial Code, 28 *U. S. C.* § 41(1).

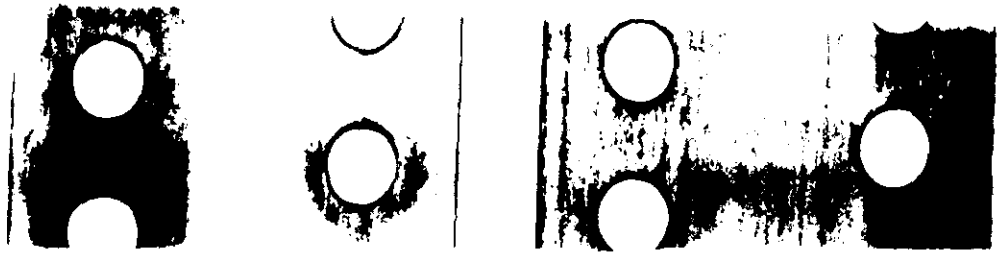
Meanwhile, the provisions conferring jurisdiction on district and circuit courts over suits brought under § 1 *of the Civil Rights* Act of 1871 were continued as R. S. §§ 563 and 629, and now appear as § 24(14) of the Judicial Code, 28 U. S. C. § 41(14). The Act of March 3, 1911, 36 Stat. 1087, 1091, amended § 24(1) of the Judicial Code so as to direct that "The foregoing provision as to the sum or value of the matter *in controversy shall not* be construed to apply to any of the cases mentioned in the succeeding paragraphs of this section".[2] Thus, since 1875, the jurisdictional acts *have contained* two parallel provisions, one conferring jurisdiction on the federal courts, district or circuit, to entertain suits "arising under the Con*stitution or laws of the* United States" in which the amount in

[2] This provision made no change in existing law but was inserted for the purpose of removing all doubt upon the point. *See H. R. Rep. No. 783, Part* 1, 61st Cong., 2d Sess., p. 15; Sen. Rep. No. 388, Part 1, 61st Cong., 2d Sess., p. 11. *Cf.* Miller-Magee Co. *v.* Carpenter, 34 Fed. 433; Ames *v.* Hager, 36 Fed. 129.

controversy exceeds a specified value; the other, *now* § 24(14) *of* the Judicial Code, conferring jurisdiction on those courts of suits authorized by the Civil Rights Act of 1871, regardless of the amount in controversy.

Since all of the suits thus authorized are suits arising under a statute of the United States to *redress deprivation* of rights, privileges and immunities secured by the Constitution, all are literally suits "arising under the Constitution or laws of *the United States*". But it does not follow that in every such suit the plaintiff is required by § 24(1) of the Judicial Code to allege and prove that the constitutional *immunity* which he seeks to vindicate has a value in excess of $3,000. There are many rights and immunities secured by the Constitution, of which freedom *of speech* and assembly are conspicuous examples, which are not capable of money valuation, and in many instances, like the present, no suit in equity could be *maintained for* their protection if proof of the jurisdictional amount were prerequisite. We can hardly suppose that Congress, having in the broad terms of *the* Civil Rights Act of 1871 vested in all persons within the jurisdiction of the United States a right of action in equity for the deprivation of constitutional *immunities, cognizable* only in the federal courts, intended by the Act of 1875 to destroy those rights of action by withholding from the courts of the United States jurisdiction to entertain them.

That such was not the purpose of the Act of 1875 in extending the jurisdiction of federal courts to causes *of action* arising under the Constitution or laws of the United States involving a specified jurisdictional amount, is evident from the continuance upon the statute books of § 24(14) side by side with § 24(1) of the Judicial Code, as amended by the Act of 1875. Since the two provisions stand and must be read together, it is obvious that neither is to be interpreted as abolishing the other, especially when it is remembered that the 1911 amendment of § 24(1) provided *that the requirement* of a jurisdictional amount should not be construed to apply to cases mentioned in § 24(14). This must be taken as legislative recognition *that there* are suits authorized by § 1 of the Act of 1871 which could be brought under § 24(14) after, as well as before, the amendment of *1875 without* compliance with any requirement of jurisdictional amount, and that these at least must be deemed to include suits in which the subject matter *is one incapable of valuation*. Otherwise we should be forced to reach



the absurd conclusion that § 24(14) is meaningless and that a large proportion of the suits authorized by the Civil Rights Act cannot be maintained in any court, although jurisdiction of them, with no requirement of jurisdictional amount, was carefully preserved by § 24(14) of the Judicial Code and by the 1911 amendment of § 24(1). By treating § 24(14) as conferring federal jurisdiction of suits brought under the Act of 1871 in which the right asserted is inherently incapable of pecuniary valuation, we harmonize the two parallel provisions of the Judicial Code, construe neither as superfluous, and give to each a scope in conformity with its history and manifest purpose.

The practical construction which has been given by this Court to the two jurisdictional provisions establishes that the jurisdiction conferred by § 24(14) has been preserved to the extent indicated. In *Holt* v. *Indiana Mfg. Co.*, 176 U. S. 68, suit was brought to restrain alleged unconstitutional taxation of patent rights. The Court held that the suit was one arising under the Constitution or laws of the United States within the meaning of § 24(1) of the Judicial Code and that the United States Circuit Court in which the suit had been begun was without jurisdiction because the challenged tax was less than the jurisdictional amount. The Court remarked that the present § 24(14) applied only to suits alleging deprivation of "civil rights". On the other hand, in *Truax* v. *Raich*, 239 U. S. 33, aff'g 219 Fed. 273, this Court sustained the jurisdiction of a district court to entertain the suit of an alien to restrain enforcement of a state statute alleged to be an infringement of the equal protection clause of the Fourteenth Amendment because it discriminated against aliens in their right to seek and retain employment. The jurisdiction of a district court was similarly sustained in *Crane* v. *Johnson*, 242 U. S. 339, on the authority of *Truax* v. *Raich*, *supra*. The suit was brought in a district court to restrain enforcement of a state statute alleged to deny equal protection in suppressing the freedom to pursue a particular trade or calling. For the purposes of the present case it is important to note that the constitutional right or immunity alleged in these two cases was one of personal freedom, invoked in the *Raich* case by one not a citizen of the United States. In both cases the right asserted arose under the equal protection, not the privileges and immunities clause; in both the gist of the cause of action was not damage or injury to property, but unconstitutional infringement of a right

of personal liberty not susceptible of valuation in money. The jurisdiction was sustained despite the omission of any allegation or proof of jurisdictional amount, pointedly brought to the attention of this Court.

The conclusion seems inescapable that the right conferred by the Act of 1871 to maintain a suit in equity in the federal courts to protect the suitor against a deprivation of rights or immunities secured by the Constitution, has been preserved, and that whenever the right or immunity is one of personal liberty, not dependent for its existence upon the infringement of property rights, there is jurisdiction in the district court under § 24(14) of the Judicial Code to entertain it without proof that the amount in controversy exceeds $3,000. As the right is secured to "any person" by the due process clause, and as the statute permits the suit to be brought by "any person" as well as by a citizen, it is certain that resort to the privileges and immunities clause would not support the decree which we now sustain and would involve constitutional experimentation as gratuitous as it is unwarranted. We cannot be sure that its consequences would not be unfortunate.

Mr. Chief Justice HUGHES, concurring:

With respect to the merits I agree with the opinion of Mr. Justice ROBERTS and in the affirmance of the judgment as modified. With respect to the point as to jurisdiction I agree with what is said in the opinion of Mr. Justice ROBERTS as to the right to discuss the National Labor Relations Act being a privilege of a citizen of the United States, but I am not satisfied that the record adequately supports the resting of jurisdiction upon that ground. As to that matter, I concur in the opinion of Mr. Justice STONE.

Mr. Justice MCREYNOLDS.

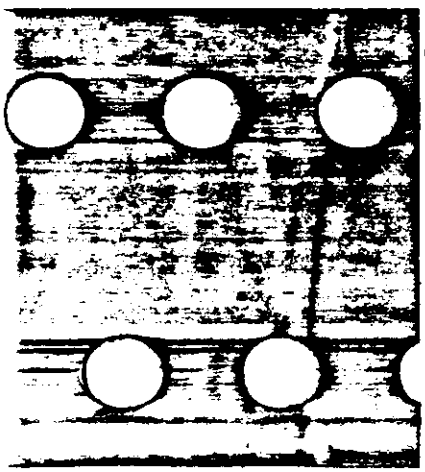
I am of opinion that the decree of the Circuit Court of Appeals should be reversed and the cause remanded to the District Court with instructions to dismiss the bill. In the circumstances disclosed, I conclude that the District Court should have refused to interfere

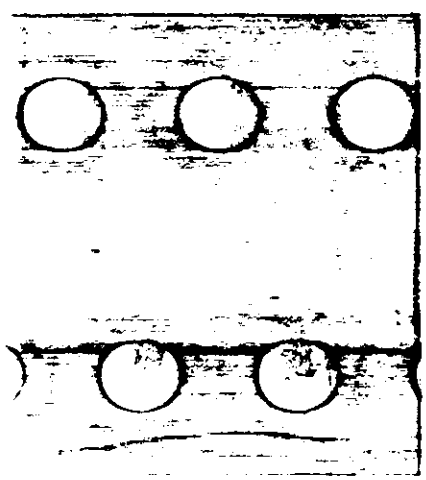
by injunction with the essential rights of the municipality to control its own parks and streets. Wise management of such intimate local affairs, generally at least, is beyond the competency of federal courts, and essays in that direction should be avoided.

There was ample opportunity for respondents to assert their claims through an orderly proceeding in courts of the state empowered authoritatively to interpret her laws with final review here in respect of federal questions.

Mr. Justice BUTLER.

I am of opinion that the challenged ordinance is not void on its face; that in principle it does not differ from the Boston ordinance, as applied and upheld by this Court, speaking through Mr. Justice White, in *Davis* v. *Massachusetts*, 167 U. S. 43, affirming the Supreme Judicial Court of Massachusetts, speaking through Mr. Justice Holmes, in *Commonwealth* v. *Davis*, 162 Mass. 510, and that the decree of the Circuit Court of Appeals should be reversed.





John L., U. S. Are Needled By High Court

Frankfurter Throws Documents to Floor

By FRANK HOLEMAN

With black-robed justices peppering questions at both sides, the Supreme Court listened for nearly four tense hours yesterday, while lawyers for John L. Lewis and the Government argued the contempt conviction and $3,510,000 fine growing out of the soft coal strike.

The court adjourned without word as to when it will hand down its decision.

Attorney General Clark, clad in black cutaway coat for the momentous trial, which may determine the Government's full power over labor unions, charged that Lewis and his United Mine Workers Union (AFL) "do not yet seem to realize" that their recent coal strike "fell little short of causing a national disaster" and was an "insult to the United States itself." Moreover, Lewis and his United Mine Workers are continuing their "defiance" of the courts, possibly a side reference to the threat of a crippling new coal strike next March 31.

Hopkins Asks Reversal

Welly K. Hopkins, chief counsel for Lewis, retorted with a demand that the high tribunal reverse the lower court's judgment because Trial Judge T. Alan Goldsborough lumped civil and criminal contempt together, denied Lewis a jury on the contempt charge and slapped the heaviest fine in history on the union and its leader.

The dramatic highlight of the hearing in the lofty jam-packed pink-marble courtroom came when Joseph A. Padway, another Lewis lawyer, read excerpts from the judicial opinions and a 1932 book by Justice Frankfurter, condemning the use of injunctions in labor disputes.

Frankfurter, sitting behind the high wooden bench with the eight other Justices, flushed, then loosed a barrage of questions dealing with the details of laws under which President Truman seized the 3,200 mines last May 21.

Hits at Psychoanalysis

All the judges, except Justice Murphy, shot questions at the lawyers. Justice Black dug into the exact details of Government operation of the mines, after Hopkins claimed U. S. ownership was a "fiction."

At one point, Justice Jackson demanded that Assistant Attorney General John F. Sonnett

(Turn to Page 2, Col. 3)

High Court Fires Quiz Barrage in Coal Strike Case

(Continued from First Page)

quit "psycho-analyzing Congressmen," after Sonnett had dwelt at length on congressional debates preceding passage of the Norris-LaGuardia and Smith-Connally acts in response to questions by Frankfurter.

At this point Frankfurter, in apparent annoyance, grabbed a wad of documents, swiveled around on his high back chair and flopped them onto the floor with a thud.

A page boy came along and scooped them up.

Black demanded whether Padway, the silver-haired general AFL counsel, thought the Norris-LaGuardia Act, which bars injunctions in labor disputes, applies to the Government.

"To any dispute between any employes and employer," Padway answered.

"Suppose you're wrong and the act does not apply to Government employes," Justice Douglas interrupted. "Would that make any difference in this case?"

Wouldn't Make Any Difference

Padway said it would not because the miners are not strictly Government employes.

Chief Justice Vinson asked if Padway challenged the President's right to seize the mines under his war powers. "No," the lawyer replied.

"Does the Smith-Connally Act amend the Norris-LaGuardia Act?" Black asked. "No," Padway declared emphatically.

Douglas demanded to know what function the Government was performing by seizing. "The only function of Government by taking possession is to prosecute union officials and workers for interfering with work," Padway answered.

"I would like, at the outset of this case, to make it clear that the issue here is not a dispute between Government and labor," Clark declared. "The Government does not ask this court to establish any principle which would interfere with the recognized rights of labor."

Then he drew a vivid word picture of the industrial collapse which faced the nation during the 17-day strike by 400,000 U.M.W. members after Lewis "terminated" his contract with Secretary of Interior Krug last November 21.

Then he related how the Government got a temporary restraining order from Goldsborough. Lewis ignored the order.

Insult to U. S. Charged

"In my humble opinion," Clark said fervently, "to hold a United States court in contempt is an insult to the United States itself; it compromises all law and invites mob rule."

Hopkins, sparking the defense, charged that Goldsborough erred when he refused to tell the defendants which kind of contempt they were charged with, until December 4—the day he slapped a $3,500,000 fine on the union and $10,000 on Lewis personally, for both civil and criminal contempt.

Lewis, ailing since the time of the first trial, was en route to Miami to bask in the sunshine until the AFL executive council meeting there January 29.

Mr. Tolson
Mr. E. A. Tamm
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Carson
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Hendon
Mr. Jones
Mr. Pennington
Mr. Quinn Tamm
Mr. Nease
Miss Gandy

File

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ENCLOSURE

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Text o, the Majority Decision Upholding Wagner Labor Law

THE text of the majority opinion upholding the Wagner labor relations act in the Jones and Laughlin Steel Corp case, as delivered by Chief Justice Hughes, follows

In a proceeding under the national labor relations act of 1935, the National Labor Relations Board found that the petitioner, Jones & Laughlin Steel Corp., had violated the act by engaging in unfair labor practices affecting commerce. The proceeding was instituted by the Beaver Valley Lodge No 200, affiliated with the Amalgamated Association of Iron, Steel and Tin Workers of America, a labor organization. The unfair labor practices charged were that the corporation was discriminating against members of the union with regard to hire and tenure of employment, and was coercing and intimidating its employes in order to interfere with their self-organization. The discriminatory and coercive action alleged was the discharge of certain employes.

The National Labor Relations Board, sustaining the charge, ordered the corporation to cease and desist from such discrimination and coercion, to offer reinstatement to 10 of the employes named, to make good their losses in pay and to post for 30 days notices that the corporation would not discharge or discriminate against members, or those desiring to become members, of the labor union. As the corporation failed to comply, the board petitioned the Circuit Court of Appeals to enforce the order. The court denied the petition, holding that the order lay beyond the range of Federal power. 83 F (2d), 998. We granted certiorari.

Provides Rights of Workers To Bargain Collectively.

The scheme of the national labor relations act—which is too long to be quoted in full—may be briefly stated. The first section sets forth findings with respect to the injury to commerce resulting from the denial by employers of the right of employes to organize and from the refusal of employers to accept the procedure of collective bargaining. There follows a declaration that it is the policy of the United States to eliminate these causes of obstruction to the free flow of commerce. The act then defines the terms it uses, including the terms "commerce" and "affecting commerce." Section 2. It creates the National Labor Relations Board and prescribes its organization. Sections 3-6. It sets forth the right of employes to self-organization and to bargain collectively through representatives of their own choosing. Section 7. It defines "unfair labor practices." Section 8. It lays down rules as to the representation of employes for the purpose of collective bargaining. Section 9. The board is empowered to prevent the described unfair labor practices affecting commerce and the act prescribes the procedure to that end. The board is authorized to petition designated courts to secure the enforcement of its order. The findings of the board as to the facts, if supported by evidence, are to be conclusive.

If either party on application to the court shows that additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearings before the board, the court may order the additional evidence to be taken. Any person aggrieved by a final order of the board may obtain a review in the designated courts with the same procedure as in the case of an application by the board for the enforcement of its order. Section 10. The board has broad powers of investigation. Section 11. Interference with members of the board or its agents in the performance of their duties is punishable by fine and imprisonment. Section 12. Nothing in the act is to be construed to interfere with the right to strike. Section 13. There is a separability clause to the effect that if any provision of the act or its application to any person or circumstances shall be held invalid, the remainder of the act or its application to other persons or circumstances shall not be affected. Section 15. The particular provisions which are involved in the instant case will be considered more in detail in the course of the discussion.

Board Charges Unfair Labor Practices.

The procedure in the instant case followed the statute. The labor union filed with the board its verified charge. The board thereupon issued its complaint against the respondent, alleging that its action in discharging the employes in question constituted unfair labor practices affecting commerce within the meaning of section 8, subdivisions (1) and (3), and section 2, subdivisions (6) and (7) of the act. Respondent appearing specially for the purpose of objecting to the jurisdiction of the board, filed its answer. Respondent admitted the charges, but alleged that they were made because of inefficiency or violation of rules or for other good rea- [illegible]

because they are not subject to regulation by the Federal Government, and (3) that the provisions of the act violate Section 2 of Article III and the fifth and seventh amendments of the Constitution of the United States.

The facts as to the nature and scope of the business of the Jones & Laughlin Steel Corp. have been found by the Labor Board and, so far as they are essential to the determination of this controversy, they are not in dispute. The Labor Board has found: The corporation is organized under the laws of Pennsylvania and has its principal office at Pittsburgh. It is engaged in the business of manufacturing iron and steel in plants situated in Pittsburgh and nearby Aliquippa, Pa. It manufactures and distributes a widely diversified line of steel and pig iron, being the fourth largest producer of steel in the United States. With its subsidiaries—19 in number—it is a completely integrated enterprise, owning and operating ore, coal and limestone properties, lake and river transportation facilities and terminal railroads located at its manufacturing plants. It owns or controls mines in Michigan and Minnesota. It operates four ore steamships on the Great Lakes, used in the transportation of ore to its factories. It owns coal mines in Pennsylvania. It operates towboats and steam barges used in carrying coal to its factories. It owns limestone properties in various places in Pennsylvania and West Virginia. It owns the Monongahela connecting railroad which connects the plants of the Pittsburgh works and forms an interconnection with the Pennsylvania, New York Central and Baltimore & Ohio Railroad systems. It owns the Aliquippa & Southern Railroad Co., which connects the Aliquippa works with the Pittsburgh & Lake Erie, part of the New York Central system. Much of its product is shipped to its warehouses in Chicago, Detroit, Cincinnati and Memphis—to the last two places by means of its own barges and transportation equipment.

In Long Island City, New York, and in New Orleans it operates structural steel fabricating shops in connection with the warehousing of semi-finished materials sent from its works. Through one of its wholly owned subsidiaries it owns, leases and operates stores, warehouses and yards for the distribution of equipment and supplies for drilling and operating oil and gas mills and for pipe lines, refineries and pumping stations. It has sales offices in 20 cities in the United States and a wholly owned subsidiary which is devoted exclusively to distributing its product in Canada. Approximately 75 per cent of its product is shipped out of Pennsylvania.

Self-Contained, Highly Integrated Body.

Summarizing these operations, the Labor Board concluded that the works in Pittsburgh and Aliquippa "might be likened to the heart of a self-contained, highly integrated body. They draw in the raw materials from Michigan, Minnesota, West Virginia, Pennsylvania in part through arteries and by means controlled by the respondent; they transform the materials and then pump them out to all parts of the Nation through the vast mechanism which the respondent has elaborated."

To carry out its activities 33,000 men mine ore, 44,000 men mine coal, 4,000 men quarry limestone, 16,000 men manufacture coke, 343,000 men manufacture steel and 83,000 men transport its product. Respondent has about 10,000 employees in its Aliquippa plant, which is located in a community of about 30,000 persons.

Respondent points to evidence that the Aliquippa plant, in which the discharged men were employed, contains complete facilities for the production of finished and semi-finished iron and steel products from raw materials; that its works consist primarily of a by-product coke plant for the production of coke; blast furnace for the production of pig iron, open hearth furnaces and Bessemer converters for the production of steel, blooming mills for the reduction of steel ingots into smaller shapes, and a number of finishing mills such as structural mills, rod mills, wire mills and the like. In addition there are other buildings, structures and equipment, storage yards, docks and an intra-plant storage system. Respondent's operations at these works are carried on in two distinct stages, the first being the conversion of raw materials into pig iron and the second being the manufacture of semi-finished and finished iron and steel products, and in both cases the operations result in substantially changing the character, utility and value of the materials wrought upon, which is apparent from the nature and extent of the processes to which they are subjected and which respondent fully describes. Respondent also directs attention to the fact that the iron ore which is procured from mines in Minnesota and Michigan and transported to respondent's plant is stored in stock piles for fu- [illegible]

the blast furnaces for a few weeks. Various details of operation, transportation and distribution are also mentioned which for the present purpose it is not necessary to detail.

Employes Were Active Leaders in Union.

Practically all the factual evidence in the case, except that which dealt with the nature of respondent's business, concerned its relations with the employes in the Aliquippa plant whose discharge was the subject of the complaint. These employes were active leaders in the labor union. Several were officers and others were leaders of particular groups. Two of the employes were motor inspectors; one was a tractor driver; three were crane operators; one was a washer in the coke plant, and three were laborers. Three other employes were mentioned in the complaint, but it was withdrawn as to one of them, and no evidence was heard on the action taken with respect to the other two.

While respondent criticizes the evidence and the attitude of the board, which is described as being hostile toward employers, and particularly toward those who insisted upon their constitutional rights, respondent did not take advantage of its opportunity to present evidence to refute that which was offered to show discrimination and coercion. In this situation, the record presents no ground for setting aside the order of the board so far as the facts pertaining to the circumstances and purpose of the discharge of the employes are concerned. Upon that point it is sufficient to say that the evidence supports the findings of the board that respondent discharged these men "because of their union activity and for the purpose of discouraging membership in the union." We turn to the questions of law which respondent urges in contesting the validity and application of the act.

First. The scope of the act.—The act is challenged in its entirety as an attempt to regulate all industry, thus invading the reserved powers of the States over their local concerns. It is asserted that the references in the act to interstate and foreign commerce are colorable at best; that the act is not a true regulation of such commerce or of matters which directly affect it but on the contrary has the fundamental object of placing under the compulsory supervision of the Federal Government all industrial labor relations within the Nation. The argument seeks support in the broad words of the preamble (section one) and in the sweep of the provisions of the act, and it is further insisted that its legislative history shows an essential universal purpose in the light of which its scope cannot be limited by either construction or by the application of the separability clause.

If this conception of terms, intent and consequent inseparability were sound, the act would necessarily fall by reason of the limitation upon the Federal power which inheres in the constitutional grant, as well as because of the explicit reservation of the tenth amendment. Schechter Corp. vs. United States, 295 U. S. 495, 549, 550, 554. The authority of the Federal Government may not be pushed to such an extreme as to destroy the distinction, which the commerce clause itself establishes, between commerce "among the several States" and the internal concerns of a State. That distinction between what is national and what is local in the activities of commerce is vital to the maintenance of our Federal system. Id.

Principal Is to Save and Not to Destroy.

But we are not at liberty to deny effect to specific provisions, which Congress has constitutional power to enact, by superimposing upon them inferen[illegible] legislative
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Co., 26[illegible]

Co. vs. Johnson, 264 U. S. 375, 390; Missouri Pacific R. R. Co. vs. Boone, 270 U. S. 466, 472; Blodgett vs. Holden, 275 U. S. 142, 148; Richmond Screw Anchor Co. vs. United States, 275 U. S. 331, 346.

We think it clear that the national labor relations act may be construed so as to operate within the sphere of constitutional authority. The jurisdiction conferred upon the board, and invoked in this instance, is found in section 10 (a), which provides:

"Section 10 (a). The board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce."

The critical words of this provision, prescribing the limits of the board's authority in dealing with the labor practices, are "affecting commerce." The act specifically defines the "commerce" to which it refers (section 2 (6)):

"The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any territory of the United States and any State or other territory, or between any foreign country and any State, territory or the District of Columbia, or within the District of Columbia or any territory, or between points in the same State, but through any other State or any territory or the District of Columbia or any

There can be no question that the commerce thus contemplated by the act (aside from that within a territory or the District of Columbia) is interstate and foreign commerce in the constitutional sense. The act also defines the term "affecting commerce" (section 2 (7)):

"The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

Definition One of Exclusion As Well as Inclusion.

This definition is one of exclusion as well as inclusion. The grant of authority to the board does not purport to extend to the relationship between all industrial employes and employers. Its terms do not impose collective bargaining upon all industry regardless of effects upon interstate or foreign commerce. It purports to reach only what may be deemed to burden or obstruct that commerce and, thus qualified, it must be construed as contemplating the exercise of control within constitutional bounds. It is a familiar principle that acts which directly burden or obstruct interstate or foreign commerce, or its free flow, are within the reach of the congressional power.

Acts having that effect are not rendered immune because they grow out of labor disputes. See Texas & N. O. R. Co. vs. Railway Clerks, 281 U. S. 548, 570; Schechter Corp. vs. United States, supra, pp. 544, 545; Virginian Railway vs. System Federation, No. 40, decided March 29, 1937. It is the effect upon commerce, not the source of the injury, which is the criterion. Second Employers' Liability Cases, 223 U. S. 1, 51. Whether or not par[illegible] lar action does affect commer[illegible] such a close and intimate fash[illegible] to be subject to Federal contro[illegible] hence to lie within the authority [illegible] ferred upon the board, is left b[illegible] statute to be determined as ind[illegible] cases arise. We are thus to [illegible] whether in the instant case the [illegible] stitutional boundary has been pa[illegible]

Second. The unfair labor pra[illegible] in question.—The unfair labor [illegible] tices found by the board are [illegible] defined in section 8, subdivisions [illegible] and (3). These provide:

"Section 8. It shall be an u[illegible] labor practice for an employer—

"(1) To interfere with, restra[illegible] coerce employes in the exercis[illegible] the rights guaranteed in sectio[illegible]

"(3) By discrimination in re[illegible] to hire or tenure of employme[illegible] any term or condition of emplo[illegible] to encourage or discourage mem[illegible] ship in any labor organizatio[illegible]

Employes Shall Have Right To Self-Organization.

Section 8, subdivision (1), refe[illegible] section 7, which is as follows:

"Section 7. Employes shall [illegible] the right to self-organization, to f[illegible] join or assist labor organization[illegible] bargain collectively through r[illegible] sentatives of their own choosing [illegible] to engage in concerted activities [illegible] the purpose of collective barga[illegible] or other mutual aid or protection[illegible]

Thus, in its present applicatio[illegible] statute goes no further than to [illegible] guard the right of employes to [illegible] organization and to select repres[illegible] tives of their own choosing for [illegible] lective bargaining or other m[illegible] protection without restraint or [illegible] ercion by their employer.

This is a fundamental right [illegible] ployes have as clear a right t[illegible] ganize and select their representa[illegible] for lawful purposes as the respon[illegible] has to organize its business and [illegible] its own officers and agents. Disc[illegible]

(Continued on Page B-6.)

order lay beyond the range of Federal power. 83 F. (2d), 998. We granted certiorari.

Provides Rights of Workers To Bargain Collectively.

The scheme of the national labor relations act—which is too long to be quoted in full—may be briefly stated. The first section sets forth findings with respect to the injury to commerce resulting from the denial by employers of the right of employes to organize and from the refusal of employers to accept the procedure of collective bargaining. There follows a declaration that it is the policy of the United States to eliminate these causes of obstruction to the free flow of commerce. The act then defines the terms it uses, including the terms "commerce" and "affecting commerce." Section 2. It creates the National Labor Relations Board and prescribes its organization. Sections 3-6. It sets forth the right of employes to self-organization and to bargain collectively through representatives of their own choosing. Section 7. It defines "unfair labor practices." Section 8. It lays down rules as to the representation of employes for the purpose of collective bargaining. Section 9. The board is empowered to prevent the described unfair labor practices affecting commerce and the act prescribes the procedure to that end. The board is authorized to petition designated courts to secure the enforcement of its order. The findings of the board as to the facts, if supported by evidence, are to be conclusive.

If either party on application to the court shows that additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearings before the board, the court may order the additional evidence to be taken. Any person aggrieved by a final order of the board may obtain a review in the designated courts with the same procedure as in the case of an application by the board for the enforcement of its order. Section 10. The board has broad powers of investigation. Section 11. Interference with members of the board or its agents in the performance of their duties is punishable by fine and imprisonment. Section 12. Nothing in the act is to be construed to interfere with the right to strike. Section 13. There is a separability clause to the effect that if any provision of the act or its application to any person or circumstances shall be held invalid, the remainder of the act or its application to other persons or circumstances shall not be affected. Section 15. The particular provisions which are involved in the instant case will be considered more in detail in the course of the discussion.

Board Charges Unfair Labor Practices.

The procedure in the instant case followed the statute. The labor union filed with the board its verified charge. The board thereupon issued its complaint against the respondent, alleging that its action in discharging the employes in question constituted unfair labor practices affecting commerce within the meaning of section 8, subdivisions (1) and (3), and section 2, subdivisions (6) and (7) of the act. Respondent, appearing specially for the purpose of objecting to the jurisdiction of the board, filed its answer. Respondent admitted the charges, but alleged that they were made because of inefficiency or violation of rules or for other good reasons and were not ascribable to union membership or activities. As an affirmative defense respondent challenged the constitutional validity of the statute and its applicability in the instant case. Notice of hearing was given and respondent appeared by counsel. The board first took up the issue of jurisdiction and evidence was presented by both the board and the respondent. Respondent then moved to dismiss the complaint for lack of jurisdiction and, on denial of that motion, respondent in accordance with its special appearance withdrew from further participation in the hearing. The board received evidence upon the merits and at its close made its findings and order.

Contesting the ruling of the board, the respondent argues (1) that the act is in reality a regulation of labor relations and not of interstate commerce, (2) that the act can have no application to the respondent's relations with its production employes

... Pennsylvania, New York Central and Baltimore & Ohio Railroad systems. It owns the Aliquippa & Southern Railroad Co., which connects the Aliquippa works with the Pittsburgh & Lake Erie, part of the New York Central system. Much of its product is shipped to its warehouses in Chicago, Detroit, Cincinnati and Memphis—to the last two places by means of its own barges and transportation equipment.

In Long Island City, New York, and in New Orleans it operates structural steel fabricating shops in connection with the warehousing of semi-finished materials sent from its works. Through one of its wholly owned subsidiaries it owns, leases and operates stores, warehouses and yards for the distribution of equipment and supplies for drilling and operating oil and gas mills and for pipe lines, refineries and pumping stations. It has sales offices in 20 cities in the United States and a wholly owned subsidiary which is devoted exclusively to distributing its product in Canada. Approximately 75 per cent of its product is shipped out of Pennsylvania.

Self-Contained, Highly Integrated Body.

Summarizing these operations, the Labor Board concluded that the works in Pittsburgh and Aliquippa "might be likened to the heart of a self-contained, highly integrated body. They draw in the raw materials from Michigan, Minnesota, West Virginia, Pennsylvania in part through arteries and by means controlled by the respondent; they transform the materials and then pump them out to all parts of the Nation through the vast mechanism which the respondent has elaborated."

To carry out its activities 33,000 men mine ore, 44,000 men mine coal, 4,000 men quarry limestone, 16,000 men manufacture coke, 343,000 men manufacture steel and 83,000 men transport its product. Respondent has about 10,000 employees in its Aliquippa plant, which is located in a community of about 30,000 persons.

Respondent points to evidence that the Aliquippa plant, in which the discharged men were employed, contains complete facilities for the production of finished and semi-finished iron and steel products from raw materials; that its works consist primarily of a by-product coke plant for the production of coke, blast furnace for the production of pig iron, open hearth furnaces and Bessemer converters for the production of steel, blooming mills for the reduction of steel ingots into smaller shapes, and a number of finishing mills such as structural mills, rod mills, wire mills and the like. In addition there are other buildings, structures and equipment, storage yards, docks and an intra-plant storage system. Respondent's operations at these works are carried on in two distinct stages, the first being the conversion of raw materials into pig iron and the second being the manufacture of semi-finished and finished iron and steel products, and in both cases the operations result in substantially changing the character, utility and value of the materials wrought upon, which is apparent from the nature and extent of the processes to which they are subjected and which respondent fully describes. Respondent also directs attention to the fact that the iron ore which is procured from mines in Minnesota and Michigan and transported to respondent's plant is stored in stock piles for future use, the amount of ore in storage varying with the season but usually being enough to maintain operations from 6 to 10 months; that the coal which is procured from the mines of a subsidiary located in Pennsylvania and taken to the plant at Aliquippa is there, like ore, stored for future use, approximately two to three months' supply of coal being always on hand, and that the limestone which is obtained in Pennsylvania and West Virginia is also stored in amounts usually adequate to run

... ings of the board (the respondent discharged these men "because of their union activity and for the purpose of discouraging membership in the union." We turn to the questions of law which respondent urges in contesting the validity and application of the act.

First. The scope of the act.—The act is challenged in its entirety as an attempt to regulate all industry, thus invading the reserved powers of the States over their local concerns. It is asserted that the references in the act to interstate and foreign commerce are colorable at best; that the act is not a true regulation of such commerce or of matters which directly affect it but on the contrary has the fundamental object of placing under the compulsory supervision of the Federal Government all industrial labor relations within the Nation. The argument seeks support in the broad words of the preamble (section one) and in the sweep of the provisions of the act, and it is further insisted that its legislative history shows an essential universal purpose in the light of which its scope cannot be limited by either construction or by the application of the separability clause.

If this conception of terms, intent and consequent inseparability were sound, the act would necessarily fall by reason of the limitation upon the Federal power which inheres in the constitutional grant, as well as because of the explicit reservation of the tenth amendment. Schechter Corp. vs. United States, 295 U. S. 495, 549, 550, 554. The authority of the Federal Government may not be pushed to such an extreme as to destroy the distinction, which the commerce clause itself establishes, between commerce "among the several States" and the internal concerns of a State. That distinction between what is national and what is local in the activities of commerce is vital to the maintenance of our Federal system. Id.

Principal Is to Save and Not to Destroy.

But we are not at liberty to deny effect to specific provisions, which Congress has constitutional power to enact, by superimposing upon them inferences from general legislative declarations of an ambiguou[s char]acter, even if found in t[he same] statute. The cardinal prin[ciple of] statutory construction is to [save and] not to destroy. We have re[peatedly] held that as between two interpretations of a statute, [by one] of which it would be unconst[itutional] and by the other valid, our pl[ain duty] is to adopt that which will [save the] act. Even to avoid a seriou[s doubt] the rule is the same. Feder[al Trade] Commission vs. American [Tobacco] Co., 264 U. S. 298, 307; Panam[a]

... obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

Definition One of Exclusion As Well as Inclusion.

This definition is one of exclusion as well as inclusion. The grant of authority to the board does not purport to extend to the relationship between all industrial employes and employers. Its terms do not impose collective bargaining upon all industry regardless of effects upon interstate or foreign commerce. It purports to reach only what may be deemed to burden or obstruct that commerce and thus qualified, it must be construed as contemplating the exercise of control within constitutional bounds. It is a familiar principle that acts which directly burden or obstruct interstate or foreign commerce, or its free flow, are within the reach of the congressional power.

Acts having that effect are not rendered immune because they grow out of labor disputes. See Texas & N. O. R. Co. vs. Railway Clerks, 281 U. S. 548, 570; Schechter Corp. vs. United States, supra, pp. 544, 545; Virginian Railway vs. System Federation, No. 40, decided March 29, 1937. It is the effect upon commerce, not the source of the injury, which is the criterion. Second Employers' Liability Cases, 223

Wagner Decision

(Continued From Page A-3)

nation and coercion to prevent the free exercise of the right of employes to self-organization and representation is a proper subject for condemnation by competent legislative authority. Long ago we stated the reason for labor organizations. We said that they were organized out of the necessities of the situation; that a single employe was helpless in dealing with an employer, that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equality with their employer. American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184, 209. We reiterated these views when we had under consideration the railway labor act of 1926. Fully recognizing the legality of collective action on the part of employes in order to safeguard their proper interests, we said that Congress was not required to ignore this right, but could safeguard it. Congress could seek to make appropriate collective action of employes an instrument of peace rather than of strife. We said that such collective action would be a mockery if representation were made futile by interference with freedom of choice.

Hence the prohibition by Congress of interference with the selection of representatives for the purpose of negotiation and conference between employers and employes, "instead of being an invasion of the constitutional right of either, was based on the recognition of the rights of both." Texas & N. O. R. Co. vs. Railway Clerks, supra. We have reasserted the same principle in sustaining the application of the railway labor act as amended in 1934. Virginia Railway Co. vs. System Federation No. 40, supra.

Application to Employes Engaged in Production.

Third. The application of the act to employes in production.—The principle involved—Respondent says that whatever may be said of employes engaged in interstate commerce, the industrial relations and activities in the manufacturing department of respondent's enterprise are not subject to Federal regulation. The argument rests upon the proposition that manufacturing in itself is not commerce. Kidd vs. Pearson, 128 U. S. 1, 20, 21; United Mine Workers vs. Coronado Co., 259 U. S. 344, 407, 408; Oliver Iron Co vs. Lord, 262, U. S. 172, 178, United Leather Workers vs. Herkert, 265 U. S. 457, 465. Industrial Association vs United States, 268 U. S. 64, 82. Coronado Co. vs. United Mine Workers, 268 U. S. 295, 310; Schechter Corp. vs. United States, supra, page 547. Carter vs. Carter Coal Co., 298 U. S. 238, 304, 317, 327.

The Government distinguishes these cases. The various parts of respondent's enterprise are described as interdependent and as thus involving "a great movement of iron ore, coal and limestone along well-defined paths to the steel mills, thence through them, and thence in the form of steel products into the consuming centers of the country—a definite and well-understood course of business." It is urged that these activities constitute a "stream" or "flow" of commerce, of which the Aliquippa manufacturing plant is the focal point, and that industrial strife at that point would cripple the entire movement. Reference is made to our decision sustaining the packers and stockyards act. Stafford vs. Wallace, 258, United States 495. The court found that the stockyards were but a "throat" through which the current of commerce flowed and the transactions which there occurred could not be separated from that movement. Hence the sales at the stockyards were not regarded as merely local transactions, for while they created "a local change of title" they did not "stop the flow," but merely changed the private interests in the subject of the current. Distinguishing the cases which upheld the power of the State to impose a non-discriminatory tax upon property which the owner intended to transport to another State, but which was not in actual transit and was held within the State subject to the disposition of the owner, the court remarked "The question, it should be observed, is not with respect to the extent of the power of Congress to regulate interstate commerce, but whether a particular exercise of State power in view of its nature and operation must be deemed to be in conflict with this paramount authority." Id., page 526. See Minnesota vs. Blasius, 290, United States 1, 8. Applying the doctrine of Stafford vs. Wallace, supra, the court sustained the grain futures act of 1922 with respect to transactions on the Chicago Board of Trade, although these transactions were "not in and of themselves interstate commerce."

Congress had found that they had become "a constantly recurring burden and obstruction to that com-

jurious action springing from other sources. The fundamental principle is that the power to regulate commerce is the power to enact "all appropriate legislation" for "its protection and advancement" (The Daniel Ball, 10 Wall., 557, 564); to adopt measures "to promote its growth and insure its safety" (County of Mobile vs. Kimball, 102 U. S. 691, 696, 697). "to foster, protect, control and restrain." Second Employers' Liability Cases, supra, p. 47. See Texas & N. O. R. Co. vs. Railway Clerks, supra. That power is plenary and may be exerted to protect interstate commerce, "no matter what the source of the dangers which threaten it." Second Employers' Liability Cases, p. 51, Schechter Corp. vs. United States, supra.

Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control. Schechter Corp. vs. United States, supra. Undoubtedly the scope of this power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government. Id. The question is necessarily one of degree. As the court said in Chicago Board of Trade vs. Olsen, supra, p. 37, repeating what had been said in Stafford vs. Wallace, supra. "Whatever amounts to more or less constant practice, and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause and it is primarily for Congress to consider and decide the fact of the danger and meet it."

Commerce Commission Is Given Powers.

That intrastate activities, by reason of close and intimate relation to interstate commerce, may fall within Federal control is demonstrated in the case of carriers who are engaged in both interstate and intrastate transportation. There Federal control has been found essential to secure the freedom of interstate traffic from interference or unjust discrimination and to promote the efficiency of the interstate service. The Shreveport case, 234 U. S. 342, 351, 352; Wisconsin Railroad Commission vs. Chicago, B & Q R Co, 257 U. S 563, 588. It is manifest that intrastate rates deal primarily with a local activity. But in rate-making they bear such a close relation to interstate rates that effective control of the one must embrace some control over the other. Id. Under the transportation act, 1920, Congress went so far as to authorize the Interstate Commerce Commission to establish a State-wide level of intrastate rates in order to prevent an unjust discrimination against interstate commerce. Wisconsin Railroad Commission vs. Chicago, B & Q. R. R. Co., supra; Florida vs United State, 282 U. S. 210, 211. Other illustrations are found in the broad requirements of the safety appliance act and the hours of service act. Southern Railway Co. vs. United States, 222 U. S 20; Baltimore & Ohio R. R. Co. vs Interstate Commerce Commission, 221 U. S. 612. It is said that this exercise of Federal power has relation to the maintenance of adequate instrumentalities of interstate commerce. But the agency is not superior to the commerce which uses it. The protective power extends to the former because it exists as to the latter.

The close and intimate effect which brings the subject within the reach of Federal power may be due to activities in relation to productive industry, although the industry when separately viewed is local. This has been abundantly illustrated in the application of the Federal anti-trust act. In the Standard Oil and American Tobacco cases, 221 U. S. 1, 106, that statute was applied to combinations of employers engaged in productive industry. Counsel for the offending corporations strongly urged that the Sherman act had no application because the acts complained of were not acts of interstate or foreign commerce, nor direct and immediate in their effect on interstate or foreign commerce, but primarily affected manufacturing and not commerce. 221 U. S. pp. 5, 125. Counsel relied upon the decision in United States vs Knight Co., 156 U. S. 1. The court stated their contention as follows: "That the act, even if the averments of the bill be true, cannot be constitutionally applied, because to do so would extend the power of Congress to subject dehors the reach of its authority to regulate commerce, by enabling that body to deal with mere questions of production of commodities within the States." And the court summarily dismissed the contention in these words: "But all the structure upon which this argument proceeds is based upon the decision in United States vs E. C. Knight Co.,

Coronado case the court ruled that while the mere reduction in the supply of an article to be shipped in interstate commerce by the illegal or tortious prevention of its manufacture or production is ordinarily an indirect and remote obstruction to that commerce, nevertheless when the "intent of those unlawfully preventing the manufacture or production is shown to be to restrain or control the supply entering and moving in interstate commerce, or the price of it in interstate markets, their action is a direct violation of the anti-trust act." 268 U. S. p. 310. And the existence of that intent may be a necessary inference from proof of the direct and substantial effect produced by the employes' conduct. International Association vs. United States, 268 U. S. p. 81. What was absent from the evidence in the first Coronado case appeared in the second and the act was accordingly applied to the mining employes.

It is thus apparent that the fact that the employes here concerned were engaged in production is not determinative. The question remains as to the effect upon interstate commerce of the labor practice involved. In the Schechter case, supra, we found that the effect there was so remote as to be beyond the Federal power. To find "immediacy or directness" there was to find it "almost everywhere," a result inconsistent with the maintenance of our Federal system. In the Carter case, supra, the court was of the opinion that the provisions of the statute relating to production were invalid upon several grounds—that there was improper delegation of legislative power, and that the requirements not only went beyond any sustainable measure of protection of interstate commerce, but were also inconsistent with due process. These cases are not controlling here.

Effect of Unfair Practices In Respondent's Enterprise.

Fourth. Effects of the unfair labor practice in respondent's enterprise.—Giving full weight to respondent's contention with respect to a break in the complete continuity of the "stream of commerce" by reason of respondent's manufacturing operations, the fact remains that the stoppage of those operations by industrial strife would have a most serious effect upon interstate commerce. In view of respondent's far-flung activities, it is idle to say that the effect would be indirect or remote. It is obvious that it would be immediate and might be catastrophic. We are asked to shut our eyes to the plainest facts of our national life and to deal with the question of direct and indirect effects in an intellectual vacuum. Because there may be but indirect and remote effects upon interstate commerce in connection with a host of local enterprises throughout the country, it does not follow that other industrial activities do not have such a close and intimate relation to interstate commerce as to make the presence of industrial strife a matter of the most urgent national concern. When industries organize themselves on a national scale, making their relation to interstate commerce the dominant factor in their activities, how can it be maintained that their industrial labor relations constitute a forbidden field into which Congress may not enter when it is necessary to protect interstate commerce from the paralyzing consequences of industrial war? We have often said that interstate commerce itself is a practical conception. It is equally true that interferences with that commerce must be appraised by a judgment that does not ignore actual experience.

Essential Condition of Industrial Peace.

Experience has abundantly demonstrated that the recognition of the right of employes to self-organization and to have representatives of their own choosing for the purpose of collective bargaining is often an essential condition of industrial peace. Refusal to confer and negotiate has been one of the most prolific causes of strife. This is such an outstanding fact in the history of labor disturbances that it is a proper subject of judicial notice and requires no citation of instances. The opinion in the case of Virginian Railway Co. vs. System Federation, No. 40, supra, points out that, in the case of carriers, experience has shown that before the amendment, of 1934, of the railway labor act "when there was no dispute as to the organizations authorized to represent the employes and when there was a willingness of the employer to meet such representative for a discussion of their grievances, amicable adjustment of differences had generally followed and strikes had been avoided." That, on the other hand, "a prolific source of dispute had been the maintenance by the railroad of company unions and the denial by railway management of the authority of representatives chosen by their employes." The opinion in that case also points to the large measure of success of the labor policy embodied in the railway labor act. But with respect to the appropriateness of the recognition of self-organization and representation in the promotion of peace, the question is not essentially different in the case of employes in industries of such a character that interstate commerce is put in jeopardy from the case of employes of

ganization and freedom in the choice of representatives for collective bargaining.

Employes Have Right To Organize.

Fifth. The means which the act employs—Questions under the due process clause and other constitutional restrictions.—Respondent asserts its right to conduct its business in an orderly manner without being subjected to arbitrary restraints. What we have said points to the fallacy in the argument. Employes have their correlative right to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work. Texas & N O R. Co. vs. Railway Clerks, supra; Virginian Railway Co. vs. System Federation, No. 40. Restraint for the purpose of preventing an unjust interference with that right cannot be considered arbitrary or capricious. The provision of section 9 (a) that representatives, for the purpose of collective bargaining, of the majority of the employes in an appropriate unit shall be the exclusive representatives of all the employes in that unit, imposes upon the respondent only the duty of conferring and negotiating with the authorized representatives of its employes for the purpose of settling a labor dispute. This provision has its analogue in section 2, ninth, of the railway labor act, which was under consideration in Virginian Railway Co. vs. System Federation, No. 40, supra.

The decree which we affirmed in that case required the railway company to treat with the representative chosen by the employes and also to refrain from entering into collective labor agreements with any one other than their true representative as ascertained in accordance with the provisions of the act. We said that the obligation to treat with the true representative was exclusive and hence imposed the negative duty to treat with no other. We also pointed out that, as conceded by the Government, the injunction against the company's entering into any contract concerning rules, rates of pay and working conditions except with a chosen representative was "designed only to prevent collective bargaining with any one purporting to represent employes" other than the representative they had selected. It was taken "to prohibit the negotiation of labor contracts generally applicable to employes" in the described unit with any other representative than the one so chosen, "but not as precluding such individual contracts" as the company might "elect to make directly with individual employes." We think this construction also applies to section 9 (a) of the national labor relations act.

Act Does Not Compel Any Agreement.

The act does not compel agreements between employers and employes. It does not compel any agreement whatever. It does not prevent the employer "from refusing to make a collective contract and hiring individuals on whatever terms" the employer "may by unilateral action determine." The act expressly provides in section 9 (a) that any individual employe or a group of employes shall have the right at any time to present grievances to their employer. The theory of the act is that free opportunity for negotiation with accredited representatives of employes is likely to promote industrial peace and may bring about the adjustments and agreements which the act in itself does not attempt to compel. As we said in Texas & N. O. R. Co. vs. Railway Clerks, supra, and repeated in Virginian Railway Co. vs. System Federation, No. 40, the cases of Adair vs. United States, 208 United States 161, and Coppage vs. Kansas, 236 United States 1, are inapplicable to legislation of this character. The act does not interfere with the normal exercise of the right of the employer to select its employes or to discharge them. The employer may not, under cover of that right, intimidate or coerce its employes with respect to their self-organization and representation, and, on the other hand, the board is not entitled to make its authority a pretext for interference with the right of discharge when that right is exercised for other reasons than such intimidation and coercion. The true purpose is the subject of investigation with full opportunity to show the facts. It would seem that when employers freely recognize the right of their employes to their own organizations and their unrestricted right of representation there will be much less occasion for controversy in respect to the free and appropriate exercise of the right of selection and discharge.

The act has been criticised as one-sided in its application, that it subjects the employer to supervision and restraint and leaves untouched the abuses for which employes may be responsible. That it fails to provide a more comprehensive plan—with better assurances of fairness to both sides and with increased chances of success in bringing about, if not compelling, equitable solutions of industrial disputes affecting interstate commerce. But we are dealing with the power of Congress, not with a particular policy or with the extent to which policy should go. We have frequently said that the legislative authority, exerted within its proper field, need not embrace all the evils within its reach.

is subject to review by the designated court, and only when sustained by the court may the order be enforced. Upon that review all questions of the jurisdiction of the board and the regularity of its proceedings, all questions of constitutional right or statutory authority are open to examination by the court. We construe the procedural provisions as affording adequate opportunity to secure judicial protection against arbitrary action in accordance with the well-settled rules applicable to administrative agencies set up by Congress to aid in the enforcement of valid legislation. It is not necessary to repeat these rules which have frequently been declared. None of them appears to have been transgressed in the instant case. Respondent was notified and heard. It had opportunity to meet the charge of unfair labor practices upon the merits, and by withdrawing from the hearing it declined to avail itself of that opportunity. The facts found by the board support its order and the evidence supports the findings. Respondent has no just ground for complaint on this score.

The order of the board required the reinstatement of the employes who were found to have been discharged because of their "union activity" and for the purpose of "discouraging membership in the union." That requirement was authorized by the act. Section 10(c). In Texas & N O R Co. vs Railway-Clerks, supra, a similar order for restoration to service was made by the court in contempt proceedings for the violation of an injunction issued by the court to restrain an interference with the right of employes as guaranteed by the railway labor act of 1926. The requirement of restoration to service, of employes discharged in violation of the provisions of that act, was thus a sanction imposed in the enforcement of a judicial decree. We do not doubt that Congress could impose a like sanction for the enforcement of its valid regulation. The fact that in the one case it was a judicial sanction, and in the other a legislative one, is not an essential difference in determining its propriety.

Amendment Preserves Right Under Common Law.

Respondent complains that the board not only ordered reinstatement, but directed the payment of wages for the time lost by the discharge, less amounts earned by the employe during that period. This part of the order was also authorized by the act. Section 10 (c). It is argued that the requirement is equivalent to a money judgment and hence contravenes the seventh amendment with respect to trial by jury. The seventh amendment provides that "in suits at common law, where the value in controversy shall exceed $20, the right of trial by jury shall be preserved." The amendment thus preserves the right which existed under the common law when the amendment was adopted. Shields vs Thomas, 18 How. 253, 262, in re Wood, 210 U. S. 246, 258, Dimick vs. Schiedt, 293 U. S 474, 476, Baltimore & Carolina Line vs. Redman, 295 U. S. 654, 657. Thus it has no application to cases where recovery of money damages is an incident to equitable relief even though damages might have been recovered in an action at law. Clark vs. Wooster, 119 U. S. 322, 325; Pease vs. Rathbun-Jones Engineering Co., 243 U. S. 273, 279. It does not apply where the proceeding is not in the nature of a suit at common law. Guthrie National Bank vs. Guthrie, 173 U. S. 528, 537.

The instant case is not a suit at common law or in the nature of such a suit. The proceeding is one unknown to the common law. It is a statutory proceeding. Reinstatement of the employe and payment for time lost are requirements imposed for violation of the statute and are remedies appropriate to its enforcement. The contention under the seventh amendment is without merit.

Our conclusion is that the order of the board was within its competency and that the act is valid as here applied. The judgment of the Circuit Court of Appeals is reversed and the cause is remanded for further proceedings in conformity with this opinion.

[illegible] course of business. It is urged that these activities constitute a "stream" or "flow" of commerce, of which the Aliquippa manufacturing plant is the focal point, and that industrial strife at that point would cripple the entire movement. Reference is made to our decision sustaining the packers and stockyards act. Stafford vs. Wallace, 258, United States 495. The court found that the stockyards were but a "throat" through which the current of commerce flowed and the transactions which there occurred could not be separated from that movement. Hence the sales at the stockyards were not regarded as merely local transactions, for while they created "a local change of title" they did not "stop the flow," but merely changed the private interests in the subject of the current. Distinguishing the cases which upheld the power of the State to impose a non-discriminatory tax upon property which the owner intended to transport to another State, but which was not in actual transit and was held within the State subject to the disposition of the owner, the court remarked: "The question, it should be observed, is not with respect to the extent of the power of Congress to regulate interstate commerce, but whether a particular exercise of State power in view of its nature and operation must be deemed to be in conflict with this paramount authority." Id., page 526. See Minnesota vs. Blasius, 290, United States 1, 8. Applying the doctrine of Stafford vs. Wallace, supra, the court sustained the grain futures act of 1922 with respect to transactions on the Chicago Board of Trade, although these transactions were "not in and of themselves interstate commerce."

Congress had found that they had become "a constantly recurring burden and obstruction to that commerce." Chicago Board of Trade vs. Olsen, 262 U. S. 1, 32; compare Hill vs. Wallace, 259 U. S. 44, 69. See, also, Tagg Bros. vs. Moorhead, 280 U. S. 420.

Instant Case Presents Material Distinctions.

Respondent contends that the instant case presents material distinctions. Respondent says that the Aliquippa plant is extensive in size and represents a large investment in buildings, machinery and equipment. The raw materials which are brought to the plant are delayed for long periods and, after being subjected to manufacturing processes, "are changed substantially as to character, utility and value." The finished products which emerge "are to a large extent manufactured without reference to pre-existing orders and contracts and are entirely different from the raw materials which enter at the other end." Hence respondent argues that "if importation and exportation in interstate commerce do not singly transfer purely local activities into the field of congressional regulation, it should follow that their combination would not alter the local situation." Arkadelphia Milling Co. vs. St. Louis, Southwestern Railways Co., 249 U. S. 134, 151; Oliver Iron Co. vs. Lord, supra.

We do not find it necessary to determine whether these features of defendant's business dispose of the asserted analogy to the "stream of commerce" cases. The instances in which that metaphor has been used are but particular, and not exclusive, illustrations of the protective power which the Government invokes in support of the present act. The congressional authority to protect interstate commerce from burdens and obstructions is not limited to transactions which can be deemed to be an essential part of a "flow" of interstate or foreign commerce. Burdens and obstructions may be due to i-

[illegible]
vs. United States, 222 U. S. 20; Baltimore & Ohio R. R. Co. vs. Interstate Commerce Commission, 221 U. S. 612. It is said that this exercise of Federal power has relation to the maintenance of adequate instrumentalities of interstate commerce. But the agency is not superior to the commerce which uses it. The protective power extends to the former because it exists as to the latter.

The close and intimate effect which brings the subject within the reach of Federal power may be due to activities in relation to productive industry, although the industry when separately viewed is local. This has been abundantly illustrated in the application of the Federal anti-trust act. In the Standard Oil and American Tobacco cases, 221 U. S. 1, 106, that statute was applied to combinations of employers engaged in productive industry. Counsel for the offending corporations strongly urged that the Sherman act had no application because the acts complained of were not acts of interstate or foreign commerce, nor direct and immediate in their effect on interstate or foreign commerce, but primarily affected manufacturing and not commerce. 221 U. S. pp. 5, 125. Counsel relied upon the decision in United States vs. Knight Co., 156 U. S. 1. The court stated their contention as follows: "That the act, even if the averments of the bill be true, cannot be constitutionally applied, because to do so would extend the power of Congress to subject dehors the reach of its authority to regulate commerce, by enabling that body to deal with mere questions of production of commodities within the States." And the court summarily dismissed the contention in these words: "But all the structure upon which this argument proceeds is based upon the decision in United States vs. E. C. Knight Co., 156 U. S. 1. The review, however, which the argument takes of that case and the arguments based upon that view have been so repeatedly pressed upon this court in connection with the interpretation and enforcement of the anti-trust act, and have been so necessarily and expressly decided to be unsound as to cause the contentions to be plainly foreclosed and to require no express notice" (citing cases). 221 U. S. pp. 68, 69.

Act Applied to Employes Engaged in Production.

Upon the same principle, the anti-trust act has been applied to the conduct of employes engaged in production. Loewe vs. Lawlor, 208 U. S. 274; Coronado Coal Co. vs. United Mine Workers, supra; Bedford Cut Stone Co. vs. Stonecutters' Association, 274 U. S. 37. See, also, Local 167 vs. United States, 291 U. S. 293, 297; Schechter Corp. vs. United States, supra. The decisions dealing with the question of that application illustrate both the principle and its limitation. Thus, in the first Coronado case, the court held that mining was not interstate commerce, that the power of Congress did not extend to its regulation as such, and that it had not been shown that the activities there involved—a local strike—brought them within the provisions of the anti-trust act, notwithstanding the broad terms of that statute. A similar conclusion was reached in United Leather Workers vs. Herkert, supra; Industrial Association vs. United States, supra, and Levering & Garrigues Co. vs. Morrin, 289 U. S. 103, 107.

But in the first Coronado case the court also said that "if Congress deems certain recurring practices, though not really part of interstate commerce, likely to obstruct, restrain or burden it, it has the power to subject them to national supervision and restraint." 259 U. S. p. 408. And in the sec-

[illegible]
with that commerce must be appraised by a judgment that does not ignore actual experience.

Essential Condition of Industrial Peace.

Experience has abundantly demonstrated that the recognition of the right of employes to self-organization and to have representatives of their own choosing for the purpose of collective bargaining is often an essential condition of industrial peace. Refusal to confer and negotiate has been one of the most prolific causes of strife. This is such an outstanding fact in the history of labor disturbances that it is a proper subject of judicial notice and requires no citation of instances. The opinion in the case of Virginian Railway Co. vs. System Federation, No. 40, supra, points out that, in the case of carriers, experience has shown that before the amendment, of 1934, of the railway labor act "when there was no dispute as to the organizations authorized to represent the employes and when there was a willingness of the employer to meet such representative for a discussion of their grievances, amicable adjustment of differences had generally followed and strikes had been avoided." That, on the other hand, "a prolific source of dispute had been the maintenance by the railroad of company unions and the denial by railway management of the authority of representatives chosen by their employes." The opinion in that case also points to the large measure of success of the labor policy embodied in the railway labor act. But with respect to the appropriateness of the recognition of self-organization and representation in the promotion of peace, the question is not essentially different in the case of employes in industries of such a character that interstate commerce is put in jeopardy from the case of employes of transportation companies. And of what avail is it to protect the facility of transportation, if interstate commerce is throttled with respect to the commodities to be transported!

These questions have frequently engaged the attention of Congress and have been the subject of many inquiries. The steel industry is one of the great basic industries of the United States, with ramifying activities affecting interstate commerce at every point. The Government aptly refers to the steel strike of 1919-1920 with its far-reaching consequences. The fact that there appears to have been no major disturbance in that industry in the more recent period did not dispose of the possibilities of future and like dangers to interstate commerce which Congress was entitled to foresee and to exercise its protective power to forestall. It is not necessary again to detail the facts as to respondent's enterprise. Instead of being beyond the pale, we think that it presents in a most striking way the close and intimate relation which a manufacturing industry may have to interstate commerce and we have no doubt that Congress had constitutional authority to safeguard the right of respondent's employes to self-or-

said in Texas & N. O. R. Co. vs. Railway Clerks, supra, and repeated in Virginian Railway Co. vs. System Federation, No. 40, the cases of Adair vs. United States, 208 United States 161, and Coppage vs. Kansas, 236 United States 1, are inapplicable to legislation of this character. The act does not interfere with the normal exercise of the right of the employer to select its employes or to discharge them. The employer may not, under cover of that right, intimidate or coerce its employes with respect to their self-organization and representation, and, on the other hand, the board is not entitled to make its authority a pretext for interference with the right of discharge when that right is exercised for other reasons than such intimidation and coercion. The true purpose is the subject of investigation with full opportunity to show the facts. It would seem that when employers freely recognize the right of their employes to their own organizations and their unrestricted right of representation there will be much less occasion for controversy in respect to the free and appropriate exercise of the right of selection and discharge.

The act has been criticized as one-sided in its application, that it subjects the employer to supervision and restraint and leaves untouched the abuses for which employes may be responsible. That it fails to provide a more comprehensive plan—with better assurances of fairness to both sides and with increased chances of success in bringing about, if not compelling, equitable solutions of industrial disputes affecting interstate commerce. But we are dealing with the power of Congress, not with a particular policy or with the extent to which policy should go. We have frequently said that the legislative authority, exerted within its proper field, need not embrace all the evils within its reach. The Constitution does not forbid "cautious advance, step by step," in dealing with the evils which are exhibited in activities within the range of legislative power. Carroll vs. Greenwich Insurance Co., 199 U. S. 401, 411; Keokee Coke Co. vs. Taylor, 234 U. S. 224, 227; Miller vs. Wilson, 236 U. S. 373, 384; Sproles vs. Binford, 286 U. S. 374, 396. The question in such cases is whether the legislature, in what it does prescribe, has gone beyond constitutional limits.

Board Must Conform to Standards of Act.

The procedural provisions of the act are assailed. But these provisions, as we construe them, do not offend against the constitutional requirements governing the creation and action of administrative bodies. See Interstate Commerce Commission vs. Louisville & Nashville Railroad Co., 227 U. S. 88, 91. The act establishes standards to which the board must conform. There must be complaint, notice and hearing. The board must receive evidence and make findings. The findings as to the facts are to be conclusive, but only if supported by evidence. The order of the board

common law or in the natur[e]
a suit. The proceeding is one un[…]
to the common law. It is a sta[…]
proceeding. Reinstatement of
employe and payment for tim[e]
are requirements imposed for
tion of the statute and are
appropriate to its enforcement
contention under the seventh a[…]
ment is without merit.

Our conclusion is that the o[…]
the board was within its comp[…]
and that the act is valid as
applied. The judgment of the
cuit Court of Appeals is reverse[d]
the cause is remanded for furthe[r]
ceedings in conformity with
opinion.

OSHAWA PAR[TS] PLANTS REOPENED

83 Employes Go Through Boos of Picket Lines to Jobs.

By the Associated Press

OSHAWA Ontario, April 12 — Fourscore office workers and parts department employes went to work in the strike-closed General Motors of Canada plant here today amid boos and jeers from picket lines

The production division employing about 3,700, remained closed, however, by the strike for an agreement between General Motors and the United Automobile Workers of America

In nearby Toronto the Globe and Mail quoted Premier Hepburn saying he was "convinced" the strike could be settled "if we can get these paid professional American agitators out of Ontario"

Hepburn, like General Motors, has refused to deal with a strikers' committee as long as it included Hugh Thompson, United Automobile Workers' organizer from Detroit

Hepburn characterized Thompson and Homer Martin president of the U A W who spoke here Saturday night as "slick fellows who operate from outside Ontario and make a fat living out of the pay envelopes of our working class"

Hits Lewis "Hirelings"

"We can settle our own problems in this province without having the ... John L. Lewis the master

Court

(Continued From First Page)

...den Harriman, mentioned for appointment as Minister to Norway. Mrs Gifford Pinchot, wife of the former Pennsylvania Governor, and Mrs Mabel ... former Assistant

light of which its scope cannot be limited by either construction or by the application of the separability clause. This clause permits the court to sustain valid features of an act while declaring unconstitutional provisions invalid

Chief Justice's Words.

Referring to these contentions, the Chief Justice said

"If this conception of terms, intent and consequent inseparability were sound, the act would necessarily fall by reason of the limitation upon the Federal power which inheres in the constitutional grant, as well as because of the explicit reservation of the tenth amendment.

"The authority of the Federal Government may not be pushed to such an extreme as to destroy the distinction, which the commerce clause itself establishes, between commerce among several States and the internal concerns of the States That distinction between what is national and what is local in the activities of commerce is vital to the maintenance of our Federal system

"But we are not at liberty to deny effect to specific provisions, which Congress has constitutional power to enact, by superimposing upon them inferences from general legislative declarations of an ambiguous character, even if found in the same statute

"The cardinal principle of statutory construction is to save and not to destroy We have repeatedly held that as between two possible interpretations of the statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the act. Even to avoid a serious doubt, the rule is the same"

Seen Reply to President.

This language by the Chief Justice was construed as a direct reply to the President and those of his supporters who have charged that the Supreme Court in passing on the validity of acts of Congress, had failed to follow the rule that the law should be presumed to be constitutional until the contrary is clearly shown He added

"We think it clear that the national labor relations act may be construed so as to operate within the sphere of constitutional authority"

Discussing the avowed purposes of the act the opinion pointed out that "the grant of authority to the board does not purport to extend to the relationship between all industrial employes and employers"

"Its terms" the opinion continued, "do not impose collective bargaining upon all industry, regardless of effects upon interstate or foreign commerce. It purports to reach only what may be deemed to burden or obstruct that commerce and thus qualified, it must be construed as contemplating the exercise of control within constitutional bounds.

"It is a familiar principle that acts which directly burden or obstruct interstate or foreign commerce, or its free flow, are within the reach of the congressional power Acts having that effect are not rendered immune because they grow out of labor disputes"

Combining their dissenting opinions in the cases of the Jones & Laughlin Corp, the case of the Fruehauf Trailer Co and the case of the Friedman-Harry Marks Clothing Co., Inc., the four justices declared "It seems clear to us that Congress has transcended the powers granted

"The right to contract is fundamental and includes the privilege of selecting those with whom one is willing to assume contractural relations This right is unduly abridged by the act now upheld. A private owner is deprived of power to manage his own property by freely selecting those to whom his manufacturing operations are to be intrusted We think this cannot lawfully be done in circumstances like those here disclosed"

After terming the decisions by three Circuit Courts of Appeals in the above cases as "terse, well considered and sound" the minority expressed the view that the Supreme Court "departs from well-established principles" followed in the Schechter and the Carter Coal Co cases

"The three respondents," the minority said in reference to the present cases, "happen to be manufacturing concerns—one large, two relatively small. The act is not applied to each upon grounds common to all.

"Obviously what is determined as to these concerns may gravely affect a multitude of employers who engage in a great variety of private enterprises—merchantile, manufacturing, publishing, stock raising, mining, etc. It puts into the hands of a board power of control over purely local industry beyond anything heretofore deemed permissable

During the argument of the case, counsel for the Government had asked the court to hold that labor disputes, even though their effect on commerce be indirect, resulted in such substantial obstruction to the free flow of commerce that they should properly be within the power of Congress. Counsel for the steel corporation, however had expressed confidence the court would follow its former rule that the effect must be direct before coming within the scope of congressional power

Effect of Labor Disputes.

After asserting the right of employes to bargain collectively with their employer, the court then laid down the rule that the determining ... gress cannot be denied the ... to exercise that control"

The opinion then proceeded to hold that discrimination against workers because of their union affiliations and the refusal of employers to bargain collectively with representatives chosen by the employes tended to result in strikes having a substantial effect on the free flow of interstate commerce

Of the five cases involving the Wagner act, three manufacturing cases concerned a question of fundamental importance to the New Deal and the Nation—namely, whether the Federal control of interstate commerce can be extended to intrastate matters indirectly affecting the flow of commerce between the States

Constitutional Provision

The Constitution provides merely that Congress shall have power to regulate commerce among the States. The Supreme Court has interpreted this to mean that congressional control extends only to matters having a direct effect on this commerce

Arguing that the tremendous industrial development in the country must now be taken into consideration in interpreting the commerce clause, attorneys for the Government argued during the hearing of the Wagner cases that Congress should be given control of any industrial activity which affects commerce indirectly, if that effect is a substantial one.

Under previous definitions announced by the high court, a big steel plant is an interstate business. But even if this be true, the Government lawyers argued, a strike shutting down the plant must necessarily have far-reaching effects on interstate commerce. They pointed out that most of the big industries operate their own transportation systems and also employ the regular channels of interstate commerce in hauling vast quantities of raw materials to their plant from all parts of the country, and repeat this process in shipping their finished products to buyers in virtually all the States.

In such a situation, they contended, the courts should not apply hair-splitting definitions in upholding a conception of commerce that was evolved during the "horse and buggy" era.

Argument on Strikes.

The position taken by attorneys for the companies was that a strike is the direct result of labor trouble, and that the effect on commerce is, therefore, secondary or indirect This has been the attitude adopted by the court in the past

These suits have been treated as test cases, the court having rejected several subsequent petitions to review similar employer-employes controversies.

Law in Effect in 1935.

The challenged law went on the statute books July 5, 1935, after a slow trip through Congress in which its constitutionality frequently was challenged It guaranteed workmen the right to select representatives for collective bargaining with their employers on wages, hours of labor and working conditions

The National Labor Relations Board was created to administer the law.

President Roosevelt, in signing the bill, said the measure "should serve as an important step toward the achievement of just and peaceful labor relations in industry." William Green, president of the American Federation of Labor, said the law was "labor's magna charta."

In August, 1935, the President appointed a three-man board to administer the act. It was made up of J. Warren Madden of Pittsburgh, a college law professor; Edwin S. Smith of Boston, former State labor commissioner, and John M. Carmody, an industrial engineer

Carmody resigned after a year's service and was replaced by Donald Wakefield Smith, a Washington attorney.

Since its creation the board has handled 3,072 cases of industrial disputes, involving 746,782 workers.

Among these it listed 378 strike cases, involving 87,883 workers. The board said 248, affecting 86,888 workers, were settled, and that 101 threatened strikes had been averted.

Of the 3,072 cases handled the board said 1,579 had been closed, leaving 493 pending on March 1. Agreements between employes and management were reached in 737 cases, involving 97,819 workers. There were 330 cases dismissed by the board and 470 withdrawn by the petitioners

The board said that in 784 cases employers were charged with discriminating against workers because of their union activities, and in 436 employers were alleged to have refused to bargain collectively

The Majestic Flour Mills, of Aurora, Mo., brought the first court action against the board, asking Federal Judge Merrill E Otis of Kansas City to enjoin the board from holding a hearing on a complaint that the company had interfered with its employes' collective bargaining rights.

In his decision December 21 Judge Otis granted the injunction and held the Wagner act unconstitutional

WOMAN FOUND DEAD IN GAS-FILLED ROOM

Proprietor of Rooming House Left Message to Be Awakened, Lodger Says.

Mrs. Catherine Lyons, 47, proprietor of a rooming house at 933 Twenty-third street, was found dead at 9:30 a.m. today in the gas-filled kitchen of her basement apartment

The rescue squad, summoned by John Sullivan, a lodger, was unable to revive her She was found with her head over an open gas jet in the kitchen stove, police said

Sullivan, who works at the Veterans' Bureau from midnight to 8 p m., said the woman had asked him last night to awaken her when he returned from work this morning

Police refused to reveal the contents of notes which they said had been found in the room Mrs Lyons had been working in a fur shop authorities were told

HOUSE DELAYS ACTION

The House Labor Committee postponed today consideration of a Senate-approved resolution condemning both sit-down strikes and "unfair" labor practices of employers

A committee source said the action was taken because members had thought the Supreme Court would give its decision today on the Wagner labor relations act.

INCOME TAX URGED ON U. S. EMPLOYE[S]

House Member Proposes Amendment to Widen Scope of Levy.

BY WILL P. KENNEDY.

Chairman Cochran of the House Committee on Expenditures today introduced an amendment to the Constitution, which would require every Federal official and employe, elected or appointed, to make a Federal income tax return on his or her salary and also require an income tax to the State of which he or she is a legal resident

His proposal also would require all State officials and State employes to make Federal income tax returns on their salaries It further would require officials and employes of all national and State banks members of the Federal Reserve System, to pay income tax to the States on their salaries.

"The necessity for this legislation grows out of the constitutional provision which does not require a Federal official or employe to pay State income tax, and does not require the President or members of the Federal judiciary to pay Federal income tax" Cochran explained. He pointed out however, that although the salary is considered exempt, all Presidents of the United States since enactment of the income tax law, have paid an income tax to the Government on their salaries

Another reason for offering the amendment Cochran said, is that in the case of Brush vs Commissioner of Internal Revenue March 15, 1937, the Supreme Court by a 7-to-2 decision with Justices Brandeis and Roberts dissenting, held in effect that State officials and State employes are not subject to Federal income tax on the salary they receive

A third reason given by Cochran is that "officials and employes of national and State banks, members of the Federal Reserve system are taking advantage of a decision by the Social Security Board, holding that the banks are instrumentalities of the Government Officials and employes of the banks thus place themselves in the same category as a Federal employe and therefore are not making returns on their salaries to the various States

Court

(Continued From First Page.)

den Harriman, mentioned for appointment as Minister to Norway, Mrs. Gifford Pinchot, wife of the former Pennsylvania Governor, and Mrs. Mabel Walker Willebrandt, former Assistant United States Attorney General.

The Jones and Laughlin case opinion reversed a ruling by the Fifth Circuit Court of Appeals, which had held the activities of the steel corporation constituted intrastate commerce and therefore were not subject to regulation by Congress.

The Jones & Laughlin Corp., according to findings by the Labor Relations Board, had been guilty of unfair labor practices in discriminating against employes belonging to a union affiliated with the Amalgamated Association of Iron, Steel and Tin Workers.

The labor board had found that the steel corporation, although having its two principal plants in Pennsylvania, used the instrumentalities of interstate commerce in shipping raw materials to its mills and in transporting its finished products to various sections of the country. The Supreme Court opinion pointed out that these findings by the board were not in dispute so far as the challenge of the validity of the act was concerned.

The steel corporation challenged the Wagner act in its entirety as an attempt to regulate all industry, thus invading the reserved powers of the States over their local concerns.

The company also argued that the legislative history of the act showed an essential universal purpose in the ... was construed as a direct reply to the President and those of his supporters who have charged that the Supreme Court in passing on the validity of acts of Congress had failed to follow the rule that the law should be presumed to be constitutional until the contrary is clearly shown. He added:

"We think it clear that the national labor relations act may be construed so as to operate within the sphere of constitutional authority."

Discussing the avowed purposes of the act, the opinion pointed out that "the grant of authority to the board does not purport to extend to the relationship between all industrial employes and employers."

"Its terms," the opinion continued, "do not impose collective bargaining upon all industry, regardless of effects upon interstate or foreign commerce. It purports to reach only what may be deemed to burden or obstruct that commerce and, thus qualified, it must be construed as contemplating the exercise of control within constitutional bounds.

"It is a familiar principle that acts which directly burden or obstruct interstate or foreign commerce, or its free flow, are within the reach of the congressional power. Acts having that effect are not rendered immune because they grow out of labor disputes."

Combining their dissenting opinions in the cases of the Jones & Laughlin Corp., the case of the Fruehauf Trailer Co. and the case of the Friedman-Harry Marks Clothing Co., Inc., the four justices declared: "It seems clear to us that Congress has transcended the powers granted.

"The right to contract is fundamental and includes the privilege of selecting those with whom one is willing to assume contractural relations. This right is unduly abridged by the act now upheld. A private owner is deprived of power to manage his own property by freely selecting those to whom his manufacturing operations are to be intrusted. We think this cannot lawfully be done in circumstances like those here disclosed."

After terming the decisions by three Circuit Courts of Appeals in the above cases as "terse, well considered and sound," the minority expressed the view that the Supreme Court "departs from well-established principles" followed in the Schechter and the Carter Coal Co. cases.

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During the argument of the case, counsel for the Government had asked the court to hold that labor disputes, even though their effect on commerce be indirect, resulted in such substantial obstruction to the free flow of commerce that they should properly be within the power of Congress. Counsel for the steel corporation, however, had expressed confidence the court would follow its former rule that the effect must be direct before coming within the scope of congressional power.

Effect of Labor Disputes.

After asserting the right of employes to bargain collectively with their employer, the court then laid down the rule that the determining principle in deciding the validity of the act in this case must be the nature of the effect of labor disputes on interstate commerce, not the character of work in which a particular employe may be engaged.

"Although activities may be intrastate in character when separately considered," the Chief Justice said, "if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Con-

state commerce in hauling vast quantities of raw materials to their plant from all parts of the country, and repeat this process in shipping their finished products to buyers in virtually all the States.

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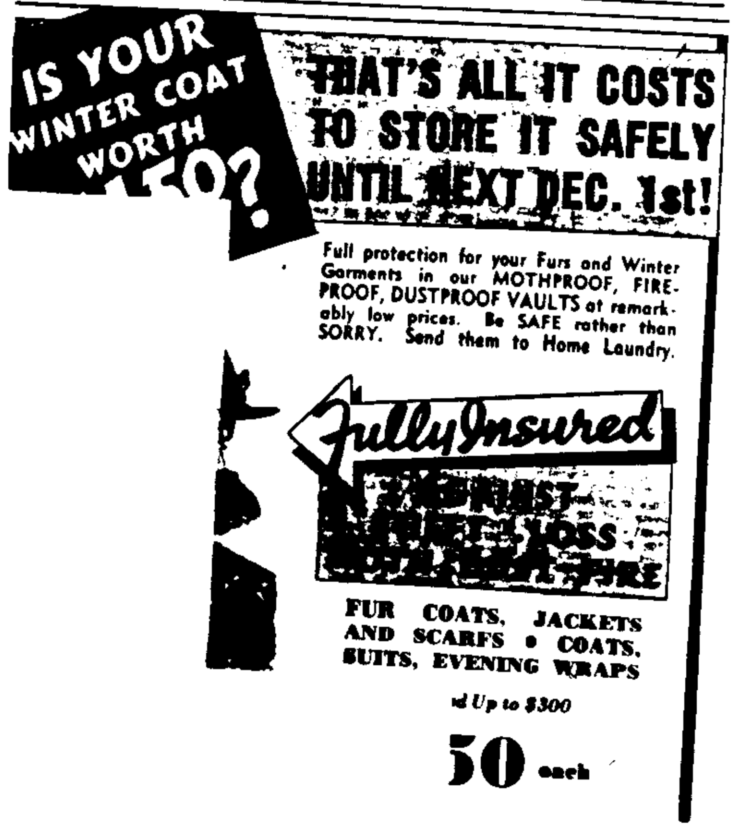

WAGNER ACT UPHELD IN ALL FIVE CASES, GIVING U. S. WIDE POWERS OVER LABOR

Robinson Tells Senate

MORE LIBERAL COMMERCE INTERPRETATIONS SEEN IN GOVERNMENT VICTORY

Legislation Valid in A. P. Case. Bus Firm Ruling Only Unanimous One

BACKGROUND—

Long considered most important issue pending before Supreme Court is that involving constitutionality of labor relations law. Sponsored by Senator Wagner of New York and Representative Connery of Massachusetts, statute attempts to assure working people right of collective bargaining with their employers.

Under fire of much of industry, and openly violated by many concerns on advice of such authorities as National Association of Manufacturers, the question of the law's constitutionality was brought before the Supreme Court in five separate cases.

(Text of majority decision on Wagner labor act is on page A-3.)

BY JOHN H. CLINE.

Adopting a liberal interpretation of the meaning of interstate commerce, the Supreme Court today upheld the validity of the Wagner labor relations act in its entirety.

This unexpected finding of the court was announced in five cases, one being decided unanimously and the court dividing 5 to 4 in each of the others.

This action, lodging in the Federal Government broad power to regulate employe-employer relationships irrespective of the fact that particular employes might not be engaged directly in interstate commerce, was expected to have a decisive effect on the present attempt by President Roosevelt to add six Supreme Court justices unless those over 70 retire.

Opponents of the President's court plan hailed the decision as eliminating every argument advanced by Mr. Roosevelt in support of his undertaking.

Senator Wagner to Discuss Decision Tonight.

New York author of the act

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Senator Wagner to Discuss Decision Tonight.

Senator Wagner, Democrat, of New York, author of the act, will discuss today's Supreme Court decisions over the blue network of the National Broadcasting Co. at 8 o'clock tonight. The address will be broadcast from Station WMAL.

The epochal ruling on the Wagner law extends the power of Congress to regulate activities which heretofore had been regarded as strictly intrastate in character.

In the four major cases, Chief Justice Hughes joined with Associate Justices Roberts, Brandeis, Stone and Cardozo in upholding the legislation. Justices Butler, Sutherland, McReynolds and Van Devanter registered emphatic dissents.

The court was unanimous only in the case brought by the Washington, Virginia & Maryland Coach Co. No question of interstate commerce was involved in this case.

Case Involves One of Largest Steel Firms.

The cases in which the law was upheld by a divided vote were brought by the Jones & Laughlin Steel Corp. of Pennsylvania, fourth largest in the country, the Pinehaul Trailer Co. of Michigan, the Friedman-Harry Marks Clothing Co. of Richmond, Va., and the Associated Press.

The press association case involved two important questions—whether it is engaged in interstate commerce and whether the law violated the freedom of the press. The court held the association was engaged in interstate commerce and that the law, as applied in this particular case, did not invade the freedom of the press.

As a result of the ruling, the Associated Press will be required to reinstate with back pay Morris Watson, a New York editorial employe who was discharged, according to a finding by the National Labor Relations Board, because of his activities in behalf of the American Newspaper Guild.

The three manufacturing cases involved substantially the same question—whether factors causing labor disputes in the business of manufacturing are subject to Federal regulation.

The right of collective bargaining, upheld in these cases, has been the major point of dispute in the recent series of sit-down strikes.

In earlier cases, the court had declared manufacturing to be an intrastate business and therefore not subject to regulation by Congress. Taking a different view in these instances, the majority of the court held that the character of the work done by a particular group of employes might be intrastate in nature, but that Congress could still legitimately legislate to prevent the outbreak of labor strife if such strife would have a substantial effect on the free flow of interstate commerce.

The court found that discrimination against workers engaged in manufacturing because of their union affiliations and a refusal by employers to bargain collectively with them were conditions calculated to produce such an effect.

The decisions were handed down before a packed court room. Hundreds of the tourists now jamming the Capital had flocked to the Supreme Court Building, but only a small percentage was able to get in.

Among the notables present were Mrs. Charles Evans Hughes, wife of the Chief Justice; W. S. Van Dyke, motion picture director; Mrs. J. Bor-

(See COURT, Page A-4.)

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FEDERAL BUREAU OF INVESTIGATION
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INVESTIGATION OF UN-AMERICAN PROPAGANDA ACTIVITIES IN THE UNITED STATES

30
877.2

HEARINGS

BEFORE A

SPECIAL COMMITTEE ON UN-AMERICAN ACTIVITIES HOUSE OF REPRESENTATIVES

SEVENTY-SIXTH CONGRESS

THIRD SESSION

ON

H. Res. 282

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

VOLUME 12

FEBRUARY 7, 8, 10, MARCH 25, 28, 29, APRIL 2, 3, 4, 1940

AT WASHINGTON, D. C.

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

UNITED STATES
GOVERNMENT PRINTING OFFICE
94931 WASHINGTON : 1940

61-7582

61 12

Original

hat one a moment ago, did you not?

py of the leaflet brought out by the eague?

at this be marked as an exhibit. The Deal Being Scuttled? Are We Head- he People Do About It? A Statement mist League."

xample of good Harvard scholarship,

ve any communications relating to this lisagreed sharply with you as to its

et, but with one previously issued.

above was marked "Exhibit No. 1.")

rrespondents take issue with you on

the letters there; you can read them. scholarly even if the gentlemen who ations.

letter addressed to Pat O'Dea, Box 23, ated March 5, 1940. Did you receive

y on this communication is the fol-

ight: I just asked the question.

nat in, and this was the answer; a copy o New York, and this was the answer. d "Comradely yours," and also "Edu- ns the national committee, does it not?

ead as follows:

n for the copies of the Harvard Y. C. L. one and should prove to be quite effective. questioned is the reference in the very last for a legislative furthering of New Deal of this is correct, the expression "New Deal visable. The "New Deal" is so completely acceptance might mean acceptance of its v Deal" today is certainly not something the also have been advisable to speak more g a new anti-imperialist, anti-war party of plendid job.

is you recall it?

from the national headquarters of the

ement or a criticism of the statement g Communist League, which amounts ganda, is it not?

answer at a little length, because the age leaflet, and if the gentleman and they will see that it deals with a great

deal of material, and that letter takes one little specific instance, and it is a criticism in the same form that a book review is a literary criticism, and it is not an instruction by any means.

Mr. MATTHEWS. When you bring out your next piece of literature, or when you make speeches, you will make a point to follow the criticism contained in this letter, will you not?

Mr. O'DEA. I do not know; I cannot answer that right now.

Mr. MATTHEWS. Until you get some further indication of the wishes of the national headquarters, you will carry out those instructions, will you not?

Mr. O'DEA. I do not know. I cannot say what I will say when I go out; I do think that the criticism is a correct one. My own personal opinion is that I think it is a correct one, if that is the question.

Mr. MATTHEWS. So therefore since you look upon it as correct, you do adopt it as your present viewpoint?

Mr. O'DEA. It was my viewpoint before.

Mr. COHN. Will you offer the original leaflet in evidence?

Mr. MATTHEWS. I have.

I will offer the letter of March 5 in evidence as exhibit No. 2.

(The document above referred to was marked "Exhibit No. 2.")

Mr. MATTHEWS. Who is the secretary of the Harvard Young Communist League?

Mr. O'DEA. I refuse to answer that question because I believe that by answering that question I will expose this person to economic persecution. He will be unable to get a job, and getting a job is the only way he will be able to live, and I think under the fourteenth amendment, that is due process, his only property will be his scholarship and his job, and he will lose that.

The CHAIRMAN. Then you decline to answer?

Mr. LYNCH. I think that that should be stricken from the record, all of the witness's statement except the statement that he refuses to answer, on the ground that it is entirely immaterial. The only right that he has to refuse to answer is one, that his answer might tend to incriminate him; and if he objects on that ground why, of course, that is all right, but otherwise he has absolutely no right to refuse.

Mr. COHN. I think that is an incorrect statement of the law handed down by the United States Supreme Court in the case of Sinclair against the United States and other cases. I think that the objection of the witness is well taken.

Mr. CASEY. What is the *Sinclair case?*

Mr. COHN. In that case the Supreme Court said that the witness had other rights to object in addition to the one, the privilege against self-incrimination. It said that, for example, the committee had no right to delve into matters that were personal or private matters affecting the witness, and other cases held that the committee may only ask questions, and the witness has the right to refuse to answer questions which are not material to the investigation, questions that are not relevant to the investigation, questions that are not within the scope of the investigation.

The committee is limited by those decisions of the United States Supreme Court in addition to the constitutional provision against self-incrimination.

May I further say that it is my belief that the witness has a full right to explain his refusal to answer.

Mr. LYNCH. I submit that none of the reasons advanced by Mr. Cohn are applicable to this witness. In other words, this witness does not say that they are not material, this witness does not say that they are personal to him, but he says that they are personal to someone else, and, of course, he has no right to attempt to protect somebody else.

Mr. COHN. We are going to bring to the United States Supreme Court the question of whether a witness has a right to decline to answer questions, in view of what the chairman has already stated in the record, that he proposes to use any names of Communist members for a blacklist to see to it that those——

The CHAIRMAN (interposing). That is stricken from the record; that is incorrect and will be stricken.

Mr. COHN. That was the testimony when Mr. Cooes was examined. If my recollection is correct, the chairman then said that that was his purpose, and I said under those circumstances that the witness has a right to decline to answer.

The CHAIRMAN. That is stricken from the record; you are incorrect.

Mr. COHN. I respectfully object.

The CHAIRMAN. The Chair will take under advisement the question of whether a witness can state the reasons for his declining to answer. The Chair is not familiar with the decisions with respect to that, but for the time being we will take that under advisement. The Chair now directs you to answer the question that was asked you. Do you decline to do so?

Mr. O'DEA. I do, for the reasons stated.

The CHAIRMAN. You have already said that. You decline to answer the question?

Mr. O'DEA. I do, for the reasons stated.

Mr. CASEY. First, let us lay a little groundwork. Do you know who the secretary of the Young Communist League at Harvard is?

Mr. O'DEA. Yes.

Mr. CASEY. And the next question, I believe, which you refused to answer is: Who is he?

Mr. O'DEA. I refuse, for the stated reasons.

The CHAIRMAN. All right.

Mr. MATTHEWS. Mr. O'Dea, is the secretary of the Young Communist League at Harvard secretly a member of the Young Communist League?

Mr. O'DEA. I do not know.

Mr. MATTHEWS. Has his name ever appeared on any publications, leaflets, or in any other public manner as secretary of the Young Communist League at Harvard?

Mr. O'DEA. No, as far as I know; unless there is one there that I have not seen.

Mr. MATTHEWS. Are the 50 to 60 members of the Young Communist League at Harvard secretly members of your organization?

Mr. O'DEA. I do not know.

Mr. MATTHEWS. If you do not know that they are secret members, what is the purpose of shielding or concealing their identity at the present time?

Mr. O'DEA. Because, as I explained before, that—in the first place, let me say just in passing that I am not intimately connected with

ACTIVIT[illegible] THE UNITED STA[illegible]

HEARINGS

BEFORE A

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[illegible]MERICAN [illegible]

[illegible]RESENTATIVES

SEVENTY-FIFTH CONGRESS

THIRD SESSION

ON

H. Res. 282

TO INVESTIGATE (1) THE EXTENT, CHARACTER, AND OBJECTS OF UN-AMERICAN PROPAGANDA [illegible] [illegible]FUSION WITHIN THE UNITED [illegible] [illegible]-AMERICAN PROPAGANDA [illegible] [illegible]N COUNTRIES OR [illegible] [illegible]RINCIPLE OF THE FORM OF GOVERNMENT [illegible] OUR CONSTITUTION, AND (3) ALL OTHER QU[illegible]TIONS IN RELATION THERETO THAT WOULD AID CO[illegible]GRESS IN ANY NECESSARY REMEDIAL LEGISLATION

VOLUME 1

[illegible]UGUST 12, 13, 15, 16, 17, 18, 19, 20, [illegible] AND 2[illegible]
AT WASHINGTON, D.[illegible]

[illegible]cial Committee on Un-American Activ[illegible]

No. 5
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No. 7
No. 8
No. 9

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default, or who, having appeare[illegible]horized, shall [illegible]
o the investigation heretof[illegible]ised Statutes of [illegible]
provided by section 102 of the [illegible]
C., title 2, sec. 192).

2. *Collective bargaining, with right to organize and strike.*—Abolish company unions, spy- and stoolpigeon systems. Impose penalties on employers guilty of discharging workers for political and union activities. (Amend National Labor Relations Act to compel employers to recognize labor unions.)

3. *Social insurance.*—For the unemployed, the aged, the disabled, and the sick, based on the workers' unemployment, old-age and social-insurance bill, with compensation to all unemployed, and pensions for those 60 years or over, equal to former earnings but not less than $15 per week; maternity and health insurance for all expectant mothers and all injured workers or victims of occupational diseases. Extend the drive for the workers' bill while supporting amendments to Social Security Act to cover all workers now excluded, repeal present tax on wages, and to put the entire cost on the Government and employers.

4. *Civil liberties.*—Repeal all Federal legislation infringing upon political rights and freedom of assemblage, guarantee freedom of press and radio. Outlaw the Black Legion, Ku Klux Klan, vigilante gangs, and other terrorist organizations. Release all political prisoners. Repeal all sedition, criminal syndicalist, and teachers' oath legislation. Put teeth into the Federal anti-injunction law to prevent judges, sheriffs, and employers from breaking strikes and curbing labor organization. Abolish poll taxes and all other anti-democratic interference with the right to vote. Full political rights for women.

5. *Supreme Court.*—Reaffirm the constitutional power of Congress to pass all labor and social legislation without interference from the Supreme Court. Amend the Constitution to deny the Supreme Court power to nullify social and labor legislation.

6. *Negro people.*—Equal rights to jobs, the full right to organize, vote, serve on juries, hold public office. Abolish segregation and discrimination. Establish heavy penalties against floggers, kidnappers, with the death penalty for lynchers. Enforce the thirteenth, fourteenth, and fifteenth amendments to the Constitution. (Support the Wagner-Costigan antilynching bill, with appropriate amendments.)

7. *Unemployment relief.*—Provide moneys to the States and municipalities to maintain adequate relief standards. Expand the W. P. A. Increase the W. P. A. wages by 20 percent; establish a $40 monthly minimum. Grant the right of collective bargaining and trade-union rates to W. P. A. workers. Place representatives of the unemployed on all W. P. A. policy boards.

8. *Farm mortgages.*—End farm evictions and foreclosures. Establish a long-term moratorium on all needy farmers' debts. Relief for needy and drought-stricken farmers. Refinance farm loans at nominal interest with a fund of $3,000,000,000, raised by taxes on high incomes, inheritances, and corporate wealth.

9. *Cost of production.*—Guaranteed to the farmer, which would give him a higher standard of living. All Government boards to be under the democratic control of farmers, labor and consumers. (Support amended Thomas-Massingale bill.)

10. *Tenant farmers and sharecroppers.*—To be provided with land by the Government, and long-term loans for seed, farm implements, feed, etc. Make every tenant a landowner with right to home, chattels, and guaranteed standard of living.

11. *Soil conservation.*—Amend the Soil Conservation Act; prevent crop reduction; put program under the supervision of farmers' organizations.

12. *Taxation.*—Sharply graduated taxes on incomes over $5,000 a year. Increase the tax on corporate profits and surpluses. Tax all tax-exempt securities and large gifts and inheritances. Repeal all consumers' sales taxes.

13. *Working conditions.*—Abolish sweatshops, curb the speed-up and child labor, furnish adequate protection for women, erect proper safeguards against industrial accidents and diseases. (Support appropriate amendments to the Walsh-Healy law and the Connery and O'Mahoney bills.)

14. *Public works program.*—Appropriate $6,000,000,000 for a Federal public works program to provide jobs for the unemployed, to clear the slums, furnish housing at low rentals, build schools, hospitals, provide health and recreational facilities, rural electrification, etc.

15. *Banks.*—Nationalize the entire banking system. Guarantee the savings of small depositors. Lower rates on loans to small business men. Democratize banking control through representatives of labor, consumers, farmers, and small business men.

the need for differentiating between the Communist Party and the Committee for Industrial Organization. Communists should not be deceived, he said, by the fact that the threat of some Committee for Industrial Organization leaders to make a "red purge" a couple of months ago has been set aside. John L. Lewis is still John L. Lewis and only the movement of the workers compels Lewis to adopt other tactics for the moment. Communists can and must support Lewis now, but they can have no guaranty from him or anyone else that they will not be made the goats at some future time. Foster said that many copies of the Daily Worker now look like Committee for Industrial Organization publications and they can be read in vain for any semblance of Communist leadership in the labor struggles or directions as to mass struggles.

Clarence Hathaway, editor of the Daily Worker, who came in late, disagreed with Foster and defended the Daily Worker.

William Weinstone discussed the situation in the Detroit area, particularly with reference to the strikes in the automobile industry and the situation in the State of Michigan, as an example of how the "people's front" is developing there. He said Governor Murphy is trying to put into effect the people's mandate given to President Roosevelt and the Democratic Party at the last election. Murphy is in such a position that he can dominate the progressive political movement in the State. Weinstone said that Murphy does not seem to be the same Murphy who, as Mayor of Detroit, aided Henry Ford's strike-breaking policy in every way. Because of the situation in Michigan, he said, the Communist Party is experiencing a good growth and if all places were like Detroit there would not be such alarm about the slow growth or, as in some places, the decline of the Communist Party.

William F. Dunne, who is now stationed in Butte, Mont., stated that there is a deep schism in the Democratic Party of that State. He said that Senator Burton K. Wheeler was put in the Senate by the Silver Bow, Mont., leaders of the Trades Council in cooperation with the friends of former Socialist Mayor Duncan of Butte. Senator Wheeler's attacks on President Roosevelt's Supreme Court program, he said, have lost him much support. He said that he was going to consolidate that opposition inside the Democratic Party and put up a full slate of candidates in the next election to defeat the Wheeler crowd.

Binkley, of New Orleans (who arrived late), stated that the remnants of the Huey P. Long machine in Louisiana were being reached by the Communists in the cities of New Orleans and Baton Rouge; that in the South the only hope for the Communists to get in office is through the Democratic machinery inasmuch as Louisiana, like other Southern States, is a one-party State. If one is not a Democrat, he does not amount to anything there.

Others in attendance at the session of the central committee dealt with local conditions in their respective localities and attempted to show how favorable the situation is in their districts for putting into effect the policy of boring from within the Democratic Party.

Charles Krumbein, Israel Amter, and Max Bedacht and a number of leaders of the needle trade unions—among them Rose Wortis, Ben Gold, and Irving Potash—discussed the situation in New York. They all showed how it was necessary to support Labor's Non-Partisan League and the American Labor Party (composed of right-wing Socialists), who are all behind the reelection of Mayor La Guardia. They stated it is understood that Senator Wagner will not be a Tammany candidate for mayor, inasmuch as President Roosevelt does not want the Federal administration involved in a local New York election.

Pat Toohey, of Philadelphia, and Ned Sparks, of Pittsburgh, talked at great length, praising Governor Earle of Pennsylvania in much the same manner that Weinstone praised Governor Murphy of Michigan.

The whole group attended a party on Saturday night, and many of them got very intoxicated and admitted that a lot of what they stated was said to give lip service to the policy of the American Communist Party—that it is unquestionably dictated to conform to the interests of Soviet Russia. They admitted that Josef Stalin does not want to antagonize any of the great democracies nor offend President Roosevelt, Premier Chautemps of France, or Great Britain.

In the final session of Sunday, Earl R. Browder summarized the discussion and praised the comrades for beginning to put into effect the policy of the "people's front" in the United States. The central committee made only one decision, and that was to start daily Communist papers in Chicago and San Francisco by January 1 next. The Chicago paper will be known as the Mid-West Edition and the one in San Francisco as the Pacific Coast Edition. The central com-

pened, however, that the individual was not the one that they were hunting for.

(The statement referred to is as follows:)

COMMUNIST

NEW YORK, *April 23, 1937.*

The political buro of the contral committee of the Communist Party of the United States called a special meeting in Cleveland for Saturday, April 17. Due to the delay in the arrival of some of the leaders invited, the meeting did not convene until 9 a. m., Sunday, April 18. It was held in the Jewish Labor Center, Fifty-fifth and Scoville Streets, Cleveland. Among those present were Jack Stachel, F. Brown (real name Alpi), Clarence Hathaway, Elizabeth Lawson, and Harry Raymond (of the Daily Worker staff), from New York; William Weinstone, district secretary for Michigan; John Williamson, district organizer for Ohio; Ned Sparks, district organizer for Pittsburgh; John Steuben (real name, Martin Rilak), section organizer for Youngstown; June Croll, from the women's department of the national office in New York; Morris Childs, district organizer for Illinois; I. Amter and Charles Krumbein, district organizer and district secretary, respectively, for New York; and Jack Johnstone and Rober Minor, members of the central executive committee of the Communist Party. There were several others present, who were not identified.

Elizabeth Lawson (whose real name is Elsa Block) was formerly a student of the University of Minnesota and recently was editor of the Southern Worker, using the pen name of "Jim Mallory"; June Croll, of the women's department (whose real name is Sonia Croll), was formerly the wife of Carl Reeve, son of "Mother" Ella Reeve Bloor, but is now the wife of Langston Hughes, radical Negro poet of Boston. Quite a number of others were invited but could not be present because of the pressure of work in their respective communities.

In opening the session Stachel stated that the purpose of the meeting was to endeavor to clarify a number of problems, among them:

(1) The political situation in the light of the Supreme Court decision on the Wagner Act; (2) the prospect for further work by the Communist Party in the C. I. O. and the A. F. of L.; and (3) the party position today on the Negro question. Despite the poor attendance, because of the short notice, it was decided to discuss these matters and then direct the political buro to prepare a letter to district and section committees on the results of the discussion. The first reports on the political situation were made by Stachel and Brown.

Stachel stated that while the Supreme Court, by a five to four vote, upheld the Wagner Labor Relation Act, it is not possible to rely upon the whims of one judge, and therefore the campaign to support President Roosevelt's proposals to enlarge the Supreme Court must go on. It is necessary even to go further and demand legislation curbing the power of the Court, even if enlarged, by removing from it the power to review social legislation when passed by a two-thirds vote of both Houses of Congress. He further said that it is necessary to cover certain phases of the second point under discussion (work in the C. I. O. and A. F. of L.) in connection with the Court's decision. It is necessary to recognize that reactionaries in Congress will begin a barrage against the labor movement by trying to interpret certain sections of the Wagner Act as legalizing compulsory arbitration, outlawing strikes, and railroading to prison without trial those who refuse to abide by unsatisfactory decisions. Under the present practice anyone violating provisions of the decisions of the Federal courts can be brought in for contempt and denied a jury trial. There is not much danger of this happening at present, he said, but there are forces trying to amend the act right now so that it will be a more effective weapon against labor.

The Communist Party job is to try to introduce amendments in Congress that will strengthen the prolabor sections, and some of the leading comrades have recently had conferences with Senator Lundeen, of Minnesota, on the possibility of such amendments. While Senator Lundeen was in the lower House he introduced the Unemployment and Social Security Act that was written by the political buro of the Communist Party and presented to him through the unemployment councils. It may be possible to get such amendments introduced by some such roundabout method at this time. Congressman Maury Maverick is also amenable to influence by groups close to the Communist Party, and he can be used to aid in putting over the program in the House of Representatives.

Instead of discussing each report separately, it was at this point decided that

later said he could not use $3,000 of it for bail without the consent of the party.

He was later deported.

Under separate cover, I am mailing you a complimentary copy of a booklet written by an officer of this department.

Yours truly,

Capt. H. M. NILES,
Acting Chief of Police.

That is just one instance. That is an instance of a party member carrying money around loosely, in large amounts.

Then I have here another letter from the chief of police of Wilmington, Del., in which he states:

Replying to your communication relative to Communist leader being arrested in this city, with bonus marchers to Washington, D. C., in 1932.

I have to advise that Benjamin Gold who gave his address as 315 Second Avenue, New York City, N. Y., was arrested in this city December 2, 1932, charged with assault and battery on a police officer. He was fined $50 and costs and sentenced to serve 40 days. This case was appealed to the Supreme Court who upheld the decision of the lower court. January 19, 1934, the above sentenced was imposed. Released February 22, 1934.

When arrested this man had in his possession 50 $10 travelers checks, made payable to Carl Winter.

Very truly yours,

GEORGE BLACK,
Superintendent of Public Safety.

We have information on a great number of instances like that.

I want to submit still another financial report. Here is a report of the International Labor Defense for another year, showing that in this particular year their total income was $80,127.63. We have many similar reports, but I did not go to the expense of photostating them, because it would have amounted to considerable.

The CHAIRMAN. You did take into consideration, in computing the $10,000,000, all these reports from these organizations themselves as to expenditures?

Mr. STEELE. We took the reports of the organizations that we could get reports on, and we took the average and multiplied it by half of that average, in order to allow for a very small expenditure by some organizations.

In other words, I could very well build up a figure higher than that, I *think*, and prove it, but we wanted to be conservative in this statement.

We know that they take in a lot of money at their meetings. For instance, at the meeting in Madison Square Garden last year, and the one at the Hippodrome last year—they had two meetings—we know what their advertised prices for these meetings were, as they charge for all these meetings that they hold. They claimed later that they took in $26,000 at one meeting and $21,000 at another. That is just for two meetings.

We have arrived at the $10,000,000 expenditure in a great many ways. There is no set way of proving the exact amount.

The CHAIRMAN. In reference to your statement that 60 families rule world communism, what is that based on?

Mr. STEELE. I have shown you by their own documents, the Party Manual, that the high authority in this country is the central committee of the Communist Party.

Mr. HEALEY. Composed of 60 members?

The CHAIRMAN. Is not that a fact?

Mr. CHAILLAUX. That is correct.

The official publication of the League is Fight, the magazine Fight. It is edited by Joseph Bash. I have given you a copy here of an earlier edition, 1936. I have the later ones, but you will be interested in this particular one.

Might I refer back to the March issue of 1937 and give you this one article? I do not know how authentic the article is, but it is published in their own publication and is headed "Revising the Bill of Rights." That is the title of the article in the official publication of the League Against War and Fascism. I have given you this much of a quotation from it:

This investigation may assume historical importance because it is serving to awaken the interest of the American people in a phase of the Constitution that the Supreme Court rarely touches upon, those ten amendments guaranteeing to all citizens certain civil rights. It is telling to millions what only thousands knew, that behind the denial and abrogation of civil rights is the mailed fist of corporate might. It is also serving as a tribute to the growing strength and solidarity of American labor, for it shows that labor has been able to make important gains despite the army of labor spies and strike breakers mustered by industry.

The investigation was born in the Cosmos Club in Washington one February evening in 1936. * * *.

The CHAIRMAN. I did not quite catch the continuity of that. What was that that was formed at the Cosmos Club?

Mr. CHAILLAUX. This refers to a Senate committee, I believe known as the La Follette committee, investigating civil rights.

The investigation was born in the Cosmos Club in Washington one February evening in 1936. Present at the meeting were some 15 people, including John L. Lewis, Gardner Jackson, of the American Civil Liberties Union; Dorothy Detzer, of the Women's International League for Peace and Freedom; Senator Robert La Follette, now chairman of the Subcommittee on Education and Labor conducting the inquiry; and other liberals and socially minded people.

Some of those present were concerned with the plight of the sharecropper in the South. They had watched the growing reign of terror instituted by planters in an effort to maintain a dying plantation system and they saw their efforts at organizing sharecroppers into the Southern Tenant Farmers' Union thwarted by systematic terrorism.

I only review that to show you the type of claim made on their part.

The CHAIRMAN. Who published that?

Mr. CHAILLAUX. That was published in Fight, their official publication.

The CHAIRMAN. The official publication of the League for Peace and Democracy?

Mr. CHAILLAUX. That is right, issue of March 1937.

Are there any questions you wish to ask on the league before I pass it?

Mr. MASON. Before we pass that, may I say that I gave the name of Marshall, Robert Marshall, as one of the members of the local league. I have a quotation from Robert Marshall which is:

Personally I am in favor of public ownership of oil lands both in Mexico and in this country.

That statement was made in connection with the meeting on the Mexican labor question.

Mr. STARNES. Mr. Chaillaux, do you have any information upon how the American League for Peace and Democracy is financially maintained? I mean, from what source does it obtain its money?

Mr. CHAILLAUX. Before you came in, Congressman Starnes, I told of having attended their national convention in Cleveland in 1936. They took up a collection the first evening and took in $1,900. Every one of their branches raised funds through every type of devious means imaginable. They would take up a collection at every possible chance, at every meeting. They passed up no opportunity to raise funds in every possible way. They are now raising funds to aid the Loyalist cause in Spain.

Mr. STARNES. Do we have any information which would lead you to believe that they are being financed from sources outside of the United States?

Mr. CHAILLAUX. No; there is no evidence to substantiate that.

The CHAIRMAN. I might say in that connection that we have access to the Secretary of State's reports. These organizations are now compelled to file a report of the amounts that they are sending to Spain. You will notice a clipping of a meeting out in California, which was called the other night, where they raised a certain sum of money to send to Loyalist Spain. All those reports have to be filed with the Secretary of State. We have that information available, definite information on the amount of money collected in the United States and sent to the Loyalist cause in Spain.

Mr. STARNES. Do you have any information as to the number of the names, if any, of Government officials who are members of the American League for Peace and Democracy?

Mr. CHAILLAUX. No; I do not have of Government officials here, locally. I believe some are available. However, I was interested and have written into the record here fully the fact that Government officials—or that some people who are employed by the Federal Government raised $1,000 in cooperation with the American League Against War and Fascism, to be given to the North American Committee to Aid Spanish Democracy, which is the Loyalist Party in Spain. I have put that into the record of the North American Committee to Aid Spanish Democracy.

Mr. MOSIER. Some reference was made here yesterday to some of these flying brigades that are over in Spain. Are you going into that question?

Mr. CHAILLAUX. I am going briefly into the Abraham Lincoln and the George Washington Battalions of the International Brigade, which are promoted, part of them, from the campuses of American colleges and through the Young Communist League of the United States and by the Communist Party and sent to Spain.

Mr. HEALEY. Have you any figures at all indicating about how many recruits for the Abraham Lincoln Brigade and the other Loyalist organizations were furnished by this country?

Mr. CHAILLAUX. I have the Communist Party's own figures from Earl Browder, over 9 months ago. And they have been continually recruiting since then. At that time he claimed 2,200.

Mr. HEALEY. From the United States?

Mr. CHAILLAUX. Yes.

The CHAIRMAN. In that connection, may I say that we have some witnesses who will be here, probably in the morning, who will testify

It Can't Happen Here, expelled Communist students in Michigan, San Francisco Communist strikes, Newspaper Guild, criminal anarchists, admission of alien pacifists to citizenship, prohibition of interstate transportation of strike breakers, Oklahoma City Federal conspiracy, Rensselaer Polytechnic Institute Communist teacher, University of Pittsburgh atheist professors, and New York Communist cases.

The United States Supreme Court has found that "a State may punish utterances endangering the foundation of organized government and threatening its overthrow by unlawful means. These imperil its own existence as a constitutional State. Freedom of speech and press does not protect disturbances of the public peace or the attempt to subvert the Government * * *."

Yet, in the name of so-called constitutionality, the American Civil Liberties Union upholds those who advocate the overthrow of our form of government, whose utterances and activities imperil the existence of our constitutional state.

OFFICERS 1938

In the latest list of officers the following names have been added: Dorothy Dunbar Bromley, Carl Carmer, Harold Fey, John F. Finnerty, Oswald Fraenkel, Nathan Greene, Charles Houston, A. J. Iserman, Corliss Lamont, Mary Van Kleeck, Raymond L. Wise, Bishop Edgar Blake, Heywood Broun, Francis J. Corman, B. Charney Vladeck, Joseph Schlossberg, John Nevin Sayre, Prof. William L. Munn, A. J. Muste, James H. Maurer, Dr. Henry Linville, Dr. John A. Lapp, Sidney Howard, Powers Hapgood, John Dos Passos, Dr. Harry Elmer Brown, and Dr. Mary E. Woolley has become a vice chairman. Seven new divisions have been set up this year. These include one in Santa Barbara, Calif.; Kern County, Calif.; Indiana Civil Rights Committee, R. F. D. No. 1, New Palestine, Ind.; Iowa Civil Liberties Union at 1116 Paramount Building, Des Moines; Kansas City, Kans., in the Federal Reserve Building; Maryland Civil Liberties Committee in Baltimore with Mauritz Hallgren as chairman; Western Massachusetts Civil Liberties Committee at Amherst, with Prof. Colston Warne as chairman; Ann Arbor, Mich.: Kansas City, Mo., Bureau; New Jersey Civil Liberties Bureau; Erie County Bureau; Cincinnati Bureau; Texas Bureau in Austin; Tacoma Bureau; Central Wisconsin; etc.

In their 1938 report they condemn: The Senate filibuster on the antilynching bill; Alabama State for keeping Scottsboro Negroes in prison; decision of California Supreme Court denying writ of habeas corpus to Mooney; Mayor Hague's activities; Chicago police Memorial Day activities; Florida court decisions in *Tampa case;* Ohio National Guards in connection with strikes; Cotton planter situation in Georgia; New Mexico Supreme Court on Gallup cases; Gadsden, Ala., officials; San Antonio police; Memphis City officials; San Antonio police officials; the Massachusetts State legislative committee investigating subversivism; the United States Congress for enactment of the bill setting up the Committee to Investigate Un-Americanism; Congress for passing an act prohibiting picketing of foreign embassies in District of Columbia; New York State Legislature for enacting a bill to prohibit holding office by Communists (they express glee over Governor Lehman's veto of same); Deportation warrant against anarchist editor; State Department limitation of stay for alien C. I. O. president of International Woodworkers; censorship of State boards of radical films; decisions of Supreme Court in *Georgia Tax case*, its refusal to rehear flag-salute case, its refusal to take jurisdiction in case of alien slacker applying for citizenship; its refusal to review conviction cases of Puerto Rican revolutionists convicted for sedition and its refusal to take jurisdiction in the *Scottsboro case.*

It claims it is with the C. I. O. suing Mayor Hague for an injunction to restrain interference with C. I. O. rights in New Jersey.

It criticizes the Government for shutting out William Gallacher, British Communist in 1938.

The financial report of this organization as of January 31, 1937, is: income $26,404.27; expenditures, $25,186.34. Its trust funds show: Receipts, $30,185.[illegible]; expenditures $1,415.47. Its revolving fund, $441.07; loans due, $1,120 (for Communist International Labor Defense). It shows total assets ing 20; liabilities of $1,868.

During the year it published and circulated in addition to its regular [illegible] weekly, monthly, and annually, some 43 pamphlets and books, [illegible] ng the militia, Congress, alien interference, so-called labor spy

Supreme Court, censorships, etc. One of the pamphlets was an Secretary Ickes entitled Nations in Night Shirts.

It says it will fight in the next (1939) Congress for changes in the i and deportation laws "to end all restrictions" so as to admit all in wi

It will fight against military training in schools and colleges and the flag salute and loyalty oath regulations where existing.

It will, it says, fight for the release of all "political prisoners" ja sedition and criminal syndicalism laws.

It will fight to prevent declaration of martial laws and suspens law during strikes. It will fight post office, radio, and movie cens freedom of our colonies, etc.

Footnote: Open letter of Fred Beal, defended by the American Civ Union during the Gastonia, N. C., civil-warfare trials and who escape only to get fed up on Communism in Russia and to return to the Un to serve a 20-year sentence:

"ROGER BALDWIN,
"*Director of American Civil Liberties Union,*
"JOHN DEWEY,
"*Eminent American philosopher and educator,*
"NORMAN THOMAS,
"*Leader of the American Socialist Party,*
"HARRY WARD,
"*Professor of the Union Theological Seminary,*
"MARY VAN KLEEK,
"*Industrial expert of Russell Sage Foundation.*

"You and the hundreds of liberals who supported me in the battles for full justice to labor, will be interested in the story of ences in Soviet Russia which I am bringing to the American mas

"I cannot remain true to my ideals and remain silent. You and of the press which are largely under your influence have just and condemned the iniquities of the Fascist dictatorship in Italy dictatorship in Germany.

"But you and the so-called American liberals have either unwittingly blinded yourselves to the iniquitous and reactiona dictatorship in Soviet Russia."

FBI

In 1938 the American Civil Liberties Union joined the Communist Labor Defense in having several bills introduced in the House cripple the use of the National Guard in serious uprisings.

It has issued publications denouncing the police and the Nat of our Nation. It has waged a fight against teaching religion in against teachers' oaths. It continues its activities in behalf of th and has recently taken up the cudgels for the C.I.O.

CHICAGO CIVIL LIBERTIES COMMITTEE—(JUNE, 8)

Officers.—Honorary chairman, Judge William H. Holly; chairm linford; vice chairman, Charles P. Schwartz; Treasurer, George nal, Edgar Bernhard; Counsel, William E. Rodriguez; Executive Latimer.

Executive board.—Edgar Bernhard, Jessie F. Binford, Robert T Charles W. Gilkey, Carl Haessler, Pearl M. Hart, Dr. John A Lapp Rabbi Joshua L. Liebman, Georgia Lloyd, Prof. Robert M. Lovett, George L. Quilici, William E. Rodriguez, Charles P. Schwartz, Sharp, Robert R. Taylor, Paul E. Thurlow, and Rev. W. B. Walth

Advisory board.—Robert S. Abbott, Rev. Norman B. Barr, Prof. Jr., Prof. Percy H. Boynton, Prof. S. P. Breckinridge, Prof A. J. J. Cooke, Prof. William E. Dodd, Earl B. Dickerson, Prof Pa Prof. Thomas D. Eliot, Dr. Edwin R. Embree, John M. Fewkes, Margaret Furness, Prof. A. Eustace Haydon, Lillian Herstein, Dr. son, Esther L. Kohn, Prof. James Weber Linn, Rabbi Louis L Lawrence Martin, Catherine W. McCulloch, Rev. Clyde McGee, McMillen, Dr. Charles C. Morrison, Joseph L. Moss, Ruth W. Porte W. Reese, Amelia Sears, Prof. T. V. Smith, Rev. Ernest F. Titt J. Todd, Dr. James M. Yard, and Victor S. Yarros.

"ARTICLE VIII. STATE COMMITTEES

"SECTION 1. A state or regional council shall be constituted in all states regions designated by the National Council, having five or more branches of t Young Communist League.

"SEC. 2. Any member of the State Committee may be recalled by a majo vote in a state referendum.

"ARTICLE IX. NATIONAL CONVENTION

"SECTION 1. The national convention shall be the highest body of the organiza tion and shall have the power to decide upon all matters of policy.

"SEC. 6. The convention shall be ruled by the order of business and procedu proposed by the national council subject to change by a majority vote at t convention.

"SEC. 8. All decisions of the national convention with the exception of amend ments to the declaration of principles and bylaws, and election of nation officers, shall be made by a majority vote of the convention.

"ARTICLE XII. NATIONAL COUNCIL

"SECTION 1. The national council is to consist of the national presiden national vice president, national executive secretary, and national administra tive secretary, and 56 additional members.

"SEC. 5. The national council shall be the supreme body of the organizatio between sessions of the national convention. It shall make such decisions an formulate such policies as it deems necessary.

"SEC. 6. The national council shall elect 21 of its members as the nationa board, which shall meet at least four times a year.

"ARTICLE XV. FINANCES

"SECTION 1. All branches and committees of the Youth Communist League shall keep financial records and shall issue financial statements periodically.

"SEC. 2. Every Young Communist League convention, whether national, State regional, or county, shall set up an auditing committee to audit the finances o the respective leading bodies.

"ARTICLE XVII. DIVISIONS OF THE YOUNG COMMUNIST LEAGUE

"SECTION 1. The national council shall be empowered to set up such divisions of the organization as it deems necessary with appropriate functions.

"ARTICLE XVII. INTERNATIONAL AFFILIATION

"SECTION 1. The Young Committee League of the United States of America is affiliated to the Young Communist International.

"ARTICLE XVIII. PUBLICATIONS

"SECTION 1. The national council shall issue a regular publication, which shall be the official organ of the Young Communist League.

"SEC. 2. The national council shall be empowered to issue such publications a it sees fit and to take measures to insure their circulation among the youth.

"ARTICLE XIX. EMBLEM

"SECTION 1. The emblem of the Young Communist League shall be the letters YCL in gold upon a red five point star, encircled by a golden background centered upon a red flag."

The following statements of purposes and beliefs of the Young Communist League are to be found in its declaration of principles, May 1937:

"We believe that through the maintenance of democracy today they will recog nize the greater hope and vision of tomorrow—a new social order—socialism!

"We who believe in socialism love our country not only for what it is but for what it can become, not for its suffering of today but for this promise of the future—when America shall belong to the people.

"But the Young Communist League believes that real educat only th rough bo[illegible] study and action, by combining the study sciences as illuminated by Marxism-Leninism with active part labor and progressive movement.

"The Young Communist League is an organization for edu[illegible] recreation.

"Capitalism, and particularly fascism, its most reactionary form, denies culture to millions and degrades even that culture which is available.

"Unity alone can win the great battles that lie ahead. Because of the grave menace of war and fascism, we consider as the most important and urgent task the unification of youth in behalf of their most essential needs. We are happy to note that this is already taking place through such move ments as Christian Youth Building a New World and the American Youth Congress.

"Today more than ever the onrush of war and fascism should unite Socialist and Communist youth who have declared their belief in a Socialist society.

"The followers of Trotsky have been exposed as wreckers and assassins in the land of socialism—the Soviet Union. They have conspired with fascism to defeat the heroic struggle of the Spanish People's Front.

"We will enlist the support of the youth of the Nation to insist that the American Government adopt an effective peace policy in cooperation with the peace efforts of the Soviet Union. We are unalterably opposed to the reac tionaries of this Nation who would draw us into another war in alliance wi the Fascist powers.

"We oppose the expenditures of billions of dollars for armaments in Am and propose that these funds be used to help young people secure educatio employment. We favor the nationalization of the munitions industry stand for the abolition of the Reserve Officers Training Corps and the e tion of all Army influence and personnel from the Civilian Conservation camps. We pledge our aid to the annual student peace strike.

"We condemn American intervention in the internal affairs of the American countries and the Philippines, and we support the Puerto people in their fight for independence. We support the struggles oppressed peoples the world over.

"The Young Communist League gives its support to the first land of socialism the Soviet Union.

"Real democracy flourishes and is extended under the new Soviet stitution.

"We hail these triumphs as a challenge and an inspiration to America a forecast of what socialism can mean in our land. The Soviet Union can record these achievements because it has remained true to the principles of internationalism, and has been guided by the teachings of Marx, Engels, Lenin, and Stalin.

"We will support all measures aimed at the curtailment of the usurped, autocratic powers of the Supreme Court."

The following is a list of the officers of the "Young Communist League":

Gil Green, national president.
Angelo Herndon (Negro), national vice-president.
Henry Winston, national administrative secretary.
Carl Ross, national executive secretary.
Celeste Strack, national student director.

[illegible] COMMITTEE

Jack Kling, State executive secretary, Illinois.
Clarence Prence.
Frank Cook.
Dave Doran.
Henry Winston (Negro).
Lloyd Brown, State secretary, western Pennsylvania.
Celeste Strack.
Mac Weiss, State organizer, Ohio.
Tom Morton, Harlem, N. Y., organizer.
Jack Little, State secretary, New York.
Irving Herman, Chicago organizer.
Jay Olsen, Los Angeles organizer.
Frank Curry, Birmingham, Ala., organizer.

EVERY FACTORY A FORTRESS

In its companion pamphlet, The Communist Party in Action, this statemen may be found: "We must build our revolutionary unions and the revolutionar oppositions of the A. F. of L. unions first of all in the shops. Our slogan is Every shop must become a fortress of communism." The Communists furthe state, in another pamphlet, The Manual on Organization: "The way of the fina overthrow of the old order, and the establishment of the new—the proletaria dictatorship. * * * These experiences will be learned in the day-to-da struggles * * *, in strikes for higher wages and shorter hours, in strug gles for relief, for unemployment insurance, against evictions * * *."

"The workers learn through their own experiences that they must have Communist Party, which leads them in their struggles * * *. In order t achieve this, every available party member must join the union of his industry craft, or occupation, and work there in a real bolshevik manner."

THE CONSPIRACY PLANNED

"The shop unit is trained to work in a conspirative manner, in order to orga ize and lead other workers, to safeguard the organization and to prevent it members from being fired." The C. I. O. follows this line and uses the Nationa Labor Relations Board to force reinstatements.

Communists explain their stand in their publication, The Way Out: "It (th Communist Party) must work toward the bringing together the independe and revolutionary trade unions into an independent federation of labor. Th building of such a broad class trade union, center of all class unions whic stand outside of the American Federation of Labor as a part of a wide rev lutionary trade union movement, is an important task of our party * * The outstanding events of the recent period are a more rapid and deep-goi radicalization of the workers, already expressed in the growth of a militant ma strike movement already embracing large sections of workers in the basic indu tries."

It is interesting to note that as early as July 10, 1933, the Communists alrea had high hopes of success in the auto industries. In an Open Letter to Members of the Communist Party, issued by the central committee of the Com munist Party, they claimed that "the success of the party and of the Au mobile Workers' Union in Detroit shows what can be accomplished by the par and the revolutionary trade unions in other districts when they vigorou defend the interests of the workers and carry out the principles of concentr tion in the proper way." The C. I. O. has continually concentrated its effor first on auto, secondly on steel, and announces a contained plan of concent tion. Homer Martin, head of the C. I. O. auto unit is now faced with Com munist trouble makers in that industry.

STRIKES REHEARSALS FOR REVOLUTION

In the twelfth plenum of the executive committee of the Communist Inte national, Prepare for Power, issued in 1934, they declare: "The revolution, a certain extent, veils its offensive operations under the guise of defe * * * Strikes are mere dress rehearsals for the revolution." It is noticea that the various moves of the C. I. O. are painted as defensive, and the bla for difficulties are shouldered on others.

The following quotation is taken from the eleventh plenary sessions repo "Every shop must become a fortress of communism, and every member of t party an organizer and leader of the daily struggles of the masses."

In August 1935, in New Steps in the United Front, the Communist Int national advocated "united struggles of the workers and unity of the tr union movement in each country," and ordered the establishment of "*one tr union for each industry;* one federation of trade unions in each country; international federation of trade unions in each industry; one general inter tional of all trade unions based on class struggle." This apparently is C. I. O. plan for its sections are set up mostly if not entirely, each to co one industry, and each are internationals. Communist movements change th names as frequently as their organizations are discredited in the public e It is significant to note that recently the C. I. O. has been speculating renaming itself. It is understood that the names Council, Federation, Congress, are being considered. It is understood that a convention of C. I. O. will be called in the fall for the purpose of deciding on a new name.

C. I. O. ECHOES MOSCOW DEMANDS

At this Third International Congress in 1935 in Moscow, the head of the American section, the Communist Party of the United States reported: "We in the United States have already before the Congress, in the main solved the problem of trade union unification," believing evidently they had Lewis and his crowd sold on the plan.

Earl Browder, in detailing the proceedings of the Third International to the members of the Communist Party attending its convention in New York City held the same year, called for a greater intensification of the Communist drive for strikes, for industrial union, cancelation of farmers' debts and mortgages. He also urged his followers to fight against the deportation of the aliens within their ranks and condemned the Supreme Court, Germany, and Japan. Later we saw the C. I. O. linked in the drive against the Supreme Court, for industrial unionism, against deportations and for boycotts on Japan, Germany, and Italy.

The report of the "Resolutions of the Ninth Convention of the Communist Party of the U. S. A.," made in 1936, declared that "the immediate task is to drive forward more energetically on the issue of organizing in the basic industries, industrial unions, and following a policy of class struggles. We must seek to isolate the reactionaries (in the auto, steel, etc., industries) who stand in the way of organizing the unorganized, demand that the C. I. O. pass over from words to deeds * * *; to promote the organization of the power of the working class for the higher stages of struggles for the overthrow of capitalism and the establishment of socialism." It called for the strengthening of shop units and for their increased prestige in the trade unions, to establish additional units in auto, steel, rubber, and key industries, and "to develop within the A. F. of L. a struggle for industrial unionism." They have isolated the A. F. of L. and are now attempting to isolate Homer Martin, the head of the C. I. O. auto unions and the struggles were immediately intensified.

ORDERS TO DISREGARD GOVERNMENT

Company unions today, mentioned as the communists' main targets in 1935 particularly those unions in the Chrysler, General Motors, Weirton Steel, Fisher Body, Jones & Laughlin, U. S. Steel, Chevrolet, Nash, Auburn plants and in the rubber, oil, and packing industries. The reds called for strikes and picketing until all demands were met, and to reject all efforts at labor truce even if made by the Roosevelt Government. It demanded the formation of unions which would "not depend on congressional laws and presidential boards, but rather one capable of striking and picketing until demands were met." Certainly these have been the tactics of the C. I. O. even to the extent the A. F. of L. says recently, that the National Labor Relations Board on charges by the C. I. O. are painting A. F. of L. unions as "company unions."

As an example of success the Communists pointed out that there were 1,898 strikes, bringing out 1,141,363 workers with the loss of 15,641,329 working days in 1935, as compared with 894 strikes in 1931, which had brought out 279,299 workers with the loss of 6,838,183 working days. They bragged over these losses in wages to the workers as Communist successes.

REDS PRAISE LEWIS FOR APPOINTING REBELS

Until 1934, the Communists were as much opposed to John L. Lewis, Hillman, Dubinsky, and others as Lewis appeared to be to the Communists and their plan at that time. The "reds" termed them labor misleaders, strike breakers, and racketeers, but in the June 26, 1936, Report on the Ninth Convention of the Communist Party, the work of these men is praised, and William Green, Matthew Woll, and William Hutcheson, A. F. of L. leaders, are so condemned. The Communist report stated: "While we meet, the C. I. O. is launching the second great crusade to carry trade unionism into the open shop citadel of monopoly capital. Nothing so heartening has been seen in the labor movement since 1919, when the chairman of our party, Comrade Foster, carried through the first great organizing campaign in the steel industry, which culminated in the great general strike. We fier industr t the transformation would have been impossible without the ener man Hook ent, well planned, and well directed participation of the Com me say to you nd its followers in this (C. I. O.) movement." At this tim lliant over the Lewis C. I. O. move and referred jubilantly to eart and expressed appreciation over

the Lewis appointment of John Brophy as director of the C. I. O., stat "with Brophy came other men of the same calibre—Powers Hapgood, Clare Irwin, the long list of rebels, many of whom had fought Lewis' policies ju before," and it could have been added that Lewis had fought them and th policies years before.

COMMUNISTS PUSH C. I. O. FORMATION

Such progress was made during the time intervening between Lewis's ex sures in 1924 and the 1935 convention of the American Federation of La that the issue of industrial unionism was forced to the floor of the A. F. of convention. A Communist report says: "At the 1935 A. F. of L. conven militant Socialists and Communists united to support industrial unionis and the Labor Party * * *." The Communists had through their Tra Union Unity League late in 1935 formulated the A. F. of L. Trade Union Co mittee, better known as the Rank and File movement within the A. F. of unions, which locals had been deeply penetrated by the "reds" having ord their independent union members to join the A. F. of L. locals.

C. I. O. IS BORN

Following the enforced break in the ranks of the A. F. of L. at the Atla City convention, the C. I. O. was trotted out into the field of labor activi Labor Fact Book, published by the "reds," states that the C. I. O. was found in Washington, D. C., in November 1935 and that the chairman was John Lewis; secretary, Charles P. Howard, and that the national committee consi of Sidney Hillman, David Dubinsky, Thomas F. McMahon, Harvey Fremm M. Zaritsky, and Thomas Brown. "Sit-down" strikes began to sweep t Nation and leaders of the A. F. of L. of course began to denounce the str as Communist-inspired and Communist-led affairs. Those whom Lewis had viciously denounced as Moscow agents in earlier days for attempting what now assumed leadership of, were found solidified into the Lewis camp, fig ing with might and main to "organize the unorganized" to force the A. F. of to the "industrial union" plan, to "undermine the A. F. of L. leadership," to up a powerful "industrial union" outside and to steel the workers of the na into a revolutionary fervor and to greater and continued struggles and to b a radical political movement all of which Lewis had denounced before as C munist conspiracy.

Coincident with this movement sprang forth the C. I. O. labor party a ment, a fight against the Supreme Court of our land and unlawful seizure property followed. Government and the laws of our land were openly flou Workers were being told that "for might" they must "unite." Might exercised.

If Mr. Lewis was correct in his analysis of the "struggles" for "indus unionism" in the early days, he knows without a doubt that he is being as a Communist tool today. The public has a right to believe that the pr turmoil is also "Moscow made," and is as "un-American," as Mr. Lewis pa it to be in 1924. If it was wrong without Lewis's hand, it cannot be ri with his hand in it.

WILL NOT DRIVE "REDS" OUT

Homer Martin, the ex-preacher from Leeds, Mo., who heads the auto w section of the C. I. O. movement and which section has been keeping Mich Wisconsin, Ohio, Indiana, and Illinois, particularly, in a state of unrest, in effort to rule or ruin the auto, auto accessory, and auto parts industries the Nation denied in the past that there was a Communist slant to the C. I movement but recently he has charged that many of his immediate underst are Communists, while Lewis and others of the movement remain cunn silent on the question, either ignorant as to the true situation within t own circles or Communist-like are denying the facts to the public, bec acknowledgement might defeat certain of the C. I. O. plans. The Communis their official organ, the Daily Worker, December 6, 1935, say: "If a sympa is in a high and stragetic position, he may best preserve his usefulness by plete passivity insofar as his sympathizations are concerned." Not only has Third (Communist) Ingetic, persistly the C. I. American section taken active part in the Communist Party that the name C. I. O. in the United S

Likewise has the C. I. O. now received the endorsement the United States, and on June 26, 1937, they receiv action and support of the Communist Mexican Federa head, Vincente Lombardo Toledano, who is also head o University of Mexico, a member of the Mexican "re head of the Mexican Labor Relations Board. His 850,000 members, he claims. The pledge of the "r "Comrade" Toledano to "Comrade" Lewis. Lewis, it is an invitation to attend a national convention of t summer in Mexico. Communist organs state that t regarding an alliance of North and South American un

That the C. I. O. (except the auto union) has no ranks of Communists is shown by the emphatic denial Murray, Ohio leaders of the C. I. O., of the statement Stevens (alias Stevenson) had been dismissed from t appeared in the official organ of the Communist Par said: "There has been no purge. Nobody has been the statement. In the meantime, Lewis conferred radical alien labor leader on the west coast, Jul Columbia University student and active in Commun Columbia, was indicted in Ohio in connection with a ri were killed. Stevens was indicted on charges of dis tearing up railroad ties during Ohio strikes.

ENTIRE C. I. O. "RED"

It has been publicly charged by leaders of the Ameri and now admitted by some C. I. O. leaders and gloa themselves, that the entire strike movement is honey Socialists and revolutionary Communists. In fact, the and among themselves chiefly, brag over the fact th leaders of the so-called labor struggles that have be They issued a plan for sit-down strikes, which was ve them, and they were the chief propagandists, agitators organizers of the affair.

While not all in the C. I. O. movement are Socialis very noticeable that a great many of the local leaders Scores of C. I. O. agents in the North, South, East, W are known Communists and Socialists.

C. I. O. LEADERS ON "RED" HONOR R

Is it any wonder then that Lewis, Bridges, Curr Communists' Labor Roll of Honor for 1937, which i from a Communist viewpoint: "Stalin (Russia), Ca Caballero (Spain), Harry Bridges (United States mari John Lewis (C. I. O. head), Homer Martin (C. I. O. a leader with Bridges), Krhypnen (Russia), and Tom Mo

C. I. O. LEADERS HAVE "RED" BACKGROUND

We do not accept the writer as the sole authority fo C. I. O. is overflowing with Communists. Note that American Federation of Labor, the largest organizatio openly makes this charge. On May 21, 1937, he deliver radio, during which he read an item taken from a Ru stated that the "C. I. O. is being energetically supported Socialist Party." Mr. Green also charges that "an ev groups of newly organized workers connected with the destructive policies. As a result, public opinion is turnin New York Times, considered to be an extremely libera an article in its June 1937 issue, after the writer the mines and made careful research of the question, which s Socialist and Communist backgrounds have been active mines, the power plants, and other industries under the In this connection, Congressman Hook of Michigan (s following statement: "Let me say to you that while I w

The State, under which private property, including the church, the home, and he press is sanctioned; the family, which is the bulwark of individualism, and eligion, which prescribes a system of ethics incompatible with the principles of Marxism.

The aims of communism might be best explained by the Communists themselves.

According to the Communist *Manifesto*, the following are among the admitted aims of the Marxians everywhere and including those in the United States.

Page 29, chapter 2 (Communist *Manifesto*): "The immediate aim of the Communists is—the formation of the proletariat into a class, overthrow of the bourgeois" and "conquest of political power by the proletariat. * * *

Page 30: "The theory of the Communists may be summed up in a single sentence: Abolition of private property * * *," and the—

Page 34: "Abolition of the family." Even the most radical flare up at this infamous proposal of the Communists. It says (p. 35): "*On what foundation is the present family based? On capital, on private gain. The bourgeois family will vanish as a matter of course when its complement vanishes, and both will vanish with the vanishing of capitalism.*"

Page 39: "The proletariat will use its political supremacy to wrest by degrees, all capital *from the* bourgeoise, to centralize instruments of production in the hands of the State, i. e., of the proletariat.

"In most advanced countries the following will be pretty generally applicable: Abolition of property in land * * *, abolition of all rights of inheritance * * *, confiscation of the property of all immigrants and rebels * * *, centralization of credit in the hands of the State, by means of a national bank with State capital and exclusive monopoly."

Of course the church is in for it too, for it says that "religion is the opiate" that the capitalist administer the working class and that it must go with the "capitalist" system of which the Marxians claim it is a part.

Now, in another document, this by Lenin, who fathered the Communist Manifesto into action in the present-day world, he says that after the above is accomplished the "State will be abolished." *Meaning*, of course, that after everything has been centralized into the hands of the State, that the State as such will be abolished and in its place will come the *dictatorship* of the proletariat, which he says will have to adopt suppressive means to protect the dictatorship from counterrevolutionists, meaning all who dissent.

Mr. Browder and other revolutionaries give much lip service publicly, to the suggestion that they are all out to "save democracy," they are particular not to state, however, that they are out to "save our Republic." But in their instructions to revolutionaries in the schools of training in our country, one of their lessons taken from The State and Revolution by Lenin, says: "The more developed democracy is, the nearer at hand is the danger of a program of civil war in connection with any profound political divergence."

That statement appears to be in keeping with the statement of Madison in the Constitutional Convention in which statement he tells of leading the fight against the creation of a democracy instead of a republic as was finally created under our Constitution. He warned that a democracy could subject our people to "external and internal dangers" through actions of organized minorities and that a proper interpretation of the Constitution as adopted and which created the Republic, could guard the people against such dangers.

It may be pertinent then to show in the course of my testimony how the revolutionaries are trying to force the Republic toward a democracy of the "more developed" type referred to by their leader (Lenin), which he says would lead to civil war

Let us consider then Earl Browder's *analysis of* the situation in the United States at present. That is what he says briefly concerning present conditions in the United States (taken from What *Is Communism*, by Earl Browder, general secretary of the Communist Party):

"In America most of our difficulties lie precisely in the *achievement* of power for the working class, in the establishment of the soviet government. After that has been accomplished, the American capitalists will have *no great powerful allies from abroad* to help them continue the struggle. It will already be clear that world capitalism has received its death blow. The soviet *government* of America will take over a society already technically prepared for communism. Where in Russia it was necessary to go through the prolonged period of war communism, the N. E. P., the first and second 5-year plans, in America we will start economically at a stage even further advanced, at about the point which Russia will reach in her fourth 5-year plan.

The only thing that could change this favorable perspective for a soviet America would be a possible, but unpredictable, destruction of American economy by an imperialist war, carried out by agencies of destruction hitherto unknown.

The United States, in short, contains already all the prerequisites for a Communist society except the one single factor of soviet power. In Russia, Lenin, said, several years after 1917, "The Soviet power, plus electrification, equals communism." In America the electrification already exists, so we can shorten Lenin's formula.

You may begin to see, gentlemen, that the many efforts to destroy the balance in our Government, by attempts to usurp State rights and to shackle the Supreme Court, while not alone engineered by Communists, but demanded by all Marxians and by some non-Marxians, would lead right down the Marxian alley and help them to accomplish their goal.

I am not contending that all who favor such changes are Marxians or that all who favor such changes are purposely trying to destroy our system of government. Some are undoubtedly sincerely hopeful of helping sustain our system by such methods, but if the results regardless of the motives behind them threaten to be the same, we should tread carefully.

Nazi-ism, Fascism, Communism, and Religion

We charge the Socialists, atheists, anarchists, and Communist movements with being a direct effort to destroy the Christian religion. We need not point further than to what Marxians have done in the way of destroying the Christian religion in Russia and Spain to prove that.

We charge on the other hand that fascism and nazi-ism are out to destroy the Jewish religion and to at the same time place the Christian religion under State control robbing it of its freedom and eventually changing if not destroying it.

We have to point to no other source as proof, than present-day happenings in Italy, Germany, and Austria. To destroy religion the State necessarily destroys the individualism of the people making them dependent directly on the Government, thereby subjecting them to its rules regarding religion and making the State the god. All of these attacks on religion comes about through varied interpretations of Marx works who built the program of destructive action against religion.

SUMMARY

We have shown that "60" persons (central committee of the Communist Party of the United States) absolutely control and rule the Communist movements in the United States. We have shown likewise that "60" (executive committee, Communist International) control the world Communist movement which includes the section in the United States.

We have shown that in the Communist Party and its fronts the Communists have a membership and following of over 6,500,000 which we estimated for all un-American movements in the United States, but we made our estimate low to provide for duplication of which there are many.

We have shown by submitting financial reports of some of the larger organizations and by showing the wide propaganda and organizational activities that it is easily estimated that over $10,000,000 a year is spent or collected for un-American activities in the United States.

We have shown that most of the un-American campaigns are among foreign-born and under foreign dictation and encouragement.

We have shown that over 80 internationals—and we could have enlarged that—control the activities of many national branches of un-American actions in the United States.

We have shown that the "reds" use a member of "Wall Street bankers" families in their efforts in the United States while parading before the workers that "Wall Street" bankers control America.

We have shown that in the face of Communists' campaign against the American press as a "capitalistic monopoly" that the Communist press is the world's biggest monopolity and trust.

We have proven that the Communists claim an 800,000 following in New York alone.

We have proven in every respect our opening statement to this committee.

We charge that communism, socialism, pacifism, atheism, and anarchism are of the same school of thought and purpose and that fascism and nazi-ism are but

Miss HUFFMAN. If I may be permitted, the press has a
regarding my being investigator for General Johnson in 193
would like to clarify that. General Johnson was not with the
Theater Project under the W. P. A., as Administrator, in 19
during the time General Johnson was at 116 Eighth Avenue
ministrator of the W. P. A., the Drama Division, at that time,
under him. I was under him, but not as an investigator for
Johnson's office. However, there had been some activities on a
project over near my home, and I had taken the matter to
Johnson in behalf of some young girls, 12 or 14 years of a
were involved. I did work through General Johnson as an in
tor, helping with that investigation. So, very briefly, General
son asked me to see about something, but while I was not an
gator for him on that work. Later on, when Mr. Ritter ca
the office, I was on the pay roll of the New District Theater
and did investigational work. I remained there until Mr.
Nunn, who is listed as an active Communist, I believe, came in
and then I was no longer on the pay roll.

I wondered if I could not bring that statement in to clari
angle.

Mr. THOMAS. All right; go ahead.

Miss HUFFMAN. Stephan Karnot, an active Communist,
wife were also on the project at the time. He was employed
retary to Rose Fisher, and they held Communist meetings
home. I was invited to attend Communist meetings in the

Morris Watson was a newspaper editor, who was dismissed
Associated Press for union activities. This was the Morris
who was in the test case in the Supreme Court decision of the
Act. Incidentally, he received from the Supreme Court 2
back pay. Two years later he came back to the project
increase of salary.

Bernard Freund was an insurance salesman.

Mr. THOMAS. He is one of the supervisors of the Theater

Miss HUFFMAN. Yes, sir. Edward Goodman was an amat
ater director, whose chief claim to fame was as the founder
Washington Square Players Guild.

Jack Rennick was a clerk in his uncle's delicatessen st
Joseph Brogan was a rug salesman at Bloomingdale's. Franc
is a colored girl, and is a blues singer. Madelyn O'Shea wa
in the Workers Laboratory Theater, later known as the A
Laboratory Theater. The only thing I know about the
Laboratory Theater is the mention that was made of it in
Masses.

Halstead Wells was employed as instructor at Yale Un
He directed plays for the project. He was an instructor at
would direct plays for the project, and would go back.

Phillip Barber, who at one time was a director on the pro
a graduate of the Baker Forty-Seven Workshop. He was wel
to theater workers, but he had had no professional experi
far as I know.

Those were among the original men, and then recently
James Ullman, who had been a theatrical producer and exper
with theaters. He was appointed on the Federal Theater

, what I am talking about is the inefficienc
in this connection I will read you a comment
It is an article written by Leonard Lyon
Den. It is as follows:

ENTERPRISE

A few Sundays ago James Ullman told the public, v
section of the New York Times, that he was
erican Theater. Mr. Ullman, who had four flops
ps it was all the fault of the critics, that for him th
ure, and that it was impossible to make a living at it
He was very frank in writing his theatrical obituary.
ly through. Within the next 10 days, however, the
ction will announce that James Ullman has accept
ant administrative positions in the Federal Theater.

Mr. THOMAS. What is the date of that?

Miss HUFFMAN. I do not have the date of th
pointed in 1937. I should say that it wa
ember.

Now, since experience was not required as a
k at their activities. Early in the history of t
re formed the group known as the Supervi
ervisors' Council from the beginning worked
C. P. C. and the Workers Alliance, but de
nection with them. The C. P. C. has alway
en with ability or authority to hire or fire
C. P. C., that organization being used exclusi
hers can belong to it. Consequently, the super
rity to hire and fire, were not supposed to b
rked with them. The first contact with them
en a mail control was set up. Mr. Barber ex
ard Beck had been using the stationery of
ministration. I do not know just exactly wha
rious things were being done, and letters wer
re not befitting the dignity of the Works Prog
ey wanted the mail opened, assorted, and
tments, or to the people working in the I
This was the first talk in Mr. Ritter's office, a
survey. I was at it for 2 days. Outside o
and many things that should not have been a
supervisors. Mr. Barber called me the ne
, with the exception of John Houseman, the p
l directed to them if they belonged to the
ld be sent to their homes. They were using
though it was their own personal property.
the condition right in the Supervisors'
man in the beginning outlined a policy for t
being set up. It was not an outline or plan
was through Mrs. Flanagan and the other sup
I have that outline for the theaters and fo
, outlining the way to handle the work and
dure. It gives an outline of the duties.
bers. Bernard Freund, as I have said, was
, and I will say, incidentally, that the Supe

Mr. THOMAS. My point is, that we are taking the same steps in this country that they took in some of those other countries, and I think the public should know it.

The CHAIRMAN. That is wandering far afield.

Mr. THOMAS. I believe such steps are un-American, and I should like to hear the answer to the question.

Mr. STARNES. I think the question in its present form is improper, because it is entirely too general. If you want to name names——

Mr. THOMAS (interposing). All right; I will name names.

Mr. STARNES. And specific acts——

Mr. THOMAS. I will name specific acts.

Mr. STARNES. It will be a different proposition, of course; and then I think the committee should pass upon the wisdom of such question. The committee does not want to lay itself open to the charge that it is injecting partisanship into its hearings.

Mr. THOMAS. I agree with that, Mr. Chairman; but inasmuch as you have asked me to name names and specific acts, I will do so.

Mr. STARNES. I said if you did name names and specific acts, that would present it in a different light, and then the committee could pass on it, as to whether it is in line with our inquiry.

Mr. THOMAS. All right; let me word the question in a different way.

Mr. Matthews, do you not think that the many steps taken by our Government in the last few years, such as the recommendations of the Supreme Court packing bill and the reorganization bill—and those are two specific cases—which have been made, do not constitute a prelude to dictatorship in this country?

Mr. STARNES. I think that question is entirely improper. It is the judgment of the Chair—and if the committee wants to overrule it, that is their province—that it is injecting partisanship into the hearing.

The CHAIRMAN. The Chair is entirely correct in that, and the chairman agrees entirely in the ruling.

Mr. STARNES. If the gentleman wishes to overrule the Chair, he is at liberty to do so.

Mr. THOMAS. No; I have not got a chance.

Mr. STARNES. All right; proceed.

Mr. MATTHEWS. Point No. 2: In understanding the work of the Communist Party's united front, it is necessary to distinguish between *maneuver and principle*, between transitional slogans and ultimate objectives.

The principle to which communism has always adhered and still adheres is "the dictatorship of the proletariat." The current maneuver adopted by the Communist Party is to speak everywhere, in season and out of season, of the need to "defend democracy."

Or again, the principle which is unalterable in communism is that violence, in which Communists take the offensive against the bourgeois, is necessary for the setting up of the dictatorship of the proletariat.

And I can buttress that by endless quotations from the literature.

The current maneuver of the Communist Party is to try to impress the gullible with the belief that the party is in favor of wholly peaceful methods of bringing communism.

Or again, the principle, stated again and again in Communist ture, is that the so-called reformist trade-unions must be e destroyed. The current maneuver of the Communist Party is to a deep and genuine interest in building up these same trade-uni

Georgi Dimitroff, in his much-publicized speech at the S World Congress of the Communist International, explicitly attention to the need for what he described as "transitional slog propaganda devices to be used in the period preceding the dictat of the proletariat. "The defense of democracy," "Peace," "Th of fellowship extended to Catholic brothers," and "Building the unions," are all transitional slogans which, it is assumed, are discarded when the moment arrives to seek openly the attainm communism's objectives.

Third. Lenin said: "Our task is to utilize every manifestat discontent, and to collect and utilize every grain of even rudim protest." The united front is communism's method apit upon any current discontent, no matter how slight o dim If there is current sentiment for peace as ordinary folk unde the word, it is the business of the Communist Party to utiliz sentiment for its own ultimate objectives. If there is current d in the economic affairs of the country, it is the business of th munist Party to utilize that distress for its own ulterior pu If there is even rudimentary protest against the curtailment liberties anywhere (outside the Soviet Union), it is the busi the Communist Party to organize and utilize that protest for ng up its own movement. All this is the major strategy in th munist science of revolution.

It can be stated, I think, without fear of successful contra that the Communist Party had no interest in peace, or job se or civil liberties, as most Americans understand these things. are simply the temporary ideas and ideals which the Com Party utilizes for its objective of bringing class war, almost un insecurity, and the complete abolition of civil liberties.

Fourth point. It is relatively easy to identify the profe united fronters or stooges who are doing the cover-up ork Communist Party in the united-front maneuvers. per this class is almost certain to bob up at a num ti whole maneuver—as I have shown you, I bobbed up in 20 myself, and no intelligent American could possibly be excuse knowing that I was functioning as a united-front leader f Communist Party.

Take, for example, Mr. William P. Mangold, who is one editors of the New Republic.

The CHAIRMAN. Is he the one who visited Spain not long a

Mr. MATTHEWS. Yes, sir.

The CHAIRMAN. Did he represent himself as the secretary f congressional mission?

Mr. MATTHEWS. I do not know. He went to Spain on be the North American Committee to Aid Spanish Democracy, w a Communist united-front organization. He then came ba some of you will recall, perhaps, that he went around the Ho Senate Office Buildings and signed up 60 Congressmen and States Senators to a statement to send greetings to the I Government of Spain.

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STRICTLY CONFIDENTIAL

June 22, 1942

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			QUANTICO

RE: WIRE TAPPING

DECLASSIFIED BY 8269/WSB/dc
ON 7-9-84
2KS

Dear Sir:

In response to the request by the Bureau for an opinion concerning the construction and application of two decisions rendered by the Supreme Court on April 27, 1942, relating to wire tapping in the cases of Goldstein versus United States and Goldman versus United States, the Department has advised that these two decisions enunciate the following propositions of law:

"1. The Court in the Goldman case reaffirms the decision in Olmstead versus United States, 277 U. S. 438, rendered in 1928, that wire tapping does not constitute a search and seizure, and, therefore, is not covered by the ban of the Fourth Amendment against unreasonable search and seizure. This ruling eliminates the constitutional question entirely from wire tapping matters. Wire tapping is not a violation of any constitutional privilege, and the only point to be considered is whether and under what circumstances it constitutes a violation of an Act of Congress.

Mr. Tolson
Mr. E. A. Tamm
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Carson
Mr. [illegible]
Mr. [illegible]

"2. The use of a detectaphone attached on the outer wall of the premises occupied by the person whose conversation is being overheard, is not a form of wire tapping, and, therefore, is not barred by Section 605 of the Communications Act of 1934.

COMMUNICATIONS SECTION
MAILED 13
JUN 23 1942
A.M.
P.M.

"3. The prohibition of Section 605 of the Communications Act of 1934, in so far as telephone conversations are concerned, is limited to interception of the communication traveling between the two parties, and does not include the use of a device overhearing what is said at one end of the conversation.

45

"4. The Court leaves open the question as to what would be the result if the premises were invaded and an instrument, such as a dictaphone, were left therein for the purpose of overhearing a conversation carried on in such premises. In my opinion, however, in view of the limitation placed by the Court on the prohibitions of Section 605 of the Communications Act, the use of a dictaphone in such a manner would probably not be violative of the statute.

"5. Only a person who was a party to a conversation intercepted by wire tapping has a standing to object to its use. Any other defendant in the same case who was not a party to the conversation will not be heard to raise an objection that the evidence was illegally obtained. This conclusion was reached on the analogy to the cases which hold that in the event evidence is obtained by an unlawful search and seizure, no defendant may move to suppress the evidence except the one who was subjected to the unlawful search and seizure.

"The Court did not pass upon the question as to whether wire tapping in and of itself is a violation of the statute if such wire tapping is not connected with the use of the evidence obtained thereby in a court proceeding. On this point, therefore the law remains as it was before the decisions were rendered. It has always been our view that since the statute prohibits any one to intercept and to publish or divulge a communication covered by the Act, it is not unlawful to intercept communications, i. e., to tap wires, unless such interception is followed by publication or divulgence."

This information is submited for the attention and guidance of the investigative personnel in the field.

Very truly yours,

J. Edgar Hoover

John Edgar Hoover
Director

N EDGAR HOOVER
DIRECTOR

CC-287

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

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

JBL:ECR

June 6, 1942

MEMORANDUM FOR MR. LADD

RE: WIRE TAPPING

Transmitted herewith is a suggested insert for the Bureau Bulletin relating to wire tapping based upon the memorandum submitted by Judge Alexander Holtzoff of the Department under date of May 7, 1942, with reference to the two decisions rendered by the Supreme Court on April 27, 1942, in the cases of Goldstein versus United States and Goldman versus United States relating to wire tapping.

Respectfully,

J. B. Little

High Court Bans 'Forced' Confession

Mniority Assails 'Novel Doctrine'

By WILLARD EDWARDS

In a 6—3 decision fraught with significance to the law enforcement authorities of the 48 States, the Supreme Court yesterday ruled that a confession in a Tennessee murder case was inadmissible because it was obtained after 36 hours of questioning, although no violence had been employed.

On this basis, the court reversed the convictions of two men who had been sentenced to 99 years in prison for complicity in the slaying of Mrs. Zelma Ida Ashcraft, of Memphis, on June 5, 1941.

Criticized by Minority

The defendants were E. W. Ashcraft, 45, husband of the deceased, and John Ware, 20, a Negro, the latter, according to the confessions, having been hired by the husband to commit the murder.

The dissenting minority, composed of Justices Jackson, Roberts and Frankfurter, bitterly criticized the majority opinion read by Justice Black in which Justices Stone, Reed, Douglas, Murphy, and Rutledge concurred.

The "new and novel," doctrine enunciated by the majority may fetter the States in protecting society from the criminal, the minority protested, and the court was "moving far and fast" in the direction of prohibiting use of all confessions after arrest.

The use of the "due process of law" clause in the Fourteenth Amendment "to disable the States in protection of society from crime is quite as dangerous and delicate a use of Federal judicial power as to use it to disable them from social and economic experimentation," the minority asserted.

Arrested 10 Days Aft

The majority noted that Ashcraft had been taken into custody, 10 days after the crime, about 7 o'clock on a Saturday evening and was questioned continually until Monday morning at 9:30 o'clock. Ashcraft did not complain that he was physically abused but he was examined by relays of officers until, after 28 hours of questioning, he named Ware as the murderer.

"The Constitution of the United States stands as a bar against the conviction of any individual in an American court by means of a coerced confession," the majority opined.

"For 36 hours after Ashcraft's seizure during which period he was held incommunicado, without sleep or rest, relays of officers questioned him without respite . . . We think a situation such as that here shown by uncontradicted evidence is so inherently coercive that its very existence is irreconcilable with the possession of mental freedom by a lone suspect . . ."

Established Principles Ignored

The minority opinion stated:

"A confession made by one in custody heretofore has been admissible in evidence unless it was proved and found that it was obtained by pressures so strong that it was in fact involuntarily made, that the individual will of the particular confessor had been overcome by torture, mob violence, fraud, trickery, threats or promises.

"Questioning is an indispensable instrumentality of justice . . . We cannot read an undiscriminating hostility to mere interrogation into the Constitution without unduly fettering the States in protecting society from crime."

Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Carson
Mr. Coffey
Mr. Hendon
Mr. Kramer
Mr. McGuire
Mr. Quinn Tamm
Mr. Nease
Miss Gandy

[redacted]

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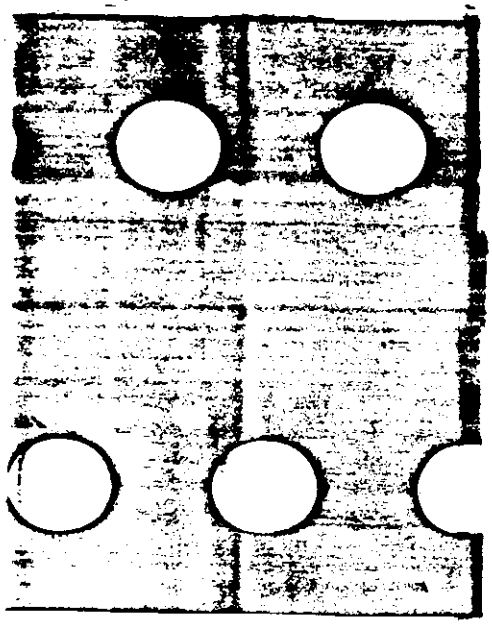
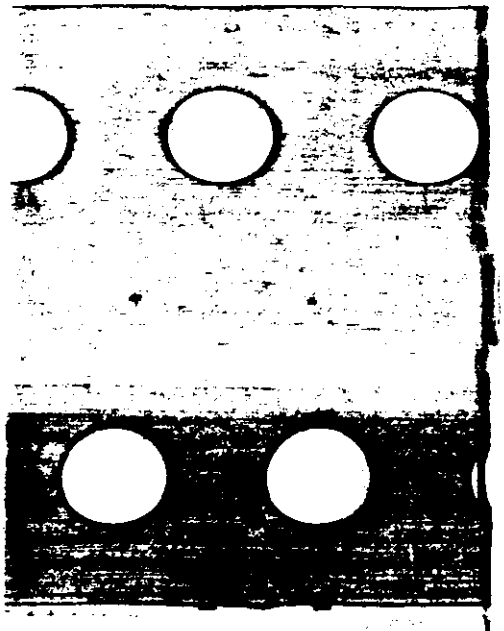
87 MAY 20 1944

MAY 27 1944

WASHINGTON TIMES-HERALD
MORNING EDITION 5-2-44





SUPREME COURT OF THE UNITED STATES.

No. 391.—October Term, 1943.

E. E. Ashcraft and John Ware, *Petitioners*, *vs.* State of Tennessee. } On Writ of Certiorari to the Supreme Court of the State of Tennessee.

[May 1, 1944.]

Mr. Justice Black delivered the opinion of the Court.

About three o'clock on the morning of Thursday, June 5, 1941, Mrs. Zelma Ida Ashcraft got in her automobile at her home in Memphis, Tennessee, and set out on a trip to visit her mother's home in Kentucky. Late in the afternoon of the same day her car was observed a few miles out of Memphis, standing on the wrong side of a road which she would likely have taken on her journey. Just off the road, in a slough, her lifeless body was found. On her head were cut places inflicted by blows sufficient to have caused her death. Petitioner Ware, age 20, a Negro, was indicted in a state court and found guilty of her murder. Petitioner Ashcraft, age 45, a white man, husband of the deceased, charged with having hired Ware to commit the murder, was tried jointly with Ware and convicted as an accessory before the fact. Both were sentenced to ninety-nine years in the state penitentiary. The Supreme Court of Tennessee affirmed the convictions. —Tenn. —.

In applying to us for certiorari, Ware and Ashcraft urged that alleged confessions were used at their trial which had been extorted from them by state law enforcement officers in violation of the Fourteenth Amendment, and that "solely and alone" on the basis of these confessions they had been convicted. Their contentions raised a federal question which the record showed to be substantial and we brought both cases here for review. Upon oral argument before this Court Tennessee's legal representatives conceded that the convictions could not be sustained without the confessions but defended their use upon the ground that they were not compelled but were "freely and voluntarily made."

62-73212-A

The record discloses that neither the trial court nor the Tennessee Supreme Court actually held as a matter of fact that petitioners' confessions were "freely and voluntarily made." The trial court heard evidence on the issue out of the jury's hearing, but did not itself determine from that evidence that the confessions were voluntary. Instead it over-ruled Ashcraft's objection to the use of his alleged confession with the statement that, "This Court is not able to hold, as a matter of law, that reasonable minds might not differ on the question of whether or not that alleged confession was voluntarily obtained." And it likewise overruled Ware's objection to use of his alleged confession, stating that "the reasonable minds of twelve men might . . . differ as to . . . whether Ware's confession was voluntary, and . . . therefore, that is a question of fact for the jury to pass on."[1] Nor did the State Supreme Court review the evidence pertaining to the confessions and affirmatively hold them voluntary. In sustaining the petitioners' convictions, one Justice dissenting, it went no further than to point out that, "The trial judge . . . held . . . he could not say that the confessions were not voluntarily made and, therefore, permitted them to go to the jury", and to declare that it, likewise, was "unable to say that the confessions were not freely and voluntarily made."[2]

If, therefore, the question of the voluntariness of the two confessions was actually decided at all it was by the jury. And the jury was charged generally on the subject of the two confessions as follows:

[1] The legal test applied by the trial court to determine the admissibility of the two confessions was stated thus:

"The Court has come to the conclusion . . . that the law in Tennessee with reference to confession is simply this: it is largely a question of fact as to whether or not a confession is voluntary, and is made without hope of reward or fear of punishment. It only becomes a question of law for the Court to decide when, from the facts surrounding the taking of the alleged confessions or statements, the Court, as a matter of law, can hold that the State has failed to carry its burden, which it has of showing that the confessions were free and voluntarily, and that reasonable minds could not differ, and could come to but one conclusion that the confessions were involuntary and forced."

[2] Notwithstanding the apparent fact that neither the trial court nor the appellate court affirmatively held the confessions voluntary, the Tennessee Supreme Court, in its opinion, restated the rule it had announced in previous cases, that, "When confessions are offered as evidence, their competency becomes a preliminary question, to be determined by the Court. . . . [If] the judge allow the jury to determine the preliminary fact, it is error, for which the judgment will be reversed." See Self *v.* State, 65 Tenn. 244, 253.

"I further charge you that if verbal or written statements made by the defendants freely and voluntarily and without fear of punishment or hope of reward, have been proven to you in this case, you may take them into consideration with all of the other facts and circumstances in the case. . . . In statements made at the time of the arrest, you may take into consideration the condition of the minds of the prisoners owing to their arrest and whether they were influenced by motives of hope or fear, to make the statements. Such a statement is competent evidence against the defendant who makes it and is not competent evidence against the other defendant . . . . You cannot consider it for any purpose against the other defendant."

Concerning Ashcraft's alleged confession this general charge constituted the sole instruction to the jury.[3] But with regard to Ware's alleged confession the jury further was instructed:

"It is his [Ware's] further theory that he was induced by the fear of violence at the hands of a mob and by fear of the officers of the law to confess his guilt of the crime charged against him, but that such confession was false and that he had nothing whatsoever to do with, and no knowledge of the alleged crime. If you believe the theory of the defendant, Ware, . . . it is your duty to acquit him."

Having submitted the two alleged confessions to the jury in this manner, the trial court instructed the jury that:

"What the proof may show you, if anything, that the defendants have said against themselves, the law presumes to be true, but anything the defendants have said in their own behalf, you are not obliged to believe. . . ."

This treatment of the confessions by the two State courts, the manner of the confessions' submission to the jury, and the emphasis upon the great weight to be given confessions make all the more important the kind of "independent examination" of petitioners' claims which, in any event, we are bound to make. *Lisenba* v. *California*, 314 U. S. 219, 237-238. Our duty to make that examination could not have been "foreclosed by the finding of a court, or the verdict of a jury, or both." *Id.* We proceed therefore to consider the evidence relating to the circumstances out of which the alleged confessions came.

[3] On motion for new trial, Ashcraft's counsel urged error in that, "The court . . . in delivering his charge to the jury . . . in no place or at any time . . . presented the theory of the defendant Ashcraft to the jury. He wholly and completely in his charge ignored the theory of the defendant Ashcraft that the alleged confessions or admissions made by him . . . were not freely and voluntarily made. . . ."

First, as to Ashcraft. Ashcraft was born on an Arkansas farm. At the age of eleven he left the farm and became a farm hand working for others. Years later he gravitated into construction work, finally becoming a skilled dragline and steam shovel operator. Uncontradicted evidence in the record was that he had acquired for himself "an excellent reputation." In 1929 he married the deceased Zelma Ida Ashcraft. Childless, they accumulated, apparently through Ashcraft's earnings, a very modest amount of jointly held property including bank accounts and an equity in the home in which they lived. The Supreme Court of Tennessee found "nothing to show but what the home life of Ashcraft and the deceased was pleasant and happy." Several of Mrs. Ashcraft's friends who were guests at the Ashcraft home on the night before her tragic death testified that both husband and wife appeared to be in a happy frame of mind.

The officers first talked to Ashcraft about 6 P.M. on the day of his wife's murder as he was returning home from work. Informed by them of the tragedy, he was taken to an undertaking establishment to identify her body which previously had been identified only by a driver's license. From there he was taken to the county jail where he conferred with the officers until about 2 A.M. No clues of ultimate value came from this conference, though it did result in the officers' holding and interrogating the Ashcrafts' maid and several of her friends. During the following week the officers made extensive investigations in Ashcraft's neighborhood and elsewhere and further conferred with Ashcraft himself on several occasions, but none of these activities produced tangible evidence pointing to the identity of the murderer.

Then, early in the evening of Saturday, June 14, the officers came to Ashcraft's home and "took him into custody." In the words of the Tennessee Supreme Court,

"They took him to an office or room on the northwest corner of the fifth floor of the Shelby County jail. This office is equipped with all sorts of crime and detective devices such as a fingerprint outfit, cameras, high-powered lights, and such other devices as might be found in a homicide investigating office. . . . It appears that the officers placed Ashcraft at a table in this room on the fifth floor of the county jail with a light over his head and began to quiz him. They questioned him in relays until the following Monday morning, June 16, 1941, around nine-thirty or ten o'clock. It appears that Ashcraft from Saturday evening at seven o'clock until Monday morning at approximately nine-thirty never left this homicide room on the fifth floor."[4]

Testimony of the officers shows that the reason they questioned Ashcraft "in relays" was that they became so tired they were compelled to rest. But from 7:00 Saturday evening until 9:30 Monday morning Ashcraft had no rest. One officer did say that he gave the suspect a single five minutes respite, but except for this five minutes the procedure consisted of one continuous stream of questions.

As to what happened in the fifth-floor jail room during this thirty-six hour secret examination the testimony follows the usual pattern and is in hopeless conflict.[5] Ashcraft swears that the first thing said to him when he was taken into custody was, "Why in hell did you kill your wife?"; that during the course of the examination he was threatened and abused in various ways; and that as the hours passed his eyes became blinded by a powerful electric light, his body became weary, and the strain on his nerves became unbearable.[6] The officers, on the other hand, swear that throughout the questioning they were kind and considerate. They say that they did not accuse Ashcraft of the murder until four hours after he was brought to the jail building, though they freely

[4] From the testimony it appears that Ashcraft was taken from the jail about 11 o'clock Sunday night for a period of approximately an hour to help the officers hunt the place where Ware lived. On his return Ashcraft was, for a short time, kept in a jail room different from that in which he was kept the rest of the time.

[5] "As the report avers 'The third degree is a secret and illegal practice.' Hence the difficulty of discovering the facts as to the extent and manner it is practiced" IV Reports of National Committee on Law Observance and Enforcement (Wickersham Commission), U. S. Government Printing Office, 1931, Lawlessness in Law Enforcement, p. 3. Station houses and jails are most frequently employed for third degree practices, "upstairs rooms or back rooms being sometimes picked out for their greater privacy." *Id.*, The Third Degree, p. 170. *Cf.* Chambers *v.* Florida, 309 U. S. 227, 238.

[6] " 'Work' is the term used to signify any form of what is commonly called the third degree, and may consist in nothing more than a severe cross-examination. Perhaps in most cases it is no more than that, but the prisoner knows he is wholly at the mercy of his inquisitor and that the severe cross-examination may at any moment shift to a severe beating. . . . Powerful lights turned full on the prisoner's face, or switched on and off have been found effective. . . . The most commonly used method is persistent questioning, continuing hour after hour, sometimes by relays of officers. It has been known since 1500 at least that deprivation of sleep is the most effective torture and certain to produce any confession desired." Report of Committee on Lawless Enforcement of Law made to the Section of Criminal Law and Criminology of the American Bar Association (1930) 1 American Journal of Police Science 575, 579-580, also quoted in IV Wickersham Report, *supra*, p. 47.

admit that from that time on their barrage of questions was constantly directed at him on the assumption that he was the murderer. Together with other persons whom they brought in on Monday morning to witness the culmination of the thirty-six hour ordeal the officers declare that at that time Ashcraft was "cool", "calm", "collected", "normal"; that his vision was unimpaired and his eyes not bloodshot; and that he showed no outward signs of being tired or sleepy.

As to whether Ashcraft actually confessed there is a similar conflict of testimony. Ashcraft maintains that although the officers incessantly attempted by various tactics of intimidation to entrap him into a confession, not once did he admit knowledge concerning or participation in the crime. And he specifically denies the officers' statements that he accused Ware of the crime, insisting that in response to their questions he merely gave them the name of Ware as one of several men who occasionally had ridden with him to work. The officers' version of what happened, however, is that about 11 P.M. on Sunday night, after twenty-eight hours' constant questioning, Ashcraft made a statement that Ware had overpowered him at his home and abducted the deceased, and was probably the killer. About midnight the officers found Ware and took him into custody, and, according to their testimony, Ware made a self-incriminating statement as of early Monday morning, and at 5:40 A.M. signed by mark a written confession in which appeared the statement that Ashcraft had hired him to commit the murder. This alleged confession of Ware was read to Ashcraft about six o'clock Monday morning, whereupon Ashcraft is said substantially to have admitted its truth in a detailed statement taken down by a reporter. About 9:30 Monday morning a transcript of Ashcraft's purported statement was read to him. The State's position is that he affirmed its truth but refused to sign the transcript, saying that he first wanted to consult his lawyer. As to this latter 9:30 episode the officers' testimony is reinforced by testimony of the several persons whom they brought in to witness the end of the examination.

In reaching our conclusion as to the validity of Ashcraft's confession we do not resolve any of the disputed questions of fact relating to the details of what transpired within the confession chamber of the jail or whether Ashcraft actually did confess.[7]

[7] The use in evidence of a defendant's coerced confession cannot be justified on the ground that the defendant has denied he ever gave the confession. White v. Texas, 310 U. S. 530, 531-532.

Such disputes, we may say, are an inescapable consequence of secret inquisitorial practices. And always evidence concerning the inner details of secret inquisitions[8] is weighted against an accused, particularly where, as here, he is charged with a brutal crime, or where, as in many other cases, his supposed offense bears relation to an unpopular economic, political, or religious cause.

Our conclusion is that if Ashcraft made a confession it was not voluntary but compelled. We reach this conclusion from facts which are not in dispute at all. Ashcraft, a citizen of excellent reputation, was taken into custody by police officers. Ten days' examination of the Ashcrafts' maid, and of several others, in jail where they were held, had revealed nothing whatever against Ashcraft. Inquiries among his neighbors and business associates likewise had failed to unearth one single tangible clue pointing to his guilt. For thirty-six hours after Ashcraft's seizure during which period he was held incommunicado, without sleep or rest, relays of officers, experienced investigators, and highly trained

[8] State and federal courts, textbook writers, legal commentators, and governmental commissions consistently have applied the name of "inquisition" to prolonged examination of suspects conducted as was the examination of Ashcraft. See, e. g., cases cited in IV Wickersham Report, *supra*, and also pp. 44, 47, 48, and passim; Pound (Cuthbert W.), Inquisitorial Confessions, 1 Cornell L. Q. 77; Chambers v. Florida, 309 U. S. 227, 237; Bram v. United States, 168 U. S. 532, 544; Brown v. Walker, 161 U. S. 591, 596; Counselman v. Hitchcock, 142 U. S. 547, 573; cf. Cooper v. State, 86 Ala. 610, 611. In a case where no physical violence was inflicted or threatened, the Supreme Court of Virginia expressly approved the statement of the trial judge that the manner and methods used in obtaining the confession read "like a chapter from the history of the inquisition of the Middle Ages." Enoch v. Commonwealth, 141 Va. 411, 423; and see Cross v. State, 142 Tenn. 510, 514. The analogy, of course, was in the fact that old inquisition practices included questioning suspects in secret places, away from friends and counsel, with notaries waiting to take down "confessions", and with arrangements to have the suspect later affirm the truth of his confession in the presence of witnesses who took no part in the inquisition. See Encyclopedia Britannica, Fourteenth Ed., "Inquisition"; Prescott, Ferdinand and Isabella, Sixth Ed., Part First, Chap. VII, The Inquisition; VIII Wigmore on Evidence, Third Ed., p. 307. "In the more serious offenses the party suspected is arrested, he is placed on his inquisition before the chief of police, and a statement is obtained. . . . Where the office of the district attorney is in political harmony with the police system, the district attorney is generally invited to be present as an inquisitor." 2 Wharton on Criminal Evidence, Eleventh Ed., pp. 1021-1022; and see Notes 5 and 6, *supra*.

An admirable summary of the generally expressed judicial attitude toward these practices is set forth in the Report of The Committee on Lawless Enforcement of Law, 1 Amer. Journ. of Police Science, *supra*, p. 587: "Holding incommunicado is objectionable because arbitrary—at the mere will and unregulated pleasure of a police officer. * * * The use of the third degree is obnoxious because it is secret; because the prisoner is wholly unrepresented; because there is present no neutral, impartial authority to determine questions between the police and the prisoner; because there is no limit to the range of the inquisition, nor to the pressure that may be put upon the prisoner."

lawyers questioned him without respite. From the beginning of the questioning at 7 o'clock on Saturday evening until 6 o'clock on Monday morning Ashcraft denied that he had anything to do with the murder of his wife. And at a hearing before a magistrate about 8:30 Monday morning Ashcraft pleaded not guilty to the charge of murder which the officers had sought to make him confess during the previous thirty-six hours.

We think a situation such as that here shown by uncontradicted evidence is so inherently coercive that its very existence is irreconcilable with the possession of mental freedom by a lone suspect against whom its full coercive force is brought to bear.[9] It is inconceivable that any court of justice in the land, conducted as our courts are, open to the public, would permit prosecutors serving in relays to keep a defendant witness under continuous cross examination for thirty-six hours without rest or sleep in an effort to extract a "voluntary" confession. Nor can we, consistently with Constitutional due process of law, hold voluntary a confession where prosecutors do the same thing away from the restraining influences of a public trial in an open court room.[10]

The Constitution of the United States stands as a bar against the conviction of any individual in an American court by means

[9] Bram *v.* United States, 168 U. S. 532, 556, 562-563; see also Wan *v.* United States, 266 U. S. 1, 14-15; Burdeau *v.* McDowell, 256 U. S. 465, 475; Counselman *v.* Hitchcock, 142 U. S. 547, 573-574; 3 Elliot's Debates, pp. 445-449, 452; cf. Chambers *v.* Florida, 309 U. S. 227. The question in the *Bram* case was whether Bram had been compelled or coerced by a police officer to make a self-incriminatory statement, contrary to the Fifth Amendment; and the question here is whether Ashcraft similarly was coerced to make such a statement, contrary to the Fourteenth Amendment. Lisenba *v.* California, 314 U. S. 219, 236-238. Taken together, the *Bram* and *Lisenba* cases hold that a coerced or compelled confession cannot be used to convict a defendant in any state or federal court. And the decision in the *Bram* case makes it clear that the admitted circumstances under which Ashcraft is alleged to have confessed preclude a holding that he acted voluntarily.

[10] Compare the following allegation contained in Ashcraft's motion for new trial, "The Sheriff's deputies . . . set themselves up as a quasi judicial tribunal and tried . . . and convicted him there and in so doing rendered a trial . . . before the trial court . . . and the jury of peers . . . a mere formality," with Lisenba *v.* California, *supra*, p. 237. "The requirement of a public trial is for the benefit of the accused; that the public may see he is fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions . . . ." Cooley's Constitutional Limitations, Sixth Ed. (1890) p. 379; see also Keddington *v.* State, 19 Ariz. 457, 459. "The aid of counsel in preparation would be farcical if the case could be foreclosed by a preliminary inquisition which would squeeze out conviction or prejudice by means unconstitutional if used at the trial." Wood *v.* United States, 128 F. 2d 265, 271. See also Chambers *v.* Florida, *supra*, p. 237, Note 10.

of a coerced confession.[11] There have been, and are now, certain foreign nations with governments dedicated to an opposite policy: governments which convict individuals with testimony obtained by police organizations possessed of an unrestrained power to seize persons suspected of crimes against the state, hold them in secret custody, and wring from them confessions by physical or mental torture. So long as the Constitution remains the basic law of our Republic, America will not have that kind of government.

Second, as to Ware. Ashcraft and Ware were jointly tried, and were convicted on the theory that Ashcraft hired Ware to perform the murder. Ware's conviction was sustained by the Tennessee Supreme Court on the assumption that Ashcraft's confession was properly admitted and his conviction valid. Whether it would have been sustained had the court reached the conclusion we have reached as to Ashcraft we cannot know. Doubt as to what the State court would have done under the changed circumstances brought about by our reversal of its decision as to Ashcraft is emphasized by the position of the State's representatives in this Court. They have asked that if we reverse Ashcraft's conviction we also reverse Ware's.

In disposing of cases before us it is our responsibility to make such disposition as justice may require. "And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered." *Patterson* v. *Alabama*, 294 U. S. 600, 607; *State Tax Commission* v. *Van Cott*, 306 U. S. 511, 515-516. Application of this guiding principle to the case at hand requires that we send Ware's case back to the Tennessee Supreme Court. Should that Court in passing on Ware's conviction in the light of our ruling as to Ashcraft adopt the State Attorney General's view and reverse the conviction there then would be no occasion for our passing on the federal question here raised by Ware. Under these circumstances we vacate the judgment of the Tennessee Supreme Court affirming Ware's conviction, and remand his case to that Court for further proceedings.

The judgment affirming Ashcraft's conviction is reversed and the cause is remanded to the Supreme Court of Tennessee for proceedings not inconsistent with this opinion.

It is so ordered.

[11] Chambers *v.* Florida, 309 U. S. 227; Canty *v.* Alabama, 309 U. S. 629; White *v.* Texas, 310 U. S. 530; Lomax *v.* Texas, 313 U. S. 544; Vernon *v.* Alabama, 313 U. S. 547; Lisenba *v.* California, 314 U. S. 219, 236-238; Ward *v.* Texas, 316 U. S. 547, 555; and see Bram *v.* United States, 168 U. S. 532

SUPREME COURT OF THE UNITED STATES.

No. 391.—October Term, 1943.

E. E. Ashcraft and John Ware, Petitioners, *vs.* State of Tennessee. } On Writ of Certiorari to the Supreme Court of the State of Tennessee.

[May 1, 1944.]

Mr. Justice Jackson, dissenting.

A sovereign state is now before us, summoned on the charge that is has obtained convictions by methods so unfair that a federal court must set aside what the state courts have done. Heretofore the state has had the benefit of a presumption of regularity and legality. A confession made by one in custody heretofore has been admissible in evidence unless it was proved and found that it was obtained by pressures so strong that it was *in fact* involuntarily made, that the individual will of the particular confessor had been overcome by torture, mob violence, fraud, trickery, threats, or promises. Even where there was excess and abuse of power on the part of officers, the State still was entitled to use the confession if upon examination of the whole evidence it was found to negative the view that the accused had "so lost his freedom of action that the statements made were not his but were the result of the deprivation of his free choice to admit, to deny, or to refuse to answer." *Lisenba* v. *California,* 314 U. S. 219, 241.

In determining these issues of fact, respect for the sovereign character of the several states always has constrained this Court to give great weight to findings of fact of state courts. While we have sometimes gone back of state court determinations to make sure whether the guaranties of the Fourteenth Amendment have or have not been violated, in close cases the decisions of state courts have often been sufficient to tip the scales in favor of affirmance. *Lisenba* v. *California, supra,* 238, 239; *Buchalter* v. *New York,* 319 U. S. 427, 431; cf. *Milk Wagon Drivers Union* v. *Meadowmoor Dairies,* 312 U. S. 287, 294.

As we read the present decision the Court in effect declines to apply these well-established principles. Instead, it: (1) substitutes for determination on conflicting evidence the question whether this confession was actually produced by coercion, a presumption that it was, on a new doctrine that examination in custody of this duration is "inherently coercive"; (2) it makes that presumption irrebuttable—i.e., a rule of law—because, while it goes back of the State decisions to find certain facts, it refuses to resolve conflicts in evidence to determine whether other of the State's proof is sufficient to overcome such presumption; and, in so doing, (3) it sets aside the findings by the courts of Tennessee that on all the facts this confession did not result from coercion, either giving those findings no weight or regarding them as immaterial.

We must bear in mind that this case does not come here from a lower federal court over whose conduct we may assert a general supervisory power. If it did, we should be at liberty to apply rules as to the admissibility of confessions, based on our own conception of permissible procedure, and in which we may embody restrictions even greater than those imposed upon the states by the Fourteenth Amendment. See *Bram* v. *United States,* 168 U. S. 532; *Ziang Sung Wan* v. *United States,* 266 U. S. 1; *McNabb* v. *United States,* 318 U. S. 332, 341; *United States* v. *Mitchell,* Nos. 514, 515, this Term, decided April 24, 1944. But we have no such supervisory power over state courts. We may not lay down rules of evidence for them nor revise their decisions merely because we feel more confidence in our own wisdom and rectitude. We have no power to discipline the police or law-enforcement officers of the State of Tennessee nor to reverse its convictions in retribution for conduct which we may personally disapprove.

The burden of protecting society from most crimes against persons and property falls upon the state. Different states have different crime problems and some freedom to vary procedures according to their own ideas. Here, a state was forced by an unwitnessed and baffling murder to vindicate its law and protect its society. To nullify its conviction in this particular case upon a consideration of all the facts would be a delicate exercise of federal judicial power. But to go beyond this, as the Court does today, and divine in the due process clause of the Fourteenth Amendment an exclusion of confessions on an irrebuttable presumption that custody and examination are "inherently coercive" if of some unspecified duration within thirty-six hours, requires us to make more than a passing expression of our doubts and disagreements.

I.

The claim of a suspect to immunity from questioning creates one of the most vexing problems in criminal law—that branch of the law which does the courts and the legal profession least credit. The consequences upon society of limiting examination of persons out of court cannot fairly be appraised without recognition of the advantage criminals already enjoy in immunity from compulsory examination in court. Of this latter Mr. Justice Cardozo, for an all but unanimous Court, said: "This too might be lost, and justice still be done. Indeed, today as in the past there are students of our penal system who look upon the immunity as a mischief rather than a benefit, and who would limit its scope, or destroy it altogether. No doubt there would remain the need to give protection against torture, physical or mental." *Palko* v. *Connecticut,* 302 U. S. 319, 325-26.

This Court never yet has held that the Constitution denies a State the right to use a confession just because the confessor was questioned in custody where it did not also find other circumstances that deprived him of a "free choice to admit, to deny, or to refuse to answer." *Lisenba* v. *California,* 314 U. S. 219, 341. The Constitution requires that a conviction rest on a fair trial. Forced confessions are ruled out of a fair trial. They are ruled out because they have been wrung from a prisoner by measures which are offensive to concepts of fundamental fairness. Different courts have used different terms to express the test by which to judge the inadmissibility of a confession, such as "forced," "coerced," "involuntary," "extorted," "loss of freedom of will." But always where we have professed to speak with the voice of the due process clause, the test, in whatever words stated, has been applied to the particular confessor at the time of confession.

It is for this reason that American courts hold almost universally and very properly that a confession obtained during or shortly after the confessor has been subjected to brutality, torture, beating, starvation, or physical pain of any kind is *prima facie* "involuntary." The effect of threats alone may depend more on

individual susceptibility to fear. But men are so constituted that many will risk the postponed consequences of yielding to a demand for a confession in order to be rid of present or imminent physical suffering. Actual or threatened violence have no place in eliciting truth and it is fair to assume that no officer of the law will resort to cruelty if truth is what he is seeking. We need not be too exacting about proof of the effects of such violence on the individual involved, for their effect on the human personality is invariably and seriously demoralizing.

When, however, we consider a confession obtained by questioning, even if persistent and prolonged, we are in a different field. Interrogation *per se* is not, while violence *per se* is, an outlaw. Questioning is an indispensable instrumentality of justice. It may be abused, of course, as cross-examination in court may be abused, but the principles by which we may adjudge when it passes constitutional limits are quite different from those that condemn police brutality, and are far more difficult to apply. And they call for a more responsible and cautious exercise of our office. For we may err on the side of hostility to violence without doing injury to legitimate prosecution of crime; we cannot read an undiscriminating hostility to mere interrogation into the Constitution without unduly fettering the States in protecting society from the criminal.

It probably is the normal instinct to deny and conceal any shameful or guilty act. Even a "voluntary confession" is not likely to be the product of the same motives with which one may volunteer information that does not incriminate or concern him. The term "voluntary" confession does not mean voluntary in the sense of a confession to a priest merely to rid one's soul of a sense of guilt. "Voluntary confessions" in criminal law are the product of calculations of a different order, and usually proceed from a belief that further denial is useless and perhaps prejudicial. To speak of any confessions of crime made after arrest as being "voluntary" or "uncoerced" is somewhat inaccurate, although traditional.

A confession is wholly and incontestably voluntary only if a guilty person gives himself up to the law and becomes his own accuser. The Court bases its decision on the premise that custody and examination of a prisoner for thirty-six hours is "inherently coercive." Of course it is. And so is custody and examination

for one hour. Arrest itself is inherently coercive, and so is detention. When not justified, infliction of such indignities upon the person is actionable as a tort. Of course such acts put pressure upon the prisoner to answer questions, to answer them truthfully, and to confess if guilty.

But does the Constitution prohibit use of all confessions made after arrest because questioning, while one is deprived of freedom, is "inherently coercive"? The Court does not quite say so, but it is moving far and fast in that direction. The step it now takes is to hold this confession inadmissible because of the time taken in getting it.

The duration and intensity of an examination or inquisition always have been regarded as one of the relevant and important considerations in estimating its effect on the will of the individual involved. Thirty-six hours is a long stretch of questioning. That the inquiry was prolonged and persistent is a factor that in any calculation of its effect on Ashcraft would count heavily against the confession. But some men would withstand for days pressures that would destroy the will of another in hours. Always heretofore the ultimate question has been whether the confessor was in possession of his own will and self-control at the time of confession. For its bearing on this question the Court always has considered the confessor's strength or weakness, whether he was educated or illiterate, intelligent or moronic, well or ill, Negro or white.

But the Court refuses in this case to be guided by this test. It rejects the finding of the Tennessee courts and says it must make an "independent examination" of the circumstances. Then it says that it will not "resolve any of the disputed questions of fact" relating to the circumstances of the confession. Instead of finding as a fact that Ashcraft's freedom of will was impaired, it substitutes the doctrine that the situation was "inherently coercive." It thus reaches on a *part* of the evidence in the case a conclusion which I shall demonstrate it could not properly reach on *all* the evidence. And it refuses to resolve the conflicts in the other evidence to determine whether it rebuts the presumption thus reached that the confession is a coerced one.

If the constitutional admissibility of a confession is no longer to be measured by the mental state of the individual confessor but by a general doctrine dependent on the clock, it should be capable of statement in definite terms. If thirty-six hours is more

individual susceptibility to fear. But men are so constituted that many will risk the postponed consequences of yielding to a demand for a confession in order to be rid of present or imminent physical suffering. Actual or threatened violence have no place in eliciting truth and it is fair to assume that no officer of the law will resort to cruelty if truth is what he is seeking. We need not be too exacting about proof of the effects of such violence on the individual involved, for their effect on the human personality is invariably and seriously demoralizing.

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But does the Constitution prohibit use of all confessions made after arrest because questioning, while one is deprived of freedom, is "inherently coercive"? The Court does not quite say so, but it is moving far and fast in that direction. The step it now takes is to hold this confession inadmissible because of the time taken in getting it.

The duration and intensity of an examination or inquisition always have been regarded as one of the relevant and important considerations in estimating its effect on the will of the individual involved. Thirty-six hours is a long stretch of questioning. That the inquiry was prolonged and persistent is a factor that in any calculation of its effect on Ashcraft would count heavily against the confession. But some men would withstand for days pressures that would destroy the will of another in hours. Always heretofore the ultimate question has been whether the confessor was in possession of his own will and self-control at the time of confession. For its bearing on this question the Court always has considered the confessor's strength or weakness, whether he was educated or illiterate, intelligent or moronic, well or ill, Negro or white.

But the Court refuses in this case to be guided by this test. It rejects the finding of the Tennessee courts and says it must make an "independent examination" of the circumstances. Then it says that it will not "resolve any of the disputed questions of fact" relating to the circumstances of the confession. Instead of finding as a fact that Ashcraft's freedom of will was impaired, it substitutes the doctrine that the situation was "inherently coercive." It thus reaches on a *part* of the evidence in the case a conclusion which I shall demonstrate it could not properly reach on *all* the evidence. And it refuses to resolve the conflicts in the other evidence to determine whether it rebuts the presumption thus reached that the confession is a coerced one.

If the constitutional admissibility of a confession is no longer to be measured by the mental state of the individual confessor but by a general doctrine dependent on the clock, it should be capable of statement in definite terms. If thirty-six hours is more

than is permissible, what about 24? or 12? or 6? or 1? All are "inherently coercive." Of course questions of law like this often turn on matters of degree. But are not the states entitled to know, if this Court is able to state, what the considerations are which make any particular degree decisive? How else may state courts apply our tests?

The importance of defining these new constitutional standards of admissibility of confessions is emphasized by the decision to return the companion case of Ware to the Supreme Court of Tennessee for reconsideration "in the light of the ruling as to Ashcraft." Except for Ware's own testimony, all of the evidence is that when he confronted Ashcraft in custody Ware confessed immediately, voluntarily, and almost spontaneously. But he had been arrested, taken from bed into custody, and detained and questioned. Does the doctrine of inherent coerciveness condemn the Ware confession? Should the Tennessee court decide whether Ware, obviously a much weaker character than Ashcraft, was *actually* coerced into confessing? It already has decided that question and this Court does not hold the fact determined wrongly. Ware's case is properly in this Court. Why should not this Court decide Ware's case on the merits and thus test and expound its novel ruling as applied to a different set of circumstances?

No one can regard the rule of exclusion dependent on the state of the individual's will as an easy one to apply. It leads to controversy, speculation, and variations in application. To eliminate these evils by eliminating all confessions made after interrogation while in custody is a drastic alternative, but it is the logical consequence of today's ruling, as its application to the facts of Ashcraft's case will show.

II.

Apart from Ashcraft's uncorroborated testimony, which the Tennessee courts refused to believe, there is much evidence in this record from persons whom they did believe and were justified in believing. This evidence shows that despite the "inherent coerciveness" of the circumstances of his examination, the confession when made was deliberate, free, and voluntary in the sense in which that term is used in criminal law. This Court could not, in our opinion, hold this confession an involuntary one except by substituting its presumption in place of analysis of the evidence and refusing to weigh the evidence even in rebuttal of its presumption.

As in most such cases, we start with some admitted facts. In the early morning Mrs. Ashcraft left her home in an automobile to visit relatives. She was found murdered. She had not been robbed nor ravished, although an effort had been made to give the crime an appearance of robbery. The officers knew of no other motive for the killing and naturally turned to her husband for information.

On the afternoon of the crime, Thursday, June 5, 1941, they took Ashcraft to the morgue to identify the body, and to the county jail, where he was kept and interviewed until 2:00 a.m. He makes no complaint of his treatment at this time. In this and several later interviews he made a number of statements with reference to the condition of the car, and as to Mrs. Ashcraft's having taken a certain drug, and as to money which she was accustomed to carry on her person, which further investigation indicated to be untrue. Still Ashcraft was not arrested. He professed to be willing to assist in identifying the killer. At last, on Saturday evening, June 14, an officer brought Ashcraft to the jail for further questioning. He was taken to a room on the fifth floor and questioned intermittently by several officers over a period of about thirty-six hours.

There are two versions as to what happened during this period of questioning. According to the version of the officers, which was accepted by the court which saw the witnesses, what happened? On Saturday evening Ashcraft was taken to the jail, where he was questioned by Mr. Becker and Mr. Battle. Becker is in the Intelligence Service of the United States Army at the present time and before that was in charge of the Homicide Bureau of the Sheriff's office of Shelby County, Tennessee. Battle has for eight years been an Assistant Attorney General of the County. They began questioning Ashcraft about 7:00 p.m. They recounted various statements of his which had proved untrue. About 11:00 o'clock Ashcraft said he realized the circumstances all pointed to him and that he could not explain the circumstances. They then accused him of the murder, but he denied it. About 3:00 a.m. Becker and Battle retired and left Ashcraft in charge of Ezzell, a special investigator connected with the Attorney General's office. He questioned

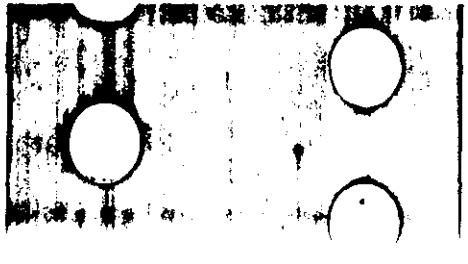
Ashcraft and discussed the crime with him until about 7:00 on Sunday morning. Becker and Battle then returned and interviewed him intermittently until about noon, when Ezzell returned and remained until about 5:00. Becker then returned, and about 11:00 o'clock Sunday night Ashcraft expressed a desire to talk with Ezzell. Ezzell was sent for and Ashcraft told him he wanted to tell him the truth. He said, "Mr. Ezzell, a Negro killed my wife." Ezzell asked the Negro's name, and Ashcraft said, "Tom Ware." Up to this time Ware had not been suspected, nor had his name been mentioned. Ashcraft explained that he did not tell the officers before because "I was scared; the negro said he would burn my house down if I told the law."

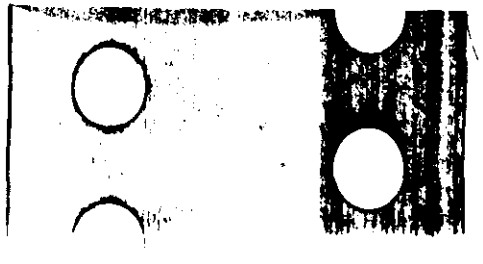
Thereupon Becker, Battle, Ezzell, and Mr. Jayroe, connected with the Sheriff's office, took Ashcraft in a car and found Ware. When questioned at the jail, Ware turned to Ashcraft and said in substance that he had told Ashcraft when this thing happened that he did not intend to take the entire blame. The officers thereupon turned their attention to Ware. He promptly admitted the killing and said Ashcraft hired him to do it. Waldauer, the court reporter, was called to take down this confession, and completed his transcript at about 5:40 a.m. He read it to Ware and told him he did not have to sign it unless he so chose. Ware made his mark upon it and swore to it before Waldauer as a Notary Public. A copy was given to Ashcraft, and he then admitted that he had hired Ware to kill his wife. He was given breakfast and then in response to questions made a statement which was taken down by the court reporter, Waldauer. It was transcribed, but Ashcraft declined to sign it, saying that he wanted his lawyer to see it before he signed it. No effort was made to compel him to sign the confession. However, two business men of Memphis, Mr. Castle, vice president of a bank, and Mr. Pidgeon, president of the Coca-Cola Bottling Company, were called in. Both testified that Ashcraft in their presence asserted that the transcript was correct but that he declined to sign it. The officers also called Dr. McQuiston to the jail to make a physical examination of both Ashcraft and Ware. He had practiced medicine in Memphis for twenty-eight years and both Mr. and Mrs. Ashcraft had been his patients for something like five years. In the presence of this friendly doctor Ashcraft might have complained of his treatment and avowed his innocence. The doctor testified, however, that Ashcraft said he had been treated all right, that he made no complaint about his eyes, and that they were not bloodshot. The doctor made a physical examination, and says Ashcraft appeared normal. He further testified as to Ashcraft, "Well, sir, he said he had not been able to get along with his wife for some time; that her health had been bad; that he had offered her a property settlement and that she might go her way and he his way; and he also stated that he offered this colored man, Ware, a sum of money to make away with his wife."[1] The doctor says that that statement was entirely voluntary. No matter what pressure had been put on Ashcraft before, the courts below could reasonably believe that he made this statement voluntarily to a man of whom he had no fear and who knew his family relations.

Ashcraft's story of torture could only be accepted by disbelieving such credible and unimpeached contradiction. Ashcraft testified that he was refused food, was not allowed to go to the lavatory, and was denied even a drink of water. Other testimony is that on Saturday night he was brought a sandwich and coffee about midnight; that he drank the coffee but refused the sandwich; that on Sunday morning he was given a breakfast and was fed again about noon a plate lunch consisting of meat and vegetables and coffee. Both Waldauer, the Reporter, and Dr. McQuiston testified that they saw breakfast served to Ashcraft the next morning, before the statement taken down by Waldauer. Ashcraft claims he was threatened and that a cigarette was slapped out of his mouth. This is all denied.

This Court rejects the testimony of the officers and disinterested witnesses in this case that the confession was voluntary not because it lacked probative value in itself nor because the witnesses were self-contradictory or were impeached. On the contrary, it is impugned only on grounds such as that such disputes "are an inescapable consequence of secret inquisitorial practices." We infer from this that since a prisoner's unsupported word often conflicts with that of the officers, the officer's testimony for constitutional purposes is always *prima facie* false. We know that police standards often leave much to be desired, but we are not

[1] The officers had been baffled as to any motive for Ashcraft to murder his wife (who was his third, two former ones having been separated from him by divorce). He disclosed in his confession to them that her sickness had resulted in a degree of irritability which had made them incompatible and resulted in his sexual frustration.





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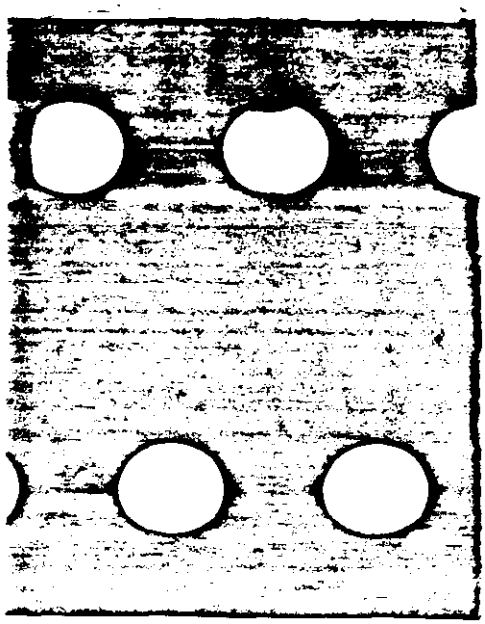
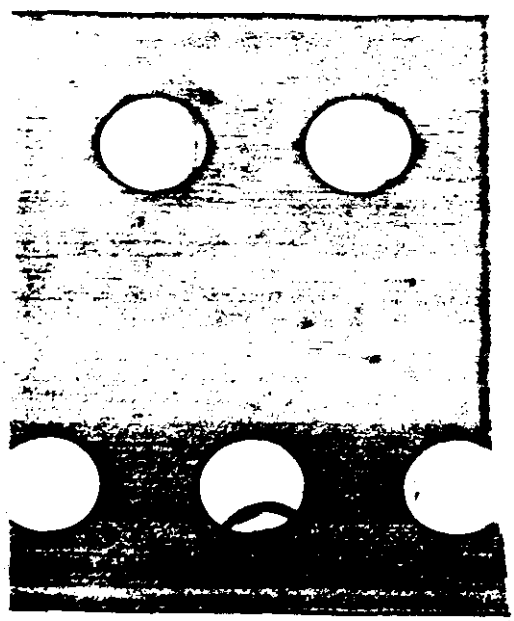




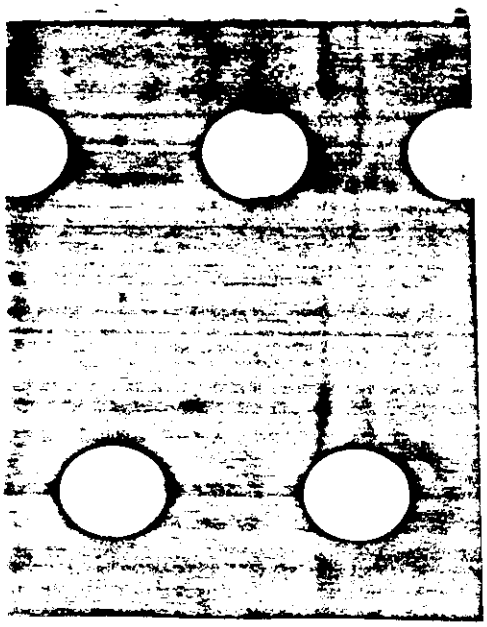
Then he became desperate and accused the Negro. Certainly from this point the State was justified in holding and questioning him as a witness, for he claimed to know the killer. That accusation backfired and only turned up a witness against him. He had run out of expedients and inventions; he knew he had lost the battle of wits. After all honesty seemed to be the best, even if the last, policy. He confessed in detail.

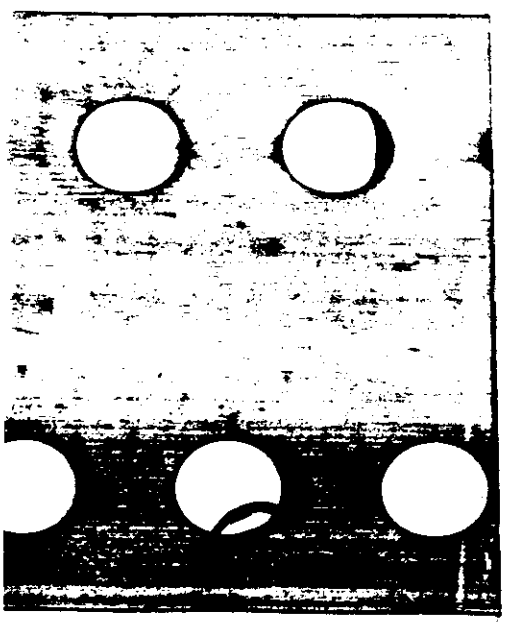
At what point in all this investigation does the Court hold that the Constitution commands these officers to send Ashcraft on his way and give up the murder as insoluble? If the state is denied the right to apply any pressure to him which is "inherently coercive" it could hardly deprive him of his freedom at all. I, too, dislike to think of any man, under the disadvantages and indignities of detention being questioned about his personal life for thirty-six hours or for one hour. In fact, there is much in our whole system of penology that seems archaic and vindictive and badly managed. Every person in the community, no matter how inconvenient or embarrassing, no matter what retaliation it exposes him to, may be called upon to take the witness stand and tell all he knows about a crime—except the person who knows most about it. Efforts of prosecutors to compensate for this handicap by violent or brutal treatment or threats we condemn as passionately and sincerely as other members of the Court. But we are not ready to say that the pressure to disclose crime, involved in decent detention and lengthy examination, although we admit them to be "inherently coercive," are denied to a State by the Constitution, where they are not proved to have passed the individual's ability to resist and to admit, deny, or refuse to answer.

III.

The Court either gives no weight to the findings of the Tennessee courts or it regards their inquiry as to the effect on the individuals involved as immaterial. We think it was a material inquiry and that respect is due to their conclusion.

The Supreme Court of Tennessee, writing in this case, stated the law of that State by which it reviewed and affirmed the action of the trial court. It said, "When confessions are offered as evidence, their competency becomes a preliminary question to be determined by the court. This imposes upon the presiding judge the duty of deciding *the fact* whether the party making the con-





fession was influenced by hope or fear. This rule is so well established that if the judge allow the jury to determine the preliminary fact, it is error, for which the judgment will be reversed.

"In the instant case the trial judge heard the witnesses as to their confessions out of the presence of the jury, and he held that under the facts he could not say that the confessions were not voluntarily made and, therefore, permitted them to go to the jury." [Emphasis supplied.]

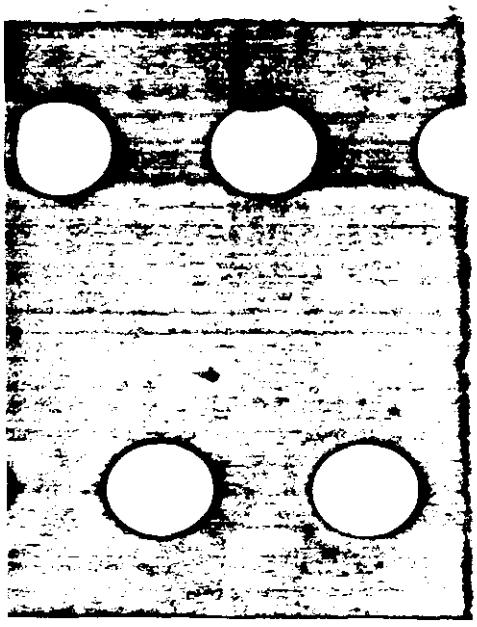
The rule of law thus laid down complied with the law as this Court had settled it at the time of trial.

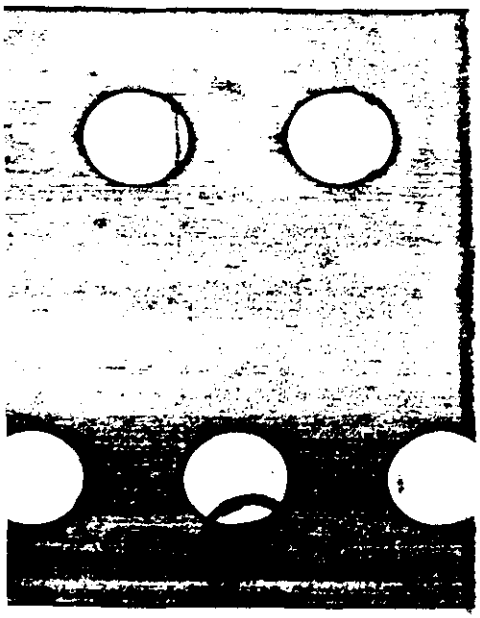
The Tennessee Supreme Court made a painstaking examination of the evidence in the light of the claim that the confessions were coerced. It concluded that it was "unable to say that the confessions were not freely and voluntarily made. Both of the plaintiffs in error have had a fair trial and we decline to disturb the conviction."

That court, it is clear, renders no mere lip service to the guaranties of the Constitution. In other cases it has set aside convictions because confessions used at trials were found to have been coerced.[2] There is not the least indication that the court was passionate or biased or that the result does not represent the honest judgment of a high-minded court, sensitive to these problems.

A trial judge out of hearing of the jury saw and heard Ashcraft and saw and heard those whom Ashcraft accused of coercing him. In determining a matter of this kind no one can deny the great advantage of a court which may see and hear a man who claims that his will succumbed and those who, it is claimed, were so overbearing. The real issue is strength of character, and a few minutes' observation of the parties in the courtroom is more informing than reams of cold record. There is not the slightest indication that the trial judge was prejudiced or indifferent to the prisoner's rights. Ashcraft's counsel moved to exclude his confession "for the reason that the statements contained therein were not freely and voluntarily made, nor were they free from duress and restraint, but were secured by compulsion. . . ." The court said, " . . . the sole proposition, as the Court sees it from this testimony, is that he was confined and questioned for a

[2] Deathridge *v.* State, 33 Tenn. 75; Strady *v.* State, 45 Tenn. 300; Self *v.* State, 65 Tenn. 244; Cross *v.* State, 142 Tenn. 510; Rounds *v.* State, 171 Tenn. 511.



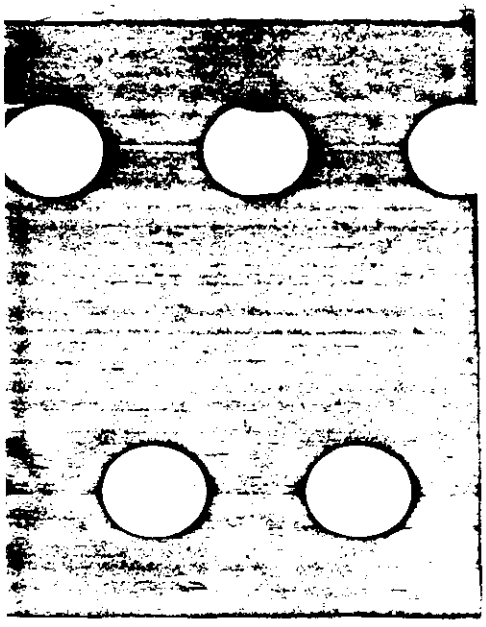


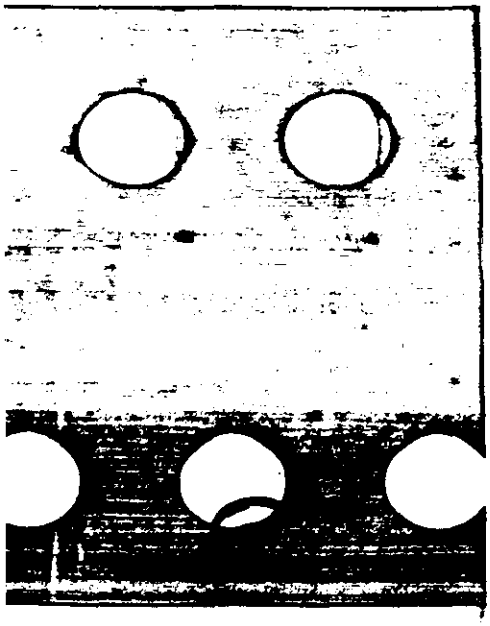
period of approximately thirty-six hours. I think counsel concedes that is practically the main ground upon which he rests his motion. There was no physical violence offered to the defendant Ashcraft, and none was claimed." He overruled the motion and received the confession. This Court, not one of whose members ever saw Ashcraft or any one of the State's witnesses, overturns the decision by the trial judge.

Moreover, a jury held Ashcraft's statements incredible. After the trial judge, out of their presence, heard the evidence and decided the confession was admissible, the jury heard the evidence to decide whether the confession should be believed. Ashcraft again testified and so did all of the witnesses for the State. Conduct of the hearing both by the judge and the prosecutors was above criticism. The Court observes: "If, therefore, the question of the voluntariness of the two confessions was actually decided at all it was by the jury." Is it suggested that a state consistently with the Constitution may not leave this question to the sole determination of a jury? I had supposed that the constitutional duty of a state when such questions of fact arise is to furnish due process of law for deciding them. Does not jury trial meet this test? Here Tennessee, and I think very commendably, provided the double safeguards of a preliminary trial by the judge and a final determination by the jury.

The Court's opinion makes a critical reference to the charge of the trial judge. However, diligent counsel took no exception to the part of the charge quoted, made no request for further instruction on the subject, and assigned no error to the charge. Even if we think the charge inadequate, does the inadequacy of a charge constitute want of due process? And if so, do we review questions as to the charge although counsel for the petitioner made no objection during the trial when the judge could have corrected the error, but after the trial was over assigned it as one of twelve reasons for demanding a new trial?

No conclusion that this confession was actually coerced can be reached on this record except by reliance upon the utterly uncorroborated statements of defendant Ashcraft. His testimony does not carry even ordinary guaranties of truthfulness, and the courts and jury were not bound to accept it. Perjury is a light offense compared to murder and they may well have believed that Ashcraft was ready to resort to a lesser crime to avoid conviction





of a greater one. Furthermore, the very grounds on which this Court now upsets his conviction Ashcraft repudiated at the trial. He asserts that he was abused, but he does not testify as this Court holds that it had the effect of forcing an involuntary confession from him. On the contrary, he flatly insists that it had no such effect and that he never did confess at all.

Against Ashcraft's word the state courts and jury accepted the testimony of several apparently disinterested witnesses of high standing in their communities, in addition to that of the accused officers. One of the witnesses to Ashcraft's admission of guilt was his own family physician, two were disinterested business men of substance and standing, another was an experienced court reporter who had long held this position of considerable trust. Another was a member of the bar. Certainly, the state courts were not committing an offense against the Constitution of the United States in refusing to believe that this whole group of apparently reputable citizens entered into a conspiracy to swear a murder onto an innocent man, against whom not one of them is shown to have had a grievance or a grudge.

This is not the case of an ignorant and unrepresented defendant who has been the victim of prejudice. Ashcraft was a white man of good reputation, good position, and substantial property. For a week after this crime was discovered he was not detained, although his stories to the officers did not hang together, but was at large, free to consult his friends and counsel. There was no indecent haste, but on the contrary evident deliberation, in suspecting and accusing him. He was not sentenced to death, but for a term that probably means life. He was defended by resourceful and diligent counsel.

The use of the due process clause to disable the states in protection of society from crime is quite as dangerous and delicate a use of federal judicial power as to use it to disable them from social or economic experimentation. The warning words of Mr. Justice Holmes in his dissenting opinion in *Baldwin* v. *Missouri*, 281 U. S. 586, 595, seem to us appropriate for rereading now.

Mr. Justice ROBERTS and Mr. Justice FRANKFURTER join in this opinion.

Court Justifies Search Of Home at Time Arrest Is Made

Chief Justice Vinson, speaking for the majority in the Supreme Court's sanction of conviction of a man on evidence found in his home without a search warrant after his arrest on another charge, yesterday held that the search was justified since evidence found showed a crime being committed in the officers' presence.

The high court split, 5-to-4, in the bitterly contested decision handed down yesterday afternoon. The case grew out of the arrest of George Harris, an Oklahoma man, who was charged by Federal Bureau of Investigation agents of violating the mail fraud statute and the National Stolen Property Act, based on the mailing of a $25,000 check alleged to have been stolen.

After a search of his home revealed evidence of Selective Service Act violations, Harris was arrested and convicted on the latter charge.

Call Ruling Threat to Home.

Dissenting justices contended that the ruling destroys the protection of the search and seizure provisions of the Constitution for any person arrested at his home. Justice Vinson held that the finding of evidence unrelated to the charge contained in the warrant was immaterial.

On the basis of papers found in Harris' home he was convicted and sentenced to five years' imprisonment on charges of unlawful possession of an altered notice of draft classification and concealment of other selective service cards and certificates.

Justices Frankfurter, Murphy, Jackson and Rutledge dissented from the Supreme Court majority decision upholding Harris' conviction.

Recall Revolutionary War Ideals.

Charging the ruling offers "serious threats to basic liberties," the minority harked back to the Revolutionary War and the rights for which it was fought.

Justice Murphy declared:

"Today has resurrected and approved, in effect, the use of the odious general warrant or writ of assistance presumably outlawed forever from our society."

Justice Vinson, however, made a sharp distinction between seizure of "merely evidential materials," which can be taken only under a search warrant, and such objects as the means for committing crime, loot, weapons and property of which the possession is a crime itself.

Nothing Found in Check Case.

The charges on which Harris was convicted were based on discovery, after five hours of search, of an envelope marked "personal papers" and containing cards and certificates, some of which the FBI men said had been stolen from a local draft board.

The court minority observed that nothing was found bearing directly on the check case, and that the check case itself has never come to court.

In the search and seizure case, the agents said they searched Harris' apartment for two $10,000 cashier's checks of the Mudge Oil Co. which had been stolen from the company's office and which they thought had been used in forging a $25,000 check on the Mudge Co.

They said they also were looking for "any means that might be used to commit these two crimes, such as burglary tools, pens, or anything that could be used in a connidence game of this type."

Circuit Court Ruling Upheld.

The high court majority upheld a Circuit Court finding that the search was carried out in good faith for the purposes asserted, that it "was not a general exploratory for merely evidentiary matterials, and that the search and seizure were a reasonable incident to petitioner's arrest."

Justice Frankfurter contended the decision goes far beyond previous ruling to permit "rummaging through a house without a search warrant on the ostensible ground of looking for the instruments of a crime for which an arrest, but only an arrest, has been authorized."

"By this reasoning," he said, "every illegal search and seizure may be validated if the police find evidence of a crime."

He declared that if the agents had had a warrant to look for the checks, they could not have seized other items they found, and concluded:

"The court's decision achieves the novel and startling result of making the scope of search without warrant broader than an authorized search."

Could Oppress Political Foes.

Justice Murphy in another dissenting opinion developed a theme on which all the other dissenters touched:

"The principle established by the court today can be used as easily by some future government determined to suppress political opposition under the guise of sedition, as it can be used by a government determined to undo forgers and defrauders."

Other Supreme Court rulings yesterday included:

1. A finding that Federal regulations supersede any by the State of Illinois in such phases of grain warehouse regulation as the Federal Government has gone into, but that the Federal Government has not pre-empted the field in regulation of "contract markets," which are exchanges where commodities are bought and sold for future delivery.

2. Rejection of a pay formula which, the court found, started real overtime pay only after some employes had worked 46 hours a week and others 54.

3. Dismissal, at Government request, of a Government appeal from a lower court ruling which OPA had complained would wreck sugar rationing.

4. Refusal for the second time to hear protests from Morton Friedman, a Government employe fired on allegations of Communist sympathy.

MAY 6 1947
WASHINGTON STAR
Page 2

Mr. Tolson
Mr. E. A. [illegible]
Mr. Clegg
Mr. Gurley
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Carson
Mr. Egan
Mr. Hendon
Mr. Pennington
Mr. Quinn Tamm
Mr. Nease
Miss Gandy

EX-50

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NOT RECORDED
81 MAY 8 1947

50 MAY 12 1947

Mr. Tolson
Mr. E. A. [illegible]
Mr. Clegg
Mr. Coffey
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Carson
Mr. Egan
Mr. Hendon
Mr. Pennington
Mr. Quinn Tamm
Mr. Nease
Miss Gandy

Homes Not Safe From Search High Court Minority Charges

By United Press

Four Supreme Court justices believe that the Bill of Rights' safeguard against "unreasonable search" has been seriously jeopardized by the court majority.

In separate opinions, Justices Felix Frankfurter, Robert H. Jackson and Frank Murphy criticized their five colleagues for a ruling centering about the Fourth Amendment to the Constitution. Justice Wiley B. Rutledge joined Justice Murphy's dissent.

"Under the court's decision," Justice Murphy declared, "The Fourth Amendment no longer stands as a bar to . . . tyranny and oppression.

" . . . direct encouragement is given to this abandonment of the right of privacy, a right won at so great a cost by those who fought for freedom."

The five-man majority, in a decision read by Chief Justice Fred M. Vinson, held that a warrant for arrest authorizes Federal officers to search a man's home and seize evidence for prosecution of a totally different crime.

The dissenters said the court heretofore has limited lawful evidence to that seized upon the arrested person's body, and then only when connected with the crime charged in the arrest warrant.

The case was that of George Harris, Oklahoma City, convicted of violating the Draft Act. Arresting officers went to his home to seize him for violation of the mail fraud statute. During a five-hour ransacking of his apartment, 11 illegal draft cards were turned up. They were the basis of his conviction. No evidence was found to support the mail fraud charge, and that complaint was never prosecuted.

Justice Murphy charged that, on the authority of the majority ruling, law enforcement officers "are now free to engage in an unlimited plunder of the home" with only the "subterfuge" of an arrest warrant.

MAY 6 1947

WASHINGTON NEWS
Page

JEH:HOB

March 11, 1940

MEMORANDUM FOR MR. TOLSON

I wish that you would have some one prepare a complete memorandum upon the subject of wire-tapping in so far as the Bureau has had any connection with it. I have in mind that we should go back to our first regulations relative to wire-tapping and the steps which I took to restrict it, even before the Supreme Court found against it. I have in mind particularly the hearings before the House Committee, at which Attorney General Mitchell, the Director of the Prohibition Bureau and myself appeared, because of the difference in regulations existing within two Bureaus of the Department - the FBI forbidding it and the Prohibition Unit allowing it. We should then trace the various regulations that pertain to it, up until the present time, and point out the various restrictions which have been imposed upon it and the types of cases in which we use it. You should, of course, have Mr. Tamm and Mr. Nathan consulted about this in order that we may have all knowledge concerning it in one memorandum which I can have readily available.

Very truly yours,

John Edgar Hoover
Director

Mr. Tolson
Mr. Nathan
Mr. E. A. Tamm
Mr. Clegg
Mr. Ladd
Mr. Gurnea
Mr. Glavin
Mr. Harbo
Mr. Lester
Mr. Gawler
Mr. Quinn Tamm
Tyler Room
Mr. Tracy
Miss Gandy

COMMUNICATIONS SECTION
MAILED
MAR 14 1940
FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE

62-12114-1961

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

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FBI/DOJ

Saturday Evening Post
Oct. 25, 1958

Editorials

Integration Is Going to be a Slow Process

President Eisenhower lost his stripes with the extremists in the integration battle when he said, in one of his press conferences, that he favored a slower pace for racial integration. "We have got to have reason and sense and education—if this process is going to have any real acceptance in the United States," he said. As the resistance in the South indicates, the President's analysis was entirely correct. For the carrying out of a social change as revolutionary, although in the long run inevitable, as this, gradualness, as the late G. Bernard Shaw used to say, is essential.

The colored people and many of their supporters, particularly among "liberal" groups, want most of all to win. They have the Federal courts on their side and few of them see any reason why every American school, regardless of geography, should not immediately include white children and colored children. In New York, the N.A.A.C.P. exerts pressure on the school authorities to transport children outside their neighborhoods to bring this about. In the long run, however, this is not likely to happen in many communities, because children normally go to school in the neighborhoods where their parents live.

Nobody can blame the Negroes, after years of enforced social inferiority, for whooping it up when the Supreme Court declares that their children can go to the same schools that white children attend, a privilege which they have a moral and legal right to enjoy. But the first flush of victory may prove more exhilarating than its eventual fruits. The experience of Washington, D.C., where thousands of white children have deserted the public schools for private ones, suggests that court decisions cannot change things overnight.

The white people in the Southern states, and to a considerable degree with support from other sections of the country, feel themselves under siege. Having worked out a system of educating Negroes which was accepted as constitutional for at least sixty years, they are expected to abolish it. This demand comes, not after the adoption of a constitutional amendment, or even a Federal statute, but in a decision by the Supreme Court of the United States, which seems to Southern people to ignore constitutional arguments in favor of sociological doctrines. The challenge to local authority over matters long considered of local concern is a "firebell in the night" in the South.

So "the South says never," without stopping to ask itself whether in the long run anything as disastrous as it has been anticipating is likely to happen. Curiously enough, one Southern city which was willing to make the integration experiment in a limited way has had to bear the brunt of liberal and antisegregationist abuse. But Little Rock had proposed a plan for limited integration which, had Governor Faubus managed to hold his horses, might have worked, or at least taken the heat off for a time. Few other Southern communities have moved as far as Little Rock tried to move, and, as the bitterness increases, few will change their minds.

The usually "liberal" Washington Post recently pointed out that a workable solution lay not in "massive integration," but in some sort of plan which would "remove the stigma of segregation based on race and still result in relatively little mixing." If President Eisenhower's advice could be taken, partisans on both sides of the fence would have an opportunity to decide whether the practical issues, as opposed to the emotional issues, are worth so much furious controversy.

The U.S.A. Can't Surrender Its Rights in the Panama Canal

Agitation in the Republic of Panama over the status of the Canal Zone features two claims: (1) "The Canal is ours!"; and (2) Panama and the United States are equal partners in the Canal, and should therefore split its gross revenues fifty-fifty, while we meet all expenses.

In this country, some voices, notably Mr. James Warburg's, have been raised to suggest that we should internationalize the Canal, to set a good example to Colonel Nasser.

None of these proposals makes sense. There is no legitimate comparison between the position of the American Government at Panama and that of the Suez Company in Egypt. As Congressman Flood (D., Penna.) has pointed out in several speeches, the Canal Zone is "constitutionally acquired territory of the United States." While the British Government owned 53.5 per cent of the Suez Company, and its administration was largely French, the company was an Egyptian enterprise, operating on a one-hundred-year lease, when Nasser expropriated it.

Our treaty of 1903 with the Republic of Panama gave us sovereign rights over a strip of land ten miles wide across the Isthmus. The stated purpose of the grant was that we might build, maintain, operate and defend an interoceanic canal, and the grant was perpetual.

We undertook to pay the Republic of Panama $10,000,000 in 1903, and an annuity thereafter. The payments have been increased several times, and now stand at about $1,900,000. It is conceivable that this will be increased but the notion that Panama can rightfully claim a half share of the tolls is ridiculous. Yet it was put forward by the Deputy Foreign Minister of Panama, who now occupies a professor's chair at the University of Panama, where he instructs students in the fancied rights for which they riot periodically.

Charles Evans Hughes, Secretary of State in 1929, made this statement to the Minister from Panama, when he raised the question of sovereignty in the Canal Zone: "It is an absolute futility for the Panamanian Government to expect any American Administration, no matter what it is, any President or any Secretary of State, ever to surrender any part of those rights which the United States has acquired under the Treaty of 1903."

Considerations of international law and hemisphere security make the Hughes declaration of 1925 even more valid today.

Next Move for Our Ex-Urbanites: a Cut-Rate Castle In Spain!

Back in the '20's, when anyone mentioned an American expatriate, he was usually talking about a type that approximated an F. Scott Fitzgerald character at the Ritz bar, or a bearded painter in Montparnasse. According to John C. Tysen, president of an international real-estate firm, Previews, Inc., the '50's have produced a brand-new and different crop of expatriates.

They are rebels against the high cost of living. Previews' American customers have found that it costs less to buy and maintain a European château or even a castle on the Mediterranean coast than it does to keep up a four-bedroom ranch house in the New York suburbs. Overseas sales by Previews, Inc., which have jumped 3 per cent over last year, now account for 8 per cent of the firm's total business; they have sold such bargains as a seventeen-room villa in Southern Spain for $15,000. A house like it here, they estimate, would cost $45,000.

It isn't only well-to-do elderly persons who have decided to retire abroad. A fair number of the new expatriates are men under forty-five who prefer to live in a Mediterranean villa while doing, say, free-lance advertising work or collecting dividends on American securities.

According to the president of Previews, Inc., "It's almost impossible to spend as much as $800 a month in many sections of Europe. Less than that amount is required by many young couples to buy food and clothing for a family of three and to maintain an eight-room home with two servants. Cooks and maids are about eight dollars a week."

This new group of American expatriates have found a way to have their cake and eat it too. But the rest of us are compelled to stay at home, with our high taxes, inflated prices and eight-dollar-a-day (not week) cleaning women, and like it! And, in spite of all we've read about châteaux and castles, there's a lot to be said for life in the U.S.A.

62-101087-A

FAIR ENOUGH — By WESTBROOK PEGLER

NEW YORK, June 30.

THE rowdy spectacle of two justices of the Supreme Court rolling on the floor in a tangle of robes may be all for the best if it calls general attention to some actual practices and prejudices of this court which the citizens otherwise might not appreciate.

The layman who ordinarily pays no attention to its ethics, manners and reasoning and never reads its opinions, may be unaware of changes ominous to him unless he reads carefully the text of Justice Jackson's denunciation of Justice Black and the surrounding evidence of hatred and henceforth takes the trouble to plod through much tedious reading.

This court is supposed to be aloof and impartial. Yet, anyone who has followed its decisions in recent years can predict its verdict in almost any case concerning a union or an important politician of the union movement.

These forecasts can be based on a series of decisions accompanied by sophisticated opinions, amounting to political harangues, which have endowed this auxiliary of the court's own political party with rights that amount to predatory privilege. These opinions, as a series, have condoned conduct by unions which would be held criminal if proven against any other individual or group. In passing they have deliberately blessed gross immorality in conflict with the Ten Commandments, specifically "thou shalt not steal" and "thou shalt not bear false witness against thy neighbor."

WE HAVE recently seen Congress put to the necessity of repudiating a decision of the court that it intended to endow a highway robber with the status of an employe of his victim provided the robber held a union card and to regard his loot as honest wages.

Such, of course, never was the intent of Congress, and it is very doubtful that an honest court would recognize any right of Congress so to enact.

There have been two conspicuous opinions in flagrant violation of the Eighth Commandment.

In the so-called carpenters' case, the majority opinion held that a union was merely indulging in familiar union practice when it advertised falsely that Anheuser-Busch was unfair to organized labor and organized a boycott of this brewer's beer. If such be familiar union practice, and it is, it is for an honest and moral court to deplore, not countenance.

Yet, admitting that the employer was not unfair and admitting that the union, itself, had violated its own agreement and put itself in the wrong, the court held for the union.

IN ANOTHER, known as the cafeteria case, the court again held that it was only familiar union practice, as again it was, to advertise falsely that the owners of a small business were Fascists. This was recognized as part of the give and take of such disputes, although a court sensible of Christian morals would have taken occasion to say that, familiar practice though such slander may be, it is immoral.

Regardless of its decisions on the legal questions involved in these two cases of falsehood against innocent parties, the court had no need to indorse or condone such conduct.

THESE cases and the sordid opinions holding unions above the kickback and racketeering laws are all part of a whole program of politics in the court.

The dissenting opinions have been, altogether, clear, vigorous, patient and dignified.

However, dissents are but statements of lost causes and the defeats of justice and morals have been consistent.

IN JUSTICE JACKSON'S startling attack on Justice Black, somewhat concealed among an angry text that few citizens would read at all, there occurs a really alarming revelation.

Jackson says that someone in the court actually proposed that a decision in a pending labor case be handed down in a hurry, "without waiting for the opinion and dissent," for the improper, political purpose of exerting an influence on negotiations between the mine workers and the operators.

One justice, not named by Mr. Jackson, would have used the weight of the court to tip the balance in favor of a party to negotiations who happened to be his friend.

THE Federal district courts, notwithstanding the fact that many of the judges now are Roosevelt appointees, have been more faithful to the true concept.

In many cases, however, they have had to decide in favor of unions and against innocent parties and the public interest because the Supreme Court already had ruled in favor of its political proteges in precedent cases.

Lawyers have become aware of a growing prejudice among both judges and the people. The result of political aggravation and propaganda which depicts individuals and groups as "Fascist," "anti-labor" and "anti-Semitic" merely because they opposed portions of the New Deal and Roosevelt. They try to pick their judges while opposing counsel, sensing the advantage they enjoy before certain biased judges and before juries drawn from radical neighborhoods, fight for that advantage.

The result is that the defendant or litigant identified with the political minority in a community must compromise his rights or go into court conscious that he hasn't the even chance that American law is supposed to guarantee the citizen but with the odds against him.

During good behavior, the Supreme Court is inconspicuous and its decisions and the reasoning behind them may be ignored by the citizen without peril. But, in its present state, the citizen should exert himself to study these documents so as to know how his chances of even justice have been diminished by the prejudices of unfit appointees.

Mr. Tolson
Mr. E. A. Tamm
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Carson
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Hendon
Mr. Pennington
Mr. Quinn Tamm
Mr. Nease
Miss Gandy

WASHINGTON TIMES HERALD
AFTERNOON EDITION
DATE 1946
EX-26

Patronage.

Before the Supreme Court battle is won, it looks as if the Administration will have mortgaged itself in patronage up to the hilt. It will take a lot of jury jobs to swing certain Senators.

One unfortunate movement the Supreme Court fight may cut into is the crime prevention program of the Justice Department. A very essential part of this program is the work of U. S. District attorneys in securing convictions.

All the sleuthing of Super-Dick J. Edgar Hoover would be worth nothing without a corps of forthright district attorneys to follow through. On the whole the New Deal's district attorneys have been good.

Now, however, certain Senators, seeing Roosevelt in a tight place for their votes, have demanded the ousting of old district attorneys, appointment of their friends.

Illustration is Senator Hatch, of New Mexico. Heretofore a nonentity in the Senate, Hatch suddenly found himself holding a key position on the all-important Senate Judiciary Committee. With the committee divided almost evenly, Hatch's vote can swing the report on the President's Supreme Court plan one way or the other.

Suddenly waking up to this, Hatch is demanding jobs. One is the appointment of his law partner, E. M. Grantham, as district attorney in New Mexico and the ousting of William J. Barker, incumbent. Barker is rated by the Justice Department as one of its best district attorneys. But that makes no difference to Hatch.

Note: Being a law partner of a Senator is one of the best ways to get ahead in New Mexican politics. Hatch once was law partner of Senator Bratton. When Bratton stepped out to become a Federal Judge, he jumped Law-Partner Hatch into his shoes.

Mr. Nolan
Mr. Tolson
Mr. Baughman
Mr. Clegg
Mr. Coffey
Mr. Dawsey
Mr. Egan
Mr. Foxworth
Mr. Glavin
Mr. Harbo
Mr. Joseph
Mr. Lester
Mr. Nichols
Mr. Quinn
Mr. Schilder
Mr. Tamm
Mr. Tracy
Miss Gandy

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FBI/DOJ

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Mr. Tolson
Mr. Nichols
Mr. Boardman
Mr. Belmont
Mr. Mohr
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. Trotter
Mr. Nease
Tele. Room
Mr. Holloman
Miss Gandy

BAUMGARDNER

JENCKS CASE

UP45

ADD 3 EISENHOWER

IN OTHER NEWS CONFERENCE HIGHLIGHTS, EISENHOWER:

--SAID THE JUSTICE DEPARTMENT IS STUDYING RECENT FAR-REACHING SUPREME COURT DECISIONS ON THE QUESTION OF CONSTITUTIONAL RIGHTS OF INDIVIDUALS. HE DECLINED TO COMMENT ON WHETHER HE BELIEVES THE COURT HAS GONE TOO FAR AT THE EXPENSE OF LAW ENFORCEMENT PROCEDURES AND INVESTIGATING FUNCTIONS OF CONGRESS. HOWEVER, HE INDICATED THE ADMINISTRATION MIGHT ASK FOR NEW LEGISLATION TO OFFSET PARTS OF THE DECISIONS.

--DESCRIBED THE MOST RECENT DISARMAMENT PROPOSALS BY THE RUSSIANS AS HOPEFUL SIGNS WHICH DESERVE THE MOST EARNEST AND ENERGETIC STUDY. HE SAID THAT HE WOULD BE WILLING TO MAKE SOME TEMPORARY ARRANGEMENT TO SUSPEND NUCLEAR TESTS WITH SAFEGUARDS AS A PRELIMINARY STEP TOWARD GENERAL DISARMAMENT ON A PERMANENT BASIS.

--SAID THAT THERE SEEMED TO BE A VERY IMPROVED ATMOSPHERE ABOUT THE DISARMAMENT NEGOTIATIONS. HE PREFERRED NOT TO DISCUSS THEM IN DETAIL LEST HE MIGHT DISTURB THEM.
HE SAID IT APPEARS NEGOTIATORS ON BOTH SIDES ARE SINCERE AT THIS TIME AND NOT USING THE TALKS AS A PROPAGANDA SOUNDING BOARD.

--SAID FLATLY THAT DISARMAMENT AMBASSADOR HAROLD E. STASSEN WAS NOT REPRIMANDED RECENTLY AS HAD BEEN RUMORED. HOWEVER, THE PRESIDENT SAID THAT REPORTS HAD REACHED HIM THAT STASSEN WAS MOVING TOO FAST AND THAT HE WAS BROUGHT HOME FOR CONSULTATION TO BE SURE THAT NOTHING WOULD BE DONE TO UPSET THE DELICATE NEGOTIATIONS. EISENHOWER SAID THE DELICATE NATURE OF THE TALKS REQUIRED THAT NO ONE BE ALLOWED TO STRAY OFF THE PATH.

--SUPPORTED DEFENSE MOBILIZER GORDON GRAY IN HIS REFUSAL TO TURN OVER TO SENATORS CERTAIN EXECUTIVE DEPARTMENT PAPERS IN THE IDAHO POWER CO. FAST TAX WRITE-OFF CASE. UNLESS SUCH A PROCEDURE WAS FOLLOWED, THE PRESIDENT SAID, THERE SOON WOULD BE NO COORDINATION IN THE EXECUTIVE DEPARTMENT.

INDEXED - 49

62-104074-16

NOT RECORDED
44 JUL 2 1957

55 JUN 8 1957

EX 100

WASHINGTON CITY NEWS SERVICE

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : The Director

DATE: June 14, 1944

FROM : W. R. Glavin

SUBJECT: The Congressional Record

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 12-2-83 BY SP2TAP/ki

PUBLICATION FILE

Please be advised that the attached copy of the Congressional Record for Tuesday, June 13, 1944, has been reviewed, and the following matters contained therein are marked for your attention:

S E N A T E

The Senate was in session but nothing believed to be of interest to the Bureau was considered. Its next meeting will be held on Thursday, June 15, 1944, at 12 o'clock noon.

H O U S E

Page 5920 to 5927 - The House agreed to the Conference Report on S. 1767, the bill to provide Federal Government aid for the readjustment in civilian life of returning World War No. 2 veterans (the GI Bill of Rights).

Page 5937 - Mr. May inserted in the Record a print of H. R. 3022, War Contracts Settlement Act. Attention is directed to section 12 (b) page 5939 and Section 14 (b) page 5943, which would require the Department of Justice or any other Government agency to make such investigations as the Director (of the Office of Contract Termination) deems necessary or desirable to detect unlawful acts and fraud in connection with termination settlements and payments and guaranties.

Page 5964 - Mr. Busbey again mentioned Messrs. Tom Tippett, Tom Emerson and Shad Polier, [illegible] key positions under OPA. (In the Congressional Record of June 12, 1944, Mr. Busbey alleged that they are Communists.)

Page 5976 - Mr. Anderson of New Mexico discussed "Regulation of Insurance Business".

Page 5978 - Adjournment - Until Wednesday, June 14, 1944, at 11 o'clock A. M.

A P P E N D I X

RECORDED & INDEXED 166-4921-813

EX-42

35 JUN 21

Page A3211 - The President's address on the opening of the Fifth War Loan Drive was inserted in the Record by Senator George.

Page A3229 - Mr. Anderson of California extended his remarks to include two letters, one from Director Myer of the War Relocation Authority and the other from Secretary of War stating that it is impossible to predict when the War Department will estimate the situation will warrant return of Japanese to the West Coast.

Page A3231 - Mr. Lane extended his remarks to include an article on the Supreme Court, "Making of Major Findings by Small Minority Increases Growing Lack of Faith on Part of General Public". The article referred to the case in which the Court held that interstate insurance business comes under the Sherman Antitrust Act. The Justice Department was criticized for having set in motion the case which resulted in the decision.

56 JUL 4 1944

Page A3432 - Mr. Jeffries extended his remarks to include an article from the New Republic of June, 1944, in which it was stated the history of all investigations of subversive movements and conspiracies against American constitutional government has been the same. Smear attacks destroyed the Palmer investigation - an attempt was made to blow up the home of Attorney General Palmer, and Attorney General Biddle and Jackson and J. Edgar Hoover, head of the FBI, have been attacked by the Communists as a result of their criticism of the Red menace. Mention was made also of the Dies committee.

Respectfully,

W. R. Glavin

Attachment

JOHN EDGAR HOOVER
DIRECTOR

Mr. Nathan .....
Mr. Tolson .....
Mr. Edwards .....
Mr. Clegg .....
.....

U. S. Bureau of Investigation

Department of Justice
Washington, D. C.

HHC:EM

January 11, 1933.

Suggestion #84
C. A. Appel

MEMORANDUM FOR THE DIRECTOR.

Employee suggests the inclusion of information in the Manual of Instructions in Section 9, page 5, at the end of the statement in regard to United States versus Holte which will show the citation of the decision in the case Gebardi versus United States, concerning which the Supreme Court recently handed down a decision.

The employee offered the phraseology, which the Committee approves, and if you approve this suggestion, it is recommended that there be added at the end of the statement in regard to the ~~Card~~ case of United States versus Holte, Section 9, page 5 of the Manual of Instructions, a paragraph reading as follows:

> "The Supreme Court in the case of Jack Gebardi and Louise Rolfe Gebardi vs. United States, Case #97, October Term, 1932, reversed a conviction for conspiracy on the ground that the evidence in that case was insufficient to show that the woman conspired, and as she was not guilty, there being no other party, the man could not be guilty of conspiracy. The facts show that she agreed to the transportation without active assistance."

Respectfully,

C. A. Tolson

H. H. Clegg

66-2765-1446

J. M. Keith

RECORDED

FEB 16 1933

JOHN EDGAR HOOVER
DIRECTOR

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

CAA:RG

November 14, 1932

NOV 15 1932 FBI

MEMORANDUM FOR THE DIRECTOR

In view of the decision of the Supreme Court in the case of Jack Gebardi, et al, it is believed that there should be inserted in the Manual of Instructions, Section 9, on Page 5, at the end of the statement in regard to the case of United States vs. Holte, a paragraph reading as follows:

> "The Supreme Court in the case of Jack Gebardi and Louise Rolfe Gebardi vs. United States, Case #97, October Term, 1932, reversed a conviction for conspiracy on the ground that the evidence in that case was insufficient to show that the woman conspired, and as she was not guilty, there being no other party, the man could not be guilty of conspiracy. The facts show that she agreed to the transportation without active assistance."

Respectfully,

C. A. Appel.

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FEB 16 1933

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FEB

SUPREME COURT OF THE UNITED STATES.

No. 97.—October Term, 1932.

Jack Gebardi and Louise Rolfe Gebardi, Petitioners, *vs.* The United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[November 7, 1932.]

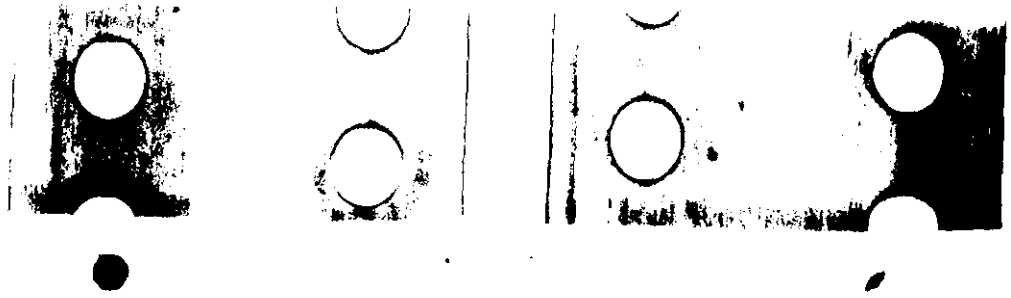
Mr. Justice Stone delivered the opinion of the Court.

This case is here on certiorari, 286 U. S. 539, to review a judgment of conviction for conspiracy to violate the Mann Act (36 Stat. 825; 18 U. S. C., § 397 *et seq.*). Petitioners, a man and a woman, not then husband and wife, were indicted in the District Court for Northern Illinois, for conspiring together, and with others not named, to transport the woman from one state to another for the purpose of engaging in sexual intercourse with the man. At the trial without a jury there was evidence from which the court could have found that the petitioners had engaged in illicit sexual relations in the course of each of the journeys alleged; that the man purchased the railway tickets for both petitioners for at least one journey, and that in each instance the woman, in advance of the purchase of the tickets, consented to go on the journey and did go on it voluntarily for the specified immoral purpose. There was no evidence supporting the allegation that any other person had conspired. The trial court overruled motions for a finding for the defendants, and in arrest of judgment, and gave judgment of conviction, which the Court of Appeals for the Seventh Circuit affirmed, 57 F. (2d) 617, on the authority of *United States* v. *Holte*, 236 U. S. 140.

The only question which we need consider here is whether, within the principles announced in that case, the evidence was sufficient to support the conviction. There the defendants, a man and a woman, were indicted for conspiring together that the man

Mann Act 11-14-32

46-2765-1444



should transport the woman from one state to another for purposes of prostitution. In holding the indictment sufficient, the Court said (p. 144):

"As the defendant is the woman, the District Court sustained a demurrer on the ground that although the offence could not be committed without her she was no party to it but only the victim. The single question is whether that ruling is right. We do not have to consider what would be necessary to constitute the substantive crime under the act of 1910 [the Mann Act], or what evidence would be required to convict a woman under an indictment like this, but only to decide whether it is impossible for the transported woman to be guilty of a crime in conspiring as alleged."

The Court assumed that there might be a degree of cooperation which would fall short of the commission of any crime, as in the case of the purchaser of liquor illegally sold. But it declined to hold that a woman could not under some circumstances not precisely defined, be guilty of a violation of the Mann Act and of a conspiracy to violate it as well. Light is thrown upon the intended scope of this conclusion by the supposititious case which the Court put (p. 145):

"Suppose, for instance, that a professional prostitute, as well able to look out for herself as was the man, should suggest and carry out a journey within the act of 1910 in the hope of blackmailing the man, and should buy the railroad tickets, or should pay the fare from Jersey City to New York, she would be within the letter of the act of 1910 and we see no reason why the act should not be held to apply. We see equally little reason for not treating the preliminary agreement as a conspiracy that the law can reach, if we abandon the illusion that the woman always is the victim."

In the present case we must apply the law to the evidence; the very inquiry which was said to be unnecessary to decision in *United States* v. *Holte, supra.*

First. Those exceptional circumstances envisaged in *United States* v. *Holte, supra,* as possible instances in which the woman might violate the act itself, are clearly not present here. There is no evidence that she purchased the railroad tickets or that hers was the active or moving spirit in conceiving or carrying out the transportation. The proof shows no more than that she went willingly upon the journeys for the purposes alleged.

Section 2 of the Mann Act[1] (18 U. S. C. § 398), violation of which is charged by the indictment here as the object of the conspiracy, imposes the penalty upon "Any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting in interstate or foreign commerce . . . any woman or girl for the purpose of prostitution or debauchery or for any other immoral purpose . . ." Transportation of a woman or girl whether with or without her consent, or causing or aiding it, or furthering it in any of the specified ways, are the acts punished, when done with a purpose which is immoral within the meaning of the law. See *Hoke* v. *United States*, 227 U. S. 308, 320.

The Act does not punish the woman for transporting herself; it contemplates two persons—one to transport and the woman or girl to be transported. For the woman to fall within the ban of the statute she must, at the least, "aid or assist" someone else in transporting or in procuring transportation for herself. But such aid and assistance must, as in the case supposed in *United States* v. *Holte, supra,* 145, be more active than mere agreement on her part to the transportation and its immoral purpose. For the statute is drawn to include those cases in which the woman con-

[1] "Any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any Territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or who shall knowingly procure or obtain, or cause to be procured or obtained, or aid or assist in procuring or obtaining, any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in any Territory or the District of Columbia, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in any Territory or the District of Columbia, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $5,000, or by imprisonment of not more than five years, or by both such fine and imprisonment, in the discretion of the court."

sents to her own transportation. Yet it does not specifically impose any penalty upon her, although it deals in detail with the person by whom she is transported. In applying this criminal statute we cannot infer that the mere acquiescence of the woman transported was intended to be condemned by the general language punishing those who aid and assist the transporter,[2] any more than it has been inferred that the purchaser of liquor was to be regarded as an abettor of the illegal sale. *State* v. *Teahan*, 50 Conn. 92; *Lott* v. *United States*, 205 Fed. 28; cf. *United States* v. *Farrar*, 281 U. S. 624, 634. The penalties of the statute are too clearly directed against the acts of the transporter as distinguished from the consent of the subject of the transportation. So it was intimated in *United States* v. *Holte*, *supra*, and this conclusion is not disputed by the Government here, which contends only that the conspiracy charge will lie though the woman could not commit the substantive offense.

Second. We come thus to the main question in the case, whether, admitting that the woman, by consenting, has not violated the Mann Act, she may be convicted of a conspiracy with the man to violate it. Section 37 of the Criminal Code (18 U. S. C., § 88), punishes a conspiracy by two or more persons "to commit any offense against the United States". The offense which she is charged with conspiring to commit is that perpetrated by the man, for it is not questioned that in transporting her he contravened § 2 of the Mann Act. Cf. *Caminetti* v. *United States*, 242 U. S. 470. Hence we must decide whether her concurrence, which was not criminal before the Mann Act, nor punished by it, may, without more, support a conviction under the conspiracy section, enacted many years before.[3]

As was said in the *Holte* case (p. 144), an agreement to commit an offense may be criminal, though its purpose is to do what some

[2] § 3 of the Act (18 U. S. C., § 399), directed toward the persuasion, inducement, enticement or coercion of the prohibited transportation, also includes specifically those who "aid or assist" in the inducement or the transportation. Yet it is obvious that those words were not intended to reach the woman who, by yielding to persuasion, assists in her own transportation.

[3] § 30, Act of March 2, 1867 (14 Stat. 471, 484) "(e)xcept for an omitted not relevant provision, ... has continued from that time to this, in almost precisely its present form". See United States v. Gradwell, 243 U. S. 476, 481.

of the conspirators may be free to do alone.[4] Incapacity of one to commit the substantive offense does not necessarily imply that he may with impunity conspire with others who are able to commit it.[5] For it is the collective planning of criminal conduct at which the statute aims. The plan is itself a wrong which, if any act be done to effect its object, the state has elected to treat as criminal, *Clune* v. *United States*, 159 U. S. 590, 595. And one may plan that others shall do what he cannot do himself. See *United States* v. *Rabinowich*, 238 U. S. 78, 86, 87.

But in this case we are concerned with something more than an agreement between two persons for one of them to commit an offense which the other cannot commit. There is the added element that the offense planned, the criminal object of the conspiracy, involves the agreement of the woman to her transportation by the man, which is the very conspiracy charged.

Congress set out in the Mann Act to deal with cases which frequently, if not normally, involve consent and agreement on the part of the woman to the forbidden transportation. In every case in which she is not intimidated or forced into the transportation, the statute necessarily contemplates her acquiescence. Yet this acquiescence, though an incident of a type of transportation speci-

[4] The requirement of the statute that the object of the conspiracy be an offense against the United States, necessarily statutory, United States v. Hudson, 7 Cranch 32, avoids the question much litigated at common law (see cases cited in Wright, The Law of Criminal Conspiracies [Carson ed. 1887] and in Sayre, Criminal Conspiracy, 35 Harv. L. Rev. 393) of the criminality of combining to do an act which any one may lawfully do alone.

[5] So it has been held repeatedly that one not a bankrupt may be held guilty under § 37 of conspiring that a bankrupt shall conceal property from his trustee (Bankruptcy Act § 29[b], 11 U. S. C., § 52). Tapack v. United States, 220 Fed. 445, certiorari denied 238 U. S. 627; Jollit v. United States, 285 Fed. 209, certiorari denied 261 U. S. 624; Israel v. United States, 3 F. (2d) 743; Kaplan v. United States, 7 F. (2d) 594, certiorari denied 269 U. S. 582. And see United States v. Rabinowich, 238 U. S. 78, 86, 87. These cases proceed upon the theory (see United States v. Rabinowich, supra, 86) that only a bankrupt may commit the substantive offense though we do not intimate that others might not be held as principals under Criminal Code, § 332 (18 U. S. C., § 550). Cf. Barron v. United States, 5 F. (2d) 799.

In like manner Chadwick v. United States, 141 Fed. 225, sustained the conviction of one not an officer of a national bank for conspiring with an officer to commit a crime which only he could commit. And see United States v. Martin, 4 Cliff. 156; United States v. Stevens, 44 Fed. 132.

fically dealt with by the statute, was not made a crime under the Mann Act itself. Of this class of cases we say that the substantive offense contemplated by the statute itself involves the same combination or community of purpose of two persons only which is prosecuted here as conspiracy. If this were the only case covered by the Act, it would be within those decisions which hold, consistently with the theory upon which conspiracies are punished, that where it is impossible under any circumstances to commit the substantive offense without cooperative action, the preliminary agreement between the same parties to commit the offense is not an indictable conspiracy either at common law, *Shannon and Nugent* v. *Commonwealth*, 14 Pa. St. 226; *Miles* v. *State*, 58 Ala. 390; cf. *State* v. *Law*, 189 Iowa 910; see *State ex rel. Durner* v. *Huegin*, 110 Wis. 189, 243, or under the federal statute.[6] See *United States* v. *Katz*, 271 U. S. 354, 355; *Norris* v. *United States*, 34 F. (2d) 839, 841, reversed on other grounds, 281 U. S. 619; *United States* v. *Dietrich*, 126 Fed. 664, 667. But criminal transportation under the Mann Act may be effected without the woman's consent as in cases of intimidation or force (with which we are not now concerned). We assume, therefore, for present purposes, as was suggested in the *Holte* case, *supra*, 145, that the decisions last mentioned do not in all strictness apply.[7] We do not rest our decision upon the theory of those cases, nor upon the related one that the attempt is to prosecute as conspiracy acts identical with

[6]The rule was applied in United States v. N. Y. C. & H. R. R. Co., 146 Fed. 298; United States v. Sager, 49 F. (2d) 725. In the following cases it was recognized and held inapplicable for the reason that the substantive crime could be committed by a single individual. Chadwick v. United States, 141 Fed. 225; Laughter v. United States, 259 Fed. 94; Lisansky v. United States, 31 F. (2d) 846, certiorari denied 279 U. S. 873. The conspiracy was also deemed criminal where it contemplated the cooperation of a greater number of parties than were necessary to the commission of the principal offense, as in Thomas v. United States, 156 Fed. 897; McKnight v. United States, 252 Fed. 687; cf. Vannata v. United States, 289 Fed. 424; Ex parte O'Leary, 53 F. (2d) 956. Compare Queen v. Whitchurch, 24 Q. B. D. 420.

[7]It should be noted that there are many cases not constituting "a serious and substantially continued group scheme for cooperative law breaking" which may well fall within the recommendation of the 1925 conference of senior circuit judges that the conspiracy indictment be adopted "only after a careful conclusion that the public interest so requires." Att'y Gen. Rep. 1925, pp. 5, 6.

the substantive offense. *United States* v. *Dietrich*, 126 Fed. 664. We place it rather upon the ground that we perceive in the failure of the Mann Act to condemn the woman's participation in those transportations which are effected with her mere consent, evidence of an affirmative legislative policy to leave her acquiescence unpunished. We think it a necessary implication of that policy that when the Mann Act and the conspiracy statute came to be construed together, as they necessarily would be, the same participation which the former contemplates as an inseparable incident of all cases in which the woman is a voluntary agent at all, but does not punish, was not automatically to be made punishable under the latter. It would contravene that policy to hold that the very passage of the Mann Act effected a withdrawal by the conspiracy statute of that immunity which the Mann Act itself confers.

It is not to be supposed that the consent of an unmarried person to adultery with a married person, where the latter alone is guilty of the substantive offense, would render the former an abettor or a conspirator, compare *In Re Cooper*, 162 Cal. 81, 85, or that the acquiescence of a woman under the age of consent would make her a co-conspirator with the man to commit statutory rape upon herself. Compare *Queen* v. *Tyrrell* [1894] 1 Q. B. 710. The principle, determinative of this case, is the same.

On the evidence before us the woman petitioner has not violated the Mann Act and, we hold, is not guilty of a conspiracy to do so. As there is no proof that the man conspired with anyone else to bring about the transportation, the convictions of both petitioners must be

Reversed.

Mr. Justice CARDOZO concurs in the result.

A true copy.

Test:

Clerk, Supreme Court, U. S.

DEPARTMENT OF JUSTICE

WASHINGTON, D. C.

December 14, 1932.

DEPARTMENT CIRCULAR NO. 2347

TO UNITED STATES ATTORNEYS:

Your attention is invited to the decision of the Supreme Court of the United States in the case of Jack Gebardi and Louise Rolfe Gebardi, Petitioners, vs. The United States, No. 97, October Term, 1932, involving a conspiracy to violate the White Slave Traffic Act, in which the Court held that a woman, by consenting to go and voluntarily going from one state to another with a man, with a view to immoral relations with him, does not violate the conspiracy statute, Section 88, Title 18, United States Code, and that in such case the man cannot be guilty of conspiracy unless he conspires with some person other than the woman.

Will you please, therefore, give careful consideration to the above mentioned decision in dealing with White Slave Traffic cases now or hereafter pending under Section 88, Title 18, United States Code?

Respectfully,

WILLIAM D. MITCHELL,

Attorney General.

DEPARTMENT OF JUSTICE

WASHINGTON, D. C.

April 19, 1929.

CIRCULAR NO. 2027

TO ALL UNITED STATES ATTORNEYS:

The Department deems it advisable to reissue Circular No. 986, dated August 5, 1919, which is a reissue of Circular No. 647, on the subject of the enforcement of the White Slave Traffic Act, as follows:

On Monday, January 15, 1917, the Supreme Court of the United States in the so-called "Diggs-Caminetti" cases (Nos. 510 and 480 of the October Term, 1916) announced that commercialism was not an essential to a violation of the White-slave traffic act.

This decision does not seem to demand any change in the general policy that has been pursued in the past six years with satisfactory results in the enforcement of this law. On July 28, 1911 (Department file 145825-65), Attorney General Wickersham said:

> "Such a case (concubinage) would fall technically within the statute * * *. In the application of the law the Federal courts must be careful * * * to prevent them being turned into ordinary courts of quarter sessions to deal with * * * violations of the police regulations of the community which should be dealt with by the local tribunals."

From the beginning District Attorneys have been advised by the Department, thus:

> "As to specific cases, the Department must rely upon the discretion of the District Attorneys who have first-hand knowledge of the facts, and opportunity for personal interviews

66-2765-1446

with the witnesses, and who will thus be able to ascertain what circumstances of aggravation, if any, attend the offense; the age and relative interest of the parties, the motives of those urging prosecution; and what reasons, if any, exist for thinking the ends of justice will be better served by a prosecution under Federal law than under the laws of the State having jurisdiction."

As a guide to the exercise of this discretion in non-commercial cases, you are advised that cases involving a fraudulent overreaching, or involving previously chaste, or very young women or girls, or, when State laws are inadequate, involving married women, with young children, then living with their husbands, may properly receive consideration; that blackmail cases should, so far as possible, be avoided; and that whenever the woman herself voluntarily and without any overreaching, has consented to the criminal arrangement she, too, if the case shall seem to demand it, may be prosecuted as a conspirator.

Intelligently and discriminately administered, this law as now interpreted may be made to serve a valuable purpose. With the above suggestions its further enforcement is confided to you.

WILLIAM D. MITCHELL,

Attorney General.

Los Angeles, California
August 17, 1938

Director
Federal Bureau of Investigation
Washington, D. C.

Re: ALBERT L. SMITH,
C - 509,732
WAR RISK INSURANCE

Dear Sir:

The Los Angeles Field Division is in receipt of a copy of a letter dated July 29, 1938, directed by the United States Attorney at Los Angeles to the Attorney General, recommending that consideration be given to the instant case to determine whether or not an appeal should be taken. There are being set out herein exqerpts from the above-referred-to letter for the information of the Bureau, which may shed some light on the situation of War Risk Insurance in the Los Angeles Field Division area.

The United States Attorney, in his letter, states, "The trial courts in this jurisdiction only in rare instances give an instructed verdict in war risk insurance cases. Mr. Fooks, who has tried practically all of these cases in this district for the Government since 1933, informs me that to the best of his recollection there have been only six directed verdicts for the Government during the period that he has been conducting this litigation.

"In addition to basing their verdicts upon the facts, and under the Court's instructions as to the law, in suits on war risk insurance contracts, it is apparent there is a tendency on the part of jurors to not only consider the physical and mental condition of the insured as those conditions would relate to the question of total and permanent disability under the terms of the insurance contract, but they also consider the insured's employability status from the standpoint of his educational qualifications, training, and experience, as well as his appearance as to age, in determining the question of total and permanent disability."

RECORDED & INDEXED

87-1-734

FEDERAL BUREAU OF INVESTIGATION

"Recently there have been handed down decisions by some of the Circuit Courts of Appeals, as well as the Supreme Court of the United States, indicating that a more liberal construction is to be given to War Risk Insurance Statutes than formerly

CNB

understood. I refer particularly to the Ninth Circuit Court case of Kathleen McClure vs. United States, 95 Fed. (2) 744, in which the provisions of Section 305, World War Veterans Act, 1924, as amended, (Section 516, Title 38, U.S.C.A.) were extended; the Seventh Circuit Court case of Charles F. Towery, etc. vs. United States (not yet reported except in the advance sheets) extending the jurisdictional features of Section 19, World War Veterans Act, 1930, as amended, (Section 445, Title 38, U.S.C.A.); the Seventh Circuit case of United States vs. Stanley J. Patyrak, 90 Fed. (2) 715, affirmed by the Supreme Court of the United States, 303 U. S. 341, barring the defense of "no loss" in suits on converted policies; and the Fourth Circuit case of United States vs. Ben B. Jackson, 89 Fed. (2) 572, affirmed by the Supreme Court of the United States, 302 U. S. 628, extending the application of Section 401, War Risk Insurance Act, as amended December 24, 1919.

"Based upon the above decisions the National Judge Advocate of the Disabled American Veterans of the World War has recently published in their national magazine, "D.A.V. Semi-Monthly," which publication is devoted exclusively to Veterans' affairs, a series of articles advising all veterans because of the Courts more liberal interpretation of the War Risk Insurance Statutes and the lack of understanding that many veterans have as to their rights under both yearly renewable term insurance contracts and converted policies of United States Government Life Insurance, to get in touch with their nearest service officers or a reputable attorney who has had experience in war risk insurance litigation with a view to filing claims on their contracts or policies of insurance in the event they are sick or disabled or feel that they have claims against the Government under their war risk insurance contracts. In one of these articles the veterans were advised that fully 60% of the World War Veterans drawing insurance benefits today were not aware they were entitled to such benefits until 1930 and it was suggested to the veterans that there must be fully 30,000 more veterans entitled to benefits now, who are "hard up" and who are finding it difficult to support themselves and families. The article goes on to suggest that many thousands of men entitled to insurance benefits under the war risk insurance contracts or policies are shortening their lives by working when they should rest and that the estimated 30,000 men who are entitled to benefits won't get them unless they do something about it soon. The articles referred to set out in detail the recent decisions handed down by the Fourth, Seventh, and Ninth Circuit Courts of Appeals, two of which cases were affirmed by the Supreme Court of the United States.

"This office has been unofficially advised that the Five Year Convertible Term policies now in force or in existence until recently run into hundreds of thousands. We have been further advised that the response to the articles published in the D.A.V. magazine has been considerable, in that certain offices are flooded with inquiries. It may be that the reaction to articles referred to may cause many of those veterans whose Five Year Convertible Term policies have lapsed because of nonpayment of premiums within the past six years or, for that matter, many of those whose policies are still in existence, to file several thousand claims throughout the United States, the result of which would cause an enormous quantity of this litigation in the near future. In view of this prospect, it is the opinion of this office that immediate steps should be taken to see that the trial courts adhere strictly to the law in the trial of these cases. That can only be accomplished by appealing all of those cases in which the record on appeal shows plaintiff failed to make a case for the jury and where the record is in such shape as to be reviewable by the Court of Appeals so as to determine that question."

Very truly yours,

J. H. HANSON
Special Agent in Charge

WJR/hlk
82-884

SAFETY DIVISION
1827 Orrington Avenue
Evanston, Illinois

INTERNATIONAL ASSOCIATION OF
CHIEFS OF POLICE

1313 EAST 60TH STREET, CHICAGO, ILLINOIS

August 12, 1938

Mr. Tolson
Mr. Clegg
Mr. Glavin
Mr. Nichols
Mr. Lester
Mr. McGuire
Mr. Harbo
Mr. Foxworth
Mr. Crowl
Mr. Dowsey
Mr. Egan
Mr. Tracy
Miss Gandy

The Executive Committee
The International Association
of Chiefs of Police

Dear Member:

At a meeting of the Board of Officers in June, Inspector Cahalane called attention of the Board to the possible implication of the Port Authority case referred to in the attached memorandum.

The Port Authority decision was handed down May 16 by the U.S. Supreme Court. Briefly, the Court decided that Gerhardt, an employee of the Port Authority, was liable for federal income taxes. Since its announcement, many people have had a chance to study this decision, and there is a growing belief that the decision is extremely important, particularly when considered side by side with President Roosevelt's message of April 25. In this message, the President recommended reciprocal taxation of federal, state, and local salaries and bonds.

Whether the IACP should take any action on this matter, and if so, what it should be, are matters which will be presented by Inspector Cahalane at the Executive Committee meeting on August 28. At this time I am attaching a brief memorandum which will give you a background of the whole picture.

Sincerely yours,

W. P. Rutledge
Executive Vice-President

WPR:M-r
Enc.

RECORDED & INDEXED.

94-1-15-2-4[illegible]

SHALL MUNICIPAL SALARIES AND BONDS BE TAXED?

All city officials today are considering very practically two questions which until recently have been largely theoretical. The first of these questions is whether the salaries of municipal officials and employees and the income from municipal bonds should be subject to federal taxation; and the second, whether federal taxes on municipal salaries, if imposed, can and should be made retroactive.

Here are the reasons, given in chronological order, why city officials are giving so much attention to these two questions:

The President's Message. On April 25, 1938, President Roosevelt sent a special message to Congress in which he recommended that proper legislative action be taken at once to terminate the tax exempt status of governmental bonds and governmental salaries. "Such legislation," said the President, "would subject all future state and local bonds to existing federal taxes, and it would confer similar powers on states in relation to future federal issues. At the same time such a statute would subject state and local employees to existing federal income taxes, and confer on the states the equivalent power to tax the salaries of federal employees."

The Port Authority Case. On May 16, the U. S. Supreme Court gave its decision in Helvering vs. Gerhardt, commonly referred to as the Port Authority case because Gerhardt is an employee of the Port of New York Authority. Briefly, the court decided that Gerhardt's income and the incomes of his two assistants are subject to federal income tax. In its reasoning the court showed a decided disposition to question and to change its previous reasoning--reasoning which has led to the creation of reciprocal tax exemption for the salaries and bonds of federal, state, and local governments. In other words, since the Port Authority decision, many state and municipal officials have begun to wonder whether the decision is broad enough to apply to the salaries of all municipal officers and employees.

Action of State Attorneys-General. On May 31, a group of state attorneys-general met in Washington to consider primarily the retroactive implications of the Port Authority decision. At this meeting it was the general opinion that the Port Authority decision placed upon all public employees affected the liability, possibly beyond the power of the Commissioner of Internal Revenue to compromise, for payment of federal income taxes, together with interest, for the period 1926 to date.

The group therefore decided on an immediate conference with Treasury officials for the purpose of determining whether an agreement could be reached on the type of federal legislation needed to prevent retroactive taxation. Without going into detail, it is reported that there was some disposition by Treasury officials to arrive by bargaining on the number of years for which back taxes should be collected. In short, no final agreement was reached on a desirable statute.

Remedial legislation. Bills designed to prevent retroactive taxation were introduced into Congress in the closing days of the session by Senators Lonergan and Green and Representatives Dingell and Phillips. None of these measures was enacted into law, nor were they pressed vigorously, because assurances were received from Treasury officials that no attempt would be made to assess retroactive taxes on the basis of the Port Authority decision until after Congress convenes in January.

Rehearing of the Port Authority Case. Attorneys for the Port of New York Authority asked on June 8 for a rehearing of the case by the court because they believed the decision constituted a complete reversal of the court's former position. Furthermore, since attorneys for the Port Authority feel confident that there is adequate legal precedent for a clause in the decision prohibiting its use to collect taxes back to 1926, they are anxious to have a rehearing in the hope that the Court may add such a clause to the decision, even

if the decision itself remains unchanged.

On June 9, Justice Roberts signed a stay pending action of the Court on the petition for rehearing. This petition will be heard by the Court in the fall session which begins on October 1.

Special Senate Committee on Taxation. Partly as the result of these foregoing developments, the U. S. Senate on June 16 created a special interim committee to make a thorough study and investigation "with respect to the taxation, and the exemption from taxation of (1) securities issued by or under the authority of the United States or the several states or political subdivisions thereof. (2) income derived from such securities; and (3) income received as compensation from the United States or from any state or political subdivision thereof."

The committee, which is to report not later than March 1, 1939, consists of Senators Austin of Vermont, Logan of Kentucky, and McGill of Kansas from the Senate Judiciary Committee; and Senators Brown of Michigan, Byrd of Virginia and Townsend of Delaware from the Senate Finance Committee. Although hearings will undoubtedly be held, the committee has not, on August 1, organized or announced its plans.

Report of the U. S. Department of Justice. In a report issued only within the last few weeks, the Department of Justice says, "In Helvering vs. Gerhardt, the Court made a far-reaching departure from the view that employees of the state as well as the Federal government were exempt from taxation..... The opinion seems broad enough to cover all employees of state and municipalities."* This same study states that the Port Authority decision seems also to apply to state and municipal bonds.

These, then, are the facts in the immediate background of two important questions concerning municipal officials. Stated again, these questions are (1) whether the incomes of municipal officials and employees and from municipal bonds should be taxed by the Federal government, and (2) whether such taxes should be made retroactive.

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*Italics ours.

Of the two questions, it is easier to arrive at a reasonable answer to the latter. Clearly the imposition of retroactive income taxes on municipal employees for any period, whether it be three years or twelve, is unjustifiable Certainly the President had no such intention in mind, because the whole intent of his message was to secure future taxation of salaries and bond income. In view of the Port Authority decision and the reported attitude of the Bureau of Internal Revenue, however, it is quite possible that retroactive taxes may be levied in the event the Supreme Court refuses to rehear the Port Authority case and vacates the stay granted on June 9 by Justice Roberts.

In these circumstances, a mutually agreeable solution appears to lie in action taken in 1926 in quite similar circumstances. In 1925 the regulations of the Bureau of Internal Revenue were revised to limit exemption from federal income tax to state employees engaged in the exercise of "essential governmental functions." The result was much the same as has been created by the Port Authority decision-- many classes of state and municipal employees were regarded by the Treasury as taxable, both in the future and retroactively. Congress thereupon enacted Section 1211 of the Revenue Act of 1926, abating liability of salaries received prior to that time by an officer or employee of any state or political subdivision thereof. Passage of a similar abatement statute by the next Congress therefore seems to be the logical and reasonable solution to the question of retroactive taxation.

In contrast to this relatively simple solution, answering the other question-- whether future municipal salaries and bonds should be taxed-- is a pretty complicated task. Assuming that this question is answered affirmative determining just how it should be done is even more complicated, involving as it does a decision as to whether such taxation can be accomplished by statute, or whether a constitutional amendment would be required.

For municipal officials to treat as a vested right the present immunity from federal taxation of municipal salaries and bonds would be to adopt a position that is extremely hard to defend. Certainly there is no

moral or ethical reason why such taxation should be avoided. Nor does it appear that there is any real danger that this power to tax might be abused by the federal government. Furthermore, the present immunity is decidedly unpopular with the public, if the results of a recent poll by the American Institute of Public Opinion are a reasonably accurate indication of public sentiment. Seventy four per cent of those polled were in favor of taxing federal, state, and municipal securities, and 82 per cent favored a constitutional amendment requiring state and municipal employees to pay federal income taxes.

Turning to the eminently practical question of cost, there is no doubt that federal taxation of municipal salaries and bonds would raise the cost of operating city governments. How much costs would rise is a very debatable point. A number of authorities on municipal finance predict a rise of about 1% in interest rates on municipal bonds if President Roosevelt's proposal is followed. There is great difference of opinion about how much or in what proportion municipal salary costs would rise. If, as is now being contemplated, the general exemption is lowered from $2,500 to $2,000 for a married person and from $1,000 to $800 for a single person, however, and municipal salaries were subject to federal taxation, it is generally agreed that there will be considerably stronger pressure for readjustment of municipal salaries.

Higher municipal costs as such are nothing new, and nothing to get unduly excited about. But higher municipal costs <u>without</u> a corresponding opportunity to obtain new revenues to finance such costs are good cause for complaint. It is with just such a predicament that cities will be faced if municipal salaries and bonds are subject to taxation, for municipalities, unlike the federal government and the states, cannot use the income tax to obtain new revenues to meet higher costs. Instead, municipalities must look either to a different form of tax or to the possibility of obtaining a share of state-collected or federal taxes.

That is to say, municipalities can very reasonably take the position that since the income tax is not directly open to them, the proposal to tax salaries and bonds can in no sense be considered reciprocal unless municipaliti are given the opportunity to tap new sources of revenue to meet their higher costs, whatever these may be. For example, there is the possibility that state and federal buildings might pay service charges to the cities where they are located. Precedent has been established for this procedure by the Federal Housing Administration, which is now paying service charges to a number of cities for municipal services provided to federally-built housing developments. Another possibility is to subject state and federal bonds to the municipal tax on intangible personal property. Already mentioned is a third possibility--local sharing of state-collected taxes.

Thus, for municipalities, whether municipal salaries and bonds shoul be federally taxed, is a severly practical problem. A change in the present exempt status has been proposed, and municipal officials will want to consider carefully the various aspects of these proposals. The basic objective of any change should be more equitable taxation, and not merely the substitution of one set of inequities for another.

The Gannett Newspapers

Frank E. Gannett
President

Executive Offices
Rochester, N. Y.

February 27, 1937

Robert E. Josepth, Esq.,
Dept. of Justice,
Washington, D.C.

Dear Mr. Josepth:

The Supreme Court is in peril. It cannot speak for itself.

If the vital principle of the complete independence of the judiciary is to be understood by the American people, the legal profession must help plead the case.

RECORDED & INDEXED N 94-8-237-1

The fight to protect our Supreme Court from subordination to the Executive CAN BE WON. It requires organization, national and local; immediate aggressive action - and enough money to carry the cost of awakening public opinion. I have joined with others in organizing a national non-partisan committee to carry on this fight.

RES DT

1 - Will you take the United States Supreme Court as your client? Will you plead its case among your friends and associates, your clients and every citizen in your community?

2 - Will you sign and circulate the enclosed petition?

3 - Will you contribute to the expenses of this national, non-partisan organization - the National Committee to Uphold Constitutional Government - to carry on the work of nation-wide education and organized protest?

4 - Will you go to your clients and urge them to give financial aid to this Committee so that its work may be effective?

Please return by earliest mail the enclosed blank with your suggestions and the contributions you secure.

Yours sincerely,

Frank E. Gannett

Checks should be made payable to Frank E. Gannett, Treasurer.

DEFEND THE HERITAGE OF JUDICIAL INDEPENDENCE

A distinguished British jurist, Herbert Arthur Smith, professor of international law at London University, warns in a special dispatch cabled under copyright by the United Press under date of Feb. 14, that the President's proposals relating to the Supreme Court threaten "a common heritage of English-speaking people since the end of the 17th century."

These proposals, says Professor Herbert Arthur Smith, "raise issues which are the common interest of all civilized countries particularly Britain, which shares a common legal tradition with the United States and certain common conceptions in the nature of judicial independence which has been a common heritage of the English-speaking people since the end of the 17th century.

"This tradition has two aspects. From the judges, it demands complete abstention from all political activities, whatever may have been their private opinions before being raised to the bench. For the rest of their lives, they are indifferent to all and only servants and spokesmen impersonal of the law . . . so long as the judges refrain from all political activity, it is an obligation of honor that neither their persons nor their office shall ever form a target for political bombardment.

"It is not overmuch to say that the whole structure of law and justice according to our ideas depends on the honorable observance by both sides of this unwritten convention.

"Should it be broken down, our courts would quickly become as the courts of Russia and Germany already have become the mere agents of a political party controlling the government. . . . If a law is declared by a judge to be unacceptable to the people, as represented by a government, it is our business to change the law *and leave the judge alone.*

"By this, we mean that we consider the principle of judicial independence one of the fundamentals of free institution and believe the maintenance of this principle is of greater importance than the decision in any particular case, however great its immediate political interest. . . .

"In Canada and Australia, we have federal constitutions which are much in common with the Constitution of the United States and it so happens that within recent weeks, Canada furnished an example which may be interesting to American observers.

"During Prime Minister Bennett's recent administration, the Canadian parliament enacted a number of statutes which may be roughly described as the Canadian counterpart of the New Deal. They dealt with industrial and social problems and they were challenged in the courts on the ground that they purported to deal with matters which under Canadian constitution are reserved to the provinces. Three weeks ago, the judicial committee of the privy council, which is the final court of appeals in such questions, decided the statutes were invalid.

"But that does not mean that those Canadians who were disappointed by the decisions will start agitation to get rid of the judges or swamp the Supreme Court with new appointments. They fully realized that in the long run, they would lose much more than they could gain by any such tactics, well knowing the principle of judicial independence is of *far greater importance than the enactment of any particular statute.*

"A judge's business is to declare the law as he finds it laid down for him by the constitution and the legislature. Whether that law is capitalistic or socialistic, whether the principle is conservative or radical, it is equally the judge's duty to apply it as he finds it.

"If a change in the law is desirable, *those changes must come from the people,* acting through the appropriate legislative agencies."

ONLY THEY DESERVE LIBERTY WHO ARE WILLING TO FIGHT FOR IT

TO MEMBERS OF THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES:

We, the undersigned, citizens of the United States, exercising our right of petition, protest against the President's bill, or any substitutes, permitting the Executive branch of the government to control or subordinate the Judicial or the Legislative powers established under the Constitution.

This bill would give to the President the power to remake the Supreme Court and to pack it with men to interpret the Constitution as he wishes. Such concentration of power is dangerous even in the hands of the best-intentioned man.

The framers of the Constitution divided the government into independent Legislative, Executive and Judicial departments, because history shows that concentration of those powers in one department, or in one man, inevitably leads to dictatorship.

This bill would establish such concentration of power as no one at any time in any place has been able to use for the public good. The independent branches of the government would become the instruments of the White House. Public respect for the courts and the Congress, so essential in a democracy, would be seriously impaired.

If one President is allowed in this fashion to create a Supreme Court to interpret the Constitution so as to validate the laws he desires, neither he nor his successors will have to consult the will of the people concerning future amendments.

We therefore protest, and demand that the constitutional safeguards of an independent judiciary be retained.

The power to amend our Constitution is not the Executive's, to exercise by indirection. It is not yours to surrender. It is ours, and we look to you, trustees of the people's liberties, to protect it. How you vote on this issue is all-important, now and in the future.

Name *Street and Number* *City* *State*

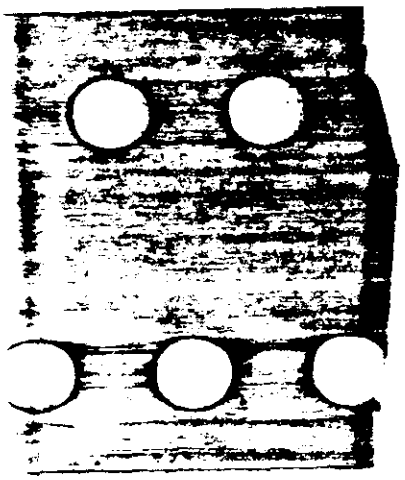
THE CHURCHES SPEAK

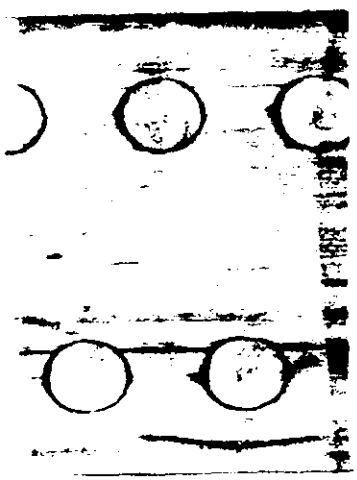
Protestant—	Catholic—	Community—	Episcopal—
"The future of democratic government in America is at stake."	*"With independence of the judiciary destroyed, the dictator assumes control."*	*"If an independent judiciary is lost, democracy itself is lost."*	*"Religious liberties and civil liberties stand or fall together."*

(See more extended quotations on reverse side of this Petition.)

Every person circulating one of these petitions is asked to impress on all signers the vital importance of writing personally, and at once, to their Congressman and to the two Senators from their State expressing in their own language their opposition to any bill destroying the independence of the Supreme Court of the United States. The names of the Congressman and Senators, if not known to every signer, can easily be obtained from the local newspaper.

For more copies of this Petition and literature on the Supreme Court Issue, write NATIONAL COMMITTEE TO UPHOLD CONSTITUTIONAL GOVERNMENT, Times-Union Building, Rochester, N. Y.





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If one President is allowed in this fashion to create a Supreme Court to interpret the Constitution so as to validate the laws he desires, neither he nor his successors will have to consult the will of the people concerning future amendments.

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Name	*Street and Number*	*City*	*State*

MAIL TO ONE OF THE SENATORS FROM YOUR STATE OR TO THE CONGRESSMAN FROM YOUR DISTRICT

NOTE: You may paste a blank sheet here for additional signatures.

A CRISIS CONFRONTS THE NATION

"A grave crisis now confronts us as a nation—a crisis which threatens the very structure of our government, the continuance of our democratic institutions and our liberties as a people.

"We face one of the most serious situations in our whole history—a situation which involves our **religious liberties** as well as our **civil liberties,** for all experience shows that **these two stand or fall together.**

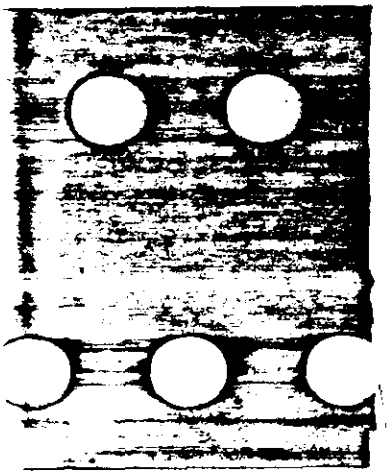
"We see clearly today what happens when a nation surrenders its freedom and becomes subject to absolute executive power.

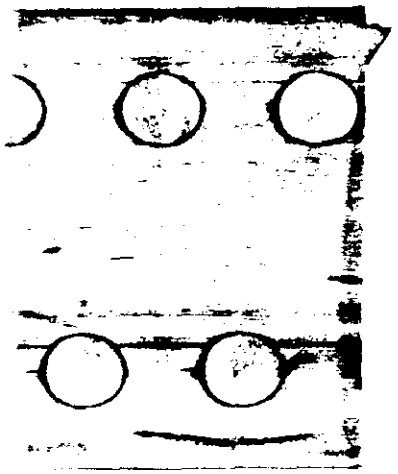
"I refer to the proposals now made by the President in regard to the Supreme Court of the United States.

"There can be no democracy, no constitutional government without an independent judiciary.

"In such a situation we are called as citizens, and as Christians, to take our stand and declare ourselves unhesitatingly."

—The Rt. Rev. WILLIAM T. MANNING, Protestant Episcopal Bishop of New York, in his Ash Wednesday sermon delivered in historic Trinity Church.





"PRESIDENT OR DICTATOR?"

"The President's motives are in no sense an issue here; let it be conceded that they are most laudable. But his plan is **the most dangerous attack in all our history upon the government established by the Constitution.**

"Whenever the independence of the judiciary is destroyed, the dictator assumes control.

"When one man controls the three coordinate and independent departments of the Government, there is no protection for our God-given rights except in an appeal to his clemency.

"That is not the Government established by our liberty-loving fathers. It is not the Government, we believe, that is desired today by a majority of the American people.

"If Mr. Roosevelt is convinced that his policies alone will save the country, let him appeal to the people in the manner prescribed by the Constitution, and on their authority alone vest himself with authority to make laws for the whole country, to interpret them with finality, and to execute them rigorously.

"We concede to no man the right to initiate a program which by act of Congress would destroy the constitutional Government of the United States."

—Editorials in "AMERICA," nationally-read "Catholic Review of the Week."

AWAKE BEFORE IT IS TOO LATE!

"I hesitate to discuss anything in the the pulpit that savors of partisan politics, and still less do I wish to deal in personalities. But the provocation now is too great and the matter, moreover, is above party.

"The future of democratic government in America is at stake. Some people may be so blind as not to see that fact. **Let us hope they will awake to this danger to their liberties before it is too late.**

"There is one great barrier between us and dictatorship, and that barrier is the Supreme Court. Now the President wants that court placed in his hands. The American people should say 'No!' to him in a tone that will never be forgotten. They should say, 'This far, Mr. President, shall you go and no farther.' The terrible truth is, it can happen here; in fact, it almost has happened here.

"Fascism in essence is established in America the minute this Supreme Court bill passes, for it places dictatorial power in the President. That means that slowly but surely civil liberties will tend to go. Religious liberties will next be attacked if we are to judge from the progress of dictatorships elsewhere."

...est Protestant church in the United Sta...s. Dr. Poole is nationally known . . his weekly NBC broadcasts on "The Art of Living." He is also an active member of important commissions of the Federal Council of Churches of Christ in America.

A MILITANT LIBERAL ENLISTS

The Rev. JOHN HAYNES HOLMES, minister of the Community Church and Forum in New York City, noted liberal, friend of labor and militant advocate of reform, writes concerning organization of the National Committee to Uphold Constitutional Government:

"I am with you absolutely in your opposition to the President's Proposal. An **independent judiciary is vital to democracy, and if it is lost, democracy itself is lost.** Count upon me to help in every way that may be possible."

NATIONAL COMMITTEE TO UPHOLD CONSTITUTIONAL GOVERNMENT

FRANK E. GANNETT, Chairman
President and Publisher of the Twenty Gannett Newspapers
Times-Union Bldg., Rochester, N. Y.

REPORT OF PROGRESS

The following statement was broadcast to the nation on Sunday, February 21, by courtesy of the Columbia Broadcasting System. Additional copies may be obtained from the mailing office of the National Committee to Uphold Constitutional Government, 205 East 42nd Street, New York, N. Y.

THE PEOPLE'S FIGHT

The other day a barber was cutting my hair. He said to me: "You know, Mr. Gannett, I am deeply interested in preserving the Supreme Court." I asked him why. He said: "I am a Jew, and therefore one of a minority. I realize that if it were not for the Supreme Court, I might be treated here as they treat the Jews in Germany."

Members of the colored race must feel the same, for the Supreme Court again and again has protected the rights of the colored people. The Court stands as a defender of all classes, all creeds and all races.

Lawyers, because of their training, understand this very clearly. One of the best legal minds that I know said to me yesterday: "In bringing home this Supreme Court issue to the people, let me suggest -- that constitutional law and the theory of checks and balances in government may be of remote interest to some. But any factory worker will appreciate what the Supreme Court means to him when you recall that picketing, as an instrument of industrial controversies, was challenged and its legality was established by the Supreme Court in an opinion written by Judge Taft. A negro will understand what the Supreme Court means when you recall that those negro boys in Alabama saved their necks twice, only because the Supreme Court had to be completely satisfied that they had had a fair trial."

A majority imposed its will on a minority in Oregon by the state law abolishing parochial and private schools, and only the United States Supreme Court prevented its enforcement. The Supreme Court held that no state can deprive an American father and mother of the right to send their children to a parochial school if the standards are equal to a public school.

"All church people, regardless of denominations, will appreciate what this decision meant," said my lawyer friend.

Organized efforts will be made to confuse the people on issues raised by the President's demand that he be given power to create a new Supreme Court by appointing six new justices. Emphasis will be laid on the fact that several of the present judges are old in years; but that, my friends, is not the issue. Throughout all history men 70 years and older have been prominent among the greatest men of their time.

Retirement of Supreme Court judges at the age of 70, whether voluntary or compulsory, would have shortened by nearly one-third the judicial career of the great John Marshall, who died at 80. It would have resulted in the retirement of Justice Holmes in 1912, reducing his period of service from 30 years to 10. It would have cut in half the judicial career of Justice Brandeis, an exponent of liberalism. It would have retired Chief Justice Hughes from public life three years ago. Whether Supreme Court justices should be retired for age, and, if so, at what age, is a question for sober debate which should be settled by a constitutional amendment and not be sprung on the people and put in effect by a mandate from the White House to enact legislation for that purpose.

The bill proposed by the President is not aimed at fixing a definite age of retirement for judges. It is aimed at getting for the President control of the

Court. That is its real objective, and spokesmen for the Administration have frankly admitted it.

An effort already has been made to label this sudden move of the President as "judicial reform." Some of his defenders have used equally clever terms to conceal the effects of it all. It has been said that more judges would expedite litigation, but noted lawyers have denied this, for 15 judges instead of 9 would have to read all the cases, and only when all of the 15 had covered the subject could a decision be reached.

It is my firm belief that the American people will not be fooled by catch phrases or by efforts to confuse them about this vital question. The informed public already has seen through the proposal and knows exactly what is its real purpose.

NATIONAL COMMITTEE FORMED

A group of patriotic citizens was so stirred with fear by the proposal to undermine the Supreme Court, by packing it with additional justices, that they induced me to head a Committee, national in scope, absolutely non-partisan, that would help to mobilize public opinion and promote a full understanding of this threatening situation.

Since I accepted this call, I have been amazed by the response. Hundreds of letters have been pouring in to me from all parts of the country, from people asking what they can do to save our Constitution and our Supreme Court. Besides circulating petitions and writing to their representatives in Washington, hundreds of citizens have sent me checks for small and moderate amounts to help carry out the fight for an informed public opinion. One farmer obtained 20 signers to a petition and $17 in contributions of 50 cents to $1.00 toward carrying on this National Committee's work. All can help by distributing literature and arranging meetings and debates and demonstrating to the members of the House of Representatives and the Senate how deeply the public feels on this great issue.

I only wish I could read to you some of the letters that are pouring in on every mail. Across this broad land the sentiment is rising to a tumult against the court proposal.

One of the most courageous Democrats in the lower house of Congress, Representative Samuel B. Pettengill of South Bend, Indiana, speaking at a citizens' mass meeting in Indianapolis, said:

"Democrats are absolutely free to vote for or against the President's proposal as their consciences dictate. The President asks for more power than a good man should want and more than a bad man should have. Unless we are willing to discuss on its merits, free from partisanship, any proposal to change the fundamentals of constitutional government, we shall be unworthy of the government for which Washington fought."

It is not to my liking to refer to party labels. I do so only to indicate that opposition to the President's proposal is non-partisan.

Five out of the nine members of a committee organized in Harding Township of Morris County, N. J., to test public sentiment, voted for Mr. Roosevelt last November.

A Southern Democrat, an official of a railroad in North Carolina, writes that while he voted for Mr. Roosevelt, he feels that revision of the Supreme Court "is the last straw" he can stand; that it is "the most flagrant disregard of orderly democratic and constitutional government."

In an Ohio protest meeting, a correspondent writes, "A great many Democratic leaders spoke against the President's bill and the resolution of protest was drafted by a Democrat, formerly President of the County Bar Association."

Equally intense, and still non-partisan, is the resentment among many ministers, doctors and teachers.

The Rev. John Haynes Holmes, Minister of the Community Church and Forum in New York City, noted liberal, friend of labor and militant advocate of reform, writes me: "I am with you absolutely in your opposition to the President's proposal. An independent judiciary is vital to democracy, and if it is lost, democracy itself is lost. Count upon me to help in every way that may be possible."

From big churches and little, from congregations and parishes of the rich and the poor alike, have come enlistments in this cause. I have letters from Free Methodists and from "The Pillar of Fire."

asking for petitions to c late. Lutherans, Episcopalians, Catholics and Jews, as well as the evangelical denominations, realize that the end of civil liberty means also the end of religious liberty.

Doctors - great makers and reflectors of public opinion - see the danger to all professional freedom. Dr. George B. Lake, of Waukegan, Illinois, editor and publisher of "Clinical Medicine and Surgery," writes: "I have been hoping that something like the NATIONAL COMMITTEE TO UPHOLD CONSTITUTIONAL GOVERNMENT would come into existence to give a focal point for the expression of opinion of the millions of Americans who are largely inarticulate."

Women are valiant soldiers in this fight. They are circulating thousands of petitions and calling for more. "I promptly secured 40 signatures, and had only one refusal," writes a housewife in Salem, New York.

Let me urge all those who are circulating our petition, or any other petition against the Supreme Court proposal, to bear this point in mind:

A voter's individual letter of protest often carries much more weight than his signature on a petition. Both are needed. Every one circulating a petition should urge all signers not to stop with signing, but also to write to their Congressman and their Senators. Tell all to express their thoughts in their own words and let their servants in Washington know, in no uncertain terms, what they think about the proposal to undermine the independence of our courts.

The question raised by this amazing proposal is not whether President Roosevelt wishes to become a dictator. The question is not whether the legislation he favors is good or bad. It is not a question between Democrats and Republicans. It transcends parties. The question is, shall we give to this man, or to any one man -- and his unknown successors -- such tremendous power as the President will have if he gets control over the judicial, as well as the legislative and executive branches of our government? Who can predict who will be President Roosevelt's successor? He might represent the viewpoint of the masses or he might represent the viewpoint of entrenched wealth, plutocracy.

Only a w years ago the people of this country were worrying about Huey Long and the methods he had adopted in gaining unlimited power in his own state. One of the things that he found necessary to do in order to establish himself as dictator was to get control of the courts.

It is this situation that has stirred the nation. This vital question is being discussed every day in homes throughout the land, on our farms and in our factories. The question is of such supreme importance that every man, woman and youth should understand its full significance.

In closing let me say that I am giving my time and effort to this cause because I am fearful of what may happen to America if the power of the Supreme Court is weakened in the way proposed. If we need changes in the Constitution, they should be made in an orderly manner as prescribed by the Constitution.

I have supported some of the measures that President Roosevelt has favored. As a liberal, there are many reforms I should like to see brought about, but these reforms must be brought about lawfully and under the Constitution, not by destroying the Constitution. As some one has well said, if you have a headache, try to cure it by administering the proper medicines, not by cutting off the head. We can bring about any legislation that the people desire without destroying the judicial safeguards of all people's liberties.

I am particularly concerned over this great issue because of what I saw in the dictator-ridden countries of Europe where orderly democratic government has been overthrown; where the people have no freedom of speech, no freedom of the press, no freedom of religious worship, no freedom of public assemblage, no trial by jury, no security whatsoever. No American would care to live under such a government; and if Americans could only know and appreciate what life in those countries means, they would see to it that we shall not be even remotely threatened with such conditions in the country we all love.

The blessings that we enjoy have cost a thousand years of bloody struggle and uncounted millions of lives. These sacrifices must not be in vain. Government of the people, by the people and for the people