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ADMINISTRATION OF THE INTERNAL SECURITY ACT OF 1950

PREPARED FOR THE

BCOMMITTEE TO INVESTIGATE THE
ISTRATION OF THE INTERNAL SECURITY
ND OTHER INTERNAL SECURITY LAWS

OF THE

OMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

by

A. Warren Littman
Associate Chief Counsel

NINETY-FOURTH CONGRESS
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RESOLUTION

Resolved, By the Internal Security Subcommittee of the Senate Committee on the Judiciary, that the attached monograph entitled "Administration of the Internal Security Act of 1950" shall be printed for the use of the Committee on the Judiciary.

JAMES O. EASTLAND,
Chairman.

Approved July 29, 1975.

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FOREWORD

This history of the administration of the Internal Security Act of 1950 represents mainly the personal research and writing of Associate Chief Counsel A. Warren Littman, and reflects his personal philosophy. Its preparation was assigned to Mr. Littman as a long-range project several years ago. At the time of Mr. Littman's retirement (in June 1974), he elected to pursue the project to completion without any additional compensation, rather than leave it unfinished, perhaps to be turned over to someone with less background and knowledge than his own. Accordingly, Mr. Littman was at his desk several days a week for nearly a year to bring this monograph to a state of completion, of both historical and legal accuracy, which satisfied his high standards. The Internal Security Subcommittee is very grateful for Mr. Littman's dedication, and is proud to present this document incident to its legislative oversight authority.

JAMES O. EASTLAND, *Chairman.*

Administration of the Internal Security Act of 1950

A Legal History

In Exercise of the Legislative Oversight Authority of the Subcommittee

(Prepared by Warren Littman, Associate Counsel (retired), Internal Security Subcommittee, Senate Judiciary Committee)

INTRODUCTION

This paper has been prepared on the premise that no government can recognize a "right" of revolution or a "right" to incite revolution if the incitement has no other purpose or effect.[1] It is in the spirit of Legislative Oversight and this Subcommittee's obedience to its mandate "to make a complete and continuing study" of enumerated aspects of the Internal Security Act of 1950 that response is directed to the instruction.[2]

The history of the Act down through mid-1974 supports the findings of the Congress. Such findings of fact have not been disturbed by either events or Congressional interpretations or subsequent determinations; from the standpoint of the body politic and polls, no change has transpired in the Findings of Fact which are incorporated in the enactment of both the Internal Security Act of 1950 and its amendment, the Communist Control Act of 1954. (*Vide:* Appendix A)

But the Act has been eviscerated largely by "judicial legislation" and erosion brought on by bombardment from the Far Left and (perhaps paradoxically) as this paper will show, not as much by external forces as by internal forces.

The Internal Security Act, which also may be officially cited as the Subversive Activities Control Act, is principally within the civil ambit, of course, but concomitant attacks upon its criminal law affiliations (as the Smith Act) and the resultant decisions in favor of the Communist Party and members and followers thereof brought the

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[1] *Dennis* v. *United States* (1951) 341 U.S. 494, Mr. Justice Frankfurter, speaking for the United States Supreme Court in upholding the convictions of eleven leading members of the Communist Party on a charge of conspiring to violate the substantive provisions of the Smith Act. Incitement, as used in the text, embraces the definition of Webster's Third New International Dictionary: "To move to a course of action . . . to stir up . . . spur on. . . . (2) to bring into being; induce to exist or occur." [Thus *revolution* or overthrow of this country's government would be "brought into being" by actions of subversives, by incitement.]

[2] *Rules of Procedure* of the Subcommittee (Feb. 27, 1973) citing at page VI S. Res. 366 of the 78th Congress, the subjects: (1) administration, operation and enforcement of the 1950 Act, as amended; including (2) espionage, sabotage and protection of the internal security of the United States; and (3) extent, nature and effect of subversive activities within the full geographic scope including "but not limited to espionage, sabotage and infiltration by persons who are or may be under domination of the foreign government or organizations controlling the world Communist movement or *any other movement seeking to overthrow the Government* of the United States by force and violence." (Emphasis added)

legislation to a veritable standstill. (The legislation in question is hereinafter referred to as "The Act.") It is a thrust of this paper to adduce the proposition that the accepted concept of internal security has been altered—principally by decisions and practices that not only do not strengthen but which serve to weaken and destroy the structure.

As instance, the First Amendment and its protection of such precious rights as those of peaceable assembly, free speech and press, and freedom of religion has been interpreted to permit extensive exploitation of those rights by radicals, revolutionaries, and fierce opponents of the American system.

Yet during the whole period of the history of the Act no one has contradicted on our behalf the bellowing assertion of Khrushchev: "We will change our system when shrimp learn to whistle." [3] Nor his overriding lethal assurance . . . "We will bury you." [4] Thus succinctly is expressed the contrast of the two systems of freedom and totalitarianism.

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[3] The expression quoted is reduced from a speech in the Kremlin September 17, 1955, as quoted by the New York Times September 18, 1955 at pages 18 and 19. Oft-quoted, the original reads, "Those who wait for the Soviet Union to abandon communism wait until shrimp learn to whistle."

The same speech includes in the same tenor, "They say that Soviet delegates smile . . . but if anyone believes that our smiles involve abandonment of the teaching of Marx, Engels and Lenin, he deceives himself poorly."

[4] The "bury" quotation was drawn from a remark made at a Polish Embassy reception following the signing of a Moscow-Warsaw joint declaration. . . . "Whether you like it or not, history is on our side. We will bury you." Present at that signing of the declaration was U.S. Ambassador Charles Bohlen who made no retort, in all politeness. The report appeared November 19, 1956 in The Washington Post.

Chapters Enumerated

Page

This monograph is divided into the following chapters:

I. The Act Itself . . . The Internal Security Act of 1950 as Title I which also is known separately as the Subversive Activities Control Act. It was amended in 1954 by the Communist Control Act ---- 5

II. Judicial Treatment, including interpretations ---- 17

III. History of The Act . . . Developments, Internationalism, Radicalism and Terrorism ---- 33

IV. Détente ---- 43

V. Legislative Oversight . . . the Subcommittee's Function and Authority ---- 49

VI, Conclusions and Recommendations of the author ---- 55

VII. Appendix ---- 71

CHAPTER I

The Internal Security Act

and the

Communist Control Act

Preceding the passage of the Act (as it is referred to in this disquisition) the Congress had adopted Findings of Fact. Similar factual conclusions followed in 1954 with the passage of the Communist Control Act, regarded as both an amendment to The Act and as an independent piece of legislation which incorporated similar Findings of Fact. (*Vide:* Appendix A)

Nearly a quarter-century ago the Congress concluded factually that the legislation in question was required because of the world-wide revolutionary movement known principally as a Communist or Marxist movement. But the Findings of Fact did not stop with that conclusion; the Congress with something of a prescience incorporated "terrorism" as a predicate for the need for the statute. In 1954 the Congress not only referred to the "instrumentality of a conspiracy to overthrow the Government of the United States," but observed in the Communist Control Act the fact that the components of the Communist Party and movement sought an "authoritarian dictatorship . . . demanding for itself the rights and privileges accorded to political parties" and "denying to all others the liberties guaranteed by the Constitution."

The legislation has remained on the books even as the movement has broadened and widened into a movement now recognized as insurrectionary, aided and abetted not only by strategic maneuverings but by terrorism and violence.

Legislation in the '50's which coped with the radical movements of legions of disciples of Communism is today barely adequate. But new Findings of Facts are required to reaffirm it, particularly in light of judicial decisions which favor the individual over the Sovereign.

One aspect of the new tactics of radical revolution is kidnapping, a part of the terrorism thrust. Traditional safeguards, as comprehended by The Act, have been all but discarded by court decisions.

As part of the history preceding the passage of the legislation in question, the Congress was influenced by such quotations as Lenin's: "The imperialists are so hungry for profits that they will sell us the rope with which to hang them." [1]

The intransigent policies of the radical revolutionaries reflect nondeviation from the "Marxist line" as corroborated by their public statements on policy (including those of Khrushchev) and by their conduct

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[1] Quoted by Russian artist I. U. Annenkov, who said he visited the Moscow Institute of V. I. Lenin shortly after Lenin's death and found the remark among some short, fragmentary notes of the Soviet leader.

with reference to this country's security and to their own security and repugnance of liberties.

Such conduct included infiltration into this country's democratic institutions and operations. The controlling of a key labor union through which Communists can cripple the nation's defense is illustrative. (*Vide:* "Red Pipeline Into Our Uranium Sources.")[2]

As the Internal Security Act of 1950 stood up during the past decades against the predictable gains of the Communist Party, the janissaries of the Party continued to follow the lead of their captains in carefully following the principle of "Two steps forward, one backward." Every "concession" is squared by an advance.

"Spawned by the Russian Revolution, raised amid terrible family squabbling, the Communist Party, USA, has been a frequent and sometimes lusty contributor to the last half-century of American history." [3] One of its strengths is the Party-members' ideological zeal as well as the quality of its leadership and its ties to the Soviet Union and world communism. Strength is gained, of course, by the Party's claim to represent the ideology that governs roughly one-sixth of the earth's people. The Party is therefore regarded as stronger in 1974 than it was in the Fifties . . . "it is up and about again, the beneficiary of detente" [4] and apathy.[4a]

With so many grim subjects occupying the country's attention in the '70's and (whirling by as so many wisps of cotton in a hurricane) it is no wonder that the Congressional Findings of Fact remain undisturbed and the Party by its continued life illustrates, "History teaches us that History teaches us nothing." Alert citizens and solons are unable to teach and preach successfully that the Punic Wars reflect the fact that Carthage was no military deterrent to Rome . . . that Carthage grew tired of the "cold war" and relaxed to indifference, luxury and non-preparedness. Roman Senator Cato assured the country that "We will bury you." Still Carthage took no warning but wallowed in indifference, fecklessness. The postscript is written into history—Carthage has passed from the maps. Such historical warnings are going unheeded.

Due principally to the present whirlpool of vital subjects, there has been overlooked a continued strong public opinion against communism, terrorism and revolutionary tactics. But such public opinion has not been aroused since the '50's into effective legislative action. There is a front called ideology and world public opinion. It is on this terrain of public opinion that we are losing many of our battles.

Thus the problem of how best to deal with domestic elements of the international Communist conspiracy to overthrow our Government by force and violence has proven to be especially vexing. The crucial issue is associated with proposals intended to curb seditious activity, safeguarding national security but without involving individual liberty.

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[2] *Reader's Digest,* June 1955. See also the subcommittee's hearings and report (Aug. 28, 1964) on "Relationship Between the Teamsters Union and the Mine, Mill, and Smelter Workers."

[3] *Saturday Review World,* Feb. 23, 1974, page 10, *et seq.*

[4] *Ibid.*

[4a] In its May 16, 1975, issue, The U.S. News-Letter, a private weekly report and forecast from U.S. News & World Report, made this assessment: "The CPUSA claims 12,000 members, but authorities say it is closer to 5,000."

Existence of such a conspiracy has been documented time and again, reaching its legislative climax in the Act and its Findings of Fact as well as in criminal laws. Basis of adoption of such statutes had as its purpose the curbing of activities of Communists and their disciples. The older of the two principal statutory safeguards, the Smith Act, prohibits advocacy of, and conspiracy to advocate, the overthrow of the Government by force and violence. Additionally, the Smith Act of 1940 declares illegal knowing membership in a society of persons who advocate such a program. 18 U.S.C. 2385 (1970).

As indicated in the Introduction, although there is no intertwining of criminal and civil jurisdictions within the four corners of this disquisition, allusion to treatment of the Smith Act is made because of its tandem association with the other leading Communist Control statute, the Internal Security Act of 1950, which is, of course, our focus.

The Act assumes a totally-different approach to the internal Communist menace, even while on all-fours with the Smith Act in recording this country's determined opposition to revolution as advanced by Marxist activists and their modern allies and counterparts. Instead of imposing criminal penalities immediately and directly, the Act sought by means of a registration scheme to *expose* the activities and membership of the Communist Party and similar organizations. The philosophy behind this approach was articulated as follows:

> It was felt that through the registration provisions the Communist movement could be exposed and the public thus protected against unwitting collaboration with it. Once the American people are alerted respecting the identity of the Communist fronts, much of the funds contributed unwittingly will be withheld, and these fronts will die for lack of support. McCarran, "The Internal Security Act of 1950," 12 *University of Pittsburgh Law Review* 418, 484 (1951).

As observed (by way of reference to Findings of Fact), the Internal Security Act was a response to accumulating evidence of the threat posed by the Soviet-directed conspiracy against the lawful institutions of the United States and other free societies through the instrumentality of the international Communist apparatus dominated and controlled by the Soviet Union.

The Congress found, *inter alia*, that the direction and control of the world Communist movement was vested in, and exercised by, the Communist dictatorship of a foreign country. (50 U.S.C. 781 (4).)

The Congress found that these Communist organizations were organized on a secret, conspiratorial basis and operated to a substantial extent through "fronts." But what could not be anticipated in the '50's, of course, was the proliferation of judicial doctrines and treatment by which the Congress's findings would be substantially disregarded in the cited collision between the rights of the Sovereign and expanded rights of individuals . . . often persons who would exploit the First Amendment for the purpose of destroying the Constitution and this Government. As instance, but on the criminal-law side . . . (and as this paper will develop) . . . a person may join an out-and-out revolutionary organization, dedicated to the forcible overthrow of this country, and still be found innocent because of his craftiness in avoiding an "overt act."

But the bulk of Title I of The Act was intended to control the Communist threat by exposure, largely through a system of registration and prohibitions. Second objective was to make various acts crimi-

nal in nature. The balance of Title I consisted principally of proposals for strengthening espionage laws (18 U.S.C. 793), the Foreign Agents Registration Act (22 U.S.C. 618(e)) and the statute of limitations as it affected prosecutions for violating the espionage laws (50 U.S.C. 792 note), together with provisions amending the immigation and naturalization laws with the objective of preventing alien subversives from gaining entry into the country or from acquiring American citizenship (8 U.S.C. 1182 (a) (27), (a) (28) (A–H), (a) (29), (d) (2), (a) (26), 1251 (a) (6), (A-C) and (a) (7), 1225, 1253, 1326, 1327, 1251–1254, 1305–1306, 1424 (a-c), 1427 (f), 1451 (c), 1441 (a) (1), 1429, 1446 (a-e), 1447 (a-d, f), 1448, 1423 (50 U.S.C. 781 (12)). Because we are concerned with the history of this legislation, we cite the fact that the last-mentioned provisions have been repealed and partially or fully-enacted in the cited sections of the Aliens and Nationality Act and therefore, are no longer properly part of the 1950 Act, as amended.

Title II is no longer on the books: It was called the Emergency Detention Act. It authorized the detention of potential spies and saboteurs during periods of war. The provisions of Title II were never implemented and after controversy regarding their possible use against political dissidents and urban rioters (and repeated recommendations for repeal by the Internal Security Subcommittee) were repealed September 25, 1971. (Public Law 92–128, 85 Stat. 348).[5]

Congress added a new title to the Internal Security Act in 1964: Impetus for its adoption followed an investigation into the circumstances surrounding the defection to the Soviet Union of two employees of the super-sensitive National Security Agency. Generally, Title III authorizes stringent new personnel security procedures in that critical agency in hopes of avoiding a repetition of the incident that sparked its adoption. Title III has not been modified in the years since its enactment nor does it appear to have been directly or indirectly involved in litigious controversy.[6]

But the Internal Security Act of 1950 soon became involved in a seemingly endless round of controversy. As remarked, Title I has been called also the Subversive Activities Control Act of 1950; for almost a quarter-century after its enactment it was in one way or another before the courts almost uninterruptedly. The heart of that Title, the registration requirements, reached a highwater mark in 1960 when the Supreme Court sustained their general constitutionality. But the Court refused, well within its own doctrines, to anticipate constitutionality of penalties should officers and members of the "action organization" (Communist Party) refuse to register. After that time attempts to enforce the provisions calling for registration, and the penalties associated therewith, suffered a succession of reversals.

Virtually gutted by these decisions, Congress attempted to revitalize some of them in 1968. When this last legislative effort was overturned by the Courts, the President by Executive Order sought to infuse the Agency created by the Act, the Subversive Activities Control Board (SACB) with new responsibilities in the personnel field. This attempt occasioned further controversy which was only stilled when Congress

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[5] Congressional Research Service, Apr. 4, 1974, page 4. Detention of Japanese and Nisei in World War II predated enactment of the Emergency Detention Act.
[6] *Ibid.*

by legislation barred its implementations. No provision was made for funding the Board for the fiscal year 1972. Accordingly, it ceased to exist at the conclusion of the fiscal year 1973.

The Board's function was aimed at alerting loyal citizens by a system of public registers against "innocent and unwitting collaboration with" the registered group, Section 8. As to groups which refused to register voluntarily, the Board, an independent agency, would identify them . . . upon petition of the Attorney General. With the Communist Control Act of 1954, the organizations within focus would be "Communist-Action," "Communist-front" and "Communist-infiltrated," the latter group embraced in the 1954 statute. Along with registration (other than infiltrated groups) *annual* reports concerning officers and members, moneys received and expended and printing facilities would be revealed.[7]

Of particular interest is the fact that the Act barred persons within the purview of the registration provisions from employment in certain defense facilities. (Section 5(a)(1)(D)). Members of Communist-action or Communist-front organizations could not without special authorization knowingly receive classified information from officers or employees of the United States (Section 4(c)), hold non-elective federal office (Section 5(a)(1)(A)(B)), hold union office or employment (Section 5(a)(1)(E)), or obtain a passport (Section 6). Members of a Communist-infiltrated organization were disabled only from knowingly receiving classified information from officers or employees of the United States without authorization (Section 4(a)). NOTE: The third of the groups within focus, Communist-infiltrated, did not have to register with the Attorney General. (Presumably because the labor organization or union rolls were to be open to the membership and the public and within the range of labor laws). Therefore, the Internal Security Act's employment and passport disabilities did not apply to Communist-infiltrated organizations.

The Act (as amended in 1954)[8] denied all Communist organizations tax advantages, (Section 11), and required them to label their mail and radio and television broadcasts as "distributed by" or "sponsored by" a Communist organization, (Section 10). By virtue of the 1954 Amendment any union identified with the organizations in question became ineligible to act as representative of any employee within the meaning of Section 7 of the National Labor Relations Act, as amended or to serve as an exclusive bargaining representative under Section 9 of that Act, or, thirdly, to make, or obtain any hearing upon, any charge under section of NLRA or, fourthly, to exercise only other right or privilege, or receive any other benefit, substantive or procedural, provided by the Act for labor organizations, (Section 13A).[9]

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[7] Congressional Research Service–6.

[8] Communist Control Act of 1954 . . . see also Appendix A anent its Findings of Fact. This 1954 piece of legislation (Public Law No. 637, 83d Congress, 2d Session, Aug. 24, 1954) was the most direct statutory attack by the Congress on internal communism. (64 *Yale Law Journal*, pp. 712–765, 1954–55 edition). The Act, as amended, was interpreted to include the Communist Party and its members. The first of the bills was introduced by Senator Butler as an amendment to the 1950 Internal Security Act which, as the text points out, created and defined two types of Communist organizations, "action" and "front." The Butler Bill added a third class, "Communist-infiltrated" and was interpreted to apply particularly to labor unions, thereby to facilitate removal of Communists from positions of union leadership. On the floor of the Senate, Senator Humphrey offered an amendment directed to the Party and its members, "the root of the evil." Major provision of the Humphrey Bill made it a crime to be a party member. The Bills were combined into a single Bill, which the Senate unanimously approved. (64 *Yale Law Journal* at page 713).

[9] Congressional Research Service–8.

The history of the Act or its epitome may well be traced, in terms of practicability, thru the Subversive Activities Control Board. Immediately after passage of The Act, the Board began a seventeen-year futile quest to register the Communist Party of the United States as a Communist-action organization. When the Party failed to register voluntarily (no organization or person ever would), the Attorney General (McGrath) petitioned November 22, 1950, the Board for a determination of its status. Following a year of hearings, the Board found the Party to be a Communist-action group and ordered it to register as such. (This was to be the only organization ever determined to be such). The Party refused to register and following ten years of involved administrative proceedings and complicated litigation, a bare majority of the Supreme Court Affirmed.[10]

Mr. Justice Frankfurter for the majority held that the registration provisions of section 7 were not unconstitutional as a bill of attainder, a restraint on freedom of speech or association, an impairment of the right against self-incrimination, or a denial of Due Process. But as indicated previously, the Court treated as premature the issue which was to prove the veritable undoing of The Act . . . the contention that the provision of Section 7 requiring Party officers to sign and file registration statements called for an act of self-incrimination.

The 1961 decision of the Supreme Court was the "most glaring success" of the Act in the courts.[11] Shortly thereafter, the tide turned and both the Board and the Act, generally, suffered a succession of reversals which would leave the latter a veritable hollow shell.[12]

The 1964 Communist Party case was a harbinger of things to come. In that case the Court of Appeals for the District of Columbia reversed the decision of the lower court which had found the Communist Party in willful violation of the Board's final order and fined it $120,000. The Court held that the Officers of the Party were privileged not to sign under the Fifth Amendment and that no liability should have attached the Party by reason of failure to do so. The Court remanded the case to allow the Government an opportunity to present evidence that a volunteer was available for the Party who could sign the registration forms for it without fear of incriminating himself. (This point was lost too, later in practicability.) The legal point that the Party could have employed an attorney to fulfill filing requirements without raising any self-incrimination question appears to have been neither briefed nor argued.

The individual became an object of attention because the Act provided that upon failure of both the Party and its officers to register, a duty was imposed upon current members to register themselves. (Section 8). When no member came forward, the Attorney General petitioned the Board, which after evidentiary hearings, determined that William Albertson and Roscoe Quincy Proctor were Party members and ordered each of them to register. Appeal was taken from the determination of the Board to the Court of Appeals for the District of Columbia. That Court affirmed but on appeal to the Supreme Court, it was held that the privilege against self-incrimination was violated when individual members were forced to register.

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[10] *CPUSA* v. *SACB*, 367 U.S. 1 (1961).
[11] Congressional Research Service–9.
[12] *United States* v. *Communist Party*, 331 F.2d 807 (D.C. Circuit) 1964; *cert denied* 377 U.S. 968 (1964).

At this stage the Court found that the self-incrimination issue was now "ripe" for adjudication, stating that the risks of incrimination attending registration were "obvious." The forms promulgated under authority of the Act by the Attorney General required an admission of membership in the Communist Party. Such admission opened the door to prosecution under either the membership-clause of the Smith Act or under Section 4(a) of the Internal Security Act.

The Court was unable to see any difference between compelled oral or written incriminating testimony "for constitutional purposes." Therefore, "it followed that the requirement to accomplish by completing and filing the . . . (authorized form was) consistent with the protection of the Self-incrimination clause." [13]

The immunity provision of Section 4(f) was deemed by the Court to be an inadequate safeguard since it neither granted "complete" immunity, citing *Scales* v. *United States*, 367 U.S. 203 (1961), nor precluded the use of information appearing on the form "as evidence or an investigatory lead," citing *Counselman* v. *Hitchcock*. In limiting the immunity under section 4(f) to "mere membership", the Court effectively subordinated the McCarran Act policy of registration and disclosure to the Smith Act policy of prosecution and punishment. Thus is observed our thesis here . . . that the civil and criminal statutes made for an effective thrust, but that the Courts have adjudicated that the country's efforts to protect itself in terms of internal security on both fronts are inefficacious.

Continuing to trace the history of the Act and its judicial (contradistinguished from legislative) deterioration, we find that the Court of Appeals of the District of Columbia in 1967 effectively closed the sole remaining avenue of securing the Party's registration, viz., noncoercive registration by an agent who was willing to waive his privilege.[14] The Court held that since no individual member could constitutionally be required to register, the Party itself could plead the defense of self-incrimination on their behalf if ordered to comply with the registration requirements of the Act, including the filing of membership lists. (Again, use of hired counsel for registration was not discussed.)

The Communist Party tactic of raising multifarious objections, setting up legalistic obstacles, insistence upon meticulous compliance with all phases of a statute under attack, has come to be known to scholars as "judicial roulette." Witnesses disappear after a long-run of litigation and prior to *de novo* hearings, memories fade, new decisions throw either new light or new turbidity upon issues and the doctrine of *stare decisis* may be a useful tool for those under the discipline of a party opposed to the American system; verily, under a discipline to destroy it.

Another attempt by the Congress illustrates the continued determination of the legislature to support and re-embrace the Findings of Fact behind the Act: In 1968 an amendment replaced the ill-fated compulsory registration provisions. A system was set up whereby the SACB, when petitioned by the Attorney General, would issue "declaratory orders," determine whether an organization it investigated should be labeled "Communist-front," "Communist-action," or "Com-

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[13] Congressional Research Service–10.
[14] *Communist Party USA* v. *United States of America*, 384 F. 2d 957.

munist-infiltrated" and whether individuals were members of Communist-action organizations.[15] This aspect of the 1968 attempt to revitalize the Act came for naught as the Court of Appeals of the District of Columbia held it unconstitutional on the ground that disclosure of Communist Party membership is protected by the First Amendment "except for those who join with a specific intent to further illegal action." [16] Hardly a pause is required at this juncture to realize that the votaries of Communist policies and doctrines are not so inept as to announce or give evidence that they "joined with a specific intent to further illegal action."

Untouched by this last decision was the Board's authority to determine and therefore label organizations as Communist-front or Communist-infiltrated. John W. Mahan, the last Chairman of the Subversive Activities Control Board, said that twenty-seven petitions for such determinations were filed by the Attorney General between the years 1953 and 1970, inclusive. Twenty-five of these involved alleged Communist-front organizations. Ten of these were dismissed by the Board and two were dismissed by court order. When the Board closed its doors, final Board orders were in effect in seven cases, three cases were in abeyance before the Board and three cases remained to be heard.

It appears that the Board issued twelve orders requiring organizations to register as Communist-front organizations. One of the affected organizations appears to have ceased operations and did not appeal. Appeals were processed to the Court of Appeals in the remaining twelve cases. In eight appeals, motions to vacate the Board's order were filed on the grounds that the organization had dissolved. In half of these eight cases, the Court seems to have concluded that the affected organizations had formally or effectively ceased to exist. The results in three cases remained inconclusive since the organizations concerned do not appear to have proved dissolutions. In one case, the Court affirmed the order of the Board.

In one of the remaining four Communist-front cases, the Court set aside the Board's order on the ground that the Government had failed to establish that at the time of the hearing the organization was substantially dominated or controlled by a Communist-action organization. Two cases in which the court affirmed the Board's orders were vacated and remanded to the Board because of the "staleness" of the record. Added to the vicissitudes and vagaries of Communist tactics in coping with internal security legislation was a new one . . . the "staleness doctrine." For an in-depth discussion of the "staleness doctrine," see Appendix B at Page 73 of this monograph.

In two Communist-infiltration cases, the petitions were dismissed by the Board with the Attorney General's consent.[17]

As noted, the Internal Security Act of 1950 imposed various disabilities and consequences with respect to certain individuals and identified or registered organizations. These latter also have been

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[15] Public Law 90–230, 81 Stat. 765 (1968) ; 50 U.S.C. 781 *et seq.* (1970 ed).

[16] *Board* v. *SACB*, 421 F. 2d 1142 (D.C. Cir. 1969), cert. denied 397 U.S. 1042 (1970).
NOTE: The Board expired, pragmatically, as a result of the June 15, 1972, Senate vote to cut off all funds. It actually went out of existence in fiscal 1973.

[17] Statement of John W. Mahan, Chairman, Subversive Activities Control Board, Hearing re Administration of Subversive Activities Control Act of 1950 and the Federal Civilian Employee Loyalty-Security Program Hearings before the House Internal Security Committee, 91st Congress, 2d Session (1970) (Part I), pp. 5134–5176.

largely voided by judicial decisions. In *Aptheker* v. *Secretary of State*, 378 U.S. 500 (1964), the Supreme Court held that (so long as subsection 201(b) of the Immigration and Nationality Act remains on the statute books making possession of a passport the quintessence of overseas travel) the Act's Section 6 passport sanction restricted too broadly and indiscriminately the right to travel and thereby abridged the liberty guaranteed by the Fifth Amendment. Perhaps an even greater blow to internal security came with *United States* v. *Robel*, 389 U.S. 258 (1967) when the Act's Section 5(a)(1)(d) was shattered. The cited section covers defense facility employment. The Congress intended, of course, that no enemy of the Country could enter into such sensitive operations as facilities providing for our defense and, primarily, for soldiers and sailors in combat. But *Robel* held that a communist, an avowed communist no less, must not suffer an abridgment of the right of association protected by the First Amendment. The *Robel* decision has negative implications on other disabilities imposed by Section 5 of the Act, including prohibition against employment in the non-elective Federal service.

Although early decisions affirmed provisions of Section 10 requiring identification of mail and radio broadcasts of Communist-action and Communist-front organizations, and provisions of Section 11 forbidding income-tax deductions to and income tax exemptions for such organizations, their doctrines may have been voided by later developments.[18] Since their linchpins, however, have been voided (adverting to registrations and later determinations), the Act's disabling provisions appear to have little or nothing to which they can be attached.

As noted, *in limine*, an effort was made by Executive action to give the Subversive Activities Control Board new responsibilities. Thus, Executive Order 11605, 36 F.R. 12831 (July 2, 1971) authorized the Board upon petition by the Attorney General to update effectively the Attorney General's List of Subversive Organizations for purpose of a government employment loyalty-security program. But Executive Order 11605 was effectively countermanded by legislation banning the use of federal moneys for this purpose. 86 Stat. 1109, 706 (1972). The matter of what to do with the Board thus bereft of responsibilities was settled by the failure to provide it with operating funds for fiscal 1974. (*Budget of the United States Government*, Fiscal 1974, page 951.)

The Board thereafter ceased to exist.[19] And thus expired an effective instrumentality for watching over and reporting to the American public subversive activities.[20] And the Attorney General has dropped the list, as reflected in the Executive Order of June 4, 1974. The Board, as noted, expired because of the June 15, 1972 vote of the Senate, cutting off its funds.

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[18] *CPUSA* v. *SACB*, 223 F. 2d 531 (D.C. Cir. 1955), reversed on other grounds, 351 U.S. 115 (1956); cf. *Lamount* v. *Postmaster General of the United States; Fixa* v. *Heilberg*, 381 U.S. 301 (1965); *Speiser* v. *Randall*, 357 U.S. 513 (1958).

[19] Library of Congress, Congressional Research Service, Apr. 4, 1974, American Law Division.

[20] See also Report of the Internal Security Subcommittee, Apr. 24, 1974, page 23 *et seq.*, with reference to Senate bill, S. 1965, which would have administered the *coup de grace* to the whole statutory construction of the Subversive Activities Control Board. The bill, would have abolished the Board if enacted, thus completing in terms of codification a finesse following the financial impoverishment. "To all effects and purposes the SACB is just as dead today, on the basis of Executive action and Congressional inaction, as even the enactment of S. 1965 could make it." For a plenary review of history and cases of the SACB, reference is made to the Internal Security Manual, Revised to July 1973 at pages 831 *et seq.*

Consequently, the primary purpose of the Act was lost . . . to bring the Communist Party and its members out into the open. (50 U.S.C. 781). Penalties were not the first objective of the Congress. Rather, the provisions for registration were intended to alert persons who were members of the CPUSA, to put them on notice that the Party might be termed a Communist-action organization and ultimately adjudicated so. Thus an opportunity was afforded individually and collectively to elect whether the individual or his organization wished to remain in the Party and declare himself and themselves Communist or whether they would elect to leave the Party. It is respectfully submitted that a more constitutional or a more valid option could not be created.

Summary

The Internal Security Act of 1950 and the Communist Control Act of 1954 have been administered competently within the functions of the oversight responsibility and within the functions of the Executive Branch [20a] but the legislation has not been efficacious.

In contrast with the year 1950, there is today no Internal Security Division of the Department of Justice; there is no Attorney General's List, there is no Subversive Activities Control Board.

With the opening of the 94th Congress there was and is no more House Internal Security Committee. It was abolished. As pointed out in the January 14, 1975 comments of the Chairman of that Committee, Congressman Richard H. Ichord, the need for an on-guard against subversive activities is more vital than ever (the gravamen of this paper's theme). Responsibility for that "on-guard" is that of the Congress as the country continues to face up to subversive activities, more rampant and terroristic than ever.

That responsibility covers the basic right of the Government to take precautionary measures to protect itself; these measures may only come about from investigatory and legislative operations. Some 56 organizations are today classified by the FBI as subversive, dedicated to the overthrow of the U.S.A. by force and violence. The retort proper to such groups is found in the opening lines, quoting from the Supreme Court, there is no right to revolution . . . all legitimate rights of a self-respecting country are suspended against revolutionaries.

As this paper points out, the vulnerability of our Internal Security program, such as today exists, lies in the academic contention that in seeking to protect itself, the country may deal only with overt acts. Jurisdiction is needed for movement in all quarters against conspiratorial acts as well: how else can activities be checked against those in the Communist Party, U.S.A., Socialist Workers Party, Trotskyite Communists and others who remain under a discipline that is committed to overthrow by force and violence? Awaiting the moment of an overt act is too late . . . the destruction should not be permitted; prevention must be exercised prior to the criminal act and the actual revolution if self-protection is to be salutary.

[20a] The Internal Security Subcommittee's Chief Counsel has suggested that perhaps the reason for failure of the Act to accomplish its purpose was the election of the Justice Department to proceed on a "Test case" basis, instead of going ahead full steam in all judicial districts against all organizations and individuals it had reason to believe were Communist in nature, under the Act's definitions.

Today there is "a general degradation of intelligence and security" in the area of this Subcommittee's jurisdiction. Elimination in the last few years of the Attorney General's list of subversives, Subversive Activities Control Board, the Internal Security Division of the Department of Justice and the House Committee itself is the underlining of our vulnerability.

The "euphoria of détente" (or as it is called in this paper, pseudo-détente) has paralyzed internal security operations.

Today the mockery of ultra-conservatives "seeing a communist under every bed" is contravened by the force of facts. Senators Strom Thurmond and William L. Scott visited nine countries [21] during the Christmas recess 1974 and found in Southeast Asia that all nine were grateful for the military and economic support this country has given them. Why was this support needed? Because of the communist menace . . . no other.

As Senator Scott remarked on his return, " * * * The communist aggression appears inconsistent with the spirit of détente which we hear so much about." The Senator informed President Ford that Russia and Red China should be advised "that we could not help them develop their oil resources, truck factories, computer technology and do other things when they were giving tacit approval to such aggression and furnishing large quantities of military supplies to the aggressor."

With a military portion of the Administration's budget reaching an all-time high in the neighborhood of $100 billion. . . . "In my opinion, the communist menace is real * * *." The Senator would insist upon acts by the communist world that would prove beyond peradventure that it is not a menace but a force for peace . . . encouraging communist agression is by no means such proof.

Congressman Ichord states that for the extremists who toss off that menace with an airy, "They find subversives under the bed," there are extremists who would have Congress accept no responsibility in the field of subversion. "We vote almost $90 billion annually for the defense of the United States primarily because of the threat of the foreign policy and military might of the Soviet Union." The word, "menace," is not lacking in aptness when applied to so huge a budget; nor is it an inept word in light of the fact that there are several thousand revolutionaries in this country, competent and well-trained, under the disciplines and control of the Communist Party. "And it does not change the fact that there are approximately 15,000 people scattered throughout some 21 Revolution Now groups such as the Symbionese Liberation Army, Venceremos and others who are under the constant surveillance of the FBI. Several of the bombings and police killings are the work of these groups." The menace may not stem from a communist under the bed, it comes with militant and massive forces dedicated to the overthrow of this country by force and violence.

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[21] The nine countries are Japan, Korea, Taiwan, Vietnam, Cambodia, Singapore, Indonesia, Thailand, and the Philippines.

CHAPTER II

Judicial Treatment of the Act

INTERNAL SECURITY

If there have been few significant changes in legislative treatment of the Internal Security Act (including the Communist Control Act), there have been significant and appreciable changes in judicial treatment. Starting with an upholding of the 1950 statute and proceeding down thru the corridor of judicial conclusions, the student of internal security learns why The Act has been reduced to a practical vacuum.

To the extent that the Courts of this Country accept the words of disciples of communism as superior to our own semantic interpretations and definitions, it may well be contended that decisions inuring to the advantage of revolutionaries are not only sound but within the ambit of legislative intendment. For no sentence, no paragraph and no statute was designed by the Congress to override constitutional liberties.

But it is established beyond successful contradiction that the essence of the communist vocabulary may be found in the following keywords, as pointed out in the *Mississippi Law Journal*:

Democracy	Communism.
Peace	Communist world domination.
Socialist	Communist.
Bourgeois	Noncommunist.
Communism	The terminal condition when noncommunist modes of thought will have been completely forgotten and suppressed.
Capitalism	Any noncommunist system, including democracy.
Imperialism	A noncommunist system actively opposing the spread of communism, especially the U.S.A.
Colonialism	Any foreign aid extended by a noncommunist country.
Liberation	The seizure of a noncommunist country by communists.
Independence	Submission to communist control.[1]

Constitutional forefathers did not know of such a lexicon two centuries ago . . . their use of language was strictly within the spectrum of English, of course, sans double-meanings or Russian or Marxist semantic twists. In the eighteenth century and during the period of revolt from dominance, it was considered (as today) that it is wise and right that there be a separation of powers between legislative, executive and judicial branches of the democracy.

Thus the findings of the Congress become paramount within the area of untwisted language in guiding the other two branches of Government in understanding and confronting present perils, therefore in guiding and protecting the country.

What a far cry from that principle to the declaring of legislation "unconstitutional" in favor of one dedicated in disciplines to a revolutionary organization: (A typical instance) A loyality oath was

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[1] 35 *Mississippi Law Journal*, 158 at page 163: From an address by John C. Satterfield before the Missouri Bar, Jefferson City, Mo., March 2d, 1962. (See Appendix, "J.C.S.")

required by a Florida statute of all who would teach the youth of that State. On June 7, 1971, the United States Supreme Court adjudicated a case involving a schoolteacher, Miss Connell, who refused to sign the five portions of the loyalty oath in question. The teacher found objectionable this declaration: "that I will support the Constitution of the United States and of the State of Florida" and "that I do not believe in the overthrow of the Government of the United States or of the State of Florida by force and violence." [2]

The facts were incontrovertible; the decision rested principally upon the point that it did not matter what sort of proof the State could muster to show that a job applicant believes in overthrow since state action against the individual cannot be justified merely on account of beliefs. As a characteristic that pervades decisions of this type, the conclusion is that in the absence of an overt act, the High Court concludes consistently that the Congress must permit the development of the communist arsenal. At no time is there defined realistically the line of demarcation between hostile beliefs of militant organizations, explosive, ready for revolutionary action, and the loyalty of law-abiding citizens. As a wag once observed, "If the overt act, essential for successful prosecution, is the criterion . . . then organizations must be permitted total destruction of the country before becoming amenable to indictment and conviction! But by that time there will be no due process, no courts and no country." *In other words, the overt act can be fatal.*

A perusing of the Constitution permits of no such interpretation. Factually, the communist movement in the United States is an organization numbering several thousands of adherents, rigidly and ruthlessly disciplined. Awaiting and seeking to advance a movement when the United States may be so far extended by foreign engagements, so far divided in counsel, or so far in industrial or financial straits that overthrow of the Government of the United States by force and violence may seem possible of achievement, the movement seeks converts far and wide by an extensive system of schooling and indoctrination. Such preparations by Communist organizations in other countries have aided in supplanting existing governments. * * * [3]

Consequently, there is posed again the question of whether the courts may rule out the right of the government to protect itself on findings of fact as to "the right of revolution." The right of "free speech" as superseding the right of Sovereign to protect itself, is the companion issue.

Continuing to draw from Mr. Justice Frankfurter's opinion, Supreme Court, 367 U.S. at pages 60 and 61 (anent Subversive Activities Control Board), the Court ruled that the SACB was entitled to consider and evaluate evidence of a consistent identity of policies of an organization, e.g., the CPUSA, and the Soviet Union. The Board found that the coincidence of policies extended over a vast area of subject-matter, that the policies were "absolutely invariant" during more than thirty years . . . the entire life of the Party (as of that time, and continuing to date) . . . that zig-and-zag policy

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[2] *Connell v. Higginbotham*, 403 U.S. 207, 29 L. Ed. 2d 418, Volume 57, *American Bar Association Journal*, November 1971, at p. 1134.

[3] From the majority opinion at p. 7 of *CPUSA v. SACB*, U.S. Supreme Court, 367 U.S. 1, June 5, 1961, Mr. Justice Frankfurter, upholding Findings of Congress as, in effect, *beyond the power of the Judiciary to alter, amend or vary or contradict.*

was unbroken even in the face of sharp reversals in the Soviet's own views. (Page 61). The Board was under obligation, within the Congressional framework of laws governing its constitution, to consider the extent of non-deviation.

Volume 367 *U.S. Reports* at page 95, *Communist Party* v. *Control Board* . . . The court had remarked that it was constrained, in effect, to accept Communist organizations as "not free and independent but sections of a world-wide Communist organization and controlled, directed and subject to the discipline of the Communist dictatorship." Hence the Court found that it must recognize the power of Congress to regulate Communist organizations and that that power is "extensive."

"Security against foreign danger is one of the primitive objects of civil society," wrote James Madison in The Federalist. "It is an avowed and essential object of the American union. The powers requisite for attaining it must be effectually confided to the federal councils." Means for effective resistance against foreign incursion—whether in the form of organizations which function, in some technical sense as "agents" of a foreign power, or in the form of organizations which, by complete dedication and obedience to foreign directives, make themselves the instruments of a foreign power—may not be denied to the national legislature. "To pressure its independence, and give security against foreign aggression and encroachment, is the highest duty of every nation, and to attain these ends nearly all other considerations are to be subordinated. It matters not in what form such aggression and encroachment come . . .[4]

The High Court cited, in further support of the Majority's conclusions, the enactment by the Congress in 1954 of the Communist Control Act * * * there Congress declared in the second section (50 U.S.C. 841, *et seq.*) * * *.

The Congress hereby finds and declares that the Communist Party of the United States, although purportedly a political party, is in fact an instrumentality of a conspiracy to overthrow the Government of the United States . . . The policies and programs of the Communist Party are secretly prescribed for it by the foreign leaders of the world Communist movement . . . Its role as the agency of a hostile foreign power renders its existence a clear, present and continuing danger to the security of the United States . . .

The first paragraph of Mr. Justice Douglas' dissenting opinion.[5]

The Subversive Activities Control Board found, and the Court of Appeals sustained the finding, that petitioner, the Communist Party of the United States is a 'disciplined organization' operating in this Nation 'under Soviet Union control' to install 'A Soviet style dictatorship in the United States.' *Those findings are based, I think, on facts; and I would not disturb them.* (Emphasis added.)

I agree with the Court and with Mr. Justice Douglas that the order requiring that the Party register and disclose its officers and members is not constitutionally invalid as an invasion of the rights of freedom of advocacy and association guaranteed by the First Amendment to Communists as well as to all others.

Mr. Justice Brennan dissenting.[5a]

But in his concluding paragraph, he said:

The requirements patently do not contemplate the effectuation of registration by any except Party officials in the precise manner specified by the requirements. I would therefore hold the order invalid insofar as it directs the petitioner (Communist Party) to register in accordance with the requirements.

Thus, the individual's "rights" (of revolution) become superior to those of the Sovereign.

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[4] 367 U.S. Reports, at page 111.

[5] 367 U.S. at page 169.

[5a] 367 U.S. at j. 191, the first paragraph of his opinion, *Communist Party* v. *Control Board*.

In the opinion of many scholars, the Supreme Court is "no longer one of the three co-equal powers of our Government. Somehow it is now considered with greater awe than the Presidency or the Congress. I suspect that political people (in Congress) would fear that (in going after the Court) they would be accused of wanting to destroy the Bill of Rights and things of that sort." [6]

The *Forum* quoted Associate Judge Wilson K. Barnes, Maryland Supreme Court of Appeals, in describing a dozen recent cases of the United States Supreme Court. The issue in focus was "invading and appropriating constitutionally-reserved powers of the states." The editor, Dean Manion, speaks of a "head-on" collision with Supreme Court "activism."

Judge Barnes points out that the trouble started when the Supreme Court began in some mysterious and unexplained way to turn the First Amendment—an express restriction solely upon Congress, which was put into the Constitution in 1791—into a restriction upon the States by deliberately transplanting the First Amendment, word for word, into the Due Process clause of the 14th Amendment, which was added to the Constitution in 1868.

The editor continued:

Since a majority of our Congressmen and Senators seem to think that the Supreme Court is a sacred cow, the States of the Union, for their own constitutional self-preservation, must demonstrate that there is nothing sacred about an institution that first banishes God from state Government and then proceeds to emasculate the constitutional integrity of state power and state responsibility by specious false pretenses.

The citations in question are not drawn for their dramatic thrust but rather to pose the question as to whether the times are not ripe for articulating the issues that find the country perplexed as to whether "Supreme" Court means a final, decisive authority superior to the other two branches of Government or whether the adjective was employed (as is accepted substantively) to denote the top level of the judicial system . . . not the political system. In our Recommendations we treat the desirability of hearings that would comprehend conservative and liberal opinions and authorities . . . thus to evolve a concept either different from the Congress of 1950 or to buttress Internal Security in 1974 in light of facts and historical developments.

Mr. Justice Black was asked to comment on that issue: Question—"Some of your colleagues would say that it is better to interpret the Bill of Rights so as to permit Congress to take what it considers reasonable steps to preserve the security of the nation even at some sacrifice of freedom of speech and association. * * * What is your view of this?

Answer (Justice Black)—"I fully agree with them that the country should protect itself in peace and war. It should do whatever is necessary to preserve itself. But the question is: Preserve what? And how?"

Question. Do you subscribe to the idea involved in the clear-and-present danger rule?

Answer. . . . "*I do not.*" [7] (Emphasis added.)

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[6] Senator James Buckley, 1973, *Manion Forum,* August 5 and 12.

[7] Page 559 of *New York University Law Review,* Volume 37, April 14, 1962. The First Amendment was being discussed at a banquet in honor of Justice Black. The article commences at page 550; at page 553 the Justice emphasized his conviction that the Congress should make no law with respect to First Amendment "absolutes" including, of course, the establishment of religion, free speech, right of people to peaceably assemble, to petition for redress of grievances. At page 563: "I am for the First Amendment from the first word to the last."

But the Congress had never asked the Justice his opinion nor did he have the power as an individual to veto its statutes and Findings of Fact.

The ultimate in analyzing the issue is whether those of Justice Black's academic persuasions would protect the country by realistic measures or by words. As the Justice put it . . . "Preserve what . . . and how?" It is here the Subcommittee would do a service in posing the question, to be considered by leading authorities, regardless of their conservative or liberal views.

Continuing to quote from Mr. Justice Black and the *New York University Law Review* (at page 563) . . .

> I am for the First Amendment from the first word to the last. I believe it means what it says, and it says to me, Government shall keep its hands off religion. Government shall not attempt to control the ideas a man has. Government shall not attempt to establish a religion of any kind. Government shall not abridge freedom of the press or speech. It shall let anybody talk in this country. I have never been shaken in the faith that the American people are the kind of people and have the kind of loyalty to their govenrment that we need not fear the talk of communists or of anybody else. Let them talk! In the American way, we will answer them.
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> (Authors note: But if the talk leads to incitement?)

Such expressions appeal to a hostile power, and its adherents. But ideology can mean incitement and, that incitement may mean the overthrow of the country's forces: thereafter it is of no consequence that the "rights" brought about overthrow.

A cogent retort to the Justice Black language comes in effect from Dorothy Thompson:

> For although Communists in non-Communist countries are loudest in protecting their legal and constitutional rights, they have no more respect for the Constitution and legal system that protects those rights than they have for the political system that permits them representation. Their object is to undermine and destroy both. And the surest way to undermine the authority of the law is to strip it of its decorum and turn a solemn deliberative process into a degrading public spectacle.[8]

When Courts confine themselves to the focus of our own system of Government, a mistake is made for the actions of disciplined disciples of the Communist regime are part of a mosaic of world-wide conspiracy. An individual crime of an individual is not the true focus. As Miss Thompson pointed out, *supra*, a communist in a communist country is a far different species than one in the United States and its possessions.

Judicial treatment in the year 1974 and following years calls for such an understanding. Instance: Religion is of no importance to the Marxists, Communists and revolutionaries . . . but in the USA a great majority, and certainly an overwhelming majority of the constitutional forefathers, regard Faith in its several forms as precious. Destruction of all religion, on the other hand, is a goal of communism. As Mr. John C. Satterfield stated in an address to the Law School of the University of Notre Dame, South Bend, Indiana, May 7, 1962, and to the Seminar on Communist Tactics, Strategy and Objectives, Baton Rouge, Louisiana, May 25, 1962 . . .

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[8] 40 *American Bar Association Journal*, 289 at page 292. (1954) (It is noted that basic Communist theory calls for using the courts as propaganda forums in which to continue "the struggle.")

The people of the United States and of all the free world can have no conception of the true basis and ultimate effect of the contest for world supremacy between the communists and the free world unless they are able to put themselves in the place of the communist who is dedicated to bringing about the ultimate goal of Communism, which they call "peaceful coexistence." [9] (And which we call destruction of our country.)

The difficulty confronting protagonists of our system (and which confronted, particularly, the staff of the Internal Security Section of the Department of Justice) is that of convincing jurists as to both the differences in the ideologies and the ultimate effect of Communist conspiracy if left unchecked. And even when a jurist in American courts may perceive such radical differences, the force of precedent within the range of our juridical philosophy is on the side of the revolutionary.

We have come to the juncture in our history, and in our dealings with governments and the system dedicated to the overthrow of this country, where we must face up to the question as to how and whether jurists are to stand by as the erosion of governmental structure is effectuated, with the communist pleading for the right to exploit under our Bill of Rights . . . while going numb at the autocracy or totalitarianism of *his* country, whether it be actual or "adopted."

Continuing with the simple but fictitious issue of "different government forms," we need not rest upon such simplicity. Illustrating with a quotation from Mr. Satterfield before the Seminar on Communist Tactics, as quoted by the *Mississippi Law Journal*:

> There are many people in the world today (some of whom live in the United States of America) who actually believe that communism is simply a different form of government, a different form of economic and industrial organization and that a transition into the Communist State would be one which would not destroy all that we know as the heritage of the centuries enjoyed by us today in the United States of America. They overlook the three basic differences between communism and liberty under the law with the Judeo-Christian concept of religion:
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> 1. Communism is unalterably opposed to any form of religion, whether it be Christian, Jewish, Mohammedan, or any religion which teaches the existence of God, the immortality of the soul or the principles of morality, honest and fair dealing among men. In every country which has become communistic, every form of religion will be ultimately destroyed as being absolutely and completely antagonistic to the ideology, philosophy and concept of communism.
>
> 2. There is no place in any Communist State for private ownership of property. This is not limited to nationalization of certain basic industries or even of all industry, but includes with it, the total destruction of the private ownership of any property whether it be real property or personal property, industry, business, commerce or any other form of the ownership and the utilization of property by any person. All property of every kind and nature, all industries, commerce, title and ownership is vested in the state and is supposed to be held in trust for the people. Communism would completely destroy the concept which we have had through the centuries of property, its ownership and use by individuals as distinguished from a monolithic state.
>
> 3. There is no place for honesty, fair dealing, good faith, morality or truth in the Communist philosophy or in any countries which are dominated by the Communist Party.

Continuing with our judicial treatment of The Act, we note that in its history and long prior thereto in its antecedents (*circa* World

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[9] 35 *Mississippi Law Journal* 169.

War I), the primary restrictive weapon was legislation punishing active subversive conspiracy on the part of the individual defendant.[10]

It cannot be gainsaid that the Congress in 1950 was not only aware of the danger of individuals and small groups "stonewalling" our ramparts but was determined to block such tactics . . . certainly upon the constitutional entitlement against the "right" of revolution.

Legislation was aimed first at the criminal syndicalist and anarchist movements; there was prescribed punishment for membership. Subversives, revolutionaries, members of the Ku Klux Klan and, by the Smith Act, members of the Communist Party, all came within the ambit of enemies of the United States Government. The term "enemies" would have provoked no argument in 1787 when the constitutional pioneers were drafting our basic document. Those determined to destroy our government were and are "enemies."

The Congress had in mind exposure and thus, back in 1941, there came about the Voorhis Act, effective January 15 of that year, which required registration with the Attorney General and the filing of detailed information including membership lists by certain types of political organizations subject to foreign control, foreign-controlled organizations engaged also in military activity, organizations which aim to forcibly overthrow the Government.[11] If the Government knew our enemies, why couldn't the people?

As the clouds became darker and the communist movement, with its disciples, expanded throughout the world, the Congress was alerted but the realities of the communist problem escaped the Supreme Court. Despite comprehensive coverage of the problem by statutes in 1950 and 1954 and all through later years up until the early part of the '70's, "the suspicion was merited that the Supreme Court had shrunk from a frank intellectual confrontation with the realities."[12]

Aptheker v. *Secretary of State*[13] illustrates the point. The 1950 Act's section 6, relating to passports, denied enemies of the State the right to traffic at our expense in their revolutionary expanding throughout the world and particularly (in effect) between Russia and this country. The High Court reversed the denial of passports to the editor of the communist party's theoretical journal, *Political Affairs*, and to the party leaders (Herbert Aptheker and Elizabeth Gurley Flynn). And here is where the Court was concentrating upon *our* spectrum while overlooking the Soviet spectrum's commitment and discipline for it *refused to construe the statute as applied to those two individuals* but construed it on its face in a manner normally reserved for the preferred freedoms of the First Amendment.[14]

Section 6 was found to be unconstitutional on its face since it "too broadly and indiscriminately restricts the right to travel and thereby abridges the liberty guaranteed by the Fifth Amendment." Liberty for whom . . . our dedicated enemies?

As in *Aptheker*, so in an unbroken strain of decisions of the Supreme Court wherever there is a clash between militant, foreign ideology *vis-a-vis* democracy as constitutionally established and practiced in this country, the cited case underlines the Court's refusal to notice

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[10] Volume 16, *Hastings Law Journal,* page 504 (1965), *vide* Appendix "H.L.J." for a full and detailed treatment of this topic.

[11] Volume 16, Hastings Law Journal, 504 et seq. (1965), see Appendix ("H.L.J.")

[12] *Id.* p. 506.

[13] 378 U.S. 500 (1964).

[14] *Ibid.*

judicially the nature and effect of the Communist Party and its general operations. Thus there is imposed upon prosecutors the burden of proving each and every time there is prosecution (1) the individual is a communist; (2) the Communist Party is committed to this country's destruction; and, (3) the defendant committed an overt act in violation of the statute, whether it be Smith Act and its membership clause or the Internal Security Act with its provisions, *inter alia*, against our enemies working in shipyards building vessels and equipment in our defense.

To have to show in each instance that the Communist Party advocates the unlawful, forcible overthrow of the government is to extinguish the doctrine of Judicial Notice. "The finding of unlawful advocacy by the Party, however, must be made only on the basis of the evidence in the record of the instant case, and not upon the evidence in some other record or upon what may be supposed to be the tenets of the Communist Party." [15]

Such rule overlooks the technique of Judicial Notice. Thus two individual members of the Communist Party (regardless of their acts) might well face conclusions of innocence and guilt in two separate proceedings depending upon the proof in each record as to what constitutes. what is the Communist Party (regardless of the individual's guilt). This reasoning was in the heyday of prosecutions which have failed in number as "détente" began to emerge. (*Vide:* The chapter Détente in this monograph.)

The late Governor Tom Dewey believed that most mischief in judicial interpretations in favor of individuals arises from construing or misconstruing the Fifth Amendment. To preserve the Sovereign, he believed it would be well to amend or revoke the Fifth Amendment. Obviously, there would be an outcry of the populace against "tampering" with the Fifth but the time has come when either interpretations of that Amendment must be guided by the citizenry or by individual jurists as to whether the Sovereign or the individual is the final issue. For a detailed and academic discussion of this conflict, reference is made to the Appendix (captioned for this purpose now as "C.L.R.") . . . the *Cincinnati Law Review*, Volume 81, pages 152 *et seq.*, (1962).

In fine, the Subversive Activities Control Act (Title I of the 1950 Act, 50 U.S.C. 781) was designed to bring the Communist Party and its members out into the open.

Provisions with respect to registration by individual party members were not designed as punishment for membership but were intended to give persons who were members of the Communist Party, U.S.A., at such time as it might be legally declared to be a communist-action organization adequate notice of the nature of the organization and an opportunity to elect whether they wished to remain in the party and declare themselves as communists, or whether they would elect to leave the party.

The Supreme Court. in a succession of decisions (and a failure to act) has rendered the Internal Security Act virtually nugatory. After its June 5, 1961, decision in favor of the Act and its conclusion, *inter alia*,

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[15] *Noto* v. *U.S.*, 367 U.S. 290, 299 (1961). (See Appendix "H. L. J.")

> It is not for the courts to re-examine the validity of these legislative findings and reject them, * * *

the Court refused to require the Party to register without a showing by the Government that the Party can do so without any violation of the Fifth Amendment rights. "Knowing membership" became the criterion . . . that enemies of the Sovereign joining an organization dedicated to its overthrow must be shown by the prosecution to be "knowing" as to what they were doing.

The communist tactics of prolixity, delay, procrastination, obstruction, endless appeals and obfuscation "paid off" for there arose the stale-evidence "doctrine". Evidence fresh *in limine* (1953) became "stale" and unactionable in 1965 in the opinion of the court when the issues eventually reached, after months and years, the ultimate adjudication.[16]

The student of law within the ambit of this subject sooner or later arrives at the question as to whether the Supreme Court is supreme over and above the other two branches. Neither the Legislative nor the Executive branch have conceded points of weakness to the hostile opposition. As an article in the *American Bar Association Journal* put the question in September 1974: "President, Congress, Judiciary: One is more equal than the others." [17]

Professor Strong in the cited article substantiates a subcaption . . . "In the field of 'constitutional review' the Supreme Court is more equal than its 'coequal' branches of government. *United States* v. *Nixon* was in this grand tradition." The professor speaks of "repeated assertions by the Government that the Party can do so without any violation of the Constitution" and . . . in adverting to the fact that somehow or other courts have come into possession of the authority to resolve constitutional issues with finality, he opines,

> As an illustration, the Supreme Court of the United States not only possesses the traditional, judicial function assigned it under the tripartite division of governmental authority but, as well, *the awesome power to sit in judgment on the constitutionality of the acts of itself*, the executive branch, and the legislative branch. (Emphasis added)

In consonance with the tenor of our recommendations (*que vide*) a seminar to articulate a conclusion as to whether this country's enemies may be met on a basis of "need-to-know" and "clear and present danger" is overdue. Whether the expressions come from the "right" or "left" or moderate, the country's concept of self-preservation ought to be enunciated. Should a revamping of constitutional concepts be in order, the hearings on such would resolve the question. Pithily, if the individual, particularly a foe, is to be "protected" as to his individual rights over the Sovereign, the citizenry should have the right, contra-

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[16]. . . The so-called "stale-evidence doctrine" appeared in two Front cases before the Subversive Activities Control Board: *American Committee for Protection of Foreign Born* and *Veterans of Abraham Lincoln Brigade*. The Court of Appeals, District of Columbia, affirmed findings of fact that both were in point of fact "fronts" for the Communist Party but the Supreme Court granted certiorari and in April 1965 remanded the cases for further proceedings to the end that the Board might bring the record up to date and make clear the current status of the organization involved. In April 1966, orders were issued by the SACB vacating the registration orders. (16th Annual Report of the Board.) To respond to the direction, "(bring the record up to date,)" signified in the opinion of the prosecution a variance from the original academic focus * * * as in all cases, personalities and circumstances had faded over the years. Thus, the cases collapsed for "staleness."

[17] *American Bar Association Journal*, September 1974, Volume 60 at pages 1050 *et seq.* (The full article, by Frank R. Strong, a Boshamer Distinguished Professor at the University of North Carolina School of Law, appears in our Appendix at page 97.)

distinguished from the prerogatives of the Supreme Court, to make the final decision thru their elected representatives.

JUDICIAL TREATMENT

A simple legislative intendment, to publicize our enemies internally, has been frustrated.

The juridical epitome is to be found, once again, in the capstone of Supreme Court decisions. The capstone of decisions by the Supreme Court, the June 5, 1961, opinion, embraced the gravamen of this presentation:

> The Constitution does not prohibit the requirement that the Communist Party must register with the Attorney General as a Communist-action organization pursuant to Section 7.[18]

If the Constitution does not prohibit the registering of the Party, what has prevented the open disclosure of the Party and its officials? Individual rights. Thus is posed the collision between the rights of the Sovereign and those of individuals dedicated to its overthrow.

Time and again this "collision" asserts itself: Illustrative:

The *Yates* case in its treatment of the Smith Act which forbids the willful advocacy of the overthrowing of the United States Government. The Congress by that Act [19] struck at the teaching, the promulgating of propaganda in all forms for purpose of destroying this country, by force and violence. In *Yates* [20] 14 persons were convicted for conspiring to advocate and teach the duty and necessity of overthrowing this Government and for organizing a society of persons who so advocated. The Supreme Court reversed the decisions holding that the Smith Act does not prohibit advocacy and teaching of forcible overthrow of government, contra-distinguished from efforts to incite action, even though such advocacy or teaching is engaged in with evil intent.[21] What's more, "organize" was interpreted in its primal sense; i.e., applying only to those who first organized the Communist Party, not to those who three and more years later continued the organizing.

But note the *Dennis* case in which certain leaders of the CPUSA were convicted for intending to overthrow the Government of the United States by force and violence: The Court held that "the clear-and-present danger" test had been met in that case. And herewith the pith of this paper:

> The Government need not wait "until the *putsch* is about to be executed, the plans have been laid and the signal is awaited." [22]

IS THE SUPREME COURT REALLY SUPREME? [23]

It is inevitable that in treatment of the rights of individuals versus the Sovereign, the quoted question comes into issue. If each of the three coördinate branches of Government is equal, as constitutionally composed, then the mischief of according complete freedom to each person, though he be a communist, or revolutionary, or radical, or anarchist, or Marxist, or Maoist, can be dissipated if the Legislature, the

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[18] *Communist Party* v. *Subversive Activities Control Board,* 367 U.S. 1.
[19] 18 U.S.C. section 2385; P.L. 772, 80th Congress, 62 Stat. 808, 867.
[20] *Yates* v. *United States,* 354 U.S. 298 (1957).
[21] On this theory, presumably it would be valid advocacy to teach a driver education class the rightness and social inevitably of running down pedestrians, at least so long as no particular pedestrian were selected as a target.
[22] *Dennis et al* v. *U.S.,* 341 494 (1951).
[23] Caption of article, *Reader's Digest,* by Eugene H. Methvin, July 1967.

Congress, has the final word with respect to permissible objectives. Not so if the Supreme Court has the final.

Article III empowers *Congress* to make "exceptions and regulations" to the Supreme Court's appellate jurisdiction. "Thus the Constitution explicitly makes our *elected legislators*," the supreme judges . . . by simple majority vote—of what types of cases the Court may decide." [24]

Herbert Wechsler, Columbia Law School professor and quondam director of the American Law Institute, reasoned that the plan of the Constitution was quite simple . . . Congress would decide how far the federal judicial institution itself could be used. Thus the judges *are not* the sole arbiters of the Constitution. The Constitutional forefathers laid on Congress the duty to define the rights provided and to act as a counterweight to the Court—as pointed out by *Reader's Digest* in the cited caption.

The writer pointed out,

> Though it has acted at other times—for example in 1868 when it stripped the Court of power to hear appeals in habeas corpus cases—Congress has failed so far to rein in the present Court. * * *
>
> In the absence of an effort to check the Court, five Supreme Court justices, in alliance with one-third of either House or Senate (in a given instance) are by "interpretation" radically amending the Constitution. Yet amendment is supposed to require a two-thirds vote of Congress and ratification by three-fourths of the State legislatures.

The great liberal justice Benjamin N. Cardozo once wrote: "Judges have, of course, the power, though not the right, to travel beyond the bounds set to judicial innovation by precedent and custom. Nonetheless, by that abuse of power, they violate the law." [25]

There has not been a poll yet which supports the reasoning that the individual is superior to our Government, particularly in his freneticism to organize revolution and destroy the Government. On a Louis Harris opinion poll, fifty-two percent of the American people rated the Supreme Court's performance as "only fair" or "poor."

"The justices are stretching the judicial process to try to translate their notion of an ideal society into reality," declared Prof. Phil B. Kurland, Editor of the University of Chicago Law School's *Supreme Court Review*.

"From legal scholars to the man in the street, from Congress to the Justices themselves, this most revered of our governmental institutions is today drawing stinging criticism. Some of the most eloquent protests have come from within the Court itself. In 1962 when the Supreme Court invaded the political thicket of legislative reapportionment, the late Justice Felix Frankfurter denied that the Court had constitutional authority for its move. He accused his colleagues of 'a massive repudiation of the experience of our whole past.' " These observations, supported by citation from the Supreme Court itself, were made by an objective and well-known writer in the *Reader's Digest* following a study in 1967. (Eugene H. Methvin, himself an erudite in the field of internal security, was the writer, author of "Rise of Radicalism" (1973)). The book concludes by quoting from Justice Oliver Wendell Holmes, "It takes a heap of sweat, toil and tears to bring

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[24] *Ibid.*
[25] *Ibid.*

about the inevitable." This from "A Lesson to Citizens of the Open Society."

It has also been cited that in the opinion of Justice Byron R. White (an appointee of the late President John Kennedy) the Supreme Court is chargeable with laying down specific rules that have "no significant support" in the history of the Constitution. Justice John M. Harlan proclaimed that certain court decisions amount "to nothing less than an exercise of the amending power by this Court."

Within the tenor of such trends it must be admitted that "activist" Justices have increasingly taken away from juries and legislatures—the two authentic voices of the people—crucial decisions affecting the order and direction of American life. What such Justices have written into our law books become precedents, of course, virtually cemented into a concept of Internal Security as at all times subservient to the ideologies and actions of foreign-disciplined subversives. (*Vide.*: Appendix, "Reader's Digest.")

LIMITATIONS OF JUDICIAL REVIEW

The reasoning that the Supreme Court is *not* supreme in the checks-and-balances doctrine of our Constitutional forefathers is coming more into focus. If that be true, then the Legislative Department will at long last come up alongside of the Judicial. *Its* pronouncements, its Findings of Fact, and its statutes, duly-enacted, will govern the previously indomitable right of self-preservation of the country.

Instance: former Supreme Court Justice Arthur J. Goldberg, in an essay appearing in *The Washington Post*, October 12, 1974 [26] *inter alia* (after remarking that he praised the Court for its decision in *United States* v. *Nixon*) said, that it is appropriate to emphasize the limitations of the Court:

> The Court is the final arbiter of the law; it is not the repository of the power to resolve all of the many other grave problems confronting us. Belief in judicial review does not compel adherence to the cult of the robe.
>
> It is necessary—to bear the limitations of the judicial process in mind. Judicial law can help us mend our ways to ensure compliance with valid laws and regulations and greater observance of the Bill of Rights—matters of transcendent importance. It cannot, however, establish social and economic justice by itself.

The Justice opined that at this time the future of democratic government in several European countries is threatened more by inflation than by Communist subversion. The Justice recognized inferentially, of course, that Communist subversion is indeed a crucial problem to be faced up to by a democratic government. Continuing . . .

> Fortunately, all members of the present Court, regardless of which President appointed them, would surely agree that the *remedy of our domestic* economic woes and *foreign travails* is the *sole province of the* executive and legislative branches of government. (Emphasis added.)
>
> Even in the area of the Court's demonstrated competence, as the ultimate guardian of our fundamental rights, the Court alone cannot ensure the preservation of our liberties. * * * But the Court, lacking the power of the purse and the sword, cannot preserve our liberties if the people are indifferent to them, as they seemed to be for many months about Watergate, until a vigilant press and an *aroused* Congress alerted them that their very freedoms were in jeopardy.

In a concluding paragraph, Justice Goldberg in his commentary,

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[26] *Vide:* Appendix for full article or commentary of Mr. Goldberg in *The Washington Post,* October 12, 1974.

stated that the country must be reminded of the Court's limitations . . .

A nation rightly euphoric about the Court's courageous exercise of power in *United States* v. *Nixon* needs to be reminded of its limitations. This in no way denigrates the role of the Court. Rather, it emphasized the duty of the executive and legislative branches of the government to exercise their power and responsibility to act with equal courage and responsibility to cure the nation's economic and foreign policy ills.

With so eminent an authority, it is understandable that the Subcommittee would be well within its Oversight duty to summon the opinions (as we recommend) of authorities on all fronts, moderate, liberal and conservative, to confront the problem of Internal Security within the ambit of a court restrained by its obvious limitations, opposed to Congressional prerogatives.

It is appropriate at this juncture to recall that Justice Goldberg was a prominent authority in the labor movement in the '50's; he was General Counsel of the Congress of Industrial Organizations (CIO) at the time it expelled from its bailiwick communist-dominated organizations. They were . . . United Electrical, Radio and Machine Workers of America (U.E.); United Farm Equipment and Metal Workers of America; Mine, Mill and Smelters Workers of America; Food, Tobacco, Agricultural and Allied Workers of America; United Public Workers of America; United Office and Professional Workers of America; American Communications Association (ACA); International Fur and Leather Workers Union; International Longshoremen's and Warehousemen's Union (ILWU); International Fishermen and Allied Workers of America; and, the National Union of Marine Cooks and Stewards of America.

In a statement issued by the CIO in September 1954, approved by its General Counsel, a report was given of the expulsion during 1949 and 1950. The process was pursued, the statement read, because the Congress of Industrial Organizations bars affiliation with it of "any national or international unions—the policies and activities of which are consistently directed toward the achievement of the program or the purposes of the Communist party, any facist organization, or other totalitarian movement, rather than the objectives and policies set forth in the Constitution of the CIO."

The American Federation of Labor which later amalgamated with the CIO (AFL–CIO) was and is at least as strong in prohibiting foreign, hostile or extraneous influences from dominating its rights and freedoms as an American organization.[27]

The question thus arises . . . The labor movement has moved to bar outside (foreign, hostile) influences from dominating it: why is the country constrained to suffer the same influences?

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[27] The 1961 AFL–CIO Constitution provides, Article V, Section 10: "No individual shall be eligible to serve either as an Executive Officer or as a member of the Executive Council who is a member of the Communist Party, any fascist organization, or other totalitarian movement, or who consistently pursues policies and activities directed toward the achievement of the program or the purposes of the Communist Party, any fascist organization or other totalitarian movement."

In a resolution adopted by the AFL–CIO Convention, December 1957, it was affirmed, "the Constitution made it clear that the rights of autonomy do not include the right of a corrupt or Communist-dominated union to remain in affiliation with the American labor movement."

[Thus once again the anomaly: The Labor Movement possesses the precious right to exclude Communists from entering it or dominating it; the Supreme Court, in a long series of decisions, upholds the right of Communists to full access of the Bill of Rights, including the right to employment in a defense facility and all other privileges of loyal citizens.]

The foreword to the Official Reports of the Expulsion of Communist Dominated Organizations from the CIO states,

This was a unique process in the annals of American Labor history, both in the United States and other nations. It was marked by a firm decision to avoid resort to hysteria and to preserve the traditional democratic concept of due process of law.

The Reports were published, it was asserted, "as a public service for trade union members and for all students of labor problems and of *democracy's successful efforts to combat the menace of totalitarianism.*" (Emphasis added.)

Again the question arises . . . isn't the American Government itself entitled, as expressed in its Communist Control Act and in its Internal Security Act, to combat successfully the menace of totalitarianism? How better than by way of excluding Communists from perverting the Bill of Rights into a "right" of revolution?

The CIO foreword concludes . . .

The CIO and its members are proud of this record of the constructive opposition to Communist domination of labor organizations—under a program which preserved the benefits of democratic unionism for hundreds of thousands of American workers while reducing to a minimum the influence and effectiveness of the agents of the Kremlin on the American Labor scene.

(A full report of the expulsion is found in a print. Document No. 89. 82d Congress, 1st Session . . . Report of the Subcommittee on Labor and Labor-Management Relations of the Committee on Labor and Public Welfare. United States Senate. Subject: Communist Domination of Certain Unions. In the introduction, Senator Hubert H. Humphrey, Chairman of the Subcommittee, declared its interest to determine "the extent to which Communist-controlled unions are in a position to endanger the defense effort." and to "propose appropriate legislation to meet the problem, a problem which still remains very much to be solved." That was in 1951. An addendum would comprehend that the problem of full Internal Security remains to be solved on the American scene in general. What the CIO could do . . . expel, the country cannot, though the danger is equally strong in all phases. Senator Humphrey declared that "the reports illuminate the nature of Communist strategy as a conspiracy to subvert the unions as democratic institutions and to convert them into bases for the extension of Communist power. We have here spelled out how Communist unionism functions as a system of power.")

The Internal Security Subcommittee conducted hearings in 1953 and 1954 on "Subversive Influence in Certain Labor Organizations," as an important salient of its duty and authority "to make a complete and continuing study and investigation" of enforcement of the Act. In 1957, the Subcommittee issued a print on "Limitation of Appellate Jurisdiction of the United States Supreme Court" anent S. 2646 as an appendix to the hearing conducted in August of that year.

The Subcommittee printed in full the dissenting opinion in *Cole* v. *Young*, June 11, 1956, wherein Justice Clark (who was joined by Justices Reed and Minton) asseverated that the Court had gone too far in its interpretation of the Act; the majority had struck down President Eisenhower's Executive Order because its standard on employee security (resting admittedly, upon a chain of inferences) comprehended all employees. The Court reasoned, contrary to the

Executive power, that not all positions could adversely affect the national security.

But Mr. Justice Clark, in opposing the restoration to duty of one obviously sympathetic to and in line with Communists objectives, discipline, and operations, declared that the President indeed had the prerogative of determining industrial security . . .

We have read the Act over and over again, but find no ground on which to infer such an interpretation. It flies directly in the face of the language of the Act and the legislative history. The plain words of Section 1 (of the Summary Suspension Act, 64 Stat. 476) make the Act applicable to "any civilian officer or employee," not as the majority would have it, "any civilian officer or employee in a sensitive position."

We believe the Court's order has stricken down the most effective weapon against subversive activity available to the Government. It is not realistic to say that the Government can be protected merely by applying the Act to sensitive jobs. One never knows just which job is sensitive. The janitor might prove to be in as important a spot security-wise as the top employee in the building.

The Congress decided that the most effective way to protect the Government was through the procedures laid down in the Act. The President implemented its purposes by requiring that Government employment be "clearly consistent with the national security. The President's standard is "complete and unswerving loyalty" not only in sensitive places but throughout the Government. The President requires and every employee should give no less. This is all that the Act and the Order require. They should not be subverted by the technical interpretation the majority places on them today. We would affirm (the dismissal of the Communist-minded employee).

This Chapter on Judicial Treatment embodies the spirit and the letter of the *Barenblatt* case. "The power of Congress to legislate rests upon the right of self-preservation, the ultimate value of any society (citing further authority)." These words are from the United States Supreme Court (Justice Harlan), 1959, (June 8) *Barenblatt* v. *U.S.*, 79 S. Ct. 1081, 360 U.S. 109.

Somewhere along the line, when that unassailed, unchanged doctrine of the United States, as interpreted, went into the law books, it nevertheless was subjected to such modification or battering that the individual terrorist or communist or subversive was permitted to override it.

As the House Committee on un-American Activities limned the case in its annual report, 1964 (Page 69) . . . . Lloyd Barenblatt, a college professor, refused to answer questions about his communist party activities in the field of education. From that decision came memorable quotations, e.g., *"This Court has consistently refused to view the communist party as an ordinary political party* and has upheld federal legislation which in different context (although aimed at the communist party) would certainly have raised grave constitutional issues."

As the writer construes that articulate language, no communist in this country has the right to revolt or tear down this government . . . . therefore no one, be he terrorist or subversive, has the right to exploit the Bill of Rights as a "right of revolution."

CHAPTER III

History of the Act Since Its Inception

developments, internationalism, radicalism and terrorism

"History" in this sense includes the transition from enactment of the 1950 Internal Security Act to and nearly through 1974. Emphasis at this stage is upon the spreading of Marxism, the proliferating of its branches into active terrorism like the Banyan tree develops its aerial roots into additional trunks.

Chapter II of this treatise has emphasized that judicial treatment of this spread has been encouraging to the individual subversive in that his own individual rights are found superior to those of the Sovereign, despite the 1961 Communist Party case which upheld the statute and gave affirmance to its Findings of Fact. But decisions have carried the statute into spinoffs by court cases not contemplated by the solons, i.e., the elevation of the individual over the sovereign.

If the first or fundamental decision of the High Court, *CPUSA* v. *SACB*. heartened patriots in the hope that this country could cope with the enemy, the salients that have developed in the areas of terrorism are disheartening because of the "stonewalling" of such developments. The Findings of Fact in verity are still solid but the spreading of roots into electronics, nuclear power, cybernetics and robots calls for realistic controls. If today the Courts had kept pace, or were within Constitutional authority to keep pace, the zealots that have carried the seeds of revolutionary conduct far past ideology and preachments into insurrection would be curbed.

Findings of Fact[1]

Added to the Findings of Fact declared by the Congress in 1954 and 1950, is the recital which might be adopted if a bill similar to H.R. 14102 of the 93rd Congress (April 9, 1974) should be passed. Regardless, the Senate Internal Security Subcommittee staff has recommended that the following factual situation be declared:

There exist in the United States and elsewhere in the world, terrorist groups. Many are a part of international terrorist net-

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[1] It is well-settled that Congressional findings of fact, made after investigation, are binding on the courts. *CPUSA* v. *SACB*, 367 U.S. 1, 939–995, 81 S. Ct. 1357 (1961). (On the subject of world-wide conspiracy and communism)—It is not for the courts to re-examine the validity of these legislative findings and reject them.* * *" "They are the product of Congress over more than a decade and a half. * * * We certainly cannot dismiss them as unfounded or irrational imaginings." (Page 91 of the U.S. Supreme Court opinion.) "And if we accept them (legislative findings) as we must, as a not unentertainable appraisal by Congress of the threat which Communist organizations pose not only to existing government in the United States, but to the United States as a sovereign, independent nation—if we accept as not wholly unsupportable the conclusion that those organizations "are not free and independent organizations, but are controlled, directed and subject to the Communist dictatorship of a * * * foreign country, *we must recognize that the power of Congress to regulate Communist organizations of this nature is extensive.*" (Page 92.) (Emphasis added.) *Comment:* Organizations are captained and staffed by individuals; if those individuals and their cadres cannot be *regulated*, the statute is unmeaningful in point of pragmatic effect.

works. These networks and groups engage in kidnappings, extortion and other acts of violence. Terrorists from one country are being used in actions by terrorist groups from another country.

Terrorist groups in the United States and elsewhere in the world are receiving training and logistical support from various Marxist-Leninist governments.

There exist in the United States organizations and individuals providing financial and logistical support to foreign terrorist groups.

There exist in the United States domestic terrorist groups which have contacts with foreign terrorist organizations and other groups which have received material support and training from foreign Marxist-Leninist governments.

Terrorist groups both in the United States and other countries finance their activities through kidnappings, extortion, and armed robberies.

Foreign terrorists are visiting the United States and other countries under various pretexts in order to obtain support from American individuals and organizations.

Such individuals, groups, and organizations have phased revolutionary objectives. Currently, these persons seek to and in fact do subvert the authority of domestic and foreign governments and subvert individual liberties by acts of terrorism with an ultimate objective of overthrow of Democratic government and the establishment of a dictatorship of the proletariat under Marxist-Leninist doctrine. Such objectives and such acts of terrorism constitute a clear and present danger to the lives and liberties of United States citizens and others and to the Government of the United States and to State and local governments.

Proof of the foregoing is abundant. The Attorney General of California (Evelle J. Younger) appeared before this Subcommittee September 23, 1974. As he remarked, California terrorists commanded headlines throughout this country and the world. In particular was the Patricia Hearst kidnapping. "The actions of the Symbionese Liberation Army [2] the Zebra killers, the Weather Underground and imitative terrorists such as the Los Angeles Bomber have provided a tough challenge to Federal, State and local law enforcement officers," Mr. Younger testified. "* * * The trend of revolutionaries to organize into small, cohesive and highly clandestine cells is also likely to continue."

Director Kelley of the FBI has observed that the tactic illustrated by "small, cohesive and highly clandestine cells" is looming as one of the most formidable bafflements ever to have challenged the Bureau.

That trend is likely to continue, testified the witness. "It would be unwise to characterize the Symbionese Liberation Army as a historic anomaly, not to be repeated. A similar group could arise again and not only in California.

The SLA exemplifies the new breed of terrorist we will continue to encounter. He is better educated, resourceful, disciplined and armed with a political ideology which serves to motivate him. Along with this, he usually has no

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[2] *Vide:* "The Symbionese Liberation Army," a study, February 18, 1974, by the House Committee on Internal Security.

interest in material or monetary gain; neither he nor his peripheral supporters can be easily bribed. In addition to these characteristics, the new breed of terrorist views himself in a historical perspective; time is on his side, he feels. He views the revolutionary struggle as a protracted one, and he chooses where and when he will act with deliberation.

The fanaticism element was regarded as the fiercest aspect of the present struggle because zealots, radicals, fired by what they regard as a religion in the attempt to bring down this Government are placing their own lives and bodies secondarily to the cause. Such was the consensus Tuesday, September 17, 1974, at a seminar on Terrorism conducted by The American Society for Industrial Security at the Washington Hilton Hotel. The outstanding leaders and security specialists in the United States, themselves the ultimate in expertise, agreed without a dissent that the very liberties, the Bill of Rights included, not only constitute a bastion for the free enterprise system, but makes it extremely vulnerable to highly-trained terrorist groups.

The Director of the Burns International Investigation Bureau, Mr. Montague Fred Rayne, an authority in the national and international security field, enumerated the conspiratorial acts which destroy executives of American corporations, either by kidnapping or killings and often by way of enriching the coffers of the groups via ransom. Mr. Rayne quoted from textbooks and manuals employed as "bibles" or guidelines by revolutionaries, including directions as to the use of bomb attacks, the use of urban guerrilla techniques such as ambushes, surprise attacks, expropriations, arms and explosives raids, sabotage, punishment of their own renegades by death. The situation is now so extreme that Mr. Rayne declared, "I personally feel that the Government and private security industry must work hand-in-hand to minimize the present situation." Mr. Rayne said that adequate professional and positive security programs are at this late state a "must". It is now necessary, he said, that a high level, very special intelligence unit be established which could on an international basis direct and coordinate all efforts to seriously fight international terrorism.

As the witness before this Subcommittee (Mr. Younger) testified September 23, 1974, in consonance with such findings and observations:

> The domestic terrorist identifies closely with his foreign counterparts and their struggles abroad; the exploits of the Tupamaros, Al Fatah, and the IRA are studied and followed. Similar to foreign terrorists, U.S. revolutionaries are attempting to institutionalize their activity; to many it has become a full-time occupation.
>
> Although urban guerrilla warfare is a new development in this country, it has been a way of life in Latin America and the Far East. Revolutionary sympathizers in this country eulogize the exploits of the SLA; however, their tactics were not original." (Although they successfully carried out America's first political kidnapping, even this act was copied from abroad.)
>
> If we are to credit the SLA (Symbionese Liberation Army) with originality, it can be found in the manner in which they achieved publicity. * * * From the day their first communique was printed in full, to the day of their shootout—live and in color—they remained a media favorite. All this publicity tends to romanticize the terrorist in the eyes of the public and is instrumental in attracting additional sympathizers and supporters.

The witness embraced within the revolutionary and terroristic structure, the SLA, the Zebra killers, the Weather Underground,[3] imitative

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[3] *Vide:* A Report of this Subcommittee entitled "Weatherman" (released in November 1974) delineates in depth all aspects of one of the most formidable revolutionary groups to have challenged this Government since its inception . . . a further proof of the underlining of the Findings of Fact of the Congress, reflecting emboldened subversives, unimpeded.

terrorists such as the Los Angeles Bomber, all of whom have an unmistakable Marxist and Maoist bias. In the background of such cabals are the Revolutionary Union and the Venceremos Brigade, all dedicated to the overthrow of this country by force and violence. Their guiding political philosophy is Marxist-Leninist doctrine, as interpreted by Mao Tse-tung . . . augmented by the practical experiences of revolutionary favorites such as Che Guevara, Franz Ganon, Carlos Marighella and Vo Nguyen Giap.

The apprehension of terrorists is a difficult task. Conventional police methods employed against politically-motivated terrorists are inadequate. * * * The example of the Weather Underground fugitives who have been at large for four years illustrates this point. The FBI's list of ten most-wanted suspects contains six terrorists.

And just as was enunciated September 17, 1974, at the 20th Annual Seminar of the American Society for Industrial Security.

The new breed of politically-motivated terrorist is considerably more resourceful. His organizations are highly resistant to police penetration; vigilance is the norm. This is primarily due to the cellular nature of their organizations. The classic guerrilla cell system permits a greater degree of autonomy and security. Each cell is responsible for its own support, and leadership is usually collective in nature. * * *

The essential needs of the urban guerrilla are arms and money—both are easily obtainable. Weapons of every description are available on the open market.

Funds come from armed robberies of banks and businesses, from friends and sympathizers and, thanks to the American economy, the effort to build such treasuries is simple, e.g., the use of stolen or fraudulent credit cards, which is common. Whereas the foreign terrorist must rely almost exclusively on kidnapping, robbery and extortion for his financing, Mr. Younger stated that his U.S. counterpart need only rely on a credit card.

The California Attorney General's office was itself bombed by the Weather Underground. *Prairie Fire*, its publication, distributed copies extensively, claiming "credit" for that and 19 terrorist bombings across the U.S. since 1969.

Continuing, Attorney General Younger pointed to the obvious targets of revolutionaries, the disgruntled, the indigent, the imprisoned:

California prisons have become the focal point of attention by various outside organizations ranging from those which are genuinely concerned with improving the inmate's lot to those actively instigating rebellion.[4] Much of the increased interest in our prisons came about as the Vietnam war diminished as a public issue. Anti-war organizations found themselves searching for substitute causes in order to preserve their membership roles, To many anti-war activists, protest had become a full-time occupation and in order to remain employed, new targets were needed. Correctional institutions are highly desirable as targets for revolutionaries for they provide eager activists with a fertile ground from which to recruit.

The disruptive activities of organizations such as the National Lawyers Guild, Venceremos, Prison Law Collective and the United Prisoners Union are well-known to law enforcement officers in California. These organizations have close working relationships with each other and it is not uncommon to find key members rotating from one organization to another. They are united in their common goal: To transform the inmate into a political prisoner and destroy the prison

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[4] *Vide:* "Prisons—A Target of Revolutionaries." Subcaption: "Inmates Today . . . present a far greater challenge to prison officials than in former years . . . Many . . . see themselves as political prisoners, regardless of their type of offense." *FBI Law Enforcement Bulletin,* September 1974, at page 11 *et seq.* See also Appendix . . . "Our Prisons are Powder Kegs," *Reader's Digest,* October 1974, p. 184.

system." (Such hearkens back to the turn-of-the-century cries of Bolsheviks, anarchists and radicals . . . "What do you have to lose but your chains!?")

The California Attorney General called attention to the dissemination of nuclear information and materiel . . . bringing up to the horizon a "whole new dimension for terrorists to exploit", thanks to the scientific-technological revolution. Each year it is becoming easier, the witness stated, for terrorists with appropriate scientific-technical skills to construct a chemical or biological device capable of mass destruction. (Obviously a case of "clear and present danger.") Verily, "The era of superviolence may be upon us."

The Subcommittee's witness concluded by decrying the fact that Federal, State and local law enforcement agencies have had little success in penetrating terrorist cells. A most important tool in combatting terrorism, of course, is intelligence.[4a]

But from the Subcommittee's standpoint, an even more efficacious weapon is the use of the sovereign's might against individual revolutionaries properly and sensibly denied the rights of citizens upholding their government and societal structure. Would such denial of our precious Bill of Rights to protect subversive activities by revolutionaries be constitutional? Yes, as enunciated by Mr. Justice Harlan of the Supreme Court in 1959 in *Barenblatt:*

> This Court has consistently refused to view the Communist Party as an ordinary political party and has upheld Federal legislation which in different context would certainly have raised grave constitutional issues. The power of Congress to legislate rests upon *the right of self-preservation, the ultimate value of any society.* * * * [5] (Emphasis added).

And as Mr. Justice White declared in a dissenting opinion in the *Robel* case, quoting from James Madison:[6] "Security against foreign danger is one of the primitive objects of civil society. * * *

Justices White and Harlan stated their belief that the Executive and Congressional branches of our Government are in better position to judge or assess the dangers. In this context, terrorism would be a "clear and present" danger.

Organized Terrorism

Because "clear and present danger" is an ingredient of Supreme Court tests of the right of the Congress and of the Executive branch to act, to cope, we continue to stress current perils: Heavily-armed bands of self-styled revolutionaries are a rising threat to police and societal apparatus all through the country. Some are infiltrated by the FBI and other internal security forces but as the Bureau itself admits, the new revolutionary phenomenon is a breed apart from the communist cells of the '50's. Impenetrable. Some are so small, so itinerant, so *ad hoc*, that Federal agents cannot seep into them. As the labor columnist Vic Riesel (himself blinded by gangsters) points out: "Some

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[4a] In addition to the Younger testimony (Part 1 of Terroristic Activity), the subcommittee also held and released the testimony of an undercover agent in the Weatherman movement (Part 2), the testimony of Frederick Schwarz (Part 3), and State Department Bombing by the Weather Underground. On May 14, 1975, the subcommittee held an open hearing on International Terrorism, with testimony by Brian Crozier, Director of the Institute for the Study of Conflict in London, and Robert Fearey, State Department representative and coordinator of the working group of the Special Cabinet Committee on International Terrorism. Also, early in 1975 the subcommittee issued an extensive report on the Weather Underground, with photographs and summaries of its members.

[5] *Barenblatt* v. *U.S. Supreme Court* (1959) 79 S. Ct. 1081, 360 U.S. 109.

[6] 389 U.S. 258, December 11, 1967.

simply pick up Eldridge Cleaver's Black Liberation Army *nom de* (urban) *guerre*. Most are killers. None of this is fantasy."[7]

Authority for much of the documentation of the extremist, dangerous operations is FBI Director Clarence Kelley. (See Appendix: "FBI," October 1974).

That there is never any ambiguity about the cries of the rabid revolutionaries is to be found in keynote speeches delivered by them whenever and wherever occasion permits. Their listeners, cohorts, janissaries and adherents, are subjected to an evangelistic emotional pitch. All the cries call for revolution with statements that the nation is "at war" even now internally. "Independence for blacks (as instance) will come through the destruction of capitalism and imperialism through the application of revolutionary theory and practice."

Mr. Riesel points out aptly, "It took the FBI years to infiltrate the American Communist Party right on up to its highest command-echelon. Today's problem is far more complex because this is a more sensitive field and fantastically fragmented."[8]

The author of this monograph is informed that the urban guerrilla branch of a faction of the Panthers, during the first half-year of 1974, is tied up with murders of white youths, two bank robberies, resulting in the wounding of two officers, and at least one jailbreak attempt. The same Black Liberation Army (BLA) issues manuals and pamphlets from time to time, the one herewith in focus entitled, "Organizing Urban Guerrilla Units," a 1974 publication. Four of its 40 pages are given over to political kidnaping. One such technique is now known coast-to-coast, the "Robin Hood act," redolent of the kidnaping of Patricia Hearst in which tons of "grade A foods" are demanded to be given to the proletariat, "the people," as a ransom in political kidnapings.

Example: Attempt was made April 17, 1974, to free four BLA members held for police killings and bank robberies. An acetylene torch was smuggled into the "Tombs" prison in New York City by four BLA members who disarmed two guards. They were only frustrated in cutting through a steel door when the torch ran out of oxygen. Two of the four raiders attempting to rescue their associates managed to escape. A gun battle ensued during which a police officer was wounded and another hit. After the robbers surrendered, seven guns were recovered.

To keep an even more rigid discipline over both its followers and enemies, more so than the parent ideological leader, the Communist Party, maintained in the '50's, death-notices are posted by way of placards threatening newsmen (June 14, 1974, San Francisco). These notices proclaim that those who fail to report the news from the black viewpoint would be executed pursuant to "death warrants." It will be recalled that one of those warrants was issued by the Symbionese Liberation Army for the Oakland school superintendent, himself a black, murdered in 1973.

Officers who came upon "the scene" April 16, 1974, at a Black Panther Party "pad" in Oakland, California, faced up to twenty-one

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[7] "Inside Labor," May 24, 1974.

[8] For 3 years, Victor Riesel has been warning of the danger of the over-romanticized young revolutionaries. To underline such characterization, several speakers October 2, 1974, outlined the terror at the annual UPI Editors' conference in San Francisco. Dr. Mason Willrich, co-author of a Ford Foundation Report on dangers of nuclear theft warned the editors of the seriousness presently of such danger.

guns, some of them stolen (of course). The police seized a hand grenade and a police radio which had been stolen from the San Francisco Police Department. "Survival pending revolution" is the designated tactic and for that point, an image is given of "political" rather than the "forthcoming revolution." To raise funds for such "political activity," Bobby Seale, Chairman of the Black Panthers, made numerous speeches, mostly at colleges around the country.

White revolutionaries committed semantic sabotage upon the word symbiotic (relating to the relationship of two or more different organisms in close association) and then formed the word, "Symbionese" to describe its "Liberation Army," followed by vicious criminal operations including the February 4, 1974, kidnapping of Patricia Hearst, *supra.* It will be recalled that members of the Symbionese Liberation Army (SLA) were identified in a San Francisco area bank robbery, April 15, 1974.

On May 17, 1974, six of the SLA guerrillas died in a shootout with Police and FBI agents in Los Angeles.

Thanks to this country's Bill of Rights including freedom of speech and freedom of association, Stokely Carmichael had embarked in March of 1974 on another speaking tour of this country, following a five-month trip to Africa. The rabble-rousing Stokely, advocate of Pan-Africanism, made 60 appearances, half on college campuses. His All-African Peoples Revolutionary Party is now efficiently organized with representatives in New York, Los Angeles, Chicago, Atlanta, Denver and the Capital of this country, plus Gary, Indiana, and Augusta, Georgia.

Carmichael made over 90 appearances in 1973, again principally at U.S. colleges, preaching the doctrine that *Mother Africa and her children will trample America into oblivion.* A Kent State University audience was told November 1, 1973, that *my goal is revolution.* He expounded this philosophy as of last year alone to well over 30,000 persons and got paid by his audiences to do so. This individual is the one who originated the term, "Black Power."

Whereas in the '50's the word "Front" was denied as a mask for revolutionary activity, it is now boldly projected, e.g., "New World Liberation Front," which published and widely circulated in 1970 its "Minimanual of the Urban Guerrilla." The author, a "hero" in that movement, was Carlos Marighella who boasted that for close to 40 years he had "opposed reaction in public or clandestine struggle against the dominant system. He was killed in his criminal operations but the killing was called by his disciples an "assassination." The "minimanual" details techniques and systems for following "political goals" by attacking the government, "the big capitalists and the foreign imperialists, particularly North Americans." (See Appendix, "Legacy of Carlos Marighella" by Thomas J. Deakin, FBI.)

The "minimanual" declares, "The urban guerrilla is an implacable enemy of the government and systematically inflicts damage on the authorities and on the men who dominate the country and exercise power. The principal task—is to distract, to wear out, to demoralize the militarists—and its repressive forces and also to attack and destroy the wealth and property of the North Americans." The student of such treasonable activity is exhorted to read books including one by Che Guevara, "Guerrilla Warfare." Such a creature must be "able to

stand up against fatigue, hunger, rain and heat. To know how to hide and to be vigilant. To conquer the art of dissembling, never fearing danger. * * * To have unlimited patience. To remain calm and cool in the worst conditions and situations. Never leave a track or trail. Not to get discouraged."

Indisputably, Patricia Hearst and her colleagues found such manuals their blueprints for action, once having been mesmerized by "the message" of revolution. The *FBI Law Enforcement Bulletin*, July 1973, declared, "Many of the techniques used by extremists of all types in this country can be found in a number of books and pamphlets on urban guerrilla warfare. The volume of this material circulating today amounts to a lexicon of violence."

Stemming from the revolutionary activity of the Marxists and communists and Leninists and Stalinists (as spotlighted in the 1950 Act and its findings of fact), there has come down through the corridor of time the fanaticism that springs from "dedication." The parent of all of the units, groups, cadres and cabals, in terms of discipline, ideology and articulation of revolutionary purpose remains the CPUSA. It continues to be dominated by the Soviet Union, as testified to by Director Clarence M. Kelley before the House Subcommittee on Appropriations March 6, 1974.

"Leaders of the Party," declared Director Kelley, "frequently confer with Soviet leaders to receive policy guidance." "The Communist Party, USA, continues to be an arm of the international Communist movement * * * and is concentrating its efforts to gain respectability as a legitimate political party by running candidates in national and local elections." This vulnerability of our own country's constitutional largesse is contrasted with the "right" of an American citizen to stand before the Kremlin in Moscow to preach the advantages of a free press and capitalism.

Mr. Kelley concluded his testimony:

> As long as the CPUSA is subservient to the Soviet Union and supports its policies and international activities it will constitute *a threat to the internal security of the United States.* (Emphasis added.)

The 42-page Minimanual of Urban Guerrilla, 1970, (*supra*) bears out the moderateness of the term, "threat". At page 11, the criminally-possessed and their compeers in the spectrum of treason are exhorted:

> Molotov cocktails, gasoline, homemade contrivances such as catapults and mortars for firing explosives, grenades made of tubes and cans, smoke bombs, mines, conventional explosives such as dynamite and potassium-chloride, plastic explosives, gelatine capsules, ammunition of every kind are indispensable to the success of he urban guerrilla's mission.

TERRORISM

In 1974 the danger to this country is more grave than ever in its history. Virtually every right of the Bill of Rights has been prostituted by revolutionaries in their pursuit of the "right of revolution." Either *Barenblatt*, *supra*, is to be faithfully followed or this country suffer extreme jeopardy in the forthcoming months: "The right of self-preservation is the ultimate value of any society."

The Congress was not a soothsayer in 1950 when it declared in its Findings of Fact (Subversive Activities Control Act) that there exists a world Communist movement which is "a world-wide revolutionary

movement whose purpose it is, by treachery, deceit, infiltration * * * espionage, sabotage, *terrorism* and any other means necessary, to establish a Communist totalitarian dictatorship in countries throughout the world * * *."

These statements, not predictions, were predicated upon facts disclosed by investigations and hearings which established the doctrine that the enemy is a system of government known as a totalitarian dictatorship, characterized by the existence of a single political party, organized on a dictatorial basis.

The Congress thereupon set up safeguards in its discharge of duty to protect the internal security. With all three coordinate branches of government working in unison, the horrendous widening of terroristic activity might have been curbed. What were frightening facts in the '50's are now terrifying. The dangers multiply under political pretexts. "We are vulnerable today. We will be even more vulnerable to terrorism tomorrow," declared Jay Mallin, researcher, author and journalist, at a security briefing conducted October 17, 1974, in Miami, Florida, by the International Center. The session on executive protection of our corporate executives in this country and abroad was based on intensive study. That study comprehended kidnapings, killings, terrorist attacks, thefts of sensitive documents, bank robbery, espionage and family security.

All of these crimes and threats stem from the religious fanaticism of disciples of communism and anarchy, galvanized into revolutionary activity with the hope of conquering non-totalitarian governments. The international conspiracy depicted by the Congress at its 81st and 83rd sessions in the '50's is now full-blown.

Mr. Mallin, recognized as an international authority on terrorism within the political and criminal context, reported to the International Center that terrorism is widespread. "The Patricia Hearst affair has held the headlines but there have been a good many other acts. There have been bomb explosions, the killing of police officers and more than twenty known kidnapings."

Obviously motivated by ideology and discipline, the fanatics, criminals and revolutionaries were responsible during the period 1971–1973 of 573 incidents of violence. The terrorists were responsible for 21 arsons, 23 ambushes, 45 snipings, 114 fire-bombings and 127 other bombings . . . and this at the three-quarter point of 1974. No prophesying is necessary to state that by the time this study is released those figures will be outdated. During the period under scrutiny terrorists were responsible, Mr. Mallin reported, for the deaths of 22 civilians and 43 policemen. [9]

"Today the Federal Bureau of Investigation has under investigation 21 different terrorist groups with memberships totalling approximately 15,000 individuals." The writer and researcher posed the question as to why terrorism is so different today, so dangerous, and why is it spreading around the world?

"In September of 1972 the world was stunned to hear that the Twentieth Olympic Games had been made the target of an attack by political terrorists. A group of urban guerrillas belonging to the Palestinian Black September Movement had forced their way into the Israeli quarters at the Olympic site and seized nine hostages."

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[9] The full text of the report of Mr. Jay Mallin as delivered to the International Center appears in the Appendix at p. 121.

The answer to the question? "Terrorism is the weapon of the few against the many, of the militarily weak against the militarily strong. Unable to meet his foe in open combat on the battlefield, or even in the forested or mountainous areas preferred by the rural guerrilla, the terrorist strikes stealthily at his enemy's vulnerable spots." If the Bill of Rights is accepted, as it must be, as the garrison of an American's liberty, it can also be treated simultaneously by the radical as a "vulnerability," thus posing the questions and possible treatment enunciated in Chapter II, Judicial Treatment.

The speaker at the Miami security briefing stressed the ideology behind such statistics as above enumerated: "Sixty-eight years ago the Bolshevik leader, N. Lenin, laid down the basic rules for terrorism:

> The first objective is to kill individuals such as high officials and low-ranking members of the police and the army. The second objective is to confiscate money from the government as well as from private persons." On another occasion Lenin counseled: "Assassinate a spy or blow up a police station . . . attack a bank to expropriate funds for an insurrection. Let every squad learn, if only by beating up police.

Even as Hitler outlined his fanatical program in detail to build up an international "superman," so have Marx, Engels and Lenin clearly depicted to the detail the never-ending threats to this country's existence by their disciples and yahoos.

CHAPTER IV

Détente

How is détente defined? If it means what the Attorney General of the United States states it means . . . a "more relaxed attitude," then there is no reason why his Internal Security Division of the Department of Justice should not have been abolished (as it was, March 23, 1973,[1] and there is no reason why the Attorney General's list of Subversives should not have been terminated (as it was, April 4, 1974). Besides, the Subversive List, said Attorney General William B. Saxbe, is "obsolete."

"Détente with the Soviet Union and a generally more relaxed attitude toward international communism already may have made the list obsolete," General Saxbe suggested.[2] And if Moscow and Peking follow the same concept anent détente, it may be assumed that the Leninists and the Maoists are likewise dropping their security safeguards? This country even abolished the Subversive Activities Control Board (end of its fiscal year, 1973), apparently for "good measure" in the mistaken belief that Russia and China were and are on the same friendly route.

But if détente is what most students of Communism think it is, our vigilance in self-preservation should be tightened. This Subcommittee recently released a report on "Soviet Disarmament Propaganda and the Strange Case of Marshal Grechko," a staff study. The Chairman of the Subcommittee, Senator James O. Eastland, asserted that the Report throws light on the Communist disarmament *propaganda* and on the staggering Soviet arms buildup which has been the counterpart of this campaign."

Continuing, Senator Eastland said, "In the single person of Grechko, indeed, we find all the essential elements of Soviet policy exemplified and unified—in arms buildup, the expansionist diplomacy which has accompanied this buildup, and the propaganda drive to achieve agreements and objectives that will impair Western defense capabilities and undermine Western unity, at the same time as it encourages an almost *somnolent feeling of security in the countries of the free world.*" It is the propaganda and the "somnolent feeling" that apparently guided Attorney General Saxbe to loosen internal security apparatus in his Department while a general apathy produced the loss of the Board designed by the Congress to control subversive activities.

The head of the AFL-CIO, George Meany, has no such illusions or "somnolent feeling." On October 1, 1974, he denounced U.S. policy toward the Soviet Union as a "one-way approach." He told the United

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[1] *The Washington Post,* March 23, 1973, "Justice Department Ends Internal Security Unit."

[2] *The Washington Post,* April 4, 1974.

States Senate Foreign Relations Committee that Soviet leaders are using détente to promote "the ultimate victory of communism." [3]

Mr. Meany testified, "* * * I cannot help but wonder what has become of the word, 'liberalism.' I always thought that liberalism had to do with the defense of freedom—and that the defense of freedom did not stop at the water's edge."

Continuing, "* * * I don't see any necessary connection between a liberal commitment to social and economic justice at home and a policy of appeasement of Communist aggression abroad."

The President of the American Federation of Labor and the Congress of Industrial Organizations chided the head of Pepsi-Cola for being transported into ecstasy by Leonid Brezhnev. Referring to that head, Mr. Don Kendell (whose product is now being sold in Russia), Mr. Meany said, "He's the man whose company fills our airwaves with jingles about 'feeling free.' I'm sure you have all heard the Pepsi jingle which winds up with these lines:

> Join the Pepsi people, feeling free, feeling free.
> All across the nation, it's the Pepsi generation.
> Here today. Here to stay. Feeling free.

What wonderful background music this would make to Soviet bulldozers breaking up art shows!"

Mr. Meany poses the question with which we commenced this Chapter, asking . . . "Détente . . . what is it?" After "hunting around" for a good definition, "I discovered something interesting. I discovered that this détente has suddenly become very ambiguous. Suddenly this great idea—this 'conceptual breakthrough' * * * is like gossamer. You can't grab hold of it."

"The truth is, of course, a little different. What happened is that, as public disillusionment with détente mounts, its proponents are retreating into a rheotric of dampened expectations, of fuzzy ambiguity. You might call it a revolution of falling expectations."

Mr. Meany, in a concluding statement, said. "We are for a détente in which the Soviet Union will stop arming and encouraging guerrilla movements and other efforts of subversion." (For the full text of the testimony of the head of the AFL–CIO, see the Appendix on "Political Aspects of Soviet-American Détente.")

This Subcommittee, long minded of the Communist maxim, "Two steps forward, one backward," in support of Marxist revolutionary advances, issued a print in 1972. "Détente and the World Revolutionary Process." In the introduction to that paper, Senator Eastland said:

> There is in the Western world a widespread belief that the Soviet Union has become increasingly less revolutionary, that it has even become 'conservative' to the point of discouraging or resisting Communist revolutions in other countries. Unfortunately, there are very few people in the Western world who take the trouble to make a continuing indepth study of Soviet publications and pronouncements.

(Editor's note: As the previous pages illustrate, Mr. George Meany and his AFL–CIO staff are within the classification of "the few who take the trouble.")

With the exception of occasional statements by Brezhnev and Kosygin, articles and speeches by Soviet leaders, military and political, are almost uniformly ig-

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[3] *The Washington Post*, October 2, 1974.

nored by the Western press. This is a great pity, because a careful scrutiny of the Soviet press is essential to a clear understanding of their theories, their policies, and their tactical and strategic objectives.

Two years after the release of that study, as reported in *The Washington Post*, September 16, 1974 (p. B–13):

Naval Superiority Intelligence reports confirm the conclusion of the authoritative publication "Jane's Fighting Ships," that the Soviet Navy had surpassed the U.S. fleet in fighting power.

Such is "Détente" as understood and practiced by the Soviets. A leading article in the New York Times, April 4, 1974, by Matthew B. Ridgeway commenced by stating that Détente "poses the potentially gravest danger to our nation of all the problems we face. Whether it is to prove a siren's call to lure us to our destruction, or the first long step toward defusing the terrible threat of nuclear warfare and worldwide holocaust, no man can today predict with any assurance." Continuing, "But what any reasoning person can clearly perceive is the distinct possibility that treaties can be abrogated or ignored, that solemn undertakings by the Soviet leadership can be deliberately flouted or repudiated and that an overnight reversion to the hard-line policies of a former Soviet Government can take place."

Abraham Brumberg, author of a number of books and articles on Soviet affairs, writing in *The Washington Post*, July 16, 1974, disputed that the "cult of the individuals" has gone out in the USSR. Referring to Brezhnev and his ostensible "tireless, creative work" for peace, Mr. Brumberg reminds the reader that "Universal peace is, of course (dialetically) a pre-condition for the triumph of communism."

That the Soviet leader is well within the genre of "cult of the individual" is proven by the sparkling USSR laudation given his policies and pronouncements. Reference is made, states Mr. Brumberg, to the leader's shaping of the foreign and domestic policy of Russia. One chauvinistic follower declared that he is "distinguished by his ability to predict the course of the historical development of Soviet society." His speeches are a "model of the Marxist-Leninist theory."

Nowhere may one find a repudiation of the ideology which, according to the late Mr. Khrushchev, will only change "when shrimp learn to whistle." That ideology calls unswervingly for worldwide revolution and the triumph of communism over all. No one of the USSR has ever even slightly filed a minor caveat to the doctrine.

Victor Zorza, in his column on "Kissinger's Global Scenario," quoted from a speech of Comrade Leonid Brezhnev made at almost the same time the Secretary of State was giving an interview reflecting his "nightmare" which Henry Kissinger says "fills him with a sense of inevitable tragedy." Such is, writes Mr. Zorza, "like sweet music to some of those watching the world from the Kremlin. (The interview was given by Mr. Kissinger to Mr. James Reston of *The New York Times* and quoted by Mr. Zorza in *The Washington Post* October 15, 1974.)

In the Brezhnev speech, made at the same time as the interview, the Soviet leader diagnosed the "symptoms of the disease of capitalism of our time. These symptoms are galloping inflation, acute economic crises, falling production and rising unemployment."

The crisis of Western democracy, Comrade Brezhnev said, was "speeding up the disintegration of the political machinery of capitalist rule." The columnist wrote further, "But the aim of Brezhnev's military, as of the military elsewhere, is to build up ruthlessly the nation's strength against any possible future threat. The crisis of capitalism, a Soviet General wrote in February 1974, is approaching a time when, "at any moment," a situation may arise in some link of the capitalist system which will clear the way for fundamental revolutionary transformations."

The Zorza column continues, "He couples this with a call of improvements in the Soviet military posture. The Soviet Union, he says, must be prepared for 'any turn' in world events. Such as, perhaps, the need to support the Communist side in a civil war with Fascists, or to deter the United States from helping a democratic regime threatened by Communist revolutionaries?" The column concludes with reference to the fact that many will find in the current omens "a powerful argument for stepping up the arms race."

Albeit, there are those in authority in this country who find the present posture of things a time for a "more relaxed attitude."

Détente within the lexicon of the USSR must be spelled out as weakness on the part of the USA. Writing from Moscow, Joseph Kraft said, "not only are Russians mindful of American weakness but they show an undoubted self-confidence." [4]

The sort of fears about the CIA that have arisen in this country have no parallel in Soviet concerns about the KGB. (*The New York Times*, September 29, 1974.) The caption was, "As many as 6 of every 10 Soviet diplomats may belong to the Agency (KGB)." The head of that secret-service Agency, Yuri Andropov, got the Order of Lenin after a speech in which President Nikolai Podgorny praised the "strengthening and improving this important sector of state activity." The same newspaper editorialized September 26, 1974:

> The chief reservation about the policy of détente, as conceived by Mr. Kissinger under two Presidents, is that this country may find itself settling for minimal tangible benefit for itself in pursuit of a desirable abstraction, while the Soviet leadership successfully extracts real concessions in return for empty lip service.

On the other hand, Foreign Minister Andrei A. Gromyko of the Soviet Union lauded détente September 24, 1974. On the same day of the report in the *Times* (September 25, 1974) another headline read, "Moscow Steps up Anti-U.S. Cartoons." Subcaption: "Soviet press, its honeymoon with Ford over, starts propaganda upswing." Détente?

The Director of Columbia University's Research Institute on Communist Affairs, Zbigniew Brzezinski, testified:

> The Soviet view of détente—explicitly and openly articulated by Soviet leaders—is that of a limited and expedient arrangement, which in no way terminates the ideological conflict even as it yields tangible economic benefits.[5]
>
> On the contrary, it has been emphasized over and over again that "peaceful coexistence" is a form of class struggle and that ideological conflict, far from abating, is to intensify during détente.

As to reciprocity of treatment on the diplomatic front:

> U.S. diplomats, businessmen, tourists, newspapermen and scholars are subjected to incomparably more harassment than are their Soviet counterparts in the U.S.

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[4] *The Washington Post*, June 30, 1974.
[5] *The Washington Post*, August 4, 1974.

Concluding testimony before the United States Senate Foreign Relations subcommittee as reported by *The Washington Post*, Sunday, August 4, 1974, Mr. Brzezinski asserted:

> Comprehensive reciprocity in U.S.-Soviet relations—political, strategic, and social—is the only solid base for an enduring détente. Until we obtain such reciprocity we would be wise to cultivate détente prudently, not allowing the economic relationship to become its primary blossom. In brief, the time is not yet ripe for a high-risk US portfolio in the Soviet Union.

It is the earnest conviction of the Subcommittee that the time is not yet ripe for a high-risk drop in our internal security safeguards, not while the Soviet Union pursues each and every one of its ideological objectives, without abatement, without softening.

CHAPTER V

Leglislative Oversight

Principal duties of the Senate Internal Security Subcommittee, in terms of its Oversight responsibility, concern matters covering the Nation's internal security, such as treason, espionage, sedition, sabotage and all internal security ramifications. Within this spectrum is the Foreign Agents Registration Act of 1938.

Such were the functions of the Justice Department's Internal Security Division; they come under the scope of the Internal Security Subcommittee's legislative watch. Today the Justice Department has telescoped its functions into one Section of the Criminal Division.[1]

The Internal Security Subcommittee's charter provides more specifically for the powers and functions within the designated ambit . . . a complete and continuing study and investigation of

(1) The administration, operation and enforcement of the Internal Security Act of 1950;

(2) The administration, operation and enforcement of other laws relating to espionage, sabotage, and the protection of the internal security of the United States; and,

(3) The extent, nature and effect of subversive activities in the United States, its Territories and possessions, including but not limited to, espionage, sabotage and infiltration by persons who are or may be under the domination of the foreign government or organizations controlling the world Communist movement or any other movement seeking to overthrow the Government of the United States by force and *violence*. (Emphasis added)

As indicated by the preceding footnote, the termination of the Attorney General's List of Subversives is but one of many phases of Internal Security operations but it is unfortunately an aspect of complacency spelled out in a "lessening of tensions". As the Chapter (IV) on Détente asserted, the concept of accepting a lessening of safeguards because of (pseudo) Détente is illusory.

This Subcommittee's latest Report (April 24, 1974) for the fiscal year ending February 28, 1974, spells out at pages 24 and 28 the continuing discharge of duty under its oversight responsibilities. The SISS bills considered during the 93d Congress included S. 177, S. 254, S. 258, S. 294 and S. 1965 dealing with the Internal Security spectrum, including the restriction of travel to areas where military forces are engaged in armed conflict with the military forces of the United

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[1] ***Vide:*** **Annual Report of the Attorney General of the United States, 1973 (last fiscal report) at p. 92. It is significant that only one section is given over to the Department's Internal Security functions and that only one paragraph, out of a compendium of 178 pages, is devoted to the vital responsibilities associated with such subject. This, contra-distinguished from several pages in the reports of the Attorney General since 1954 (when the Division was first established under Assistant Attorney General William F. Tompkins).**

Of interest to the Subcommittee was the Attorney General's list, now abolished. In practical effect, therefore, there is no guide for Government offices in employing personnel for purpose of weeding out those dedicated to the cause of revolution, to the overthrow by force and violence of this Government.

States; prohibiting assaults on State and local law enforcement officers, firemen and judicial officers; and S. 1965, a bill to insure separation of Federal powers and to protect the legislative function by abolishing the Subversive Activities Control Board, thus to amend Title 50, United States Code, an amendment to the Act, Section 791, *et seq.*

A revised edition of the Internal Security Manual, consisting of provisions of Federal statutes, executive orders and Congressional resolutions relating to the Internal Security of the United States through July 1, 1973, recently was put into distribution. It is the most complete volume on the subject ever published in a single work and embraces comprehensively the subject of this Chapter. Aside from reviewing the functions of all Agencies and legislative operations within the ambit, it will serve as a useful tool for the legislator, lawyer and layman.

The Subcommittee has directed its attentions, in an overall sweep of all phases of its jurisdiction and duty, to personnel security practices and procedures in the various Federal departments and agencies (as required by Senate Rules, January 18, 1972).

Within the area of operations are National Aeronautics and Space Administration, Agency for International Development (AID), Departments of Agriculture and Air Force, Internal Security Section of the Criminal Division of the Department of Justice, Department of the Army, Atomic Energy Commission, Civil Aeronautics Board, Civil Service Commission, Department of Commerce, Department of Defense, Export-Import Bank, Federal Communications Commission, Federal Housing Authority, General Accounting Office (GAO), General Services Administration, Department of Health, Education, and Welfare, Department of Interior, Labor Department, Loyalty Review Board, National Labor Relations Board, National Science Foundation, National Security Council, Navy Department, Peace Corps, Post Office Department, Public Housing Authority, Selective Service System, Small Business Administration, State Department, Treasury Department; U.S. Information Agency, Veterans' Administration and World Health Organization, as well as "all internal security ramifications."

The 1970 Legislative Reorganization Act places the onus upon the individual agency to assist the Senate in its analysis, appraisal and evaluation of the application, administration and execution of the laws. Purpose, of course, is to reach a point of formulation, consideration and enactment of such modifications in those laws, and additional legislation as may be necessary to appropriate. (Section 136, 2 U.S.C. 190–D.) The need is urgent for continuing investigations as embraced within the legislative mandate of 1950.

As pointed out in Dr. Gary Lane's "Congress and Subversion, A New Look at the Battlefield" (1970), this Subcommittee kept its investigative eye on subversion in Government, in the educational process, in labor organizations and unions; activities of U.S. citizens working for the UN and Communist underground printing facilities (page 142). Such continuing legislative surveillance or oversight serves to keep within focus the problems that concern this country's welfare in its defense against revolutionaries and national and international enemies.

The SISS prints that reflect such investigations and problems "are

of invaluable service to Americans," as quoted in Dr. Lane's authoritative volume (at page 144). Citizens are kept informed of dangers to our Government. The distribution of such booklets or prints is a by-product of the whole legislative process.

Again, within the authority and responsibility of the Subcommittee, is the typical situation as covered in "Activities of U.S. Citizens Employed by the U.N." Dr. Lane stated, "It was hoped the American people would become aware of the dangers posed by having an international body in our midst."

As to subversion in Government,

This report went through several printings and was distributed by anti-Communist organizations throughout America. It supported the claims made by many politicians that our Government was infiltrated by subversives. (Page 145)

And as to subversion in education,

The report substantiated the claims that many local school districts were coming under increasing attack by Communists. It was hoped that by releasing this report, local PTA's would take the offensive to keep Communists from changing school curriculum to suit Marxist belief.

Obviously omitted from the list of agencies and operations within the Subcommittee's legislative oversight responsibilities is the Subversive Activities Control Board, created by Title II of the Internal Security Act of 1950, the Subversive Activities Control Act, which became law on September 23, 1950, in the 2d Session of the 81st Congress. It is not perhaps the loss of the Board itself that constitutes a vulnerability but the failure to replace it with any Federal control over the subject of subversive activities . . . obviously a dramatic contrast with the operations of the governments in Moscow and Peking.

There has not been since 1973 and there is now no Board or authority for purpose of determining whether organization are Communist-action, Communist-front or Communist-infiltrated; no official authority for determining whether individuals are members of the Communist Party or of terroristic organizations of any kind. (See Twentieth Annual Report of the Subversive Activities Control Board, relating to such operations).

The void that now exists comes at a time when disciples of revolutionary disciplines and alien ideology are enjoying an era of sophisticated intelligence operations, with particular reference to the Soviet Bloc. This Subcommittee can but point to the blank by its continuing investigations . . . It has devoted substantial attentions to disseminating truth versus propaganda. In one year, 1972, the Subcommittee caused to be prepared a selected bibliography of Soviet publications, with some additional titles from other sources. But the distribution of such prints has its limitations, contradistinguished from the active function of a central authority placing focus upon the participants in revolutionary and terroristic activities.

Objective of the Subcommittee's booklets or prints, products of its investigations and studies, is to attempt to offset what Soviet propagandists term, "Active Measures Department," to call for legislation (or, concomitantly, no need for such legislation if that be the conclusion of the Congress) to meet head-on the Communist and terrorist techniques of "disinformation."

With dissemination of the "disinformation" flooding the propaganda airwaves, channels and internal areas of our country and all

other non-Communist countries, decisionmakers are deceived for lack of facts. Soviet objective, of course, is to cause those decisionmakers to make false decisions, based upon mendacious information "fed" them as a basis.[2]

In this phase (and, again as instance) the Subcommittee published a 290-page print in 1972 . . . placing the full glare of truth upon "Soviet Intelligence and Security Services, 1964–1970." (This document has been updated, and the revision was issued by the Subcommittee earlier this year.) It was a firmly-constructed response to anti-American propaganda; the print stands permanently in counteracting the usual propagandistic mixtures of sensational tactics of the Communists and terrorists, such mixtures bottomed upon half-truths. Purpose, among others, was to spread the word that democracy provides pros-and-cons and that full control of intelligence and espionage apparatus is not at the command of people in the Soviet bloc but in the hands of Soviet Union advisers. The 290-page publication was prepared in its final form by the Foreign Affairs Division, Congressional Research Service of the Library of Congress, based on materials provided by the Subcommittee.

If the narrowing of the internal security spectrum (by the demise of the SACB, the Internal Security Division of the Justice Department of the Attorney General's list of subversives) [3] narrows the focus of the Subcommittee, it nevertheless concomitantly strengthens its need and importance.

"Liberal" protagonists and propagandists, carried away by zeal, have attempted to lead on in international quarters . . . heartened by the seeming complacency of this country in dealing with its ideological enemies. Instances . . . informal contacts between private U.S. citizens acting on their own behalf or on behalf of others and foreign officials, directly contrary to the Logan Act (18 U.S.C. 953). Purpose of that Act is "to prevent private interference altogether since the Constitution has placed the power of negotiation in the hands of the Executive altogether." Here too, in terms of its legislative oversight responsibility, the Subcommittee has maintained a fixed focus.

Because of potential harm to U.S. interests that could result from unauthorized intercourse with foreign governments, the present wording of the Logan Act (originally adopted January 30, 1799) calls for renewed attentions and revamping. The Sixth Amendment (anent criminal prosecutions) calls for more precise wording, as pointed out in *Waldron* v. *British Petroleum Co.*, 231 F Supp. 72 (S.D., N.Y. 1964).

The hamstringing of effort on the Internal Security front is found in the fact that for a few years now there has been no further release by the Department of Justice of "Steps Taken by the Department to Enforce the Provisions of the Subversive Activities Control Act in Accordance with the Decision of the Supreme Court in the Communist Party Case." A request for the latest steps, in 1974, produces the "Steps Taken" as of March 1, 1971. Here again a paralysis of opera-

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[2] *Vide:* Annual Report, SISS Print, 1972, p. 10.

[3] The nature and purpose of the Attorney General's list of subversive organizations was greatly and quite generally misconceived. See Report of the Subcommittee in 1955 in a review of the Act generally and the List particularly (p. 4). "The List * * * is advice from the chief law officer of the Nation to the Executive, much like a communication from an attorney to his client."

tions calls for more intense legislative reviews and actions, thus placing the onus upon the Subcommittee to continue to attract interest to the vital subject.

The Subcommittee's vigilance is illustrated and found in such publications as "Gaps in Internal Security Laws." [4] The appendix to the 1966 publication sets forth several pages of recommendations to plug gaps that have developed principally because of both court decisions and experience in coping with hostile elements.

Those who would scoff at such vital problems, particularly because of the complacency engendered by the pseudo-détente, argue that there is actually no danger. Discussing this view, Professor William Stanmeyer of the Georgetown University Law Center wrote the following,[5] "* * * It is like saying 'not dead, therefore perfectly healthy,' Actually, every serious student of a free society's political health recognizes, if not blinded by ideological preconceptions, that there are degrees of danger to polity and that 'takeover' (by a foreign government) like death is only the most extreme."

The Communist Control Act of 1954 has virtually faded from view, but not from the Subcommittee's interest and attentions. The Communist Party has never ceased its activities in the area of the labor movement. Years ago Lenin ordered Communists throughout the world to "resort to various strategems, artifices, and illegal methods, to evasions and subterfuges, as long as we get into the trade unions, remain in them and carry on Communist work within them at all costs." But thanks to our Bill of Rights and "Right of Association," (and interpreting decisions) there is nothing to stop Communists and their followers from emasculating a union by functioning from within. Its coverage: uranium, as instance. (See "Red Pipeline into Our Uranium Sources," by Lester Velie, *Reader's Digest*, June 1955).

In the exercise of its responsibilities, the Subcommittee sedulously calls attention by staff studies to Congressional measures referred to the Subcommittee from the Congress, bills that have become laws within the field of its authority, Acts of Congress that have been held unconstitutional in whole or in part by the Supreme Court of the United States. It becomes apparent that a dropping or lessening of such safeguards and vigilance makes for an increasing exposure of this country's "weaknesses" when contrasted with totalitarianism. The weaknesses, of course, are the pillars of freedom. But the attack, constant, unremitting, from Communists and terrorists, demands reinforcing of our own freedom structure.

In further discharge of its Oversight duties and to reflect its operations, the Subcommittee published in August of 1972 a "21-year Index", a combined cumulative index from 1951 to 1971 . . . virtually covering its entire existence. (The Editorial Department of SISS has maintained, of course, a supplemental system to date.) In the two volumes are references to all published hearings, studies and reports, . . . running the gamut from Communist Tactics in Controlling Youth Organizations, Techniques of Soviet Propaganda, Communist Threat to U.S. Through the Caribbean to Assault on Freedom, with a reference to "Castro's Broken Pledges" (July 3, 1970).

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[4] *Vide:* Parts 4 and 6, specifically, June 30, 1966, and May 9, 1967.
[5] Allan Brownfeld, writing in Roll Call, March 7, 1974, p. 4.

The Internal Security Subcommittee produced copious exhibits, facts and testimony in its concern with World Drug Traffic and its Impact on U.S. Security. In several volumes, the Report embraced such subjects as Southeast Asia, the International Connection, the Global Context, Research on Marijuana and Hashish, and (issued September 18, 1972) The Machinery of Control.

To the end that Soviet secrecy and tactics were and are not secret in this country, the Subcommittee published September 26, 1972, "Abuse of Psychiatry for Political Repression in the Soviet Union." In the same context was the 1972 print entitled, "Communist Treatment of Prisoners of War."

CHAPTER VI

Conclusions and Recommendations

When Lyndon Johnson was Majority Leader of the Senate he alluded to Soviet proposals to ease East-West tensions as those which "must be tested to the last degree to determine whether fair words will be backed by fair deeds." The quotation from the *Daily Worker* (May 17, 1955) is the very substratum of this paper for it is as timely in 1975 as it was twenty years ago. The *Worker* declared that the then-Majority leader was endorsing a recommendation that the President of the United States form a general staff which would have the same role in the political offensive that the joint chiefs of staff would have in a military offensive. "The basic elements * * * were endorsed by President Eisenhower at a news conference last week."

The President-to-be said that to accept "fair words" would place this country in a position of "being soft-minded to accept (them) at face value."

Mr. Johnson was endorsing Brigadier General David Sarnoff's proposals at a dinner honoring the Chairman of the Board of the RCA. These proposals had been submitted April 5, 1955, in a memorandum to the White House and, verily and prophetically, the astutely-honed observations and recommendations are cogent today because world-wide communism and its spinoff, terrorism to foment revolution, has never deviated an iota from the Marxist-Leninist doctrines of destruction of non-Communist countries.

The paragraphs below are excerpted highlights of the memorandum (full copy of which appears in the Appendix)—after pointing out that the Kremlin's fixed goal is world domination by means short of an all-out war . . . propaganda, fifth-column subversion, civil strife, terror and treacherous diplomacy (all of which have eventuated in the past two decades)—

Periods of seeming Communist moderation have been used as a cover for frantic buildups and deployments for the next big push. There has not been a single year when the Kremlin did not, with single-minded concentration, make the most of its opportunities by methods short of general war.

It is useful to break down Moscow's political-psychological techniques for easier observation. But it should be remembered that they are all inextricably intermeshed, that they are stepped up or soft-pedalled as required, that they are supplemented with physical force and the menace of such force according to circumstances.

1. PROPAGANDA

The massive use of all media of communications by the Soviet Government, its puppet governments, local Communist parties, and by ostensibly independent groups under Moscow control or influence, is vast but impossible to measure.

Printed matter in tremendous quantities pours out of the USSR into the non-Soviet world. Several large publishing houses in Moscow and elsewhere do nothing else but feed this flood. Besides, the Kremlin operates a chain of large publishing enterprises on foreign soil. Their Red tide of books, pamphlets, reports, posters, etc., inundates the world.

In nearly every non-Soviet country and region there are newspapers, magazines, radio and TV stations, either overtly under pro-Communist control or in "liberal disguises." These speak in local tongues—but the voice is Moscow's. In addition, thousands of Kremlin-oriented individual writers, commentators, editors and trained propagandists are smuggled into strategic non-Communist spots to plug the current Moscow lines.

2. INFILTRATION AND SUBVERSION

Through Communists, fellow-travelers and assorted sympathizers, there is a systematic "colonization" of governments, labor unions, educational and scientific institutions and social organizations. The goal is to weaken the infiltrated bodies or to use their leverage to influence public opinion and official policy in the Kremlin's direction to undermine traditions and subvert loyalties which block the road to Communist thinking.

In the infiltration of government agencies, espionage is by no means the chief purpose. Far more important to the Soviets is the subtle pressure an infiltree can bring to bear upon the shaping of national policy and the influencing of national moods. *The theft of secret documents is routine.* (Emphasis added). The subversion of a government's self-interest, the sowing of disunity, the careful sabotage of policies unfavorable to Soviet interests—these require and receive more polished methods.

3. FIFTH COLUMNS AND FALSE FRONTS

Communist parties, whether legal or proscribed are the primary fifth column. They function under direct instructions from Moscow headquarters, usually under leaders assigned from outside.

But this is the beginning, not the end, of the apparatus of power reaching into every corner of the free world. Innumerable committees, congresses, leagues, are set up—outwardly devoted to legitimate and even noble causes like peace, race equality, antifacism but actually controlled and manipulated by Communists for strictly Communist objectives.

These false-front outfits are spawned continually, discarded when their purpose has been served. In the United States, where this technique has been widely practiced, they have run into scores. Every new situation produces its organizational instrument. At times a front started for one purpose is shifted overnight to its opposite: thus fronts for keeping America out of the war during the life of the Moscow-Berlin pact were converted into fronts for putting America into the war after the Germans attacked Soviet Russia.

[Editor's note: There is not one point in history for the last half-century and more in which the Communist Party, U.S.A., failed to follow the zigs and zigs of the Kremlin, and not one point in the same period in which the Kremlin

deviated a scintilla from the revolutionary doctrine of commitment to the Marxist dedication to overthrow of this country and all other non-Communist countries.]

Besides creating these fifth-column devices, the Communists also are expert at "capturing" organizations started by others. By joining some existing society or committee, acting as a disciplined minority bound by caucus decisions, a dozen persons have frequently succeeded in taking effective control of organizations with thousands of members.

4. SABOTAGE AND TERROR

The use of these weapons in time of war is familiar, but its systematic use in peace-time is the great Communist innovation. In all free countries the main targets of infiltration are defense industries, communications transport and police systems—all of which offer ample opportunity for mischief affecting a nation's security. Strikes at strategic points and strategic times, as well as overt physical sabotage, can slow up a country's preparations for defence or actual war-making capacity.

In regions where it is useful and feasible, the Communists do not disdain raw terror; incendiarism, kidnaping, assassination. A special research section of MVD (Soviet secret police) is devoted to developing murder weapons, poisons, and the like.

5. CIVIL STRIFE

Internal discontents and economic crises are stimulated and then systematically exploited to produce inner disunity, chaos and actual civil insurrection. Guerilla forces under professional military leaders are frequently reinforced by "volunteers" from outside.

6. PREPARATION OF "CADRES"

In Soviet Russia and now in its colonial states there are schools and universities of revolution. Students, drawn from all countries, are taught the theory and practice of political warfare, sabotage, guerrilla operations, propaganda methods.

7. PREPARATION OF RESERVES

The Communist High Command does not depend only on the faithful Communists. It attaches great value to its peripheral "reserves"—groups of sympathizers or innocent collaborators willing to travel along the Communist road part of the distance. There are mobilized and brainwashed through the false-front organizations, United and People's Fronts, the spread (as required) of pacifist or neutralist sentiment, doctrines of class struggle, belief in the "inevitable" collapse of capitalism and free societies.

In advanced countries like the United States, Britain, France, some segments of the so-called "intelligentsia" have proved especially vulnerable to Communist indoctrination. Not only their self-doubts and frustrations but their most generous idealistic instincts have been canalized and perverted to promote victory for the Soviets in the Cold War.

8. TREACHEROUS DIPLOMACY

Soviet diplomacy takes full advantage of the moral code and "political naivete" of some free countries and especially of their eagerness for peace, sometimes peace at any price. It uses the threat of war as a species of blackmail, and is past master at playing off one country against another. It appeals to the profit-motives of competitive economies, and in general exploits what it refers to as the "inner contradictions" of the free world.

It can make the most of amorphous slogans like "peaceful coexistence"—a phrase coined by Lenin, repeatedly used by Stalin and candidly defined in Communist literature as a "tactic" or "strategm" to gain time, deploy forces, undermine enemy vigilance. (Editor's note: U.S. Military authority now recognize that Soviet might in the last decade has exceeded that of America.)

Moscow has brought one-third of the human race under its iron control by means short of a Hot War—by shrewd diplomacy, deception, propaganda, the blackmail of threats, fifth-column subversion, guerrilla forces and, where expedient, localized shooting wars.

In a decision of the U.S. Supreme Court (Vol. 339, May 8, 1950) an opinion written by the late Justice Robert H. Jackson stated the case against Communism that is clear and penetrating. He said:

> The goal of the Communist Party is to seize powers of government by and for a minority rather than to acquire power through the vote of a free electorate . . .
>
> It purposes forcibly to recast our whole social and political structure after the Muscovite model of police-state dictatorship. It rejects the entire religious and cultural heritage of Western civilization, as well as the American economic and political systems. This Communist movement is a belated counter-revolution to the American Revolution, designed to undo the Declaration of Independence, the Constitution, and our Bill of Rights, and overturn our system of free, representative self-government.
>
> Goals so extreme and offensive to American tradition and aspiration obviously could not be attained or approached through order or with tranquility. If, by their better organization and discipline, they were successful, more candid Communists admits that it would be to an accompaniment of violence, but at the same time they disclaim responsibility by blaming the violence upon those who engage in resistance or reprisal. It matters little by whom the first blow would be struck; no one can doubt that an era of violence and oppression, confiscations and liquidations would be concurrent with a regime of Communism.
>
> Such goals set up a cleavage among us too fundamental to be composed by democratic processes. Our constitutional scheme of elections will not settle issues between large groups when the price of losing is to suffer extinction. When dissensions cut too deeply, men will fight, even hopelessly, before they will submit. And this is the kind of struggle projected by the Communist Party and inherent in its program. . . . *"Violent and undemocratic means are the calculated and indispensable methods to attain the Communist Party's goal* . . . In not one of the countries it now dominates was the Communist Party chosen by a free or contestable election; in not one can it be evicted by any election. The international police state has crept over Eastern Europe by deception, coercion, coup d'etat, terrorism and assassination. Not only has it overpowered its critics and opponents, it has usually liquidated them."

The foregoing monograph or "memorandum" by General Sarnoff was prepared at the request of President Eisenhower. According to a press release of May 10, 1955, referring to the discussion at the White House March 15:

> The same afternoon, at the President's request, General Sarnoff conferred with Nelson Rockefeller, Special Assistant to the President on psychological warfare, and officials from the U.S. information Service and the Central Intelli-

gence Agency. At the end of the meeting he undertook to submit his views on the subject and a suggested program of action.

That the communist strategy and "Tomorrow-the-World" doctrines have not only not abated since the Congressional Findings of Fact in the '50's but that they have grown bolder in totalitarianism is dramatically exhibited in "Solzhenitsyn: Conscience of a Nation." (*Reader's Digest*, September 1974, special feature by George Feifer, in which the use of the description of Russia as a "powerful state" is documented by the 55-year-old writer who survived eight years of prison camps, three years of exile, three years at the front in World War II, a serious cancer illness, and more years of isolation and neglect.) Solzhenitsyn has won the admiration of the world, reflected in the award in 1970 of the Nobel Prize, "the world's supreme recognition of achievement, a kind of universal knighthood for service to humanity."

Solzhenitsyn is the author of the best-seller, "The Gulag Archipelago. 1918–1956," copyrighted in 1973 and 1974. It has been described as a "book of stunning sweep, power and effect, even compared with Solzhenitsyn's previous writings, it puts the indescribable suffering of millions of Soviet citizens—the agony of the entire nation—between two covers." (The renowned Russian author and exile repeated his strong anti-Soviet doctrines at a banquet tendered by AFL–CIO in July 1975.)

There has been, of course, no contention anywhere that the terrorism described by Solzhenitsyn in the "mother country" is confined there; the spread of communism through the planet has a *leit motif*, violence as an open or subversive technique. Inspired followers of Marxism in all its branches have created what the South-East Asian *Spectrum* (July 1974, Volume 2, No. 4) terms, "The International Terrorist," by Richard Clutterbuck.

International terrorism—has undoubtedly increased and is likely to go on doing so, chiefly because it is so often seen to pay. A government which, in a conventional war, would scorn a demand for surrender knowing that the subsequent bombardment would kill thousands of its citizens, will readily surrender to three or four urban guerrillas rather than allow a hostage to be killed in cold blood, and public opinion—irrationally—often demands that it should so surrender.

The U.S. Government has made it clear that no ransoms will be paid, and out of 27 foreign service officials kidnapped, ten have been murdered—though without this firmness, the total number might well have been much larger. By contrast, EXXON paid 14.2 million for one of its executives in April 1974, to the Argentinian "ERP" group, which is reported to have extorted $30 million in ransoms in all. (NOTE: all of such prodigious sums are ideologically applied to furthering revolutions, of course, rather than employed on individual enrichment).

When they are operating inside their own countries, urban terrorists tend to follow the philosophy expounded by the Brazilian, Carlos Marighella, before he was killed in 1969. Marighella defines the aim as being to provoke repression, by making it impossible for the government to govern without repressive methods, such as curfews, searches, arrests and detention without trial. At the same time the terrorists make a concerted attempt to render the normal process of law unworkable by intimidating (and sometimes killing) witnesses, juries, magistrates and judges, so that they dare not give evidence or convict. The general public becomes incensed and, to prevent a violent backlash—with vigilante groups taking the law into their own hands—the government is forced to introduce more arbitrary forms of law. At the same time the terrorists bomb and burn so that shops and factories are closed, and unemployment grows. The overall effect is to make life for ordinary people, in Marighella's words, "unbearable." This is designed to create sympathy for the guerrillas and also to increase the number of their recruits. The final stage is the creation of a "climate of collapse" in which the government gives way. Thus a terrorist group pur-

suing the philosophies of Carlos Marighella provides troubled waters in which foreign governments may find it profitable to fish.[1]

As a dramatic indication of the contrasts in the Soviet-Marxist system and the capitalistic system, our Government permits the dissemination of propaganda, verily encourages it, tho it be inimical to the interests of this country. The Foreign Agents Registration Act of 1938, as amended, is bottomed upon our Bill of Rights and, particularly, the First Amendment: Congress is forbidden to make a law abridging freedom of speech or press.

There is, of course, not a scintilla of "right" on the part of Americans in Russia thru its Kremlin to openly or covertly disseminate the advantages of Democracy as the word is interpreted in the U.S.A. The Report of the Attorney General of the United States on the administration of the Foreign Agents Registration Act of 1938, as amended for the year 1973 (latest report on the subject), reflects an analysis of the principal trends noted during 1973 in the propaganda material disseminated within our borders in the English language on behalf of the foreign principals listed. Principal publications are set forth *inter alia*. During the cited year, no less than 6,259 dissemination reports were filed in connection with the distribution of 12,240 pieces of propaganda submitted.

Taking full advantage of this country's liberties, rights and privileges, the Union of Soviet Socialist Republics (USSR) and its disciples, agents and adherents exploited the media of print and other outlets by such entities as (pages 230 to 236 of the Attorney General's Annual Report)—

Four Continent Book
Artkino Pictures
New York Bureau of the Telegraph Agency of the USSR (TASS)
Central Parcel Service of Vneshposyltorg, Moscow
N.T.S. Radio Free Russia (political activities)
Amtorg Trading Corporation. Listed as "purchasing and selling agent; collects industrial information" with address-listings in Moscow, Leningrad, Odessa, Vladivostok and other places, numbering 43.
Louis Lerman . . . Embassy of the USSR, Soviet Life Magazine
Intourist (advertising)
Association-Sterling Films . . . Embassy of the USSR.

Other individuals and groups officially listed as specialists or dealers in films, news, public relations, books and magazine sales and "cultural affairs."

In the discharge of its Oversight duties, the Subcommittee has kept a watchful eye, not upon all Soviet operations but those officially admitted and disclosed as reported to the Attorney General in accord with the 1938 law, Foreign Agents Registration.

Again, in contrast . . . a group of art-lovers in Moscow in November of 1974 was dispersed, their canvases eclipsed by Moscow police who were and are under no compulsion, of course, to recognize even a mythical counterpart of this Country's constitutional rights for citizens and all and sundry.

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[1] South-East Asian *Spectrum*, Volume 2, No. 4, July 1974, pp. 19, 21.

The Congress, in a futile attempt to put the light upon *all* persons, corporations and organizations, passed a law January 2, 1968 (50 U.S.C. 781) calling for Subversive Activities Control Board proceedings which would disclose not only those openly admitted but all agents working subversively within the confines of this country for Russia and its satellites. In reiterating the Findings of Fact in 1950 and 1954, Congress declared:

> Disclosure of Communist organizations and of the members of Communist-action organizations as provided in this subchapter is essential to the protection of the national welfare. As amended, Pub. L. 90–237, 81 Stat. 765.

But there is no Board and therefore no such disclosure as our highest legislative body deems essential to the protection of the national welfare, "as a result of evidence adduced before various committees of the Senate and House of Representatives." (Quoting from the 1968 law.)

(The same 1968 law reiterated all the findings of fact contained in all the sections (1) thru (15) in the Internal Security Act.)

The hallmark of democracy is openness and disclosure; to the end that such not be exploited it becomes manifest that a force which thrives upon secrecy and the efficiency of totalitarianism be exposed. This is an era of sophisticated intelligence operations on the part of the Soviet bloc. Although the Subcommittee has devoted substantial attention to disseminating truth versus propaganda, there can never be a wide enough distribution of such publications as the selected bibliography prepared by the Staff in 1972 under direction of the Chairman . . . which bibliography reveals Soviet publications. It is a part of the "ammunition" (as General Sarnoff would declare) required to meet head-on "disinformation," a spinoff of espionage apparatus directed principally toward discrediting the United States in the eyes of the world.

Kremlin experts and propagandists maintain an "active measures department," as an integral part of its techniques. As long as such operations exist, the need is imperative for countermeasures.[2] The full glare of truth may be found in the cited print, "Soviet Intelligence and Security Services." But only approximately 2,200 of such prints found their way into the usual channels of distribution . . . this, without a public-relations enlightenment of availability of such studies.

Communist propagandists, it is concluded, have a virtual field day in not meeting up with counter measures. Instance: The notorious Soviet spy, Rudolf Ivanovich Abel, returned from this country to Russia and was deified. Abel's biography was serialized in Russia. But Soviet propaganda would "teach" that its government's embassies and diplomatic personnel and all other Communist disciples are not engaged in such activities as spying and espionage.

To countervail, this Subcommittee requires reinforcement to the end that the American public learns the constant adherence to Soviet goals, without exception (unless it be found within the aphorism, "Two steps forward, one backward."). As "Peaceful Coexistence" [3] reminds students of communism with regard to a universal revolution—Lenin himself said in 1918 that the ultimate goal of Commu-

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[2] Annual Report, 1972, p. 10, SISS.
[3] Peaceful Coexistence, An Analysis of Soviet Foreign Policy (1959) by W. W. Kulski.

nism is revolution in all countries. "We are fighting not only against Russian capitalism, we fight against capitalism in all countries, against universal capitalism and for the freedom of all workers." (Page 13.) No Soviet leader has ever repudiated Lenin. (Page 23.) Lenin declared in 1917—

> There is one and only one kind of internationalism in deed, working wholeheartedly for the development of the revolutionary movement * * * and only such a struggle and such a line in every country without exception.

Mr. W. W. Kulski, an astute scholar in his field of internationalism, declares at page 558 of his analysis of Soviet foreign policy that the Soviet imprint is unmistakable in thought and wording. In consonance with the presentation of this monograph in particular reference to Détente and Chapters III and IV, the international stage is seen as the scene of "the competition between the two diametrically opposed social systems." (Redolent of Khrushchev's assurance that his system would change "when shrimp learn to whistle.") Since only two systems are being referred to, it is clear that not only the Western but also the non-communist underdeveloped countries, committed or uncommitted, belong to the other diametrically opposite camp. Note further reference at page 558 . . . In foreign policy, the United States was singled out by name as the main enemy, probably because it was and is the strongest non-Communist state whose defeat would prejudge the fate of the whole non-communist camp.

Probably no one in this country is more educated and experienced in the doctrines and preachments of Marxist-Soviet ideology than Jay Lovestone, described as "the gray eminence of AFL–CIO's foreign relations." Now past 75, Mr. Lovestone began his political career in the Communist movement in the United States. As reported in the *Washington Post*, June 8, 1974 (page A–20) by Mr. John Herling:

> Except for George Meany, whose intimate adviser he was for years in the field of foreign policy, Mr. Lovestone has done more than any individual in the AFL–CIO to shape official labor attitudes in the international field.

Mr. Lovestone broke with the official Communist Party in 1929 and ultimately became a top-flight assistant to Allen Dulles, director of the Central Intelligence Agency and was soon recognized in the world intelligence community as one who, with others, "beefed up" support of Europe's non-Communist movement . . . resisting the aggressive and highly successful Soviet subsidized trade unions in the 1950's.

At AFL–CIO headquarters August 7, 1974, Mr. Lovestone indicated continuing feeling that this country, through the international labor movement, can best exercise its democratic influences and power. Use not only of the English language but all languages involved would transmit efficaciously facts and truth against Communist propaganda "supporting" comrades . . . the full glare of truth upon controlled labor in the USSR and its satellites (contra-distinguished from the prerogatives of labor in democratic countries) would eviscerate hostile propaganda.[3a]

It is the conclusion of this paper that America's influence on the international labor scene is weakening for failure to take advantage of the virtues of free speech and press in the propaganda war . . . The United States is losing out in Italy, Britain and Greece, where relationships are poor; it has reached a question mark in Turkey. By

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[3a] Mr. Lovestone retired from the AFL–CIO July 1, 1974.

encouraging the American Labor Movement in general and particularly AFL–CIO at the helm to make further strides in eliminating subversive influences in this country (as pointed out anent infiltration of the labor movement by communists) : [4] there would be a broadening of our internal security base.

Thus, thru workers (idolized in Communist propaganda-literature) could democracy and its Bill of Rights be protected by employing tactics in contravention of the flexibility maneuvers of the ideological enemy. Leonid Brezhnev, always geared as the Russian premier to revolution on the world-wide scene, making no threats but persisting chapter by chapter to the ultimate Marxist goal, would confront at last a formidable American weapon, the unrestricted rights of workers, armed with press and media freedom.

Whether the converts to Communism are persuaded by "sesquipedalian words" such as "dialectical materialism" or sheer revolutionary excitement and rebellion is of no moment to the Kremlin . . . The theory of scientific communism is constantly preached to the intelligentsia. Mr. Lovestone would strip the theory in reaching workers and masses through the national and international apparatus of the labor movement. The "proletariat" would be reached by democracy, publicized.

Within the same spectrum as that of Mr. Lovestone, Dr. Lothar Metzl speaks of a "course toward the revolutionary liquidation of the capitalist system." The preachment of all times is directed to overthrow of non-Communist governments. Dr. Metzl, consultant to the George Washington University Graduate School, points out the criteria of faithfulness on the part of the disciples and exponents of communism. Included are ability to perform fast tactical switches; an ability to convince the masses of the need for revolutionary changes, and to mobilize them for specific economic and political left currents, inluding workers, anti-monopolists, democratic and anti-military movements; and last, but not least, a systematically internationalist approach and coordination of action with other revolutionary units. Such is paraphrased from the Subcommittee's 1972 print, "Détente and the World Revolutionary Process."

In that analysis of current Soviet revolutionary aims, Senator James O. Eastland, our Chairman, remarked anent an article by Boris Ponomarev, "one of the most powerful men in the world Communist movement."

> Ponomarev's article makes it clear that the Communists still seek world-wide revolution and that they feel the present world situation is developing rapidly in their favor. "* * * the Communists," says Ponomarev, "always remain the party of the socialist revolution, *a party which never tolerates the capitalist order* and is always ready to head the struggle for the total political power of the working-class and for the establishment of the dictatorship and the proletariat in one or another form." [5]

The Subcommittee should urge, as part of its oversight duties, that all United States agencies put the spotlight upon the foregoing ideology and its actual practices . . . operations that are concealed from Russian inhabitants and all other countries on the planet. As pointed out in its annual report for the fiscal year ending Feb. 28 (published

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[4] *Vide:* Communist Control Act of 1954.

[5] *Détente and the World Revolutionary Process, An Analysis of Current Soviet Revolutionary Aims,* a SISS print, June 9, 1972 at pp. 1 and 2.

April 1974) such practices cover the operation of forced labor camps in the Soviet Union and the fact that there are literally millions of prisoners in more than 1,000 camps scattered around Russia. General conditions are bestial in a country that would urge "workers of the world" to unite. The annual report commented:

> This is a situation . . . that should be of profound concern to the entire free world. It should be of concern, first, on moral and humanitarian grounds. But beyond this, the existence of this massive concentration camp system poses a serious danger to the security of the free world. To the extent that the men in the Kremlin are able to repress all dissident opinion and all restraining voices, they are freer to engage in subversion and blackmail and expansion abroad. (Page 10 of the cited pamphlet.)

The enemy, despite its own practices, remains geared at all times to a "seismic upheaval" from civil disobedience, crime, revolution and insurrection . . . the road to the Marxist goals. And to bring about that objective, Russia has no compunction about exploiting internal conditions, given the right in any non-Communist country to do so.

It is the thesis of Sir Robert Thompson that the Soviets have been waging a major offensive in a war which might well be characterized as World War III, that the long-range goal is to win that war without a nuclear exchange. "This requires that eventually the Russians should force a strategic surrender by the United States by undermining American will and purpose, or by maneuvering the United States into an untenable global situation—or by some or both." [6]

The nub of any thesis opposed to such destruction of democracy and human rights must be the need for setting new sights in internal security protection. The Chapter on judiciary herein could be epitomized by the headline in the American Bar Association Journal, October 1974 (Volume 60, page 1203), "Courts, Congress, Judiciary: One is More Equal Than the Others."

The article, by Professor Frank R. Strong, concludes with:

> The general satisfaction with respect to judicial exercise, of "constitutional review" must not blind one to the fact that what obtains is in essence *judicial supremacy*. This stark realization is what makes so vitally important the manner in which, the extent to which, and the objectives with which the Supreme Court at the apex of the judicial hierarchy exerts this *awesome power so difficult to reconcile with democratic theory*. (Emphasis added.)

It is again the gravamen of argument that the time for a confrontation as to whether this country requires internal security is at hand. If conservatives urge a tightening of controls and even, perhaps a constitutional amendment to bring about such controls, the liberals may insist that the emasculation process of internal security safeguards should continue, toppling all operations within the complexion of Internal Security Division of the Department of Justice, the Subversive Activities Control Board and the Attorney General's list. Moderates may contend that the present state of affairs is protective.

Albeit, hearings to arrive at recommendations to the Congress for abolition of such controls or for buttressing them are in order and have long been in order. Protagonists of the several viewpoints should be heard in confrontation . . . the time for sideline and off-the-record

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[6] *Reader's Digest*, November 1974, at p. 141 at which Sir Robert Thompson is described as the major architect of the plan by which the British defeated the communist guerrilla movement in Malaya. An adviser to the U.S. Government on Southeast Asia, he is the author of such books as "Defeating Communist Insurgency" and "Revolutionary War in World Strategy."

vociferous criticisms should reach an articulation of just what this country requires to protect itself.

Such hearings would give audience to "the first and most basic rule of the American political tradition, that of *legislative supremacy*." John Locke, the philosopher who so profoundly influenced the Founding Fathers, declared in his "Second Treatise" that, "There can be but one supreme power, the legislative, to which all the rest are and must be subordinate." James Madison, follows this tradition when he maintains with respect to Article I, Section 1, of the Constitution that, "In republican government, the legislative authority necessarily predominates." [7]

Within this view is the statement of Mr. Justice White, dissenting in an opinion of the United States Supreme Court which upheld the right of an avowed communist, Eugene Frank Robel (December 11, 1967), to employment in a defense establishment. The Court "*refuses to enforce the contrary judgments of the Legislative and Executive Branches of the Government*," opined Mr. Justice White. "*Nothing in the Constitution requires this result.*" (My emphasis.)

It is surmised that the Department of Justice would approve legislation within the purlieu of present judicial decisions, to embrace substantive criminal offenses relating to the crimes of terrorism, the current motif of the world-wide communist movement. At the confrontation-hearings recommended by this treatise, Justice Department experts would be requested to adduce either new legislation to cover the crucial subject or to point to present statutes that would "stand up" to High Court scrutiny. And where vital, amendments to the Constitution might well be recommended to cope effectively with communism.

Surely at the present time Title 18 of the United States Code (relating to crimes) should embrace such language as:

> Whoever directly or indirectly:
>
> (1) furnishes or receives money or any other thing of value with intent to facilitate terrorism anywhere; or
>
> (2) willfully possesses, transports, receives or disposes of money, or any other thing of value knowing the same to be the fruits of terrorism—shall be fined not more than $10,000 or imprisoned not more than 10 years or both.
>
> The United States shall have jurisdiction over a violation of this section if the violation involved in the use of the United States mails or the channels of interstate or foreign commerce or if a felony in violation of the laws of the United States was committed in the course of preparing for or in committing the crime involved in the terrorism. No prosecution may be instituted under paragraph (2) of this subsection unless the Attorney General, in his discretion, determines that the prosecution is in the public interest and will be useful in deterrence of terrorism.[8]

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[7] Allan C. Brownfeld, writing in *Roll Call*, for the week ending March 28, 1974.

[8] Drawn from a favored proposal of the Department of Justice, September 11, 1974, in a communication to the Chairman of the House Internal Security Committee. (Page 5) (Opinion over the signature of W. Vincent Rakestraw, Assistant Attorney General.)

NUMBERED CONCLUSIONS

CHAPTER I

The Internal Security Act of 1950 and its independent amendment, the Communist Control Act of 1954, remain valid but inefficacious.

CHAPTER II

Judicial treatment of the Internal Security legislation is responsible for its stultification.

CHAPTER III

The Congressional Findings of Fact remain valid, with emphasis upon the necessity for the legislation and its substratum of ruthless espionage, sabotage and terrorism.

CHAPTER IV

Détente: Definition of the term is at variance with the Soviet concept. As a strategic measure for "peaceful coexistence," it has propaganda and superficial values. As a policy for peace, it has failed and is failing and by the nature of things ideological and international will continue to fail.[1]

CHAPTER V

Legislative Oversight: The Subcommittee, although reduced in strength, continues to oversee within its prescribed duties the remaining and dwindling safeguards and agencies.

CHAPTER VI

The pith of Conclusions is that an extraordinary review of the status of operations is needed urgently, for purpose of reaffirming this country's definition of Internal Security, to cope with the ominous spread of terrorism (an offshoot of fanatic ideology) by a Congressional buttressing of its role as an integral part of the checks-and-balances constitutional system.

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[1] Détente(?) or pseudo-Détente . . . Headline . . . Mideast is Drifting Toward Another War . . . Missiles or Worse This Time? (*Wall Street Journal,* Friday, December 27, 1974) Subcaption: Moscow's Involvement.)

An added obstacle is renewed Soviet involvement * * * So Comrade Leonid Brezhnev will soon visit four Arab states and will partially repair relations with Egypt, the most influential, by resuming arms shipments to Cairo.

A quotation from a Soviet spokesman: "Certain people have spoken of American miracles that will solve the problems of the Arabs. However, we notice that these miracles have produced only limited and modest results . . . I believe it is time for the Soviet Union to show that it will have a very active and positive role in this area."

And Mideast war, if it comes for the fifth time, would create the gravest problems for the U.S. (*ibid*).

RECOMMENDATIONS

1. That the Smith Act (Title 18, U.S.C. section 104) be amended to read—

Without regard to the immediate provable effect of such action, whoever knowingly or willfully advocates, abets, advises or teaches the duty, necessity, desirability or propriety of overthrowing or destroying the Government of the United States by force and violence, or whoever with intent to cause that overthrow teaches the duty of so doing by force and violence shall be fined not more than $10,000 or imprisonment not more than ten years, or both.

2. That the Subcommittee conduct hearings forthwith for purpose of either defining within present context or redefining within the context of present world conditions (and Détente) and the history of the Internal Security Act for the past decade the term, Internal Security. Objective: to resolve the issue within the framework of liberal, moderate and conservative opinion or to articulately declare the need or the purposelessness of internal security safeguards.

2–A. That the most advanced of professional opinion in the ambit of internal security expertise be summoned for the purpose of articulating such definition of internal security in the year 1975.

3. That the Internal Security Subcommittee's staff be strengthened for the purpose of presenting evidence and expert opinion on the subject of Internal Security, 1975, and the ultimate definition thereof for Congressional and statutory purposes.

4. In the alternative, that the Congress set up a Joint Committee for both the purpose of a current and pragmatic definition of Internal Security and to make for a unified thrust in the protection of this country's welfare *vis-a-vis* foreign and hostile ideologies.

5. That Title 18, U.S.C. (Chapter 213) be amended to provide for punishment of person or persons making false statements or representations concerning subversive activity performed by him, or them.

6. That any person falsely and fraudulently making false statements or representations anent subversive activity in application for employment by a department or agency of the United States be prosecuted, tried and punished for violating provisions of section 1001 or 1621 of Title 18, U.S.C.

7. That the term, "Subversive activity," be defined as meaning any act which when performed was punishable under (A) chapter 37 (relating to espionage and censorship), chapter 105 (relating to sabotage) or chapter 115 (relating to treason, sedition and subversive activities) or (B) section 4 or section 15 of the Subversive Activities Control Act of 1950, as amended; and, secondly, that the term, "subversive connection," means membership in, or active participation in the affairs of any organization which is proscribed by the Communist Control Act of 1954 and the Subversive Activities Control Act of 1950.[1]

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[1] (*Vide:* S. 12. 91st Congress, 1st Session, as proposed by Senator Eastland, January 15, 1969, and 16 other Senators.)

8. That a central board of authority be authorized for the prime purpose of informing the commonwealth of the activities of persons and organizations engaged in subversive activities as defined within the framework of the 1975 definition of Internal Security.

9. That the Findings of Fact of the Internal Security Act of 1950 and of the Communist Control Act of 1954, as reiterated (sections 1 to 15 inclusive) in the 1968 statute be reinforced by—

The Congress finds and declares that because of the totalitarian nature of the world Communist conspiracy, the fact that a major objective of such conspiracy is the overthrow of the Government of the United States by force and violence, the obligation imposed in Communist discipline upon members of the Communist organizations to take advantage of opportunities to act in furtherance of the aforesaid objective, and the likelihood that an individual who willfully and knowingly chooses to be a member of a Communist organization (and thereby subject to Communist discipline) will act in furtherance of the aforesaid objective if given opportunity to do so, it is *per se* a clear and present danger to the national security to have employed in a defense facility an individual who, after the expiration of ninety days following an order of disclosure and after notice of such order, has elected to remain or to become a member of such organization.

10. That the Congress give audience to proposals to establish a National Commission on Executive Secrecy, implementing Executive Order 10501 as first entertained by S.J. Res. 119, a joint resolution in 1971. Paramount phases of the proposals embrace . . . clearance of government personnel as it relates to classification procedures, and access to sensitive Government agencies and operations by the foreign press and diplomats.

11. That American organized labor, committed against communism, be invited to participate in the recommended Subcommittee hearings to the end that its relationship with the international labor movement be employed to countervail against the exploitation of this country's workers, to "stonewall" against infiltration.

APPENDIX A

Findings of Fact of the Congress (Abstracted)

SUBVERSIVE ACTIVITIES CONTROL ACT OF 1950—PUBLIC LAW 831, 81ST CONGRESS CHAPTER 204, SECOND SESSION

(*Inter alia*).—There exists a world Communist movement . . . a worldwide revolutionary movement whose purpose it is, by treachery, deceit, infiltration into other groups (governmental and otherwise), espionage, sabotage, *terrorism*, and any other means deemed necessary, to establish a Communist totalitarian dictatorship.

(2) Establishment of a totalitarian dictatorship results in the suppression of all opposition to the party in power, subordination of the rights of individuals to the state, denial of fundamental rights and liberties such as freedom of speech, of the press, of assembly and of religious worship and results in the maintenance of control over the people through fear, *terrorism and brutality*. (Emphasis added in light of events in the 70's).

(6) The Communist-action organizations, established and utilized in various countries, acting under control, direction and discipline, endeavor to carry out the objectives of the movement by bringing about the overthrow of existing governments by any available means, including force, if necessary.

(7) In carrying out the activities referred to in (6), such organizations are organized in various countries on a secret, conspiratorial basis * * * in such manner as to conceal the facts as to their true character and purposes and their membership.

(8) Due to the nature and scope of the world Communist movement, with the existence of affiliated constituent elements, travel of Communist agents from country to country facilitates communication and is a prerequisite for the carrying on of activities to further the purposes of the movement.

(11) The agents of communism have devised clever and ruthless espionage and sabotage tactics which are carried out in many instances in form or manner successfully evasive of existing law.

Communist Control Act of 1954

PUBLIC LAW 637—83D CONGRESS, CHAPTER 886, 2D SESSION (FINDINGS OF FACT—ABSTRACTED)

The Congress hereby finds and declares that the Communist Party of the United States * * * is in fact an instrumentality of a conspiracy to overthrow the Government of the United States. It constitutes an authoritarian dictatorship—demanding for itself the rights and privileges accorded to political parties, but *denying to all others* the liberties guaranteed by the Constitution. * * * the policies and programs of the Communist Party are secretly prescribed for it by the foreign leaders of the world Communist movement. * * * the Communist Party acknowledges no constitutional or statutory limitations upon its conduct or members. * * * The peril arises from its failure to acknowledge any limitation. It is dedicat(ed) to the proposition that the present Constitutional Government of the United States ultimately must be brought to ruin by any available means, including resort to force and violence. Holding that doctrine, its role as the agency of a hostile foreign power renders its existence a clear present and continuing danger to the security of the United States. (Emphasis added in light of events in the 70's).

APPENDIX B

The "Staleness Doctrine"

Quoting from the syllabus of the United States Supreme Court April 26, 1965 in *Veterans of the Abraham Lincoln Brigade* v. *Subversive Activities Control Board*, 380 U.S. 513: "Judgment of the Court of Appeals affirming respondent's order that petitioner register as a Communist-front organization is vacated in *view of the staleness of the record in this case.*" (Emphasis added).

Perhaps one of the most aggressive and aggravating of all tactics employed by "the enemy within" was acquired by its sheer pertinacity in extenuating litigation to the point that the High Court (or any Court) might term it, "stale." Rarely known for short-cutting litigation or abbreviating it, the Communist Party, U.S.A., delighted seemingly in encumbering records with time-consuming motions, "soap-box speeches," delays and frustrations. But even the Party may not have anticipated the reward for such tactics that it actually received.

Consider the instant case: It was argued before the High Court December 9, 1964 and decided several months later . . . culmination of many years of litigation. The Communist Front, Veterans of Abraham Lincoln Brigade (VALB), had been ordered by the Subversive Activities Control Board to register as a Front. This, under section 7 of the Act. The Court of Appeals for the District of Columbia affirmed. 117 U.S. App. D.C. 404, 331 F. 2d 64. The Supreme Court granted certiorari, 377 U.S. 989.

In a *per curiam* opinion, the Supreme Court declared, "The hearings themselves were concluded in November, 1954, more than 10 years ago. On so stale a record we do not think it is either necessary or appropriate that we decide the serious constitutional questions raised by the order. * * * The judgment is vacated and the cause remanded for proceedings consistent with this opinion." No wonder the Government, in light of such language, dropped the proceedings . . . there would be no way in 1965 to freshen up evidence that was timely in 1954.

The dissenting opinion of the High Court in *VALB* v. *SACB* accounts for the reasonable delay in reaching adjudication. The Board found that the Communist Party was a Communist-action organization, as required by the 1950 statute. Such finding is *sine qua non* to determining the character of offshoots or spinoffs from the Party.

The finding of the Board was a product of litigation which terminated June 5, 1961. As the footnote of the dissenting opinion (380 U.S. at page 515) reveals, that date marked the termination of the litigation in the Supreme Court, *CPUSA* v. *SACB*, 367 U.S. 1. The Party had occupied the years between 1950 and 1961 with exploitation of the tactics herein cited. Now came the time when the Government, the Justice Department, might proceed with its petitions to inform the public, to disclose, in accord with the McCarran Act, the names and identities of "the enemy within."

The Court of Appeals, District of Columbia, held in suspense the Front case pending the outcome of the *Community Party litigation.* Within months after the 1961 decision upholding the validity of the Act, the VALB case was proceeding normally and was argued before the Court of Appeals in 1962.

Decision was rendered by the CCA December 17, 1963, affirming the finding of "Front."

We remarked that "no wonder" the Justice Department, for the Government, had decided to drop further action after the Supreme Court's decision in 1965 reversing the CCA. Justice Douglas, for the minority, commented aptly that the Brigade had not changed its character. "None of the parties before us has suggested that the record is stale or incomplete * * * None of the parties before us has suggested that we need to know more about the Brigade since the Board's

decision in 1955. We are told by Counsel that what the Brigade once was, it still is." In the event of further proceedings (as to character of brigade), the Justice commented, "Hence in some months or years the case will return to us more stale than it is at the present time. With all due respect, I think it is indefensible not to decide the important constitutional questions tendered here and now." (Dissenting opinion 380 U.S. at pages 514 to 517).

As we have remarked, even the Party had not advanced "staleness" as an obstacle to prosecution. The Act at Section 14(a) specifically provides: "If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material, the court may order such additional evidence to be taken before the Board and to be adduced upon the proceeding in such manner and upon such terms and conditions as to the court may seem proper."

Thus, the petitioner, the Communist Party, USA, had ample remedy to suggest to the Courts and to the Board below that the character of the organization, VALB, had changed if in point of fact it had.

Justice Douglas in another dissenting opinion, in the *ACPFB* case,[1] remarked that only in a general way had the petitioner's counsel suggested that the case was "stale," simply because of the "passage of time." No legal point was advanced.

Decided the same day as the *Lincoln Brigade case*, April 26, 1965, the case of the *American Committee for Protection of Foreign Born*, reached a conclusion that evidence which ended in 1955, had grown stale in 1965. The judgment that the organization was a Front was vacated and the Act thus reduced to a shambles as the cause was remanded to determine "current status," contra-distinguished as to what the status was when the Attorney General had filed his petition under the Act in 1955.

The petition before the Subversive Activities Control Board under Section 7 of the Subversive Activities Control Act, as amended, 64 Stat. 993, 50 U.S.C. section 786 (1958 ed), called for a determination that ACPFB was a Communist-front because it was "substantially directed, dominated or controlled by a Communist-action organization and (B) was primarily operated for the purpose of giving aid and support to a Communist-action orgnization." The *per curiam* opinion, 380 U.S. 503 at page 504 recalled the sustaining by the Supreme Court of the Board's determination that the Communist Party was in point of fact an action-organization within the definition of Section 3(3) of the Act. Thus, said the Court, it (Supreme Court) had upheld the registration requirement against First Amendment attack.

Continuing, the majority by its *per curiam* opinion, held:

"In the present case the Board's findings that petitioner is a 'Communist front' was based primarily upon evidence taken at a hearing which was concluded in 1955. The findings which support the conclusion that the petitioner is controlled by and primarily operated for the purpose of giving aid and support to the Communist Party rest in substantial measure upon evidence of the activities of Abner Green, found to be a Party member expressly assigned in 1941 to be petitioner's executive secretary. Green died in 1959. The Board's order was filed on June 27, 1960, but the record discloses no findings or evidence concerning petitioner's activities after Green's death. In the circumstances we think that the record should be brought up to date to take account of supervening events."

It is remarked at this point that, in contravention of the Internal Security Act and in total evisceration of its purpose to protect the Country against an "agency of a hostile foreign power," the opinion fails to accord to the Congress recognition of its finding that there exists "a clear, present and continuing danger to the security of the United States."

An extra-juridical conclusion that each case must "be brought up to date to take account of supervening events" is in many respects a unique conclusion that could send hundreds of cases back to *de novo* treatment simply because the litigious process itself is the culprit. Verily a final determination might never be reached in cases involving a succession of deaths or resignations in organizations which pursue their paramount policy of attempting to overturn the country by force and violence. More to the point, the two sentences of the statute and Court are in collision.

On what must be regarded truly as a factual finding, rather than an academic conclusion, the dissenting opinion of Mr. Justice Douglas concluded with this

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[1] *American Committee for Protection of Foreign Born* v. *Subversive Activities Control Board*, 380 U.S. 503, April 26, 1965; dissenting opinion at page 506 *et seq.*

sentence, "The case is very much alive; and the record is by no means stale. We should face up to the serious issues presented and in no way affected by Abner Green's death," [2]

For purpose of defining accurately and in depth the word "staleness" or "stale" the student of law might well turn to *Ballentine's Law Dictionary:* The closest one may come to a definition within legal terminology is . . . "*stale claim.* A claim subject to the defense of laches or limitation of action."

In both the Front cases cited, counsel for the petitioners made no assertion that there was failure to prosecute diligently or that their cause had suffered for any such reason. Nor could one assume that there was anything in the record that had suggested that the Government had pursued a "stale right," one that has not been asserted for a long time. *Words and Phrases,* Volume 39A, 1973 cumulative annual pocket part.

Thus the mischief that has attacked The Act is brought closely (and paradoxically) to a non-definition: Surely both parties to an issue have in all cases of statutory and judicial tidiness a notice as to when "staleness" sets in, thus to guard against the ultimate dismissal of a cause or a defense. And surely in all cases the intendment of the Congress should be paramount. . .

In the very foundation case, that of the Supreme Court in 1961: "It is not for the courts to re-examine the validity of these Legislative Findings and reject them. * * * They are the product of extensive investigation by Committees of Congress over more than a decade-and-a-half. We certainly cannot dismiss them as unfounded or irrational imaginings * * * and if we accept them, as we must, as a not-unascertainable appraisal by Congress of the threat, etc."

Mr. Justice Frankfurter for the majority, *CPUSA* v. *SACB,* at page 91 of the opinion itself.

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[2] *ACPFB* v. *SACB,* 380 U.S. at page 511.

APPENDIX C

[From the University of Cincinnati Law Review, Vol. 81, 1962]

EDITORIAL NOTES

Judicial Technique and the Communist Party: The Internal Security and Smith Acts Construed

The most important aspect of this nation's growing involvement in world affairs is, and will for a long time continue to be, the power struggle with the Soviet Union. Citizens can no longer expect allies abroad to be an effective buffer, and the span of the Atlantic and the Pacific does not put the country out of the enemy's range. The papers are continually full of talk of nuclear war. As this crisis has developed and continued, it is not surprising that there has also developed a strong antipathy on the part of almost all citizens towards those in this country whose ideals are not dissimilar from those espoused by the masters of the Kremlin. This sentiment of the annoyed or frightened citizenry has been reflected in suppressive laws. The basis for these statutes has been the subject of much discussion. Even before these enactments, the tiny Communist Party [1] fared dismally at the polls, and home-grown Communists have apparently never played a primary role in the organization and operation of the Soviet espionage network.[2] It is undoubtedly true that much of the success of this legislation can be explained in terms of the political capital that its promoters could gain and the political hazards its opponents faced.[3] Whatever the motives, the United States Government has met the Communist menace with a barrage of legislation.[4] The role the Supreme Court has taken in giving effect to these laws has very often been a highly controversial one, with just less than a majority of the Justices themselves often in disagreement. The decisions in *Scales v. United States*,[5] *Noto v. United States*,[6] and *Communist Party of United States v. Subversive Activities Control Board*[7] will, as the five to four split of the court in the *Scales* and *Communist Party* cases might indicate, only add to the controversy as to the Court's role. A major reason for this will be the strained reasoning and questionable judicial technique which was used in these opinions, and which will be considered in this article.

SUBSECTION 4(F) OF THE ISA CONSTRUED

Scales v. United States was the prosecution of Junius Scales under Section 2 of the Smith Act. This section, containing the so-called "membership clause," forbids membership in any group which advocates the forceful and violent overthrow the government. The path of this case to its final determination was a tortuous one, with three arguments before the Supreme Court and five appearances on the Court's docket.[8] The final argument was scheduled to come before

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[1] In 1950 Senator Langer used J. Edgar Hoover's estimate that there were less than 60,000 Communists in the United States. "* * * Communists form one-twentieth of 1 percent of all the people in our country." 96 Cong. Rec. 15223 (1950).

[2] Dallin, Soviet Espionage (1955).

[3] Gellhorn, American Rights, at 70–95 (1960); Kirchheimer, Political Justice, at 157–158 (1961); see Lasswell, National Security and Individual Freedom (1950), for a positive approach to the problem.

[4] Alien Registration Act (Smith Act), 54 Stat. 670 (1940) (codified in scattered sections of 8 and 18 U.S.C.); Internal Security Act, 64 Stat. 987 (1950) (codified in scattered sections of 8, 18, 22, and 50 U.S.C.); Communist Control Act, 68 Stat. 775 (1954) (codified in scattered sections of 50 U.S.C.).

[5] 367 U.S. 203 (1961).

[6] 367 U.S. 290 (1961).

[7] 367 U.S. 1 (1961).

[8] The first conviction was in 1955. 227 F. 2d 581 (1955); 350 U.S. 992 (1955); 260 F.2d 21 (1958); 358 U.S. 917 (1958); 360 U.S. 924 (1958). Justice Harlan gives a detailed history of the case in footnote 2 in his opinion. Scales v. United States, *supra* note 5, at 207.

53–696—75——6

the Court at the same time the Internal Security Act was scrutinized in the *Communist Party* case.

In his attempt to defeat the prosecution, the defendant Scales interposed subsection 4(f) of Section 783 of the Internal Security Act, a measure enacted ten years after the Smith Act. The subsection provides:

> Neither the holding of office nor membership in any Communist organization by any person shall constitute per se a violation of subsection (a) or subsection (c) of this section or of any other criminal statute. The fact of the registration of any person under section 7 or section 8 of this title as an officer or member of any Communist organization shall not be received in evidence against such person in any prosecution for any alleged violation of subsection (a) or subsection (c) of this section or for any alleged violation of any other criminal statute.

Defendant argued that this provision nullified the effect of the Smith Act's membership clause.

Justice Harlan, speaking for the Court, rejected defendant's contention. First, he examined the wording of the provision itself and noted that what the Smith Act proscribes is not ". . . membership in Communist organizations as such, but only in organizations engaging in the advocacy of violent overthrow." [9] Therefore, he concluded, subsection 4(f) could not be positively said to refer to the Smith Act, and that this ambiguity should be resolved against the one seeking to render the Act of Congress ineffective. The artificial basis of this conclusion is patent: Congress in Section 2 of the Internal Security Act defined the Communist organizations which it was trying to reach as organizations which were, among other things, advocating the violent overthrow of the government. It is clear that both Acts were talking about the same kind of groups, though the Smith Act was broader in coverage.

Examining the subsection in its broader context, Justice Harlan saw it as a clarifying provision to prevent the prosecution of a certain *quality* membership. Subsection 4(a), referred to in subsection 4(f), makes it a crime to join with others ". . . to perform any act which would substantially contribute to the establishment within the United States of a totalitarian dictatorship." Subsection 4(c), also referred to in 4(f), makes it criminal for a member of a Communist organization to obtain classified information. If 4(f) gave immunity to all members of Communist organizations as such, the Court argued, it would produce the "quixotic result" of repealing subsections 4(a) and (c). Therefore, Justice Harlan concluded that the first sentence of 4(f) acted as a clarifier in that it made *mere* membership, in the sense of the meaningless or nominal variety, not punishable. However, note that Justice Harlan's reasoning does not seem to take into account that the essence of the crime created by 4(a) is joining to do an act which is something altogether different from membership itself; the essence of the crime is to join to "substantially contribute:" a person could be immune from punishment as a member and still be punished if it could be proved that he joined with others to do a constitutionally proscribed *act*. The same is true of 4(c): one could be totally immune from prosecution as a member, yet be prosecuted for the *act* of accepting classified information while a member.

The strongest criticism of the dissenters on this statutory construction problem went to the meanings assigned to certain words and the relationships found between other words, and the conclusion of the dissenters that the Congress' words made it imperative that something more than membership be shown to sustain a criminal prosecution seems justifiable on the basis of the plain meaning of the subsection. The majority seems to construe the expression "per se" as somehow giving to the word "membership" the qualification of a certain quality membership which the expression "mere membership" might import. But if accepted synonyms for the legalistic expression "per se" are used, it will be seen that the expression would not ordinarily ever qualify the word "membership" to make it mean a certain *quality* membership: "Neither the holding of office nor membership in any Communist organization by any person shall constitute . . . (by itself, or taken alone, or unconnected with other matters) [10] a violation. . . ." Even if "per se" is taken as an undiluted modifier of "membership," that is, as "membership per se," the words still do not indicate that Congress was talking about a certain quality membership: "membership . . . (by itself, or taken alone, or unconnected with other matters)." Of course, since the sentence

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[9] *Scales* v. *United States*, *supra* note 5, at 207.
[10] Black, Law Dictionary (4th ed. 1957).

reads: "[n]either the holding of office nor membership. . . ." then "per se" would also have to modify "[n]either the holding of office. . . ." and since office holders virtually always fit into the classification of those with the highest degree of activity in the Communist Party, the strength of Justice Harlan's argument is further diminished. That the majority did not accept the clearest meaning of the subsection is an unescapable conclusion.

LEGISLATIVE HISTORY OF SUBSECTION 4(F)

By abandoning the clearest meaning of the subsection, the Court put the Internal Security Act open to constitutional attack because the registration required by that Act would be an important piece of information leading to Smith Act prosecutions, and thus run afoul of the Fifth Amendment.[11] To make such a construction, of course, is a departure from the traditional rule that statutes should be construed to avoid such conflicts.[12] The Court justified its departure on the ground that to act otherwise would be ". . . perverting the purpose of "(the) statute."[13] To further substantiate its findings that the purpose of the disputed sentence, in spite of what it said, was to grant immunity only to "mere" members, the Court turned to the legislative history of the Internal Security Act. Not to be outdone, the dissenters, speaking through Justice Brennan, worked out a legislative history of their own. The resulting gallimaufry further demonstrates the strained reasoning and questionable judicial technique employed in these cases, and reflects upon the Court's practice in using legislative histories.

In regard to the use of legislative histories, it should be noted that there is a wide breach between the English and United States practice, with the English quite generally rejecting the notion that legislative histories can be of any proper use in discovering legislative intent.[14] The English recognize that the only thing the legislature has really agreed upon is that to which it gave its affirmative vote: the words of the statute. They recognize that the legislature is not an organic unit to which a single motive can be attributed. On the other hand, while many very prominent jurists in the United States have expressed serious doubts as to the validity of these histories' use,[15] quite generally the courts in this country have adopted a broader use of legislative histories than the English.[16] One of the most articulate advocates of a broader use of legislative histories is Dean James M. Landis, who has written:

> The assumption that the meaning of a representative assembly attached to the words used in a particular statute is rarely discoverable, has little foundation in fact. The records of legislative assemblies once opened and read with a knowledge of legislative procedure often reveal the richest kind of evidence. . . . Through the committee report, the explanation of the committee chairman, and otherwise, a mere expression of assent becomes in reality, a concurrence in the expressed views of another. A particular determinate thus becomes the common possession of the majority of the legislature, and as such a real discoverable intent.[17]

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[11] The immunity granted by subsection 4(f) forbids use of the fact of registration as evidence in future prosecutions, but does not forbid its use as ". . . a 'lead' to other evidence." *Scales* v. *United States, supra* note 5, at 210. See *Blau* v. *United States*, 340 U.S. 332 (1950); *Counselman* v. *Hitchcock*, 142 U.S. 547 (1891).

[12] *Carey* v. *South Dakota*, 250 U.S. 118, at 122 (1918); *Russian Volunteer Fleet* v. *United States*, 282 U.S. 481, at 492 (1930); *United States* v. *La France*, 282 U.S. 568, at 574 (1930); *Harriman* v. *I.C.C.*, 211 U.S. 407, at 422 (1908); *I.C.C.* v. *Oregon Washington R. Co.*, 288 U.S. 14, at 40 (1932).

[13] *Scales* v. *United States, supra* note 5, at 211.

[14] See, *e.g.*, *Millar* v. *Taylor*, 4 Burr. 2332 (1769); Viscountess Rhondda's Claim, [1922] A.C. 339; *Ellerman Lines* v. *Murray* [1931] A.C. 126; *Salmon* v. *S.*, [1897] A.C. 22; Nutting, *The Relevance of Legislative Intention Established by Extrinsic Evidence*, 20 B.U.L. REV. 601 (1940); ALLEN, LAW IN THE MAKING, at 466–516 (6th ed. 1958).

[15] See, *e.g.*, Justice Davis in *United States* v. *Union Pacific R.R. Co.*, 91 U.S. 72, at 79 (1875); Chief Justice Taney in *Aldridge* v. *Williams*, 3 How. 9, at 24 (1845); Justice Holmes in *Pine Hill Coal Co.* v *United States*, 259 U.S. 191, at 196 (1921)—*but see Boston Sand and Gravel Co.* v. *United States*, 278 U.S. 41, at 48 (1928).

[16] See generally, 2 SUTHERLAND, STATUTORY CONSTRUCTION § 5001, et seq. (1943); Radin, *Statutory Interpretation*, 42 HARV. L. REV. 863 (1929–1930); Landis, *A note on "Statutory Interpretation."* 43 HARV. L. REV. 886 (1929-1930); Miller, *The Value of Legislative History of Federal Statutes*, 73 PA. L. REV. 158 (1924–1925); Jones, *The Plain Meaning Rule and Extrinsic Aids in the Interpretation of Federal Statutes*, 25 WASH. U.L.Q. 2 (1939–1940); Richardson, *Judicial Law-Making: Intent of Legislature vs. Literal Interpretation, or What the Court Says*, 34 A.B.A.J. 535 (1948).

[17] Landis, *A Note on "Satutory Intrepretation,"* 43 HARV. L. REV. 886, at 888, 889 (1929–1930).

The legislative histories compiled in the opinions of Justice Harlan and Justice Brennan were to a large extent based on the language of the legislators as they debated the proposed Internal Security Act.[18] How helpful a reading of the *Congressional Record* was to the Court is indicated by the way the Justices used exactly the same language to maintain two inconsistent positions. This language, set out below,[19] was taken by Justice Harlan to mean that the Senators (or at least Senator Mundt) did not care to make the Communists immune from Smith Act prosecution under the membership clause. But to Justice Brennan this language meant that because the Senator seemed ignorant of the fact that the *Dennis* case[20] did not apply to the membership clause, the Senator did not see the relevance of that clause to what he was doing.

Justice Brennan went to great lengths to find backing for his position in the legislative history, making the points that Representative Multer said in the House that the effect of 4(f) was to ". . . vitiate one of the most important parts of the Smith law. . . ."[21] and that Senator Kilgore in the Senate Chamber said that the Smith Act had in effect been nullified, and that no one had objected or disputed these points with these men. This, it is submitted, is very flimsy evidence to use in trying to defend one's interpretation. If one thinks it too unlikely to believe that a Senator or Representative would keep quiet in the face of an opponent's error, then still the strong possibilities that the proponents of the measure were not present to hear or were present but simply not paying heed, are not ruled out.

Neither Justice Harlan nor Justice Brennan made note of the words of Representative Rankin. When one of his colleagues declared that not more than six members of the House had read the bill and challenged those who did to identify themselves, Representative Rankin rose to make a defense of the ignorant, saying:

> Mr. Speaker, in reply to the gentleman from New York, I desire to say that it is not necessary for every Member of Congress to read every word of what is contained in these bills: they are driving in the right direction; they are so written as to protect the American people from our enemies at home who are here planning the overthrow of this Government.[22]

It is very probably true that at least a substantial number of the Congressmen did not read the bill *in toto*, and it is undoubtedly true that only a handful of them gave any serious consideration to the ramifications of the first sentence in 4(f). It seems absurd to think that the Court could attach any meaning to the "aye" vote of the people Representative Rankin defended, other than the meaning that can be derived from the words of the statute itself.

Committee reports are ordinarily accorded a degree of respect by courts which employ legislative histories because these reports are given by the men who worked out the wording of the measure. In the *Scales* case the Court relied heavily on a report of a committee which was dealing, not with the Internal Security Act, but with similar legislation which had never been passed.[23] This report on the legislation which was never passed dealt with a section in that bill which was identical with subsection 4(a) of the Internal Security Act. To make that section constitutionally defensible, the committee proposed a section

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[18] Historically, the use of debates has not been acceptable in constructing legislative histories, but more recently this rule ". . . has been modified to permit explanatory statements by the members of the standing committee who is in charge of its presentation to the legislative house and leads the debates thereon." Also debate which shows ". . . a common agreement among the members of the legislature as to the meaning of an ambiguous provision is deemed a proper source. 2 SUTHERLAND, *op. cit.*, at 501.

[19] "Mr. Long. I was under the impression, from hearing the Senator from New York (Sen. Lehman) yesterday, that he said that under a previous statute it was unlawful to belong to an organization that advocated the overthrow of the United States Government by force. . . .

Mr. Ferguson. It is not true that Judge Medina, in his charge to the jury in the trial of the 11 Communists told them that mere membership in the Communist Party was not sufficient to warrant the jury in convicting them under the Smith Act?

Mr. Mundt. Precisely.

Mr. Ferguson. So that, it could not apply to that law.

Mr. Mundt. It could not conceivably apply. Even if the impression which the junior Senator from Louisiana had were correct, it would still be an incorrect interpretation of the act." 96 CONG. REC. 14235 (1950).

[20] Dennis v. United States, 341 U.S. 494 (1951).

[21] 96 CONG. REC. 15289 (1950).

[22] 96 CONG. REC. 15853 (1950).

[23] S. 2311, 81st Cong., 1st sess.; S. Rep. No. 1358, 81st Cong., 1st sess., at p. 2 (1949).

which read: "Neither the holding of office nor membership in any Communist organization by any person shall constitute a violation of subsection (a) . . . of this section. . . ." [24] The committee's report of the effect of this section said, as the Court quotes, that "*mere* membership in an organization required to register is not an overt act such as to bring a person within the prohibitions of section 4. . . ." [25] The emphasis on "mere," Justice Harlan acknowledged, was added by the Court itself. This is very significant because that emphasis lends to the sentence a meaning which it would not ordinarily have. An ordinary reading of the sentence, with "mere" not emphasized, would make the reader think that *all* membership was excluded, and not just a certain type: "*mere* membership" is something altogether different from "mere membership." When the Court does get around to talking about the measure under consideration in this case, it gleans great significance from the fact that there was nothing said about the changes, adding "or any other criminal statute," which were made, other than that they were reported to the Senate and House. This time silence meant "no change" to the Court in regard to the scope of immunity granted, and what was not said became important.

As the final indication of the correctness of his position on the legislative history of this case, Justice Harlan used the protest of Senator Kefauver, after the bill returned to the floor of the Senate from the committee, that *Counselman v. Hitchcock* [26] would apply to make it unconstitutional. The dissent answered this contention by rather unflatteringly suggesting that Senator Kefauver did not know of what he spoke, that he ". . . apparently did not realize that the bill had been amended in Conference. . . ." [27]

To even the most casual reader it would appear that the Justices here have perused the lengthy and confused record not to learn the legislative intent, if it could be learned there, but rather to fortify the opinions they already had. This, of course, is exactly what the proponents of the use of legislative histories do not want.[28] It would be trite and would miss the point to say that this would never happen in England, because what the Court did in this case would probably not be condoned by most of those who favor the use of the histories. And yet, we must look upon this occurrence as one to be expected from the broad use of legislative histories. Perhaps our courts should re-examine the validity of the techniques being used to find legislative intent. If Congress knew the words it used in its statutes would be important, even more important than what was said in its meetings, it seems likely that there would be a much greater effort to say what it meant. And, even if Congress had trouble in saying what it meant and the Court made what Congress deemed to be an incorrect interpretation of its words, Congress could, as it has in the past, correct the court.[29]

THE "MEMBERSHIP CLAUSE" OF THE SMITH ACT

After its consideration of the Internal Security Act, the Court turned to the Smith Act itself and examined the provision under which defendant was being prosecuted. The Court allowed that the lower court was correct in deciding that by "member" the membership clause did not mean "member," but rather meant a member of "specific intent" and an "active" member. The requirement of specific intent was read into the statute on the basis of the precedent of the *Dennis* case, where the Court had found such a requirement to be "fairly implied" in the conspiracy sections. The "active" requirement was found, or rather, written into the statute because there would be constitutional problems which could be avoided by creating this requirement, and also because it was ". . . not to be lightly inferred that Congress intended to visit upon mere passive members the penalties imposed by the Smith Act . . .," [30] and because the Court would not " . . . assume that is was Congress' purpose to allow the quality of the punishable membership to be measured solely by the varying standards of that relationship as subjec-

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[24] *Scales* v. *United States*, *supra* note 5, at 212.
[25] *Id.* at 213.
[26] 142 U.S. 547 (1892).
[27] *Scales* v. *United States*, *supra* note 5, at 286.
[28] See authorities cited *supra*, note 16. Particularly note the conclusion of Miller, *op. cit.*, at 170: "A more general use of legislative histories of statutes as an aid in determining the legislative intention will serve to materially lessen judicial legislation."
[29] See, *e.g.*, Portal-to-Portal Act, 61 Stat. 84 (1947), 29 U.S.C. §§ 216, 251–262. This statute overruled the Court's position in Anderson v. Mt. Clemons Pottery Co., 328 U.S. 680 (1945).
[30] *Scales* v. *United States*, *supra* note 5, at 222.

tively viewed by different organizations." [31] In spite of the fact that the statute had no words requiring specific intent or active membership, the Court could find ". . . no substance in the . . . suggestion that petitioner could not be expected to anticipate a construction of the statute that included within its elements activity and specific intent. . . ." [32] The Court ruled that the statute had duly apprised any would be violator of the criminality of his membership because the statute as literally read was much broader in scope than the "active" and "specific intent" requirements made it.

Justice Black was entirely dissatisfied with this reasoning. He insisted that "[i]n an attempt to bring the issue of the constitutionality of the membership clause of the Smith Act within the authority of the Dennis and Yates cases, the Court has practically rewritten the statute under which petitioner stands convicted by treating the requirements of 'activity' and 'specific intent' as implicit in words that plainly do not include them." [33]

Furthermore, the fact that the construction adopted by the Court narrowed the coverage of the statute was of no significance to Justice Black because he thought the defendant had a right to have the statute's constitutionality reviewed ". . . upon the basis for which it was originally written, for that was the condition of the statute when . . . [it was violated]." [34]

There is clearly a question of judicial technique involved here. On the basis of what were acknowledgedly suppositions, the Court moved beyond the four corners of the document into the nebulous land of legislative intent to find a special meaning for the word "member." In answer to his objections, defendant was told that he had no right to rely on the statute being unconstitutional. While this is true enough, it does not answer the essence of Justice Black's argument. Citizens, because they can read statutes, ideally are supposed to be able to avoid committing criminal acts because the words of the statutes give notice as to what acts are deemed criminal. Also it is true that no citizen need obey an unconstitutional statute. If the laws which are passed are to mean anything, they must serve the function of giving notice. And if a statute clearly reads in such a way as to be unconstitutional, then it does not seem fair that the citizens should be required to forebear from the proscribed activity until the Court is given an opportunity to rewrite the statute so it will be constitutional. This is not one of those cases where there is disagreement over the meaning of a word—both defendant and the Court know and agree upon what a "member" is in the ordinary sense—but the Court simply refuses to believe the Congress meant what it said.

Having construed the case to come within the reach of *Dennis* v. *United States* and *Yates* v. *United States*,[35] the Court had no trouble in applying the rule of those cases. The right involved here, the right of association, is an unenumerated, implied, First Amendment right, and as such is just as subject to the "clear and probable danger" test as are the enumerated rights tested in *Dennis*.[36] The *Scales* case is, in terms of the First Amendment, just as correct as *Dennis* and *Yates*.[37]

Justices Black and Douglas, dissenters in the *Dennis* case, continued to refuse to accept the new doctrine. Justice Black said:

> Petitioner is being sent to jail for the express reason that he has associated with people who have entertained unlawful ideas and said unlawful things, and that of course is a *direct* abridgement of his freedom of speech and assembly—under any definition that has ever been used for that term. Nevertheless, even as to this admittedly direct abridgement the Court relies upon its prior decision to the effect that the Government has the power to abridge speech and

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[31] *Ibid.*
[32] *Id.* at 223.
[33] *Id.* at 260.
[34] *Ibid.*
[35] 354 U.S. 298 (1957).
[36] This result was predicted in Note, *Freedom of Association—A New and Fundamental Civil Right*, 27 GEO. WASH. L. REV. 653, at 658–659 (1958–1959). The right of association is discussed at length in Note, *Freedom of Association; Constitutional Right or Judicial Technique?*, 46 VA. L. REV. 736 (1960).
[37] The "correctness" of the Dennis and Yates cases is the subject of much discussion. See, *e.g.*, Richardson, *Freedom of Expression and the Function of the Courts*, 65 HARV. L. REV. 1 (1951); Meiklejohn, *The Balancing of Self-Preservation Against Political Freedom*, 49 CALIF. L. REV. 4 (1961); Mendelsohn, *Clear and Present Danger—From Schenck to Dennis*, 52 COLUM. L. REV. 313 (1952); Antieau, *Dennis v. United States—Precedent, Principle, or Perversion?*, 5 VAND. L. REV. 141 (1952); PFEFFER, LIBERTIES OF AN AMERICAN, at 58–59 (1956); BERNS, FREEDOM, VIRTUE, AND THE FIFTH AMENDMENT, at 198–227 (1957); KONVITZ, FUNDAMENTAL LIBERTIES, at 275–341 (1957).

> assembly if its interest in doing so is sufficient to outweight the interest in protecting these First Amendment freedoms. . . . This doctrine, to say the very least, is capable of being used to justify almost any action Government may wish to take to suppress First Amendment freedoms.[38]

Justice Douglas agreed with his colleague that to permit the balancing of First Amendment rights in this way was extremely dangerous, and he quoted Jefferson to the effect that the best way to preserve peace and order in this country to "[e]ducate and inform the whole mass of the people. Enable them to see that it is their interest to preserve peace and order, and they will preserve them." [39] To Justice Douglas, "[t]his is the only philosophy consistent with the First Amendment." [40]

THE NOTO CASE

Noto v. *United States* [41] underscores the Court's intenion of keeping the strict burden of proof which it applied in the *Yates* case. The *Noto* case is an example of what will *not* be deemed sufficient proof under a membership clause prosecution. A comparison of the *Noto* case with the *Scales* case indicates that it was the greater degree of specificity in the latter which made the Court decide the testimony was compelling enough to sustain the conviction. Standing alone, the *Noto* case, like so many negative examples, means little.

THE INTERNAL SECURITY ACT

In *Communist Party of United States* v. *Subversive Activities Control Board,* [42] the Internal Security Act was in issue. This statute was enacted three months after the Korean Conflict began and two months before elections. The Act was directly aimed at the Communists: it begins with a finding that there are in this country certain treacherous and deceitful groups whose design it is to infiltrate, use espionage, sabotage, terrorism, or any other means to establish in this country a Communist dictatorship; and that these groups are controlled from abroad by a communist dictatorship which seeks to make this country subservient to itself.[43] Such groups are labeled "communist-action" and "communist-front" organizations, and the stated purpose of the Act is to make them known to the public by requiring that they register with the government.[44] The Act was passed over the strong opposition of a small number of legislators and the President, whose veto was overridden.[45]

If, after a hearing before the Subversive Activities Control Board, from which an appeal to the courts is expressly allowed, an organization is found to be one of the type the Act was designed to cover, the organization is ordered to register. This registration, as implemented under the Act, involves the disclosure of the names of members, officers, financial accounts, and other particulars. If the organization fails to register, the duty falls upon its officers as individuals, and if the officers do not register, the individual members must. If those responsible do not register, there are extremely heavy penalties which may be imposed, such as a fine of $10,000 and a five year jail term for each day of noncompliance. However, registration does not end the problems for members of these organizations: there are certain incumbrances which the Act imposes. For example, all of the organizations' propaganda must be labeled as being from a Communist source, and the tax exemptions given political parties are denied them. Members of these organizations are forbidden to work on the government payroll in nonelective positions, be a labor union employe, receive classified information, work in defense facilities, or get passports; and under certain circumstances denaturalization proceedings are authorized. The Communist Control Act of 1954 added

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[38] *Scales* v. *United States, supra* note 5, at 261–262.
[39] *Id.* at 273–274.
[40] *Id.* at 274.
[41] *Supra,* note 6.
[42] *Supra,* note 7.
[43] Internal Security Act, 64 Stat. 987 (1950), 50 U.S.C.A. § 781.
[44] Internal Security Act, 64 Stat. 987 (1950), 50 U.S.C.A. § 781.
[45] President Truman said in a message to Congress concerning the Internal Security Act: "Some of the proposed measures would, in effect, impose severe penalties for normal political activities on the part of certain groups, including Communists and Communist Party-line followers. This kind of legislation is unnecessary, ineffective, and dangerous." 96 CONG. REC. 14541 (1950).
Senator Kefauver used the blunter language of Governor Thomas Dewey of New York: "I am against it because it is immoral and nothing but totalitarianism itself." 96 CONG. REC. 15700 (1950).

"communist-infiltrated" groups to the list of those to be controlled by the Internal Security Act, but the restrictions on these groups are considerably less than the ones imposed on the other organizations.

The litigation in the *Communist Party* case began in 1950, reaching the Supreme Court as a proceeding to review the Subversive Activities Control Board's determination that the Communist Party of the United States was a "communist-action" organization. The progress of the case to final determination was extremely long and complicated and marked with perjury and undisclosed evidence. When the Court finally considered the case ready for its scrutiny, there was a substantial question of error in the proceedings. These alleged errors concerned the use of certain testimony and the non-production of certain statements which the government had. The decision that there was no error in this aspect of the case drew a sharp dissent from the Chief Justice, who thought that the non-constitutional questions could be used to decide the case, and that the constitutional questions were therefore improperly reached.

THE REGISTRATION PROVISION

The key provision of the Internal Security Act, the portion under particular attack in this case, is the registration provision. Congress has for some time appreciated that exposure can serve to help keep harmless certain types of people whose activities, if secret, might tend to become very dangerous. For example, statutes have required the registration of people who lobby for federal legislation,[46] campaign contributors of more than a designated sum,[47] and agents of foreign countries.[48] The validity of these statutes has been upheld by the Court.[49] The test for validity seems to be whether there is a substantial reason which can be shown as a basis for the registration and whether the registration is sufficiently relevant to the problem.[50] Defendant in this case did not directly invoke these tests, but instead insisted that the Congress had used its power to effect something which it could not constitutionally do directly; that is, outlaw the Communist Party.

The Supreme Court has not been unaware of the possibility that Congress might attempt to do by indirection those things which it could not properly do. In *McCullough v. Maryland*, Chief Justice Marshall said: "Should Congress, in the execution of its powers, adopt measures which are prohibited by the Constitution, or should Congress, under the pretext of executing its powers, pass laws for the accomplishment of objects not intrusted to the government, it would become the painful duty of this tribunal, should a case requiring decision come before it, to say that such an act was not the law of the land." [51]

Justice Frankfurter, speaking for the majority in the *Communist Party* case, said that whether or not the Communist Party had been outlawed could ". . . be determined by the manner in which the enactment works in its practical application." [52] Unfortunately, he chose to test this "practical application" only by looking at the statute itself; and when he looked at the statute, he only looked to see if the other provisions, consequences of registration, ". . . whatever may be their validity . . . [are] so devoid of rational relation to the purposes of the Act as expressed in this second section that it appears a mere pressuring device meant to catch an organization between two fires." [53] He concluded that there was a rational relationship. Further, Justice Frankfurter argued that it was only a type of activity which was regulated, and not the Communist Party as such. The fact that only Communist organizations could qualify under this activity test was treated by him as rather a coincidence.

It remained for Justice Black to make a realistic application of the test of which Justice Frankfurter had spoken. Justice Black pointed out that people who are made to register under this act are admitting that they are part of (to

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[46] Federal Regulation of Lobbying Act, 60 Stat. 839 (1946), 2 U.S.C.A. §§ 261–270.
[47] Federal Corrupt Practices Act, 43 Stat. 1070 (1925), 18 U.S.C. § 602.
[48] Foreign Agents Registration Act, 56 Stat. 248 (1938), 22 U.S.C. §§ 611–621.
[49] The lobbying act was upheld in United States v. Harriss, 347 U.S. 612 (1954); the act regulating campaign contributors was upheld in Burroughs v. United States, 290 U.S. 534 (1934); the foreign agent registration measure was upheld in Viereck v. United States, 318 U.S. 236 (1945).
[50] Cases cited by the Court wherein the statutes failed under this test: N.A.A.C.P. v. Alabama, 357 U.S. 449 (1958); Bates v. City of Little Rock, 361 U.S. 516 (1959); Shelton v. Tucker, 364 U.S. 479 (1961).
[51] 4 Wheat. 316, at 423 (1819).
[52] Communist Party of U.S. v. SACB, *supra* note 7, at 86.
[53] *Id.* at 83.

paraphrase the words of the statute) a treacherous, deceitful, evil, group. He commented in detail upon the effect that the other provisions of the Act would have, making ". . . it extremely difficult for a member of the Communist Party to live in this country and at the same time, . . . [making] it a crime . . . to try to get a passport to get out." [54] And finally, he noted ". . . all the civil disabilities, criminal prosecutions, and public harassments . . ." [55] to which registrants would be subjected. Only by shutting these things out of its view was the Court able to reach the conclusion that the Communist Party had not been outlawed.

THE SELF-INCRIMINATION ISSUE AVOIDED

Very closely related to the problem of outlawry is the self-incrimination aspect of this case; the self-incrimination aspect gives much force to the outlawry argument. The Communist Party is being forced to register its members with the Federal Government and thus expose those members to possible prosecution under the criminal provisions of the Smith Act which were upheld as constitutional on the same day this case was decided.[56] Registration under the Internal Security Act is to be done in a manner and form designated by the Attorney General of the United States.[57] The manner and form he has designated requires that the registration statements ". . . be signed by the partners, officers and directors, including the members of the governing body of the organization." [58] If the organization fails to register, it will be recalled, the officials must do so as individuals; and if the officials do not register, the individual members must.

The Internal Security Act is not the first statute to have a registration provision which forces people to subject themselves to penalties created by other statutes. Commonly in these circumstances one of the statutes is a taxation measure. Sometimes people are trapped by laws which are not necessarily designed for that purpose; for example the general income tax return form was not aimed at criminals in general, yet it has caught persons who could not report income criminally received or earned.[59] At other times Congress has passed statutes designed to trap undesirables between the statute created and another. A statute of this type was tested in *Sonzinsky v. United States.*[60] In that case the defendant contended that the so-called tax measure, which levied high taxes on sales of certain types of weapons of the kind used by gangsters and forced the sellers to register, was unconstitutional. The statute was clearly aimed at getting rid of the gun traffic by taxing it severely and subjecting the traffickers to scrutiny by the local authorities who could perhaps prosecute them. However, the Court permitted the measure to stand because on its face it was a revenue device; the Court said that the ". . . registration provisions . . . are obviously supportable as in aid of a revenue purpose." [61]

Later, in *United States v. Kahriger,*[62] the constitutionality of a similar registration provision was again before the Court. The statute involved in this case required bookmakers to register, buy a $50 tax stamp, and designate their place of business. The purpose of the statute was, quite obviously, to serve the local authorities in regulating gambling, but the Court concluded again that the enactment was a valid tax statute. Unlike the *Sonzinsky* case, in the *Kahriger* case a good deal of consideration was given to the self-incrimination aspect. The Court decided the self-incrimination issue, even though defendant had not registered under the Act, and decided that since the Act called for registration for future acts, the defendant could not invoke the Fifth Amendment. The argument made was that no one had to do the criminal acts to make themselves come under the registration provisions.

One of those who objected to the registration provision in the statute involved in the *Kahriger* case was the spokesman for the majority in the *Communist Party* case, Justice Frankfurter: ". . . the enforcing provision of this enactment is designed for the systematic confession of crimes with a view to prosecution for such crimes under State law . . . the motive of congressional

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[54] *Id.* at 142.
[55] *Id.* at 143.
[56] See *supra* note 11.
[57] 28 C.F.R. § 11.200, Dept. Justice Form ISA–1.
[58] 28 C.F.R. § 11.200, Dept. Justice Form ISA–1.
[59] See, *e.g.*, United States v. Sullivan, 274 U.S. 259 (1927).
[60] 300 U.S. 506 (1937).
[61] *Id.* at 513.
[62] 345 U.S. 22 (1953).

legislation is not for our scrutiny, provided only that the ulterior purpose is not expressed in ways which negative what the revenue words on their face express and which do not seek enforcement of the formal revenue purpose through means that offend those standards of decency in our civilization against which due process is a barrier." [63]

Justice Black, joined by Justice Douglas, was more direct: ". . . I am sure that it creates a squeezing device contrived to put a man in federal prison if he refuses to confess himself into a state prison as a violator of state gambling laws." [64]

The registration sections of the Internal Security Act provided the Court with an even stronger example of such a squeezing device, since they pinned the people involved between two federal statutes and because there was no way of avoiding the Fifth Amendment problem as the majority had in *Kahriger*, since the registration required by the Internal Security Act had as a basis *past* acts, acts of as far as a year back. However, Justice Frankfurter was not nearly so willing to decide the issue in this case as he had been in *Kahriger*. To him, the issue was at this time premature. The officers had only a possible problem under the statute, he said, because it was purely a matter of speculation as to whether the Party would or would not act pursuant to its duty, which had to be neglected before the officers became responsible. The Court would not consider such a prematurely raised issue, and *a fortiori* would not consider the dilemma which members would face if the officers did not do their duty under the statute.

Considering the fact that the implementing forms required the officers to sign when the "Party" registered, the Court felt that no claim of the Fifth Amendment was proper at this time on behalf of the officers because rather than sign the implementing forms, they might before signing claim the privilege and that claim might be honored by the Attorney General. The Court was not moved from its position by the fact that in order for the officers to claim the privilege they would have to identify themselves, for ". . . it is always true that one who is required to assert the privilege against self-incrimination may thereby arouse the suspicions of the authorities." [65] Justice Frankfurter continued: ". . . it is not and never has been the law that the privilege disallows the asking of potentially incriminating questions or authorizes the person of whom they are asked to evade them without expressly asserting that his answers may tend to incriminate him." [66]

As in the part of the opinions dealing with outlawry, it is once more true that the dissenting opinions in their realistic approach make obvious the dream-like qualities of the majority's rationale. Justice Brennan, speaking for himself and the Chief Justice, thought the Court should at least take up the self-incrimination issue as regarded those officials who had to sign the Party's registration form. He recognized that by the majority's decision, these Communists would be immediately responsibile for making the registrations. Further, he recognized that a claim of privilege would be self-defeating since the officials would have to bring this important element of their crime, office-holding, forward in order to claim that privilege. To presume that some sort of anonymous claim of the privilege might be honored would be to assume that the Attorney General would overlook some of the requirements of the form, and is, to say the least, very unrealistic. Justice Brennen and Chief Justice Warren would have decided the issue for the defendant if it had been reached.

Justices Black and Douglas also thought the issue should have been reached. To Justice Douglas it was clear that there was nothing conditional as to the duty of the Party to comply, so the issue should not be avoided. Since the duty of exposing officers, directors, and members from one year back was included by the required registration form, he thought that ". . . the question of self-incrimination of each of these individuals is squarely presented." [67] Again, Justice Black was more direct: "The only sense in which the Court has avoided a constitutional issue is by permitting the destruction of a group seeking to raise the constitutionality of its destruction." [68]

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[63] *Id.* at 39–40.
[64] *Id.* at 36–37.
[65] Communist Party of U.S. v. SACB, *supra* note 7, at 107–108.
[66] *Id.* at 108.
[67] *Id.* at 176.
[68] *Id.* at 145.

CONCLUSION

It would be foolish to try to pass these decisions off as bumbled efforts, for clearly they are not. It would also be wrong to believe that the source of the Court's dissension stemmed from the problems of how to read the first sentence of subsection 4(f) or how to read legislative history or how to determine when an issue is ripe, etc.; these disputes, no matter how sincere, only reflect the real cause of the disagreements. This is clearly demonstrated by the fact that the majority and dissenters in the *Scales* and *Communists Party* cases are identifiable as the so-called "conservative" and "liberal" wings of the Court, respectively: there is no "conservative" or "liberal" way of reading subsection 4(f) or constructing legislative histories or deciding whether an issue is ripe except in the sense that a "conservative" or "liberal" first makes up his mind as to what he must do to serve his ends best. The problem then, as the split indicates, is one of deep differences of political philosophy.

Those who think like the "liberals," like Justices Black and Douglas, believe that the dangers which inhere in efforts to suppress the Communists by legislation of the type under consideration here are so great that it is folly to try. Justice Douglas reflects his view in his dissent in the *Scales* case, where he made the point that none of Scales' activities taken singly, constituted a crime. The way Scales recruited, his speeches about communism and its role, being a director at a school where people learned how to kill in picket line violence, etc., simply, was not criminal in itself. The essence of the crime being punished, Justice Douglas said, is *belief* in the Communist creed:

". . . [W]e deal in this prosecution of Scales only with the legality of ideas and beliefs, not with overt acts. The Court speaks of the prevention of 'dangerous behavior' by punishing those 'who work to bring about that behavior.' That formula returns man to the dark days when government determined what behavior was 'dangerous' and then policed the dissidents for tell-tale signs of advocacy." [69]

The similar fears of Justice Black are set out in his lengthy dissent in the *Communist Party* case. None of the people in this school of thought can be said to care much about what happens to the Communists; rather, their concern is for what happens to the rights of the people as a whole as the barriers to suppressing the Communists are hurled, for these same barriers act to protect the rest of the citizens.

Opposing the people who think like Justices Black and Douglas are the so-called "conservatives." These people no doubt share the same high regard for the same rights which the Black-Douglas people hold so dear. However, they view the resemblance of the Communist Party to a political movement as more or less superficial, troublesome, formal thing [70] which has to be gone around for appearance's sake. Those who hold this view, it seems, are in the majority on the Court. This kind of attitude is unfortunate from the jurisprudential standpoint, for it is manifested in opinions as contrived as the majority opinions in the *Communist Party* case and the *Scales* case.

Two things tend to make these cases innocuous. First, the narrowness of the majority indicates that not even the Supreme Court is firmly committed to the stand taken in them. Second, these cases are decided expressely against the Communist Party, and probably have very little precedent value. But they *are* precedents, and it would behoove the Court to remember and be warned by the words of Shakespeare:

> 'Twill be recorded for a precedent,
> And many an error by the same example
> Will rush into the state.[71]

Not only is it not clear what precedent value these cases will have, it is also not clear what their effect will be upon the Communists themselves. ". . . [I]t is too early to say whether attempts to drive the Communist Party completely out of business as an overt institution will be successful. . . ." [72] How much activity will qualify one for prosecution under the membership clause of the

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[69] *Scales* v. *United States*, *supra* note 5, at 270.
[70] See, *e.g.*, Justice Jackson's concurring opinion in *Dennis* v. *United States*, *supra* note 20, at 561.
[71] MERCHANT OF VENICE, Act iv. sc. 1, *l.* 218.
[72] KIRCHHEIMER, *op. cit.*, at 149.

Smith Act is only very roughly defined by *Scales* and *Noto*. And it would seem that sooner or later the Fifth Amendment issue raised by the registrations required by the Internal Security Act must be decided.

JAMES R. PHELPS.

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THEY WILL BURY THEMSELVES—IF WE HELP THEM*

Most Americans solemnly agree that we must know more about communism if we are to be able to combat it effectively. We have been told time and again that ignorance of the Communist philosophy, strategy, and objectives imperils our own system, for we must know our enemy if we hope to defeat him. Although we agree with this reasoning, few of us act accordingly. How many Americans have read even one book on communism within the last year? How many of us have studied the philosophy of communism, and have compared their theory with practice? All too few of us could answer these questions satisfactorily. Unfortunately, apathy and complacency have smothered our resolutions to become more aware. Recognizing this attitude, Allen W. Dulles has said:

"There is a dangerously complacement attitude among many people in the United States today. Too many Americans, lulled by wishful thinking, grasp at every Soviet whim—their calls for co-existence, their grandiose schemes for universal disarmament, and emotional pleas to ban the bomb. Too many jump to the conclusion that the communist leaders really want to settle down and live in peace with us. All our past relations with communists belie any such interpretation. During the ten years that I have been with the Central Intelligence Agency, a mountain of hard evidence has passed over my desk. The Soviet plans, statements and actions show that they have no real faith in co-existence. The communists have a blueprint for conquest. They are aiming at nothing less than domination of the world. The United States is their major target." [73]

To know more about communism, we should begin by familiarizing ourselves with the basic tenets of its ideology. The four tenets which are the foundation of Communist ideology are: (1) the doctrine of historical materialism; (2) the doctrine of dialectical materialism; (3) the theory of surplus value; and (4) the inevitability of the class struggle. Each of these tenets will be examined briefly.

The theory of historical materialism, as a concept of history, holds that the nature of the political institutions and the intellectual life of society is determined by economic forces which are their foundation. In this view, the history of civilization is a series of social systems—from slavery through feudalism to capitalism—each based on some type of exploitation of the working class, with all persons divided into two classes—the exploiting and the exploited.

Working from this view of history, the Communists describe social change by means of the theory of dialectical materialism. The Communists have "borrowed" the dialectic system as propounded by the German philosopher Hegel and adapted it to their purposes. According to the theory of dialectical materialism every force of life brings into existence an opposing force. The original force (thesis) will inevitably clash with the opposing force (antithesis), and as a result a third force (synthesis) combining elements of both will emerge. Marx applied this theory in the following manner: capitalism contains the elements of its own destruction—revolt of the working class—and from this conflict between the capitalists and the working class will emerge a new force, the Communist society.

Communists bolster their arguments of dialectical materialism by use of the theory of surplus value and the resulting inevitability of the class struggle.

The theory of surplus value is that labor is the sole creator of value, and that wages received by labor represent less than the total value that labor creates. Value in excess of wages paid to labor is "surplus value," and is the measure of the capitalists' exploitation of the working class. According to Marx, the theory of surplus value accounts for the major inequalities and evils of the capitalistic society.

The final basic tenet of the Communist ideology is the inevitability of the class struggle. The *Communist Manifesto* states: "The history of all human society,

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*An address by John C. Satterfield before The Missouri Bar, Jefferson City, Missouri, March 2, 1962.

[73] Address delivered before the convention of the Veterans of Foreign Wars; Detroit, Michigan, August 22, 1960.

that is all written history, past and present, has been the history of class struggles." [74]

In the Communist view, the class struggle is not a thing of the moment, but a continuing warfare—sometimes open and acknowledged, sometimes hidden—between the exploiting and exploited classes. The class struggle will either end in a revolutionary change in the whole structure of society or in the common ruin of the contending classes. Marx believed that the class struggle is inevitable in capitalistic societies, and that eventually all class struggles will culminate in the triumph of the proletariat over capitalism. What methods have been proposed for the carrying out of the class struggle? The *Communist Manifesto* answers in this way: "The communists disdain to conceal their views and their aims. They openly declare that their ends can be obtained only by the forcible overthrow of all existing social conditions." [75]

These then are the basic tenets of the Communist ideology. From them the Communists reason "scientifically" that the collapse of capitalism is imminent, and the triumph of world communism inevitable. To the Marxist-Leninist theorist the capitalist state exists for only two purposes: the first to perpetuate the economic system upon which it is founded, and the second is the continued exploitation of the working class. Any capitalistic state, whether monarchy, republic or corporate state, is viewed as a dictatorship of the capitalists over the working class. Such systems cannot exist side by side with the communist system, inasmuch as world communism must eventually prevail everywhere, in all nations and over all peoples. "Exploitation" of the proletariat can be eliminated only by the elimination of the system of private ownership. All property and all means of production must be controlled by the proletariat. The obvious fact that the capitalists are not going to embrace these beliefs, nor give up their property rights is ample explanation for the Communist belief in the inevitability of class warfare.

It was Marx's belief that the proletariat would spontaneously follow the leadership of the Communist party and rise as a mass in revolution to "throw off the shackles" of capitalism. Lenin, however, had no such faith in the proletariat. Lenin believed that the proletariat could not be relied upon to develop a revolutionary class-consciousness on its own. His contribution to Communism was the dogma of "partyism." This dogma holds that any revolution must be led by a small, strictly disciplined, semi-secret party, the "revolutionary vanguard." This party of professional revolutionists would have as its sole objective the eventual triumph of communism everywhere. This is the Communist party as begun by Lenin, brought to fulfillment by Stalin, and presently perpetuated by Khrushchev. It retains its elite professional character—this is illustrated by the fact that only eight million Soviet citizens are Communist party members; this is less than four per cent of the total population of the U.S.S.R.

Lenin also "interpreted" Marx's theory of the withering away of the state after the proletarian revolution. Marx believed that the withering away process would follow shortly after a period of the "caretaker state." Lenin, and those who have followed him, held that the state cannot wither until the period of transition from capitalism to communism is complete throughout the entire world. Thus, the "caretaker state" in the U.S.S.R. has grown stronger and more powerful: it shows no signs of withering away. The process of withering away is not to begin until all "dissident elements" have been removed from society.

To the doctrinaire Communist any methods which will hasten the collapse of capitalism and the triumph of Communism are right and proper. Any and all means to secure the objectives of the Communist party are encouraged. Lenin has said, ". . . [R]evolutionaries who are unable to combine illegal forms of struggle with every form of legal struggle are very poor revolutionaries. . . ." [76] And on another occasion, he stated: "Until the final issue [between capitalism and communism] is decided, the state of awful war will continue." [77] And later: "As long as capitalism and socialism [communism] exist, we cannot live in peace: in the end one or the other will triumph—a funeral dirge will be sung either in Soviet Republic or over world capitalism." [78]

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[74] Marx Manifesto 13 (Gateway ed. 1954).

[75] *Id.* at 81–82: see also International Publishers, Marxism 45–46, 59 (1925).

[76] 10 LENIN, *Left-Wing Communism, An Infantile Disorder*, in SELECTED WORKS 139–40 (1943).

[77] 9 LENIN, *Tactics of the Russian Communist Party (Bolshevik)*, *op. cit. supra* note 4 at 242.

[78] 8 LENIN, *Speech to Moscow Party Nuclei Secretaries*, Nov. 26, 1920, *op. cit. supra* note 4, at 297.

Many persons throughout the world delude themselves into thinking that the views of Lenin as expressed are no longer adhered to by today's Communist party leaders. Such wishful thinkers need only be referred to a speech made by Premier Khrushchev on January 6, 1961, in which he reaffirmed the party's adherence to Lenin's beliefs as follows:

"Today our party is united as never before; it is closely rallied around the Central Committee, it is confidently leading the country down the path pointed out by the great Lenin. . . . [I]f anyone thinks we shall forget about Marx, Engels and Lenin, he is mistaken. This will happen when shrimps learn to whistle." [79]

We must keep these sentiments in mind, especially when the Communists glibly talk of "peaceful co-existence," an end to the cold war, and lasting peace between our two systems. As our President, John F. Kennedy, has reminded us, the Communist approach in such dealings is: "What is ours is ours, and what is yours is negotiable." [80] We must not lose sight of the ultimate objectives of the Communists in our heartfelt desire for peace and disarmament.

We must remember when negotiating with the Communists, we are negotiating with persons who do not share our basic beliefs. Communist morality is a far different thing from the Judeo-Christian morality of the western democracies. This is how Lenin defined Communist morality:

"We repudiate all morality derived from non-human, non-class concepts. We say that it is a deception, a fraud in the interests of landlords and capitalists. We say that our morality is entirely subordinated to the interests of the class struggle of the proletariat. Morality is what serves to destroy the old exploiting society and to unite our toilers around the proletariat which is creating a new communist society. . . . We do not believe in eternal morality." [81]

An address such as this can only scratch the surface of such a broad subject. However, it will have served its purpose if it inspires anyone to examine the matter more thoroughly and thoughtfully. Harry and Bonaro Overstreet have said:

"There comes a point when the world's peril turns into every individual's responsibility. So far as the problem of communism is concerned, this point, we feel certain, has long been reached and passed. The time has come when each of us is obliged to study the character of this new force which claims the human future as its own, and to convert such knowledge into an awareness of what is at stake and what needs to be done." [82]

Ignorance of communism cannot help but hurt us. On the one hand, ignorance of this menace may lead the unwary to willingly accept or be bullied into accepting the inevitability of world communism. The principal weapon to fend off such a threat is knowledge of the truth. Those of us who seek to repel the Communist threat must understand its nature, be aware of its strategy, and not lose sight of its ultimate objective—our destruction. On the other hand, ignorance of communism hobbles those who believe they are fighting it. As J. Edgar Hoover, the Director of the Federal Bureau of Investigation, has said:

"Too often have I seen cases where loyal and patriotic but misguided Americans have thought they were "fighting communism" by slapping the label "red" or "communist" on anybody who happened to be different from them or have ideas with which they did not agree. Smears, character assassination and the scattering of irresponsible charges have no place in the nation. They create division, suspicion and distrust among loyal Americans—just what the communists want—and hinder rather than aid the fight against communism." [83]

We must avoid these twin perils of ignorance if we are to disprove for once and for all Khrushchev's infamous and hollow boast that the Communists "will bury us." Our first task is to inform ourselves. Then we will be able to effectively combat communism and offer the world our own "creative commitment with regard to the future of mankind."

So far this address has been an exercise in generalities; any subject may be discussed in such a manner, but the discussion can usually be made more fruitful

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[79] Speech by Nikita Khrushchev, Jan. 6, 1961, in ABA, PEACEFUL CO-EXISTENCE—A BLUEPRINT FOR DISRUPTION (1961).

[80] Speech by Pres. John F. Kennedy on the Berlin Crisis, July 25, 1961, in 27 VITAL SPEECHES 642.

[81] LENIN. *Tasks of the Youth Leagues in* THOMAS, COMMUNISM VERSUS INTERNATIONAL LAW 50 (1953).

[82] OVERSTREET, WHAT WE MUST KNOW ABOUT COMMUNISM 10 (1958).

[83] HOOVER, MASTERS OF DECEIT (1958).

by reference to specifics. Let us choose one specific topic from the vast subject of communism, and explore it in more detail. Before getting down to specifics we should prepare ourselves a little more thoroughly. We can do so by keeping in mind the Communist device of twisting words to fit whatever purpose they wish. The following is a short list of key words and their current meaning as used by the Communists:

Democracy ------	Communism
Peace ----------	Communist world domination
Socialist -------	Communist
Bourgeois ------	Non-communist
Communism -----	The terminal condition when non-communist modes of thought will have been completely suppressed and forgotten
Capitalism ------	Any non-communist system, including democracy
Imperialism -----	A non-communist system actively opposing the spread of communism, especially the U.S.A.
Colonialism -----	Any foreign aid extended by a non-communist country
Liberation ------	The seizure of a non-communist country by communists
Independence ----	Submission to communist control

By keeping these definitions in mind, we will be better able to understand and cope with Communist propaganda. This will be especially helpful in considering in some detail a specific topic—the latest Communist line, that of peaceful co-existence.

Many people in the western democracies and the neutral nations have been beguiled by the latest line of the Communist party. This line is, of course, the line of "peaceful co-existence." Nearly a half century ago, 1916, Lenin laid out the official Communist party view of such a tactic. He said: "Every 'peace program' is a deception of the people and a piece of hypocrisy unless its principal object is to explain to the masses the need for a revolution, and to support, aid, and develop the revolutionary struggle of the masses that is starting everywhere." [84]

The present Communist leaders undoubtedly have this directive in mind while propagating their "new" line of peaceful co-existence. However, many persons have deluded themselves, and believe that the current line is genuinely new, and that the Communists sincerely desire to peacefully co-exist with us as we understand that phrase. Such persons should be referred to the speech made by Nikita Khrushchev on January 6, 1961, in which he said, ". . . if anyone thinks we shall forget about Marx, Engels and Lenin, he is mistaken. This will happen when shrimps learn to whistle." [85]

It should, therefore, be plain that Khrushchev's peaceful co-existence in 1961 is the same as Lenin's peaceful co-existence in 1916. Only the window dressing has changed; the underlying position is identical. To many western reporters and delegations from western and neutral nations, Mr. Khrushchev blandly suggests that the capitalists and the Communists should peacefully co-exist; that they should wage their battle for the minds of men by competing in trade, science and cultural exchanges.

When Mr. Khrushchev talks of "peaceful co-existence" with the rest of the world, those in the west should examine what has happened to those who, stopping short of complete and abject surrender, attempted to co-exist with the party both in Russia and in other nations behind the Iron Curtain. It is estimated that between five and seven million Russian peasants were eliminated for refusing to cooperate with Stalin's plan to collectivize agriculture. At one time, shortly before Stalin's death, the number of slave laborers in force labor camps approached twenty million; the number is now estimated at three million. The purges of the late 1930's resulted in the death of nearly 50,000 Russian military and government leaders. The most recent example of Russian brutality was the Hungarian revolution of 1956. At least 125,000 Hungarians were casualties in this heroic revolt; of this number 25,000 gave their lives.

The number of people who have "voted with their feet" by escaping to the West from behind the Iron Curtain testifies to the brutality with which the

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[84] 5 LENIN, *Central Committee Proposals Submitted to Socialist Conference, April 1916*, *op. cit. supra* note 4, at 237.

[85] Speech by Nikita Khrushchev before the 81st Marxist-Leninist Parties, Dec., 1960 in ABA, *op. cit. supra* note 7, at 1.

Communists treat those who attempt to co-exist with them. The numbers are as follows (as of 1960) :

East Germany	3–4, 000, 000
Hungary	375, 000
Baltic Countries (Latvia, Lithuania, Estonia)	250, 000
Poland	210, 000
Czechoslovakia	61, 000
Rumania	30, 000
Bulgaria	9, 000
Albania	8, 000

In addition, literally millions have been liquidated by Communist China, Russia's untrustworthy ally. These figures belie Khrushchev's bland promises of how easy it is to co-exist with the Communists.

While Mr. Khrushchev is telling representatives of the West and of the neutral nations one thing, he is telling his own people exactly the opposite. A brief scanning of official Communist literature establishes the fact.

"The Proletarian of the Soviet Union harbors no illusions as to the possibility of a durable peace with imperialists. The Proletarian knows that an imperialist attack against the Soviet Union is inevitable ; that in the process of a Proletarian world revolution, wars between the Proletarian and bourgeoise states, wars for emancipation of the world from capitalism, will necessarily and inevitably arise. Therefore, the primary duty of the Proletariat, as a fighter for socialism, is to make all the necessary political, economic and military preparations for these wars, to strengthen the Red army—that mighty weapon of the Proletariat—and to train the masses of the toilers in the art of war. There is a glaring contradiction between the imperialist policy of piling up armaments in a hypocritical talk about peace. There is no such contradiction, however, between the Soviet government's preparation for defense and for revolutionary war in a consistent peace policy. Revolutionary war of the Proletariat dictatorship is but a continuation of the revolutionary peace policy "by other means." [86]

At a speech made at Leipzig in 1959 for consumption by the western world, Khrushchev said : "We are confident that we shall conquer capitalism. We shall conquer it not by war, but by demonstrating practically to all the working people the superiority of communism over capitalism. The working class has a great truth—the teaching of Marxism-Leninism. This truth will triumph." [87]

In direct contradiction to this "soft" approach is the true Soviet definition of peaceful co-existence :

"Peaceful co-existence of states does not imply renunciation of the class struggle . . . the co-existence of states with different social systems is a form of class struggle between socialism and capitalism. In conditions of peaceful co-existence, favorable opportunities are provided for the development of the class struggle in the capitalist countries. Peaceful co-existence . . . does not mean conciliation of the socialist and bourgeoise ideologies. On the contrary, it implies intensification of the struggle of the working class, of all the communist parties, to the triumph of socialist ideas.[88]

From this statement we can glean the meaning Communists attach to peaceful co-existence. It is a time for "an intensification of the struggle . . . of all the communist parties . . . to the triumph of socialist [communist] ideas."

Khrushchev made it clear that "peace" includes certain kinds of war, when he said :

"Now a word about national liberation wars . . . such wars are not only admissible but inevitable. . . . The peoples can obtain their freedom and independence only by struggle, including armed struggle. . . . What is the attitude of the Marxists toward such uprisings? A most positive one . . . the Communists fully support such just wars and march in the front rank with the people waging liberation struggles." [89]

This statement illustrates once again how the Communists twist the meaning of words and phrases to fit their propaganda.

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[86] INTERNATIONAL PRESS CORRESPONDENCE. THESIS OF THE VI WORLD CONGRESS OF THE COMMUNIST INTERNATIONAL, No. 84, 1590 (1928).

[87] Speech by Khrushchev before the 9th All-German Conference of Trade Union and Plant Officials, Leipzig, Germany, March 7, 1959. in TASS March 26, 1959.

[88] Statement by 81st Marxist-Leninist Parties, Dec. 5, 1960, in ABA, *op. cit. supra* note 7, at 3–4.

[89] ABA, *op. cit. supra* note 7, at 4.

Many Americans and other peoples of neutral and western nations find it hard to accept the facts. They are so eager for peace and the end to the cold war that any overtures made along the lines of peaceful competition are eagerly grasped. Many are too willing to believe that there has actually been a change in the Communist line, that the Communists do wish to get along with us. However, a careful examination of all the Communist statements on peaceful co-existence reveals that it is just another ruse in their war for the eventual triumph of communism throughout the world.

The American Bar Association's Special Committee on Communist Tactics, Strategy and Objectives has aptly defined peaceful co-existence as a "blueprint for disruption." [90] Peaceful co-existence serves well the aims of Communists so long as they can make gains under it. Why should they resort to war when under the guise of peacefully co-existing, the Communists can continue to make gains on fronts around the world? They support "wars of liberation" in Southeast Asia. This is illustrated by the "brushfire" wars in South Viet Nam and Laos. They irritate trouble zones such as Berlin and Iran. When the nations of the West seek to alleviate the trouble or end the wars, the Communists are only too happy to suggest that we sit down and negotiate, that we "peacefully co-exist." Then at the negotiating table, if we concede a little each time, the Communists have won their battle and without having to resort to a world war. Matyas Rakosi, a Soviet citizen and former Prime Minister of Communist Hungary, has made an ominous analogy about the demise of the capitalist system. He compared the capitalist system to a large salami, which the Communists will take, not all at once, but only a slice at a time, until it is eventually all gone. Peaceful co-existence is the perfect medium in which the Communists can slice away at the salami.

Each concession, taken alone, may appear to be insignificant. The sum total of many concessions is not insignificant.

Peaceful co-existence is not meant to go on forever. Nikita Khrushchev himself said in 1956: "But of course we must realize that we cannot so co-exist eternally. *One of us must go to his grave.* We do not want to go to the grave. They [western powers] do not want to go to their graves either. So what must be done? We must push them to their graves." [91] (Emphasis added.)

The term "peaceful co-existence" then apparently means a suspension of all-out warfare, but a continuation, and indeed an intensification, of the cold war. This will be the Communist strategem so long as it helps them achieve their end, the ultimate victory of communism throughout the world, more efficiently and effectively than open warfare. So long as the Communists can use it to move closer to world conquest without war, they will follow the line of peaceful co-existence.

Let me reiterate that after knowing all of this, many people are still not convinced that the Communists are as callous as the above arguments suggest. These well-intentioned people will eagerly accept at face value the "soft" statements made by the Communist leaders. Such people must be made to realize that a Communist need not stand on his word. If lies will promote the end result of communism, all the better. A promise or a treaty is little more than a scrap of paper, something to be used in the never-ending war with capitalism.

Negotiations and co-existence can be meaningful only if the two sides negotiating and co-existing have certain common convictions and common standards which regulate their relations with each other. Political, legal and moral commitments require a certain amount of natural sympathy between those who are negotiating. The mere fact that there is a point of contention or a point of interest about which two nations can negotiate does not necessarily mean that the issue is negotiable. There must be a modicum of agreement on certain principles of behavior, fortified by agreement on fundamental values and beliefs. We of the western nations base our relations with other men on Judeo-Christian morality. This morality teaches us that a man must be as good as his word, that a promise which is solemnly given is not to be broken. We

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[90] ABA, *op. cit. supra* note 7.

[91] Speech by Khrushchev in Warsaw, Poland, 1946 in AMERICAN & FOREIGN POWER CO., THE NECESSITY FOR ALL OF US TO FIGHT (1961).

must remind ourselves that Communist morality is far different from our morality; let us recall once again Lenin's definition of Communist morality:

"We repudiate all morality derived from non-human, non-class concepts. We say that it is a deception, a fraud in the interest of landlords and capitalists. We say that our morality is entirely subordinated to the interests of the class struggle of the proletariat. *Morality is what serves to destroy the old exploiting society and to unite our toilers around the proletariat which is creating a new communist society. . . . We do not believe in eternal mortality.*" [92] (Emphasis added.)

This fundamental difference between the morality, basic beliefs and values of the western nations and the Communist morality must be kept in mind when one examines Communist proposals for peaceful co-existence. Every such overture by the Communists must be examined scrupulously.

Many believe that the Communist policy of peaceful co-existence as espoused by Khrushchev is far more dangerous than the openly tough Stalinist foreign policy. Bertram Wolfe has written: "They know that they are engaged in war to the finish, a war for the world. Every separate issue, every negotiation, every conference, every utterance they regard as a move in that war, whereas for us in the west, each is treated as a separate concrete issue to be settled once and for all in order that we may relax." [93]

To combat this we must not relax, and we will not if we remember the ultimate objective of international Communism, and remembr that every move, every act, every plea for peaceful co-existence is directed toward the achievement of that ultimate objective—victory for world communism and the end of our way of life. We cannot and we will not let this happen.

[From the Hastings Law Journal, May 1965]

Restrictive legislation aimed at the criminal syndicalist and criminal anarchist movements provides the first significant example of punishment imposed for membership, as such, in a subversive group. Similar strictures were imposed upon members of the Ku Klux Klan and, by the Smith Act, upon members of Communist, Nazi, and Fascist groups.[94] Similarly, the Voorhis Act, effective January 15, 1941, required registration with the Attorney General, and the filing of detailed information including membership lists, by certain types of political organizations subject to foreign control, certain types of political or foreign-controlled organizations engaged also in military activity, and organizations which aim to forcibly overthrow the government.[95] Alien members of Communist, Nazi, or Fascist associations were subject to exclusion from the country [96] and, if they were naturalized, they were liable, in some instances, to denaturalization.[97]

In 1951, in *Dennis* v. *United States*,[98] the Supreme Court upheld the convictions of eleven leading members of the Communist Party on a charge of conspiring to violate the substantive provisions of the Smith Act. Even more stringent anti-Communist legislation was enacted in the early fifties.[99] In 1957 the conspiracy provisions of the Smith Act were restrictively construed by the Court in *Yates v. United States*,[100] holding that Congress intended to punish the advocacy only of concrete action for the forcible overthrow of the government and not mere advocacy of forcible overthrow as an abstract doctrine.[101] Nevertheless, the con-

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[92] Thomas, *op. cit. supra* note 9, at 50.

[93] Wolfe, *Communism,* 51 Life No. 16, p. 134 (Oct. 20, 1961).

[94] Alien Registration Act (Smith Act) § 2, 54 Stat. 671 (1940), 18 U.S.C. § 2383 (1958), as amended, 18 U.S.C. § 2385 (Supp. V, 1964).

[95] 54 Stat. 1201 (1940), 18 U.S.C. § 2386. The statute defines the scope of political activity to which it applies. At its convention in November, 1940 the Communist Party, U.S.A., resolved: "That the Communist Party of the U.S.A., in convention assembled, does hereby cancel and dissolve its organizational affiliation to the Communist International . . . for the specific purpose of removing itself from the terms of the so-called Voorhis Act." The Subversive Activities Control Board found, however, that this tactic did not alter the domination of the Communist Party, U.S.A., by the Communist International. INTERNAL SECURITY SUBCOMM., SENATE COMM. ON THE JUDICIARY, 84TH CONG., 1ST SESS., REPORT ON THE COMMUNIST PARTY OF THE UNITED STATES OF AMERICA 2 (Comm. Print 1955).

[96] Alien Registration Act, ch. 439, § 23(a), 54 Stat. 673 (1940) (now Immigration and Nationality Act § 212(d)(2), 66 Stat. 187 (1952), 8 U.S.C. § 1182(d)(2) (1958)).

[97] See Baumgartner v. United States, 322 U.S. 665 (1944).

[98] 341 U.S. 494 (1951).

[99] E.g., Subversive Activities Control Act, 64 Stat. 987 (1950), 50 U.S.C. §§ 781 etc., (1958); Communist Control Act, 68 Stat. 775 (1954), 50 U.S.C. §§ 841–44 (1958).

[100] 354 U.S.C. 298 (1957).

[101] *Id.* at 320.

clusion is justified from the principal cases decided prior to 1958, that the law theretofore definitely did not recognize in principle a basic right of subversive association. Indeed, with few exceptions, the courts legitimized and implemented severely hostile legislation directed against such groups and their members.

Nor does the case law subsequent to the Supreme Court's first explicit recognition in 1958 of "freedom to engage in association for the advancement of beliefs and ideas," [102] support the motion that subversive groups will be accorded the same fundamental freedom of association long extended implicity, and explicity after 1958, to other organization.[103] And it could not logically be otherwise. There cannot be a constitutionally protected right to join or support a subversive association which levels a fundamental attack at the state itself and its government. The Constitution cannot consistently contain within itself detailed provisions for its permanent endurance unto generations yet unborn and at the same time legitimize the efforts of those who would disregard those provisions and overturn its very foundations. Mr. Justice Frankfurter approached the issue in the *Dennis* case, where he observed that "no government can recognize a 'right' of revolution, or a 'right' to incite revolution if the incitement has no other purpose or effect." [104] The Constitution provides measures, such as frequent elections and judicial review, to forestall usurpation and abuse. It sanctifies neither a despotism imposed in its name nor the efforts of those who would pervert constitutional guarantees to cloak their conspiracy to destroy the Constitution itself. This is especially true of a foreign-directed conspiracy such as the Communist enterprise.[105] At the same time, however, it must be recognized that measures taken against even subversive associations must conform to the basic standards governing governmental action in general, such as due process and the first amendment freedoms of speech and press. The problem here as in similar areas is one of balancing between the state's right and duty to preserve itself and the ascerted individual or associative freedom of expression and action.[106]

The suspicion is merited that in recent years the Supreme Court has shrunk from a frank intellectual confrontation with the realities of the Communist problem. A case in point is *Aptheker v. Secretary of State*,[107] where the Court reversed the denial of passports, pursuant to section 6 of the Subversive Activities Control Act of 1950,[108] to Herbert Aptheker, editor of the Community Party's theoretical journal, *Political Affairs*, and Elizabeth Gurley Flynn, the Party chairman.[109] In *Aptheker*, the Court, with Justices Clark, Harlan, and White dissenting, refused to construe the statute as applied to the petitioners and instead, construing it on its face in a manner normally reserved for the preferred freedoms of the first amendment,[110] ruled the section unconstitutional on its face since it "too broadly and indiscriminately restricts the right to travel and thereby abridges the liberty guaranteed by the Fifth Amendment." [111]

A basic note of unreality is struck by the Court's refusal to notice judicially the nature and effect of the Communist Party and its general operations. In cases involving the membership clause of the Smith Act, for example, the Court, applying the evidentiary requirements enunciated in the conspiracy case of *Yates* v. *United States*,[112] requires that, in each case, it must be shown that the Communist

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[102] NAACP v. Alabama, 357 U.S. 449, 460 (1958).

[103] See, *e.g.*, Scales v. United States, 367 U.S. 203 (1961); *In re* Anastaplo, 366 U.S. 82 (1961); Konigsberg v. State Bar, 366 U.S. (1961); Braden v. United States, 365 U.S. 431 (1961); Wilkinson v. United States, 365 U.S. 399 (1961); Nelson v. County of Los Angeles, 362 U.S. 1 (1960); Barenblatt v. United States, 360 U.S. 109 (1959); Uphaus v. Wyman, 360 U.S. 72 (1959).

[104] 341 U.S. at 549 (concurring opinion).

[105] See Communist Party v. Subversive Activities Control Bd., 367 U.S. 1, 174–75 (1961) for an acknowledgement by Justice Douglas, who dissented on fifth amendment grounds from the majority's upholding of the Control Board's registration order, that foreign control makes the Communist Party particularly vulnerable to regulation.

[106] See, e.g., Bates v. City of Little Rock, 361 U.S. 516, 524 (1960).

[107] 378 U.S. 500 (1964).

[108] 64 Stat. 993 (1950), as amended, 50 U.S.C. § 785 (1958).

[109] Miss Flynn is since deceased and, incidentally, she was cremented in Moscow, where her ashes were honored in a ceremony at the Kremlin. N.Y. Times, Sept. 9, 1964, p. 3, col. 1.

[110] See NAACP v. Button, 371 U.S. 415 (1963); Cantwell v. Connecticut, 310 U.S. 296 (1940); Thornhill v. Alabama, 310 U.S. 88 (1940).

[111] 378 U.S. at 505. See also Baggett v. Bullitt, 377 U.S. 360 (1964), in which the Court invalidated, as unconstitutionally vague, a Washington State loyalty oath, required of state employees and teachers, which was identical to a Maryland oath which in the view of dissenting Justices Clark and Harlan, had been sustained against a vagueness attack in Gerende v. Board of Supervisors of Elections, 341 U.S. 56 (1951) (per curiam).

[112] 354 U.S. 298 (1957).

Party advocates the unlawful, forcible overthrow of the government and, secondly, that the particular defendent has the necessary knowledge and intent.[113] The finding of unlawful advocacy by the Party, however, must be made only on the basis of the evidence in the record of the instant case "and not upon the evidence in some other record or upon what may be supposed to be the tenets of the Communist Party."[114] This rule overlooks the technique of judicial notice, which was employed in 1928 in *People ex rel. Bryant* v. *Zimmerman*[115] to support the determination of the New York State Legislature that the Ku Klux Klan is engaged in such invidious advocacy and activity that it ought to be required to disclose its membership.[116] The result now is that if two members of the Communist Party are prosecuted under the membership provisions of the Smith Act in separate trials, and the evidence in each case sufficiently shows that each defendant has the necessary knowledge and intent, one may be convicted and one may be acquitted because of variances in the proofs of the common issue of whether the same Party is engaged in unlawful advocacy.[117] Moreover, the requirement of separate proof in each case on this issue imposes an unnecessary burden upon the government, without justifiable benefit to the accused, requiring a parade of witnesses in each case to testify on the specific applications of the Marxist-Lenin dogma and the activities of the Party which are, or at least ought to be, common knowledge for every schoolboy. The various congressional declarations as to the nature of Communism and the purposes and activities of the Communist Party of the United States[118] are at least as supportable from common knowledge as were the conclusions of the New York State legislature concerning the Ku Klux Klan. The matter of judicial notice then, is one in which a more realistic approach to the problem of law enforcement may be possible without an infringement of properly-conceived rights of defendants or of voluntary associations in general.

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[113] *Scales* v. *United States*, 367 U.S. 203, 254–55 (1961).

[114] *Noto* v. *United States*, 367 U.S. 290, 299 (1961). See also *Yates* v. *United States*, 354 U.S. 298, 329–30 (1957); ; *Dennis* v. *United States*, 341 U.S. 494, 512–13 (1961).

[115] 278 U.S. 63, 76–77 (1928).

[116] The statute in *Zimmmerman* made continued membership in an organization ordered to register, with knowledge that the organization has failed to register, a misdemeanor. N.Y. CIV. RIGHTS LAW § 56. The *Zimmerman* case, therefore, does not limit the technique of judicial notice to a non-criminal proceeding.

[117] In the Noto case, the conviction of Noto was reversed because the Party was not shown, on the record, to be engaged in illegal advocacy. 367 U.S. at 299. In fact, the proof of his own knowledge and intent was also lacking, so that there could have been no conviction even if the Party's advocacy had been proven. But if Noto's knowledge and intent had been proven, the defendant in the companion *Scales* case, whose conviction was upheld, would have been punished, while Noto would have been freed because of a failure in the proof of a common issue. This analysis assumes, of course, that the local units of the Party in which defendants were members were both engaged in unlawful advocacy. It may be unfeasible to notice judicially the nature of the advocacy and activity of a local or state branch of the Party, even if the Court were to notice the nature and purpose of the Party as a whole. Even if the Court should notice judicially the national character of the Party, it would be preferable to require some actual proof on the record as to the "conspiratorial-nexus," U.S. at 231, between the local branch and the national Party.

[118] E.g., 64 Stat. 987 (1950), 50 U.S.C. § 781 (1958); 68 Stat. 775 (1954), 50 U.S.C. § 841 (1958).

APPENDIX D

PRESIDENT, CONGRESS, JUDICIARY: ONE IS MORE EQUAL THAN THE OTHERS

(By Frank R. Strong)

Unitcd States v. *Nixon* was approached as a case of "judicial review" under conventional separation of powers doctrine, but in truth it was an exercise of "constitutional review," which finds little analytical support in that doctrine. In the field of "constitutional review" the Supreme Court is more equal than its "coequal" branches of government. *United States* v. *Nixon* was in this grand tradition.

July 24, 1974, most assuredly will rate prime time in constitutional history. On the morning of that date the Supreme Court, taking a leaf directly from *Marbury* v. *Madison*, asserted with unanimity in the *Watergate Tapes Case* (*United States* v. *Nixon*, 94 S.Ct. 3090) that *it* is the entity possessing sole and final authority to determine the limits of executive privilege in relation to the effective functioning of the judicial power in criminal cases. Some hours later President Nixon stated through his chief defense counsel that, while "disappointed in the result, I respect and accept the court's decision." Thus was avoided a constitutional confrontation of major dimensions.

But what was so surprising about either the Court's declaration or the president's response? Had not the Court, just over twenty years ago, asserted in the *Steel Seizure Case*, 343 U.S. 579 (1952), authority to draw the constitutional line between congressional and executive power? And had not President Truman acquiesced, although later asserting in his memoirs, true to his nature, that he was right in what he had done? In the historic *School Segregation Cases*, 347 U.S. 483 (1954), which shortly followed, had not the Court claimed the same power in the context of direct conflict between state power and private right? And when in challenge Southern legislatures resurrected the doctrine of interposition, had not the Court successfully defended in *Cooper* v. *Aaron*, 358 U.S. 1 (1958), its assertion of this power by a ringing declaration more bold than that of Chief Justice Marshall in *Marbury* v. *Madison?*

Then only a decade ago there were the *Reapportionment Cases*, 377 U.S. 533 (1964), the challenge of which Senator Dirksen lost in a cascade of denunciation for his questioning of the result reached in the exercise by the Court of its sole and exclusive authority "in the exposition of the law of the Constitution." And but five years ago *Powell* v. *McCormack*, 395 U.S. 486 (1969), made the Court's constitutional line-drawing power seem so obviously justified and so logically inevitable: "Our system of government requires that federal courts on occasion interpret the Constitution in a manner at variance with the construction given the document by another branch. The alleged conflict that such an adjudication may cause cannot justify the courts' avoiding their constitutional responsibility."

In the face of these recent, repeated reassertions by the Supreme Court of the exclusiveness of judicial power to expound the Constitution, how could a lawyer of James D. St. Clair's ability seriously contend in oral argument before the Supreme Court on behalf of President Nixon that "This matter is being submitted to this court for its guidance and judgment with respect to the law. The President, on the other hand, has his obligations under the Constitution" (43 U.S.L.W. 3012). Explanation must lie in an insightful appreciation of the dual functions of Article III federal courts (and of state constitutional courts as well) and of the divergent sources of the power to perform these differing functions.

JUDICIAL REVIEW IS AN ESSENTIAL INGREDIENT

The structure of American constitutions is uniformly that of setting forth in separate, primary articles the Montesquieuan political conception of three distinct

powers of government and of vesting these separated powers in different official entities. In this pattern the function assigned to the judicial power is that of adjudicating with finality issues of duties, liabilities, and powers as between individuals and as between individuals and their governments. Involved, analytically, are the tasks of determining the thrust of a statutory, administrative, or common law formulation of policy and of judging the rationality of executive application of the "true rule" as judicially interpreted.

The phrase "judicial review" aptly describes this judicial function for that is exactly what it is—the review by an independent official body of governmental "willing and doing" to determine whether or not a given individual is within its purview. Finality of this determination is essential to prevent either of the other branches from undoing the result of the review. Thus understood, "judicial review" is an essential ingredient of separation of powers doctrine.

But, as Mr. St. Clair contended, the president also has his functions under the Constitution, and the same is to be said for Congress. Separation of powers theory makes the three branches coequal. Enjoying equality, each has the authority to resolve questions of its unique jurisdiction. This is what President Nixon asserted he was doing with regard to the bounds of executive privilege and why until the eve of the Court's historic pronouncement he repeatedly was pictured as uncertain whether he would comply with the Court's decision should it disagree with his considered judgment of the proper scope of that privilege. In this light Mr. St. Clair's otherwise astonishing statement represents not disrespect for the Court but rather was a gesture of respect for the guidance to the chief executive in reaching *his* decision—the judgment of a coequal branch of the federal government.

By contrast, in his oral argument to the Court, Leon Jaworski, the Watergate special prosecutor, contended that "when boiled down, this case really presents one fundamental issue: who is to be the arbiter of what the Constitution says?" (43 U.S.L.W. 3009.) To him the answer was clear: implementation of the constitutional fractionalization of total governmental power lies with the courts. For if the president is wrong in his interpretation of the Constitution, said Mr. Jaworski, and "there is no one . . . to tell him so," then the president is "free to pursue his course of erroneous interpretations. What then becomes of our constitutional form of government?" Our form of government would not necessarily collapse. There are in our political system, today at least, institutional oppositions that might well maintain some degree of balance, as is true of numerous other countries that operate under constitutional limitations, written or unwritten, without resort to courts as the umpire.

THE COURT IS MORE THAN EQUAL

For this nation, however, this issue presumably has been settled. Somehow or other, the courts have come into possession of the authority to resolve constitutional issues with finality. Although the intellectual operation entailed is like that used in the exercise of "judicial review," the function is altogether distinct. Exercise of the power of "constitutional review" places the courts in a relation with the other two branches totally different from that grounding "judicial review." As an illustration, the Supreme Court of the United States not only possesses the traditional judicial function assigned it under the tripartite division of governmental authority but, as well, the awesome power to sit in judgment on the constitutionality of the acts of itself, the executive branch, and the legislative branch. The source of this power cannot, therefore, be found in separation of powers theory, grounded as this is on the concept of equality. In the exercise of this distinctive function, the Court is not coequal with the president and the Congress but more than equal. The functional distinction between "constitutional review" and "judicial review" and the divergent sources of these two powers were presented in the writer's article in the January, 1973, issue of this *Journal*, "Three Little Words and What They Didn't Seem to Mean" (page 29).

The predicament produced by conceiving of "constitutional review" as grounded in separation of powers, as certainly is the more traditional function of the judiciary, is illustrated in the comprehensive preview of *United States* v. *Nixon* prepared by two constitutional specialists, Profs. Kenneth L. Karst and Harold W. Horowitz. This appeared in the July 8 issue of *Preview of United States Supreme Court Cases*, a publication of the Association of American Law Schools and the Joint Committee on Continuing Legal Education of the American Law Institute and the American Bar Association intended for news media personnel:

"Finally, the president's counsel argues that the courts have no power to force the president to disclose privileged material: 'compulsory process cannot

issue against the president.' The proposition is derived from the existence of the executive branch as a government coordinate with and separate from the judicial branch.

"In response to these arguments, the special prosecutor argues first that it is the obligation of the courts to rule on any issue in a controversy properly before them, even if that ruling demands the evaluation of the powers of the other branches of government. The same abstraction ('separation of powers') thus infuses opposing arguments. The special prosecutor argues that the essence of the separation of powers is a system of 'checks and balances' by which each power is constrained by actions of the others which may impose duties. The doctrine of judicial [*sic*, read 'constitutional'] review itself, announced in the 1803 case of *Marbury* v. *Madison*, rests on a similar premise."

The explanation does not satisfy; rather, it leads to an intellectual cul-de-sac in which the separation of powers "abstration" meets itself coming back. "Constitutional review" is related to separation of powers only in the special sense that it is freely exercised in implementation of most facets of departmental conflict. But the source of this great power lies elsewhere.

Why, then, is judicial power to determine constitutionality so commonly assumed, if not argued, to be grounded in separation of powers? The frank explanation is that its paternity is otherwise questionable. American constitutions do not clearly confer the power. Indeed, it is a work of faith to find even an implication. With respect to the federal Constitution some find basis in the fact that Article III, Section 2, begins by defining the judicial power of the United States as including cases arising under the *constitution*, as well as the laws and treaties, of the United States.

Study of the proceedings of the Constitutional Convention shows, conclusively to this writer, that the word "constitution" was slipped into what became Article III contemporaneously with revision of the supremacy clause, which was designed expressly to bind the states to recognition of the superiority of the new federal Constitution. In other words, the framers logically expanded the scope of federal judicial jurisdiction to provide for vertical, as distinguished from horizontal, "constitutional review."

Raoul Berger in his 1969 book, *Congress* v. *The Supreme Court*, and other writers strenuously contend that a favoring as well of the latter type of "constitutional review" was in the air at Philadelphia and that in any case ratification of the Constitution was based on the understanding that it was provided for. Yet as distinguished a jurist as Learned Hand was never convinced that this slender reed was sufficient to support a general judicial power to determine constitutionality, as he wrote in *The Bill of Rights* (1958).

POWER A FEATURE OF AMERICAN CONSTITUTIONALISM

On the other hand, scarcely a corporal's guard supports the thesis of judicial usurpation. Rather, after experience with alternative types of umpiring and evaluation of early exercises of the power largely by state courts, "constitutional review" has grown in general acceptance, whether horizontal or vertical and whether for enforcing federalistic, separation of power, due process and equal protection, or Bill of Rights limitations.

Whatever the source of this power, it is an encrusted feature of American constitutionalism. *United States* v. *Nixon* is cast in this tradition. Yet on its facts the claim of power to exercise "constitutional review" has no such range. Prominent in Chief Justice Burger's opinion is the Court's concern for the fair administration of justice. Insofar as is reasonably needed for the discharge of a president's duties, executive privilege is recognized as "constitutionally based," but: "On the other hand, the allowance of the privilege to withhold evidence that is demonstrably relevant in a criminal trial would cut deeply into the guarantee of due process of law and gravely impair the basic function of the courts." In a realistic sense, therefore, the Court in *Nixon* exercised "constitutional review" only defensively for the protection of the traditional function of "judicial review."

Reliance on *Marbury* v. *Madison* thus is particularly apropos, for it too, like the great majority of state-court exercises of "constitutional review" that antedated and supported it, in effect defended against interference with the judicial function as understood in the theory of tripartite separation of powers imbedded in the Constitution. It is quite another matter for the Court to intervene in constitutional disputes wherein its own province is uninvolved. This is the thrust of "constitutional review" that gives it such potency.

APPENDIX E

[From Reader's Digest, July 1967]

Is the Supreme Court Really Supreme?

(By Eugene H. Methvin)

RECENT CONTROVERSIAL RULINGS BY THE HIGH BENCH RAISE ANEW THE TROUBLING ISSUE: WHO IS THE ULTIMATE ARBITER OF THE CONSTITUTION? OUR FOUNDING FATHERS PROVIDED A FORESIGHTED ANSWER

Fifty-two percent of the American people rate the Supreme Court's performance as "only fair" or "poor," according to a recent Louis Harris opinion poll. "The Justices are stretching the judicial process to try to translate their notion of an ideal society into reality," says Prof. Philip B. Kurland, editor of the University of Chicago Law School's *Supreme Court Review*. From legal scholars to the man in the street, from Congress to the Justices themselves, this most revered of our government institutions is today drawing stinging criticism.

Some of the most eloquent protests have come from within the Court itself. In 1962, when the Supreme Court invaded the political thicket of legislative reapportionment, the late Justice Felix Frankfurter denied that the Court had constitutional authority for its move. He accused his colleagues of "a massive repudiation of the experience of our whole past."

In another case last year, Justice Byron R. White charged the Supreme Court with laying down specific rules that have "no significant support" in the history of the Constitution.

Justice John M. Harlan has desparingly proclaimed that recent Court decisions amount "to nothing less than an exercise of the amending power by this Court."

DIRECTION BY DECISION

Repeatedly in recent years the Court has claimed vast new powers to change by judicial decree the shape of our constitutional system. A narrow majority of "activist" Justices, spearheaded by Chief Justice Earl Warren and Justice William O. Douglas, has increasingly taken away from juries and legislatures—the two authentic voices of the people—crucial decisions affecting the order and direction of American life.

Consider the Court's decisions in three vital areas:

School Prayer

The Court has declared that reading the Bible or saying the Lord's Prayer (or even a non-sectarian prayer) in voluntary classroom religious exercises is unconstitutional. It has relied on the theory that the First Amendment ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof") somehow requires the Court to impose a wall of separation between religion and any sort of governmental activity.

This notion is "sheer invention," say many distinguished laws scholars, among them Dean Erwin Griswold of Harvard Law School. We have, Griswold says, "a spiritual and cultural tradition of which we ought not to be deprived by judges carrying into effect the logical implications of absolutist notions not expressed in the Constitution, and surely never contemplated by those who put the constitutional provisions into effect."

Reapportionment

In one stroke, in June 1964, the Court rendered "unconstitutional" the legislatures of most of the 50 states. The action boldly asserted a judicial power never before claimed. It was based on the 14th Amendment. The dictum that "no state

shall deny to any person the equal protection of the laws" means, said Chief Justice Warren, that states cannot adopt "Little Federal" plans, in which one house of the legislature is apportioned like the U.S. Senate, to accommodate other factors (historic, economic or geographic) than population. The states must, instead, elect *both* houses on a "one man, one vote" basis.

Justices Potter Stewart and Tom Clark, objected sharply. They called the Court's action "the fabrication of a constitutional mandate," and said, "The Draconian pronouncement finds no support in the words of the Constitution, in any prior decision of this Court, or in the 175-year political history of our Federal Union."

The quarrel arose because many state legislatures had failed to reapportion their districts as people moved from country to city and from city to suburbs. Other states, however, had reapportioned conscientiously—Colorado, for one. In 1962, Coloradans went to the polls to choose between two reapportionment plans, and voted 305,700 to 172,725 in favor of a "Little Federal" plan which gave Colorado's lightly populated western mountains and eastern wheatlands a few more members in the state senate than their population warranted. A majority in every county, including urban Denver, supported this plan.

Justices Clark and Stewart pleaded with the Court to avoid destroying such local initiative and decision. Under the "equal protection" clause, they said, federal courts might properly void any systems which prevent ultimate majority rule. "Beyond this there is nothing in the federal Constitution to prevent a state from choosing any electoral legislative structure it thinks best suited." Colorado simply "sought to provide that no identifiable minority shall be completely silenced or engulfed," an aim that "fully comports with the letter and spirit of our constitutional traditions." The Justices pleaded in vain.

Criminal Procedures

Historically, the administration of criminal justice has been left to the states. The Constitution originally gave the federal government no authority whatever to intervene in ordinary criminal matters. However, the 14th Amendment forbids states to deny a person "due process of law," and the Court has now been using this language as reason to impose a net set of detailed, and controversial, rules of its own making on state law enforcement.

In 1961, for example, five Justices asserted that "due process" requires a state judge to keep physical evidence from the jury if he finds any legal fault with the police search that obtained it. That overruled long-standing Supreme Court decisions and nullified contrary rules in 26 states. Then, in 1964, five Justices prohibited the century-old practice in 15 states of letting the jury decide whether a confession has been coerced. Justice Clark protested: "Dependence on jury trials is the keystone of our system of criminal justice, and I regret that the Court lends its weight to the destruction of this great safeguard to our liberties."

In June 1966, Chief Justice Warren and four fellow Justices imposed on all states a new rule, never before followed in any state: Judges must also keep a confession from the jury unless police can prove beyond doubt that they warned the suspect of his rights, and even furnished him a lawyer throughout interrogation if he wished.

There is mounting evidence that the Court's massive federalization of criminal justice has grievously crippled law enforcement. FBI statistics show that, since the 1961 ruling, the rate at which police are solving reported crimes—a rate which had held steady for years—has dropped by almost ten percent. In New York City, after last year's ruling on interrogations, the proportion of unsolved murders increased by 40 percent. Indeed, the Supreme Court's rulings have compelled the freeing of many apprehended and confessed criminals.

Last September, for example, a woman stood before Brooklyn Judge Michael Kern. She had confessed to taping her four-year-old son's mouth and hands and beating him to death with a broomstick and a rubber hose. Neverthless, because of the new Supreme Court ruling, her signed confession, the state's only evidence had to be thrown out.

"Thank you, your honor," the woman said.

"Don't thank me," the judge replied icily. "Thank the United States Supreme Court. You killed the child and you ought to go to jail."

CONFLICTING PHILOSOPHIES

These highly controversial decisions reflect a titanic clash of judicial philosophies in today's Supreme Court. Justices Harlan, White and Stewart are cur-

rently the chief representatives of the philosophy of judicial restraint propounded by the great jurist Oliver Wendell Holmes: In a democratic society, judges who never face the discipline of the ballot box must defer to elected legislators in policy choices—and leave it to the voters to discipline the legislators at the polls if the legislators' decisions are bad. A judge should declare a legislative act unconstitutional only when he is certain that reasonable men could not disagree. Otherwise, said Holmes, even though the legislators have decided unwisely, a judge is obligated to say, "Damn 'em, let 'em do it!"

On the other side in today's Court, Chief Justice Warren, Justice Douglas and usually Justice Hugo L. Black represent the activist philosophy, or what is sometimes called "political jurisprudence." This school holds that constitutional claims coming to the Supreme Court involve, primarily, conflicting values and interests. There may be no express law relevant to today's conditions. So, in weighing conflicting interests, the Justices must impose their own "social preferences." This philosophy sees the Justices as the modern interpreters of the values expressed in "our living Constitution."

Last year, for example, the Court outlawed Virginia's poll tax—even though it had unanimously upheld a similar tax 29 years before. Even Justice Black denounced this change by judicial decree as "an attack on the concept of a written constitution which is to survive unless changed through the amendment process."

But do we want the Court to be such a lawgiving body? Carried very far, this philosophy would mean in effect abandoning our written Constitution. The High Bench would become not a court of law but a Grand Policy Council, a "Big Brother Club," as one law professor irreverently dubbed the activists.

From the first, men like Thomas Jefferson feared the federal judiciary as a dangerous, fundamentally antidemocratic power. Their fears have proved valid. For half a century (between 1890 and 1937), reactionary "activists" on the Court virtually destroyed the nation's legislative ability to cope with the industrial revolution, to regulate wages and working conditions, child labor, utilities, railroads, labor-management wars. They nullified 52 acts of Congress and 228 state laws. Ultimately, in the "limited constitutional revolution" of 1937, President Franklin D. Roosevelt, Congress and public pressure persuaded three activist Justices to retire or switch, thus allowing needed social legislation to stand.

Today, the Court is again exhibiting judicial "activism"—only this time designed to impose radical change instead of a freeze. "When in the name of interpretation, the Court adds something to the Constitution that was deliberately excluded from it," warns Justice Harlan, "the Court in reality substitutes its view of what should be so for the amending process."

TO GUARD THE GUARDIANS

Who is the ultimate arbiter of our Constitution? Does the Constitution limit the Justices as well as the legislators and the President?

The founding fathers, understanding the tendency of all men to grasp ever more power, labored to subject every branch of government to checks and balances. They specifically included the Supreme Court. To the ancient question, "Who will guard these guardians?" they answered emphatically, "The people—through their elected representatives." And, historically, we have asserted that authority on many occasions.

For example, one powerful check on the Court is the President's power of appointment. In 1870, President Ulysses S. Grant filled two vacancies. The votes of these new Justices made it possible to reverse a recent crucial decision, which declared that Congress had no power to issue paper money. Last June's crucial five-four decision on criminal confessions could not have been made had not President Johnson's first appointee, Justice Abe Fortas, promptly lined up with the activists. Since Justice Clark, a moderate, has recently retired, and since several Justices are over 65, Presidential appointments may completely reshape the Court in the next few years.

The Constitution also plainly specifies two major ways in which Congress can check the Court:

The 14th Amendment—under which the Supreme Court has dictated state legislative apportionments and criminal procedures—specifically names Congress as the protector of the rights it creates. While Congress cannot reverse a Supreme Court decision in a specific case, it can write new remedies which the Court is then obligated to apply in resolving such cases in the future. Last year, for

example, Chief Justice Warren specifically acknowledged that Congress may, by simple statute, write rules different from those that the Court handed down for police interrogations.

Article III empowers Congress to make "exceptions and regulations" to the Court's appellate jurisdiction. Thus the Constitution explicitly makes our elected legislators the supreme judges—by simple majority vote—of what types of cases the Court may decide. Says Herbert Wechsler, Columbia Law School professor and director of the American Law Institute, "The plan of the Constitution was quite simply that Congress would decide from time to time how far the federal judicial institution should be used. Congress has the power, by enactment of a statute, to strike at what it deems judicial excess."

Thus the judges are not the sole arbiters of the Constitution. The framers of the Constitution laid on Congress a duty to define the rights it provided, and to act as a counterweight to the Court.

BEYOND THE BOUNDS

Though it has acted at other times—for example, in 1868, when it stripped the Court of power to hear appeals in habeas corpus cases—Congress has failed so far to rein in the present Court. In 1964, the House did vote 218–175 to forbid the Court to interfere in state legislative apportionments. This simple majority vote was, under Article III, sufficient. But in the Senate, an attempt was made to seek passage of the measure as a constitutional amendment, and it missed—by seven votes—the required two-thirds majority. An amendment to permit voluntary school prayer also failed by a narrow margin. Both goals might well have been accomplished, a simple majority vote, under Article III and the 14th Amendment.

Some scholars are convinced that the present Supreme Court would have declared any such effort unconstitutional. Others argue, however, that if the Court had gone to that extreme, Congress could then have retaliated by restricting the Court's future jurisdiction in cases of the kind under Article III.

In the absence of such an effort to check the Court, five Supreme Court Justices, in alliance with one third of either House or Senate, are—by "interpretation"—radically amending our Constitution. Yet amendment is supposed to require a two-thirds vote of Congress and ratification by three fourths of the state legislatures.

The great liberal Justice Benjamin N. Cardozo wrote: "Judges have, of course, the power, though not the right, to travel beyond the bounds set to judicial innovation by precedent and custom. Nonetheless, by that abuse of power, they violate the law."

The founding fathers named Congress as the referee to guard the bounds beyond which the Justices should not go. The time has come for our elected representatives to blow the whistle.

APPENDIX F

[From the Washington Post, Dec. 12, 1974]

The Limitations of Judicial Review

(By Arthur J. Goldberg, Former Associate Justice of the Supreme Court)

United States v. *Nixon* is truly one of the great decisions of the Supreme Court. It reaffirms our constitutional commitment to the rule of law.

"The King," said Lord Coke, "is under God and the law." "The President," said Chief Justice Burger, "cannot prevail over the fundamental demands of due process of law." And, to emphasize that a President, like any citizen, is subject to the laws' commands, the Chief Justice went on to say, quoting Chief Justice Marshall in *Marbury* v. *Madison*, "we therefore reaffirm that it is 'emphatically the province and the duty' of this court 'to say what the law is.'"

It is the awesome power of judicial review of executive and legislative actions which the court rightly exercised in *United States* v. *Nixon*. In applauding the exercise of this power, as I do, it is perhaps appropriate however, in Watergate's aftermath, to emphasize its limitations.

The Court is the final arbiter of the law; it is not the repository of the power to resolve all of the many other grave problems confronting us. Belief in judicial review does not compel adherence to the cult of the robe.

The pervasive belief that judicial law can fundamentally change our social and economic institutions is evidenced by the flood of young men and women to our nation's law schools and the creation of new law schools. This reflects commendable idealism and does give the bar new voices that should be heard. It is necessary, however, to bear the limitations of the judicial process in mind. Judicial law can help us mend our ways to ensure compliance with valid laws and regulations and greater observance of the bill of rights—matters of transcendent importance. It cannot, however, establish social and economic justice by itself.

Directing compliance with a subpoena, even one directed against a President, is one thing—this is judicial stuff; coping with our nation's economic, social and foreign ills is another.

The Court can do nothing about inflation and unemployment; it is up to President Ford and Congress to seek the remedy. Yet, the consequences of the failure to curb inflation and check unemployment may be even more menacing to our democratic institutions than the clear danger to them of Watergate. The fate of the Weimer Republic is a stark example. And at this very time the future of democratic government in several European countries is threatened more by inflation than by Communist subversion.

The Court cannot solve our energy crisis. Only the Executive, Congress and the people can.

The Court canont negotiate SALT II or prevent nuclear proliferation. But our very survival depends upon staying the hand of the nuclear clock, now inexorably advancing to midnight.

The list of our domestic and foreign problems is staggering. These primary examples, however, illustrate my thesis.

There was a time when the Supreme Court attempted to intervene in the resolution of the nation's economic problems during the 1930s. Its attempt to veto President Roosevelt's anti-Depression measures almost resulted in national disaster, prevented only by self-correction on the Court's part. Fortunately, all members of the present Court, regardless of which President appointed them, would surely agree that the remedy for our domestic economic woes and foreign travails is the sole province of the executive and legislative branches of government.

Even in the area of the Court's demonstrated competence, as the ultimate guardian of our fundamental rights, the Court alone cannot ensure the preservation of our liberties. Judge Learned Hand once observed that "a society so riven that the spirit of moderation is gone, no court can save; that a society where that spirit flourishes, no court need save." This rather over-states the case. The Supreme Court has acted on many occasions, and most in *United States* v. *Nixon* needs to be the moral conscience of the nation and, to quote one of Justice Hugo Black's last opinions, as a "palladium of liberty" and a "citadel of (equal) justice." But the Court, lacking the power of the purse and the sword, cannot preserve our liberties if the people are indifferent to them, as they seemed to be for many months about Watergate, until a vigilant press and an aroused Congress alterted them that their very freedoms were in jeopardy.

A nation rightly euphoric about the Court's courageous exercise of power in *United States* v. *Nixon* needs to be reminded of its limitations. This in no way denigrates the role of the Court. Rather, it emphasizes the duty of the executive and legislative branches of the government to exercise their power and responsibility to act with equal courage and responsibility to cure the nation's economic and foreign policy ills. There seems to be a broad consensus that the anti-inflation program that President Ford set forth in his message to Congress is hardly the prescription for our economic malady.

In *United States* v. *Nixon*, the Court, without extraneous considerations, did its duty. Now, it is the time for the President and Congress, without regard to political consequences or special interests, to do theirs.

[From Reader's Digest, October 1974]

Our Prisons Are Powder Kegs

(By Nathan M. Adams)

AND UNLESS WE ACT NOW—BY IMPROVING PRISON CONDITIONS AND CURBING THE EXTREMISTS—AND TERRORISTS WHO ARE RECRUITING INMATES—THERE WILL BE MORE AND MORE EXPLOSIONS

On the morning of May 31, 1973, two inmate-spokesmen for Black Muslim convicts at Pennsylvania's Holmesburg Prison were granted a "grievance hearing" with Warden Patrick Curran and his deputy, Robert Fromhold. No sooner was the meeting under way than the inmates lunged at the officials. Curran and Fromhold were dead within seconds, each stabbed repeatedly with daggers fashioned from table knives. Investigators called it a preplanned, cold-blooded murder. However, such criminals are hailed as heroes and "political prisoners" by both radical inmates and outside extremist groups.

Police and FBI agents in Ohio are monitoring the activities of an extremist group—including former Weathermen—which last year almost succeeded in breaking out a dozen inmates from the Southern Ohio Correctional Institute. The plan called for taking the convicts to a hideout in the hills of West Virginia, where they would undergo training in urban guerrilla warfare. Meanwhile attacks on the prison staff by militant inmates have increased dramatically. And radical "prison-reform" groups have forced state corrections officials to relax discipline to the extent that one inmate group has been permitted to hold military maneuvers togged out in combat boots and berets.

Early last March, a letter intercepted by California corrections investigators disclosed a chilling plot to free several of the state's most dangerous convicts. Terrorists of the Symbionese Liberation Army planned to hijack a busload of school children who were dependents of guards at Folsom Prison. Until the inmates were released, the letter made clear, the hostages were to be beheaded, one a day. Strict new security provisions were immediately enacted, and the plot failed.

STATE OF SIEGE

These shocking incidents are typical of what is happening today in America's prisons. Indeed, extremists have been so successful in their assaults on our antiquated and unwieldy correctional system, and so effective at intimidating administrators and organizing inmates, that they hold many of the nation's 350 federal and state institutions in a state of near siege. "There is not a major prison in this country," reports a top FBI official, "where revolutionaries are not recruiting inmates. Somebody better wake up before it's too late."

How do the agitators do it? For one thing, they now have near-total access to convicts—thanks to a series of recent federal-court decisions relaxing curbs on inmate-mail censorship and visitation privileges. In most of our large prisons, extremists have enlisted more than ten percent of the inmates, forming them into revolutionary cadres which control the majority of convicts through muscle and intimidation.

The arithmetic of the potential danger is frightening. Authorities estimate that 94 percent of the quarter-million or more offenders presently incarcerated in the state and federal institutions will be returned to society within five years. Prison officials agree with radical organizers that thousands of them could emerge as hardened political terrorists. "A ticking time bomb," reports the House Committee on Internal Security, which has probed the situation throughout the country.

LOCKDOWN

California, with the nation's largest inmate population (23,800), has been singled out by radicals as a prime target—with devastating results. In the past four years, 92 convicts have been murdered there, and 265 guards assaulted; 11 of the latter were stabbed to death. The last, Officer Jerry Sanders, was reportedly clubbed and stabbed by two black militants on November 27, 1973, at the Deuel Vocational Institution.

Sanders' murder was the final straw for California's Director of Corrections Raymond Procunier. Investigators learned that prison revolutionaries were planning to kill a guard a week. Two days after Sanders' death, Procunier ordered the wardens of four of the state's penal institutions to confine all inmates to their cells in a "lockdown." Once this was done, prison officials classified and isolated extremist inmates.

The tactic worked—temporarily. From December 1973 through last March, the assault rate fell 63 percent. But radicals' criticism of the crackdown has been strong. Militant organizers even publicized a plan to stage a public execution of Director Procunier.

"What is happening here," says Procunier, "is a highly organized attempt to destroy our system of correctional justice. These agitators mean to bring anarchy to the prisons and, through them, to the streets of our cities. It is an explosive situation."

A look behind the scenes at San Quentin tells why. Originally built in 1852, "Q," as it is known to inmates, has been enlarged and today confines 3,500 of the state's most dangerous convicts. Inmates are shoehorned together as many as eight to a cell. Their days are spent aimlessly, wandering the corridors of the four main cellblocks or basking in the sun of the exercise yard. They have only time on their hands—and nothing to do with it.

Under such conditions, it is little wonder that San Quentin is the most violent institution in the United States. Last year, 54 "Q" inmates were stabbed. Narcotics there are almost as easy to come by as they are on the street. Homosexual rape is a daily occurrence. So, too, is revolution. The comic books and girlie magazines once popular with convicts have long since been replaced by the works of Marx and Mao, Che Guevara and Eldridge Cleaver. San Quentin administrators estimate that 85 percent of the magazines and newspapers subscribed to by inmates advocate revolution. In fear of provoking legal action, censors withhold only the most inflammatory literature. Yet what is denied militants through mail inspection reaches them by other means.

Last year, a virulent pamphlet on urban guerrilla warfare was smuggled into San Quentin, reproduced on a mimeograph machine and widely distributed among inmates before guards seized it. A sample of the lesson plan: "Kidnaping is important to the release of political prisoners. Harm to the victim should not be entertained until it has become obvious that demands will not be met. At such a time he should be executed at once. His face should be disfigured by small-arms fire and pictures of the results sent to the newspapers and television stations across the country."

A NATIONAL PATTERN

While California's experience with prison disruption and radical organizers has been the most severe, prisons in other states are increasingly coming under attack. On June 22, 1973, inmates of the State Penitentiary at Florence, Ariz., went on a rampage of destruction. Before state police brought the riot under control, two corrections officers had been killed.

Five weeks later, the Oklahoma State Prison at McAlester exploded in violence. "Let's go!" convicts screamed. "This is a revolution!" Three inmates, reluctant to join in the riot, were murdered. Only days later, it was the turn of the Federal Prison at Leavenworth, Kans., where militants rioted and a guard was killed.

Why are these disturbances plaguing our correctional system? And who or what is behind them?

To begin with, the U.S. prison system is, in the words of one warden, "the most violent system in the civilized world, and the most in need of urgent reform." In New York State, four of the seven state prisons were built before the turn of the century—one, incredibly, in 1816. Three of the four penitentiaries in Illinois date back to the 19th century.

Nor is age the only factor. In most American prisons—and in local jails, too—prisoners are squeezed together cheek by jowl in conditions that approach the subhuman. Young, first-time offenders, shoveled into overcrowded cells with hardened criminals, are easy prey for homosexual rapists. (A recent paroled mobster promised to shoot his own son before he'd see him incarcerated in an American prison.) Prisons are frequently understaffed, and their guards and administrators poorly trained. Classification of inmates is too often nonexistent.

LEGAL ACCOMPLICES

But if our corrections system has fallen victim to official neglect and public apathy, it has not escaped the attention of others who see in it a unique opportunity to sow the seeds of unrest. FBI and corrections administrators single out the radical National Lawyers Guild (NLG) as perhaps the most important leader of revolutionary prison movements. An organization of activist attorneys formed in 1936, the Guild has grown to 4000 members nationwide. In the past, it was a powerful force in the fight for black civil rights in the deep South. However, in the last decade the leadership has become increasingly radical, and today includes outspoken revolutionaries. Its lawyers have figured prominently in prison disturbances from coast to coast.

In February 1971, the Guild's National Executive Board received a staff report calling for the political organizing of inmates. "The prison work is crucial," said the report, "for only lawyers have relatively free access to jails and penitentiaries. We must see that access is used carefully . . . in providing legal support for prison militancy and organizing." A year later, one militant faction submitted a prison position report stating: "Prisoners are the revolutionary vanguard of our struggle. When prisoners come out, they will lead us in the streets."

One of the most radical Guild chapters in the nation, with a membership of no fewer than 600 practicing attorneys and legal assistants, is located in San Francisco. While Guild officials deny any illegal activity, some evidence has appeared to the contrary. One reported example of the Guild's work: In July 1973, Lee Arthur Smith, a recently paroled inmate at the California Men's Colony at San Luis Obispo, told a Congressional committee, under oath, that he had been ordered by a fellow NLG organizer inside the prison to assault a guard to gain attention for a prisoners' strike. Indeed, he testified, before the assault the planning for the strike was submitted to outside NLG contacts who approved and set a time and date. Badly beaten, the guard survived.

Nor are radical lawyers the only organizers of prison movements in the United States. Vietnam Veterans Against the War (VVAW) has founded a splinter group specifically to concentrate on politicizing inmates. Called the Winter Soldier Organization, it recently staged widespread demonstrations in support of the Leavenworth inmates indicted as a result of the 1973 riots in which the guard was killed. Then there is the National Prisoners' Reform Association, based in Rhode Island, which has managed to organize inmates in nearly every New England penal institution. From March through May 1973, the Association's organizers simply took over Walpole Prison outside Boston. Inmates who refused to join in were stabbed and beaten. In the three months that the Association controlled the institution, prison administrators reported nearly 50 convicts were knifed or badly beaten by Association thugs.

FACING THE SHAME

With the great majority of convicts in U.S. institutions due for parole in the next five years, what can be done to counteract the revolutionary menace? At

a minimum, authorities agree, progress must be made, and soon, in the following three areas:

At present, only a handful of penal institutions have investigators trained to recognize the activities of revoluntionary organizers. Thus, prison officials are often unaware of what is going on until a prison erupts. The Law Enforcement Assistance Administration is currently spending $113 million to assist states in running prison programs. Clearly, some of these funds should be used to train investigators.

Despite mounting evidence, state bar associations have refused to take disciplinary action against extremist attorneys. The American Bar Association itself should launch an immediate investigation of the links between prison revolutionaries and outside groups like the Guild.

Finally, the public must be made to recognize the shame of its prisons. New prisons must be built, much smaller than current institutions, where regular inmates can be kept separate from violent offenders and agitators. State and federal governments must begin to make badly needed reforms in such areas as medical care, job-training, rehabilitation and work-release programs. This is not a matter of coddling criminals. It is, instead, the satisfaction of basic human needs.

Time and again, warnings about the state of our prisons have fallen on deaf ears. The time to act is now, before it is too late.

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APPENDIX G

[From FBI Law Enforcement Bulletin, October 1974]

Message From the Director

(By Clarence M. Kelley, Director)

Terrorists cultivate fear with a cunning intent. Through fear they hope to intimidate lawful authorities and cow people of goodwill to accept their frequently irrational demands. Terrorism has no place in a free society. To defend it or to shield it is simply to glorify violence.

One contemporary writer has noted: "There was a time when violence was a means of last resort. Now it is a method of communication." This statement, it seems to me, is particularly apt in describing the situation in our country, which during the past decade has experienced a disturbing accumulation of terrorist acts.

Certainly, despite its faults and shortcomings, this Nation offers more peaceable remedies for grievances, real or imagined, than any on earth. With rare exceptions, our country's history is filled with the records of satisfactory and peaceful solutions to seemingly irreconcilable differences. This is the great strength of democracy—its capacity to accommodate a wide range of sharply divided opinions. Communication among divergent views needs only rational discussion. Reasonable men advancing reasonable arguments need never resort to violence.

Yet, in recent years, there has been in the United States a proliferation of groups with sinister and militant-sounding names that have adopted foreign-bred terrorist tactics as their creed. Thus far this year, for example, individuals affiliated with these groups have been linked with the killing and wounding of police officers, kidnapings, racist murders, bombings, jail-break attempts, prison riots, bank robberies, urban guerrilla warfare, and even the posting of public notices threatening death to any who oppose them. Surely, there are no rational philosophies, programs, or grievances that need communication by such methods.

While all citizens must be concerned with the indiscriminate threat of terrorism, law enforcement officers should pay particular heed to its dangers. Lawful authority, as symbolized by the police, is a primary target of the terrorist. In seeking to destroy precious constitutional processes, the terrorist has no hestitation to use the personal guarantees they provide to evade detection, apprehension, and prosecution for his crimes.

There is another grave danger in terrorism to which all law enforcement officers must be ever alert. That is the tendency for persistent acts of violence to be met with counterviolence. The inability of authorized law enforcement agencies to cope with terrorist acts spawns, as we have seen elsewhere in the world, counterterrorist movements, which only fan the flames of violence and further erode personal freedoms.

The law enforcement profession should take a hard look at its capability to stop the growth of terrorism. The FBI Academy has held several symposiums on various aspects of this threat. More will be held. Several hundred training conferences have been conducted throughout the Nation this year by FBI personnel with local, State, and other Federal law enforcement agencies on the frequent and ugly terrorist crime of taking hostages.

All levels of our profession must unite in confronting the many-faceted threat of terrorism. It is a foe against which solid public support and all the skill and determination at our command are required.

APPENDIX H

[From the FBI Law Enforcement Bulletin, October 1974]

The Legacy of Carlos Marighella

(By Thomas J. Deakin, Special Agent, Federal Bureau of Investigation)

The influence of urban guerrilla theories developed in other countries during the past several decades on would-be terrorists in the United States is considerable. To understand the development of urban guerrilla activity in this country, it is necessary to examine its historical and geographic antecedents. This examination helps focus on the peculiar nature of this genre of revolutionary activity as it is practiced here and illuminates some of the dilemma encountered by the urban guerrilla in the United States.

Such an examination requires, first, a definition of terms, although the media uses "terrorist," "urban guerrilla," and "revolutionary" almost interchangeably. In the context of today's political world, urban guerrilla warfare can be defined as criminal conduct for revolutionary purposes. Terrorism on the other hand, is usually violent criminal activity designed to intimidate for political purposes. The distinction is in goals sought, and only sometimes in methods used. The guerrilla is working toward revolution. The terrorist acts to focus attention on a particular grievance.

A word on the distinction between urban and rural guerrillas: While the difference would appear to be simply geographic, there exists an argument between proponents of the two types of guerrilla warfare. Part of this dispute lies rooted in interpretations of Marxist theory and it has not affected advocates of guerrilla warfare in this country nearly so much as have the practical considerations that (1) power of all types—governmental, political, economic—lies primarily in America's urban centers, and (2) most of those who have become guerrillas in the United States are individuals with urban backgrounds. They would be "fish out of the sea" operating in a rural area. Rural communes have been used as guerrilla hideouts in this country, particularly by New Left-type revolutionaries, but these rural commune dwellers have not mounted their guerrilla operations in rural areas.

While the primary difference between the terrorist and the guerrilla is in the accomplishment sought—overthrow of the government in the case of the guerrilla or a more limited political goal, such as discouraging support for Israel by attacking targets believed supportive of Israel on the part of the Arab terrorist—the distinction is sometimes confused when urban guerrillas use indiscriminate terror as a tactic. Bombings are historically the most common instrument of the terrorist, as the unsuspected bomb, especially when used against civilians, is well calculated to instill fear. Witness the worldwide letter bomb campaign against Israeli officials and sympathizers that followed the XX Olympiad, and then the letter bomb campaign directed against British establishments, part of the Northern Ireland situation.

Robert Moss, who has written extensively on the topic of urban guerrilla warfare, put it succinctly: "The terrorist has a political tool; the urban guerrilla has a strategy for revolution . . . ." [1] The matter of violence is sometimes of assistance in delineating terrorism and urban guerrilla warfare. Terrosium almost always involves violence: bombings, assassinations, kidnapings, and airplane hijackings all involve force or the threat of force. But the urban guerrilla can use almost any activity, violent or not, that is designed to disrupt the functioning of government or the "establishment." The tactic of supporting revolutionary activity through expropriation has been used as justification by some Weatherman types in this country for various frauds involving traveler's checks

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[1] *Urban Guerrilla Warfare* (The International Institute for Strategic Studies, London, 1971), p. 3.

and stolen credit cards. Without violence, the "establishment" is still disrupted—through "ripoffs."

The expropriation tactic itself may serve to indicate whether terrorism or urban guerrilla activity is involved. The urban guerrilla must be indigenous to create a revolution. But his tactics are not those of the orthodox Marxist revolutionary, thus he does not receive financial support from Marxist countries and must rely on expropriation, or other usually indigenous assistance, for funds. The political terrorist is often involved in third country operations, is not physically present in his ultimate target country, and often receives support from still other countries or individuals sympathetic to his aims.

Dr. Stefan T. Possony, however, would include urban guerrilla warfare as defined here within an overall concept of "strategic terrorism" on the part of revolutionaries aiming to defeat a hostile state. Private terrorism is then differentiated as criminality.[2] Dr. Possony later notes that there are distinct forms of strategic terrorism—described in this article as urban guerrilla warfare and political terrorism—and that the planner needs a typology of the distinct forms in order to counter them.

URBAN GUERRILLA ACTIVITY IN THE UNITED STATES

While this country has not seen sustained or unified urban guerrilla activity on the scale of the Tupamaros of Uruguay, nonetheless there have been a significant number of attacks on police, bombings, and expropriations by revolutionaries of this type in the past 3 years. Two primary movements have been involved in these activities—the Weatherman-type revolutionary of the New Left and the Panther-type black extremist.

The Weatherman group grew out of the Students for a Democratic Society (SDS), itself reorganized in 1962 at the height of student civil rights activity in the South. Involved in the early stages of the antiwar movement, the organization began moving toward a violent revolutionary posture in 1967. An SDS member was convicted of attempting to bomb ROTC facilities and another was charged with sabotage in dynamiting power transmission lines. An SDS faction, calling itself the Weatherman ("You don't need a weatherman to know which way the wind blows" was a line in a then-popular song), split from the parent group in 1969 over the advocacy of revolutionary violence.

In February 1970, the Weatherman group closed its national office in Chicago, discontinued its newspaper, and went underground into collectives and communes. The group's strategy was proclaimed in a letter to the press, received on May 21, 1970:

"Now we are adapting the classic guerrilla strategy of the Vietcong and the urban guerrilla strategy of the Tupamaros to our own situation. . . ."[3]

A series of bombings followed, claimed by the Weatherman group in letters or calls to the news media, including the March 1, 1971, bombing of the U.S. Capitol Building and the May 19, 1972, bombing of the Pentagon. Other groups with revolutionary goals, and outlandish labels such as the Purple Sunshine Clan, the Proud Eagle Tribe, the New Year's Gang, The Perfect Park Home Grown Garden Society, the Quarter Moon Tribe, and the Smiling Fox Tribe, also claimed bombings directed against the "establishment." In 1974, the Weatherman group claimed bombings in San Francisco and Los Angeles.

But this half of the guerrilla movement in this country remained: "structurally fragmented, decentralized, loosely organized, with little direct leadership. Among its components (were) the original Weatherman elements, bolstered by occasional recruits. Then there (were) Weatherman-type individuals and groups not organically linked with the Weatherman but allied in mood and motivation."[4]

New Left-type guerrilla warfare in the United States is seen as part of a "clearly discernible trend" in the world. Edmund Demaitre described the phenomenon of: "highly educated, occasionally highly gifted, middle class and upper-middle-class intellectuals slowly succumbing to a revolutionary mystique that incites them not only to condone violence as a means of political struggle but also to participate personally in terrorist actions. . . ."[5] Indeed, the first Tupamaro

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[2] "Terrorism, A Global Concern," *Defense/Foreign Affairs Digest* (January 1973), p. 4.
[3] "Outlaws of America, Communiques from the Weather Underground," *The Liberated Guardian* (New York, 1971), p. 3.
[4] J. Edger Hoover, "Extremist New Left Violence," *The University of Maryland Law Forum*, Spring 1972.
[5] "Terrorism and the Intellectuals," *Washington Star and Daily News*, April 15, 1973.

manifesto, issued in 1965, justified a Montevideo bombing as a protest against U.S. involvement in Vietnam.

The other half of the urban guerrilla movement in this country is the Panther-type black revolutionary—also a fragmented and loosely organized movement. In February 1971, the Black Panther Party split into two factions, one headed by Minister of Defense Huey P. Newton and the other by Minister of Information Eldridge Cleaver, a fugitive then residing in Algiers. The Cleaver faction quickly took the lead in advocating violence, especially violence against police officers. The Newton faction, to distinguish itself from the Cleaver followers, emphasized political activity rather than revolution now, while, in the Panther publication Babylon (November 1–14, 1971), Eldridge Cleaver asserted: "the absolute right of the Afro-American people to take up arms and wage war against their oppressor . . . by taking the initiative and actually attacking the pigs (police) with guns, and killing them."

The primary vehicle for Panther urban guerrilla activity has been the Afro-American Liberation Army, better known as the Black Liberation Army. The public activities of this group began on May 19, 1971, when two New York City police officers, pursuing an apparent traffic violator, were wounded in a hail of machinegun bullets. Two days later, another two New York policemen were shot and killed by black assailants. Letters to the news media, signed "Black Liberation Army," claimed credit for these attacks.

Since then, the Black Liberation Army has been linked to a continuing series of attacks on police—2 officers were killed and 17 were wounded in 1973 shoot-outs alone—in addition to other urban guerrilla actions, particularly armed expropriations. Scores of weapons, including machineguns and hand grenades, have been seized from Black Liberation Army arsenals. The organization was described in the February 29, 1972, issue of the newspaper Right On!:

"The purpose of the Black Liberation Army is the same as that of the Tupamaros in Uruguay, Frelimo in Mozambique, and all the other liberation forces. The Black Liberation Army is simply brothers and sisters who have gone underground to put all the revolutionary rhetoric and theory into practice. The difference between the Black Liberation Army and the aboveground politico-apparatus, the Black Panther Party is that the Black Panther Party (is) organizing and politicizing in the open by whatever means necessary and advantageous and the Black Liberation Army moves in a military manner to carry the politicizing to its logical extension—action."

One of the newest urban guerrilla groups, the Symbionese Liberation Army (SLA), has claimed credit for the November 6, 1973, murder of Oakland, Calif., school superintendent Dr. Marcus Foster and for the February 4, 1974, kidnapping of Patricia Hearst. The group demanded ransom in the form of a multimillion dollar food giveaway program in California. Leaders of the Symbionese Liberation Army were identified in an April 15, 1974, California bank robbery; some of these leaders died in the subsequent shoot-out with authorities in Los Angeles.

The apparent catalyst in forming this "army" was visits to black prison inmates in California by revolutionary white youths. The group's strategy is set out in its "Declaration of Revolutionary War" which calls on "all revolutionary black and other oppressed people within the Fascist United States to . . . fight in the forces of The Symbionese United Liberation Army." Specific goals of the groups, taken from this declaration, include: Destruction of the capitalist state; control of industry by the "people"; formation of communes; children to be the "responsibility of the community"; destruction of the prison system; seizure of state and capitalist-owned land, to be given to the "people"; total destruction of the rent system; and "destruction of racism, sexism, ageism, capitalism, fascism, individualism, possessiveness, competitiveness.

MARIGHELLA'S INFLUENCE

Carlos Marighella's "Minimanual of the Urban Guerrilla," called the "Holy Writ" of modern guerrillas by one writer, has had as much influence on the theories and tactics of urban guerrillas in this country as any writing in the field. An early indication of this is seen by comparing Marighella's statement that "[t]he principal object of the ambush tactic is to capture enemy arms and punish him with death"[6] with Stokely Carmichael's writing. Carmichael, who

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[6] Carlos Marighella, *Minimanual of the Urban Guerrilla* (New World Liberation Front, 1970), p. 26.

lectured to American college audiences on urban guerrilla warfare in 1970 before he traveled to Africa as the late Kwame Nkrumah's protege, cited Marighella's tactic on capturing weapons in his talks and included it in his book in this form: ". . . when the guerrilla kills a member of the occupying army, he not only takes the gun that's around his waist, he opens up the door and he takes a 12-gauge shotgun." [7]

This tactic was adopted by the Cleaver faction of the Panthers. Right On! (February 15, 1972, p. 10) called for urban guerrilla units to act as "Revolutionary Executioners of the gestapo pigs (police) mainly to capture weapons from the enemy. . . ."

But there are no immutable laws in urban guerrilla warfare tactical manuals. When Panthers in the Black Liberation Army took weapons from officers they killed, they found these weapons a deadly link in a chain of evidence tying them to the slayings. Soon, guerrilla notes were found that advised:

"We do not need to take weapons from iced (killed) pigs, specially those that have been righteously baconized. There are better places to rip-off weapons—not where they can be linked to butchered hogs."

Marighella was a longtime Marxist. He held office in Brazil as a member of the Communist Party after World War II. By the 1960's, Marighella was a top leader of the orthodox Communist Party of Brazil, but his theories of urban guerrilla warfare finally led to a break with the Party. His view of the class struggle holds to the necessity of armed struggle by the urban guerrilla, with two primary objectives: "a) the physical liquidation of the chiefs and assistants of the armed forces and of the police; b) the expropriation of government resources and those belonging to the big capitalists . . . with small expropriations used for the maintenance of individual urban guerrillas and large ones for the sustenance of the revolution itself." [8]

And these primary objectives—a "disposition" to kill police as Marighella calls it, and financing guerrilla activities (especially for the maintenance of individual guerrillas) through expropriation—have been adopted in toto by the Panthers and their Black Liberation Army. On February 15, 1972, the Panther newspaper Right On! (page 10) called for ". . . armed revolutionary violence. . . . [r]ipping off money from banks. . . ." and executing police. Members of the Black Liberation Army have ambushed and killed police officers and have robbed banks—and messages from these guerrillas have boasted of these activities. "Communique No. 1," published in Right On!, April 5, 1971, page 17, signed by the Attica Brigade of the Afro-American Liberation Army, claimed those who threw a hand grenade under a New York City police car on December 20, 1971, were on a mission to "rip off funds for the Afro-American liberation struggle." Marighella's primary objectives were most succinctly expressed in a "Message from the Black Liberation Army," published by Right On!, April 5, 1972, page C: "The police have the guns and the banks have the money."

The act of expropriation is, of course, not a new technique. The Bolsheviks used robberies of Czarist banks to finance their activities; Joseph Stalin gained an early reputation in Russia as a bank robber for the communists. But Marighella's overall theory of revolution differed from that of orthodox Marxists. Instead of an uprising by politically indoctrinated masses led by an indigenous communist party, the urban guerrilla's theory of revolution is to demonstrate that the government is incapable of fulfilling its primary purpose, that of providing a stable and ordered society. If this basic function of government is eroded in practice, then the masses will reject the government in power. Rejection will come about through revolution, which will come to fruition when the most visible symbol of government, law enforcement, is shown to be impotent in battling the guerrilla. Hence, the primary objective of attacking police officers: If the police cannot protect themselves, how can they protect the citizenry—their basic function?

The "Minimanual of the Urban Guerrilla" has been extensively circulated in this country, by the Panthers and by other guerrilla groups. It has been included in most of the collections of revolutionary literature found in the possession of Black Liberation Army members and other revolutionaries. It has served as a textbook for formal "political education" classes. Excerpts have been serialized in the Panther newspaper Right On! and portions of the "Minimanual" have appeared in the so-called underground press. Field Marshal Donald Cox, a

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[7] Stokely Carmichael, *Stokely Speaks* (New York, 1971), p. 213.
[8] Marighella, *Minimanual*, p. 6.

Panther fugitive who joined Eldridge Cleaver in Algerian exile, dedicated his pamphlet "On Organizing Urban Guerrilla Units" to Marighella. Cox freely quotes Marighella in his "little red book" on guerrilla tactics and weapons.

The Symbionese Liberation Army may have followed three of the "action models" set out in the "Minimanual of the Urban Guerrilla": Execution, kidnaping, and expropriation—tactics common to Latin American and other guerrilla groups. Marighella defined execution as the "killing . . . of a fascist personality in the government involved in crimes and persecutions against patriots." [9] "Communique No. 1" from the Symbionese Liberation Army, in which the group claimed the murder of Dr. Foster, was in the form of a "warrant" from the "Court of the People" which accused Dr. Foster of "taking part in crimes committed against . . . the people." (These "crimes" were the proposed introduction of guards and identification cards into Oakland schools.)

According to the "Minimanual," the kidnaping of well-known, but apolitical, persons "can be a useful form of propaganda for the revolutionary. . . ." [10] The ransom in this case included a demand for the publication of several Symbionese Liberation Army propaganda tracts, and the media was warned that "attempts to confuse the public by withholding or omitting sections of the tape or S.L.A. documents jeopardizes the prisoner." But this type of kidnaping differs from that of a political personality or a police agent, according to Marighella. It must be "handled so that the public sympathizes with it and accepts it." [11] Hence, the ransom demand of food for others rather than cash for the kidnapers.

Following the example set by Algerian rebels, the Weatherman group, the Black Liberation Army, and the Symbionese Liberation Army in this country, have used the now classic guerrilla term "communique" for their message. The Symbionese group has posted its message ("Communique No. 1" in a different format) on telephone poles and has sent it to a variety of community organizations, both techniques recommended in the "Minimanual." A copy of Marighella's book was among the urban guerrilla documents found in a Symbionese Liberation Army pad.

As an organizational outline and a tactical handbook, Marighella's book has gained him a measure of immortality in guerrilla circles. He was killed in a gun battle with police in November 1969, just a few months after the appearance of the "minimanual." The biographic note in the 1970 New World Liberation Front edition (copied from the Tricontinental translation, January-February, 1970), notes that the "Minimanual" will become "one of the principal books of every man who . . . takes the road of armed rebellion." It has.

DIFFERENCES IN NEW LEFT STRATEGY

The Weatherman type of New Left urban guerrillas has not opted for Marighella's theories to the degree that black extremists have. Expropriations, yes, even bank robberies, but these primarily white revolutionaries eschew the "macho" masculinity syndrome evident in Panther gunfights with police. The anarchist's bomb is their weapon, and the "establishment" in general (and law enforcement only as a part of the establishment) their target. While Weatherman members (later called Weatherpeople, or collectively, the Weather Underground, in response to male chauvinism charges from the ranks) advocate revolution through urban guerrilla warfare, in common with other such revolutionaries around the world they have not presented specific ideologies to replace the structures of government they would topple.

Robert Moss highlighted this lack of a "single coherent statement of ideology" on the part of any urban guerrilla group: "along with an indifference to the normal forms of political agitation and a virtual silence about social conditions. that makes most urban guerrillas 'Blanquists' in the sense that Lenin defined the term: military conspirators with a tactic rather than a political philosophy." [12] Mr. Moss notes that Marighella's "Minimanual" comes closest to formulating a strategy, yet it "offers more instruction about simple weaponry than about the kind of society he wanted to create." [13]

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[9] Ibid., p. 30.
[10] Ibid., p. 31.
[11] Ibid.
[12] Robert Moss. "Urban Guerrillas In Uruguay," *Problems of Communism*, September-October 1971, p. 15.
[13] Ibid.

Kwame Nkrumah does present a strategy and specific objectives—"Nationalism, Pan Africanism, and Socialism" [14]—along with basic techniques of guerrilla warfare. But, although Stokely Carmichael has recently propagated Nkrumah's objectives in lectures at various U.S. colleges, Nkrumah was not an urban guerrilla, nor have Panther-type urban guerrillas in this country yet adopted his philosophy. In this respect, one could say none of the urban guerrillas in this country have any strategy much beyond revolution for its own sake. Still, there are theoretical antecedents for New Left-type urban guerrillas. These are primarily the military writings of Che Guevara, Regis Debray, Stalin, and Lenin.

Guevara, for a time a folk hero to many members of America's commune society, was a rural guerrilla. He wrote that the countryside is the battleground in underdeveloped (Latin and South) America and that a "suburban guerrilla band," if one developed, would be subordinate to direction from rural guerrilla chiefs. Glossing over this element of Guevara's philosophy, the New Left seized upon his thesis that "[i]t is not necessary to wait until all conditions for making revolution exist; the insurrection can create them." [15] Despairing of recruiting masses of U.S. "workers," or even a significantly large number of U.S. students, as required by Marxist doctrine then extant, this "foco" theory was the denouement sought by the elitists of the New Left. Instead of organizing the masses as a whole, per Marxist dictates, they decided that "a small group of armed insurgents . . . can act as a focus for the various discontended elements. . . ," in the words of Brigadier Kitson, the British Army counterguerrilla expert.[16]

"Foco" is used in a second sense as the first, and leadership, unit of the "liberation army." In the "classic" guerrilla mode, as explained by Regis Debray, the military pyramid of the liberation forces in Latin America "tends to be built from the apex down—the permanent forces first (the *foco*), then the semiregular forces in the vicinity of the *foco* . . . ." [17] This dualistic use of "foco," both as a theory of revolution and as the name of an initial guerrilla group, has not facilitated the grasp of the concept and in this country "foco" has become a glib catch phrase for the intellectual fringe rather than a working guerrilla concept.

This Cuban, or Guevara, influence also extends from the theoretical down to the tactical level. A diagram showing how to launch a Molotov cocktail from a rifle or shotgun, on page 55 of the Vintage Books edition of "Guerrilla Warfare," was copied on page 99 of "The Anarchist Cookbook," by William Powell (New York, 1971). "The Anarchist Cookbook" (the title stems from the chapter on recipes incorporating marihuana or hashish) covers guerrilla organization and technique, and has become quite popular among student revolutionaries here. Another "how to" book for guerrillas, emanating from Cuba, is "150 Questions for a Guerrilla" by General Alberto Bayo, "The Man Who Trained Castro." A detailed manual on sabotage and explosives, "150 Questions" was circulated by New Left groups in this country as early as 1968. General Bayo was a Marxist veteran of the Spanish Civil War, who, like Abraham Guillien, settled in South America and drew on his experience in Spain to write on guerrilla warfare. Guillien, author of "Philosophy of the Urban Guerrilla" and other works, may have had considerable influence on Carlos Marighella.

"Armed propaganda" is another concept adopted from abroad by urban guerrillas in this country. As Regis Debray explains it: "The destruction of a troop transport truck or the public execution of a police torturer is more effective propaganda for the local population than a hundred speeches." [18] Debray claimed that during at least one 2-year period of warfare, Castro did not have any political rallies in his zone of operations. This tactic, added to the "foco" theory, was ideally suited to U.S. revolutionaries whose speeches, after some initial successes on the campuses, took on some of the irrelevance of other periodic campus fads. Action, or propaganda of the deed, would replace the sterility of revolutionary oratory.

And "Propaganda of the Deed" was even the subtitle of "Underground Manual Number 3," one of the first handbooks of guerrilla military techniques to circulate in the United States. (There were no manuals numbered one and two.) This booklet was first circulated by the New Left and was then picked up by the underground press. The material on homemade explosives, booby traps, and incendiaries, such as thermit and napalm, was also irresistible to the Panthers. They circulated the pamphlet, too, but in an unusual gesture of circumspection,

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[14] Nkrumah, *Handbook of Revolutionary Warfare* (New York, 1969), p. 24.
[15] Che Guevara, *Guerrilla Warfare* (New York, 1969), p. 1.
[16] Frank Kitson, *Low Intensity Operations* (London, 1971), p. 33.
[17] Regis Debray, *Revolution in the Revolution?* (New York, 1967), p. 51.
[18] Ibid., p. 53.

cloaked it in an innocuous cover, that of a Department of Agriculture bulletin. But the Panthers, as popularizers of the slogan "pig" for police officers, picked a bulletin on processing pork for their cover.

Part of armed propaganda, according to Debray, includes the tactic of demonstrating the vincibility of law enforcement, similar to Marighella's "disposition" to shoot police:

"In order to destroy the idea of unassailability—that aged-old accumulation of fear and humility vis-a-vis the . . . policeman . . . there is nothing better than combat." [19]

This element of armed propaganda was an obvious early success of the Panthers, who gained much stature in some circles with their armed invasion of the California legislature. Indeed, the initial armed Panther confrontations with police were designed to show their ability to stand up to, and face down, law enforcement officers.

Certain writings of Lenin and Stalin were used extensively, if selectively, in a thesis advocating urban guerrilla warfare on the part of the recently disbanded Venceremos group, itself a splinter of the Revolutionary Union, a national Maoist organization. This "military strategy" paper presents the dilemma of "dual errors of adventurism" (premature action) and "social pacifism" (agreeing to armed struggle, but only at some distant time in the future). A sophisticated political document, the Venceremos statement recognizes the split aborning among Marxists over the "foco" theory, revolution from the apex of a sociological pyramid, with its emphasis on the gun, or propaganda of the deed. It is interesting to note that a sociologist author of a fictional scenario of urban guerrilla revolution in America (who describes himself as a democratic radical) feels that "[a] revolution cannot be artificially induced. . . . To attempt to induce it prematurely . . . is adventurism. . . ." [20]

The Venceremos paper uses certain of Lenin's writings—"The Black Hundreds and the Organization of an Uprising," "From the Defensive to the Offensive," "To the Combat Committee of the St. Petersburg Committee," and "Tasks of Revolutionary Army Contingents"—written during the 1905 Revolution as evidence of the need to "begin military action as soon as possible." Even Stalin's "Political Report of the Central Committee to the 16th Congress of the CPSU" is used to support the thesis that the time is right for organized urban guerrilla warfare. Parenthetically, the primarily white Venceremos group recognizes the divergent courses taken by white and black guerrillas here, and calls the problem "white chauvinism." Venceremos notes: "Somehow, white skins are assumed to be too valuable to sacrifice to a pig's bullet, while Black and Brown minds are seen as unable to cope with the theory of Marxism-Leninism."

CONCLUSION

Without question, Carlos Marighella, Che Guevara, and Regis Debray are among the primary lineal progenitors of the urban guerrilla theories and tactics practiced in the United States today. Their influence on causation of this phenomenon in this country is rather more within the purview of the sociologist/historian, however. Behind Marighella and company is more than a century's development of Marxist doctrine, for these theorists of urban guerrilla warfare were first Marxists. The non-Marxist observer may delineate them as the first of a new breed, their philosophy a climacteric in the development of Marxist revolutionary thought. The orthodox Marxist sees them as "adventurists," and repudiates them. The lack of true communist uprisings in recent history, as opposed to "revolutions" with the Soviet military as surety, coupled with the Cuban experience, would seem to weigh toward the judgment that perhaps these "wars of the flea" in urban settings are, indeed, the wars of the future.

In the United States, of course, we have just the embryo of such a war, and an unorganized embryo at that, though deadly to Marighella's first target, the policeman. While recent history has shown that not all urban guerrilla campaigns succeed, it could be argued that the disruptions of even embryonic urban guerrilla warfare may be a self-generating catalyst, leading to further serious revolutionary activity. One interpretation of Marxism takes just such a view. However, the irregular pulsation of urban guerrilla activity in America during the past half decade almost defies anything better than an "if, then" prognosis, tempered by a multitude of economic and sociological factors.

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[19] Ibid., p. 52.
[20] Martin Oppenheimer, *The Urban Guerrilla* (Chicago, 1968), p. 173.

APPENDIX J

TERRORISM

[Speech by Jay Mallin, Oct. 17, 1974, Miami, Fla.]

Ours is indeed a vulnerable society.

It is a society subject to many ills and many dangers. Not the least of the dangers is terrorism, political terrorism and criminal terrorism operating under political pretexts.

We are vulnerable to terrorism today. We will be even more vulnerable tomorrow.

The horror of terrorism has been starkly brought forth by the massacre at Ma'alot and other mass killings along the Israeli-Lebanese border, by the mass murders at Lod, Rome and Athens airports, by the assault of the Twentieth Olympic Games.

The greatest terror campaign of modern times was conducted by the Viet Cong in South Viet Nam. It is estimated that over 30,000 people were murdered in the period 1961 through 1970. In Ireland more than 1,000 people have been killed by terrorists. In Argentina there were approximately 170 known kidnappings last year alone, and, incredibly, more than $100 million was paid in ransoms over a two-year period.

The prime minister of Spain killed by a bomb. A senator assassinated in the Irish Republic. Seven killed and nearly 100 persons injured in a bomb blast in Italy. Twenty-two persons killed and over 100 injured by bomb explosions in Dublin.

A British rancher kidnapped in Paraguay. An American nurse and five American oil prospectors kidnapped in Ethiopia. A German diplomat kidnapped in Ulster. Russian doctors kidnapped in Burma. American diplomats and Mexican businessmen kidnapped in Mexico.

Terrorism is widespread throughout the world. The United States has not escaped terror. The Patricia Hearst affair has held the headlines, but there have been a good many other acts of terrorism in recent months. There have been bomb explosions, the killing of police officers and, since the first of this year, more than twenty known kidnappings. One chain of stores alone has had five or six of its managers seized and held for ransoms.

During the period 1971–1973 there was a total of 573 incidents of violence attributed to terrorists. These included 21 arsons, 23 ambushes, 45 snipings, 114 fire-bombings and 127 other bombings. During this same period terrorists were responsible for the deaths of 22 civilians and 43 policemen.

Today the Federal Bureau of Investigation has under investigation 21 different terrorist groups with memberships totalling approximately 15,000 individuals.

Criminal actions have been with mankind since Adam stole the apple. Why is terrorism different? What is new about it? Why is it so dangerous, and why is it spreading around the world?

In September of 1972 the world was stunned to hear that the Twentieth Olympic Games, a symbol of international harmony, had been made the target of an attack by political terrorists. A group of urban guerrillas belonging to the Palestinian Black September Movement had forced their way into the Israeli quarters at the Olympic site and seized nine hostages.

The guerrillas issued a number of demands, including one for the release of 200 Palestinian prisoners in Israel. Day-long negotiations took place between the guerrillas and the West German Government, and eventually the government appeared to accede to the Palestinian demands. An accord was reached whereby the terrorists, together with their hostages, were to be taken to an airport and there provided with air transportation to Egypt. At the military

airport, however, German snipers opened fire on the terrorists, and in the resulting battle all Israeli hostages died, as well as four guerrillas, a police officer, and a helicopter pilot.

Thanks to the miracles of modern communications people in many lands were kept abreast of developments minute by minute. Americans watched television in fascination as events unfolded before their eyes. When the final holocaust occurred at the German airport, feelings of horror and revulsion against the terrorists swept the civilized world.

The question was repeatedly asked, what did the Palestinians hope to gain? Did not the kidnappings and killings do their cause far more harm than good? The actions of terrorists, however, cannot be measured in the way acts of war and revolution are appraised. Urban guerrillas do not march to the same drum that regular soldiers march to, or even rural guerrillas. Their rationales and methods are different; their immediate goals are different.

Terrorism is the weapon of the few against the many, of the militarily weak against the militarily strong. Unable to meet his foe in open combat on the battlefield, or even in the forested or mountainous areas preferred by the rural guerrilla, the terrorist strikes stealthily at his enemy's vulnerable spots. These may not be militarily important—hence are unguarded and susceptible to attack—but they provide the terrorist with the opportunity to discomfort and embarrass his enemy and to publicize his cause and his activist presence. After having seized and destroyed three jet airliners in September 1970 Arab extremists boasted that "the headlines have shown that our cause is now clearly publicized."

With much of the world's population concentrated in or moving toward urban areas, guerrilla warfare has also moved into the more heavily populated regions. The fundamental precepts of rural guerrilla warfare—hit, run, and hide, or as Thomas Edward Lawrence, Lawrence of Arabia, said, "Tip and run, no pushes, but strikes"—have been adapted for urban guerilla conflict.

For the extremist (or militant, or activist—call him what you will), urban guerrilla warfare offers clear advantages over rural guerrilla warfare. If he is a city youth, he can remain in the cities and need not meet the rugged demands of rural and hill fighting. In the cities there are a plethora of potential targets. The countryside offers few targets. In the cities there are opportunities for militant actions (such as the surreptitious placing of bombs) which do not necessarily entail direct personal and immediate conflict with the police. In the countryside guerrillas must eventually prove themselves by combat with units of the regular army. Rural guerrilla warfare requires a great deal of physical exertion over a long period with few gratifying results.

One of the characteristics of terrorist activities is the killing of police officers. In South Viet Nam the police were a priority target of terrorists. Not only were individual policemen shot but even police headquarters were attacked. In the Dominican Republic, at the time of the 1965 uprising, so many police were attacked and killed by terrorists that the police disappeared from the streets of the capital city. In Uruguay, too, at the height of the Tupamaros campaign, the police were a specific target of the terrorists.

The United States, too, has suffered assaults on police officers. Many have died in the line of duty in recent years. During the ten-year period 1963 through 1972, 786 police officers were slain. Of these, sixty-three were killed from ambush, that is, they were the victims of terrorists.

The killing of police is not merely a matter of striking at a hated enemy by dissident groups. There is a hard purpose behind this tactic. Police are a symbol of the existing order; they are also a major support of that order. To attack the police is to deal psychological as well as real blows against the existing establishment. Weaken the morale and effectiveness of the police and you weaken the entire civil structure.

Sixty-eight years ago the Bolshevik leader, N. Lenin, laid down the basic rules for terrorism: "The first objective is to kill individuals such as high officials and low-ranking members of the police and the army. The second objective is to confiscate money from the government as well as from private persons." On another occasion Lenin counseled: ". . . Assassinate a spy or blow up a police station . . . attack a bank to expropriate funds for an insurrection. Let every squad learn, if only by beating up police."

Terrorist activities are not restricted to the less developed areas of the world. A bomb in London or Rome is just as fatal as a bomb in Saigon or Santiago de Cuba. In fact a lot more damage can be done in London than in Santiago and a lot more people may be killed.

The more materially developed a society is, the more vulnerable it is to terrorist attack. One has but to look about a modern city and he will see an abundance of potential targets. Aqueduct pumping stations and conduits, power stations and lines, telephone exchanges, post offices, airport control towers—all these form part of a city's nervous system.

Killings and kidnapings are forms of terrorism, and because of the human elements involved they receive the most publicity, but sabotage is also a form of terrorism. Its primary purpose is to cause material damage, but like the other forms of terrorism it also is aimed at generating publicity for the terrorists.

One man can destroy a computer. One man can destroy a power generator and black out part of a city. One man can shoot down a plane. The capture of Palestinian guerrillas outside Rome who were planning to bring down a passenger plane with a rocket was an awesome and terrible indication of what terrorists with sophisticated equipment can accomplish.

As the communication, transportation, industrial and innumerable other types of equipment of our times become more and more complex, they also become more and more susceptible to attack. Machines can be broken, and it often takes no more than a hammer to destroy a machine. Sugar poured into the gas tank of a car will stall that car, and sugar poured into a number of vehicles will jam a transportation system. Sand thrown into the grease box of a freight car will ruin the bearings, and the moving or removal of rails can derail a train. Electric lines can be out, tacks can be thrown on highways, gasoline storage tanks can be set afire, bombs can be placed in airports and in radio and television stations. Ours is indeed a vulnerable society.

And what of the ultimate sophistication in terrorism, the little-mentioned but very real danger of nuclear weapons in the hands of terrorists? In March 1973 a guerrilla group seized temporary control of a nuclear station in Argentina. The incident was a clear warning of what may happen in the future. More and more nations are achieving nuclear capabilities, more and more nuclear energy is being utilized for commercial purposes, more and more nuclear raw materials are being transported in this country and abroad. According to some estimates, within twenty-five years or so the annual production of plutonium in the United States will reach 600,000 pounds. Plutonium is the essence of atomic bombs. Even of itself it is extremely dangerous: put a sufficient quantity, unshielded, on a roof top, and the lives of thousands of people would be endangered.

With the proper knowledge, and this is readily available in libraries, and the proper equipment, and this can be obtained, too, and the proper raw materials, terrorists can build simple but devastating nuclear weapons. And even if a terrorist group of itself is unable to build an atomic bomb, let us not forget that there are nations who have actively aided terrorist bands and who might not stop at providing nuclear weapons. Raúl Castro once stated, "It is my dream to drop three atomic bombs on New York."

This is not science fiction. This is reality.

It is today feasible for a terrorist organization to build a suitcase nuclear weapon, place it in the basement of a building in a city, and demand a vast ransom.

And, what of you business gentlemen? In the new era of terrorism, you and your companies are a primary target of terrorists, not only abroad but in the United States itself. I have known terrorists personally, I have conversed with them at length, I have witnessed their activities at firsthand in Cuba, Viet Nam, Uruguay, Argentina and other countries. They are intelligent, they are well-educated and, I tell you, they are dangerous.

A Pan American airliner destroyed at Rome airport, ITT offices bombed in New York, a Ford official killed in Argentina—the terrorists have decided that U.S. businessmen and American concerns are ideal targets. Ideologically, the American is a representative of the so-called "imperialism" that is the convenient target of all leftwing revolutionaries. Financially—and even idealistic terrorists need funds to purchase weapons and bribe officials—American companies pay the highest ransoms for their kidnapped officials. In one case, $14.2 million was paid to secure the release of an American in Argentina. In this country, look at the vast sums paid by the Hearst family for the distribution of food to the poor. For the victims, terrorism is an expensive proposition.

The terrorist may not be a long-haired, wild-eyed, unkempt individual. He or she may be a well-dressed accounting major, the graduate of a topnotch engineering school—or the daughter of a prominent publisher. The terrorist may go to work for you, carefully study your organization and plant, and then when he is

ready, burn your files, place a bomb in machinery, or kidnap you when you head home from work. This happens abroad. It can happen here, too.

Gentlemen, make no mistake about it—the target is you. It is you, it is your company. Abroad you are the imperialist enemy. In the States, you are the man who will bring a tidy ransom to kidnappers, political or criminal, as the case may be.

It would be a grave mistake to believe that the terrorist attacks will end tomorrow. It would be a mistake to think that these attacks are the work of small bands of Irish, Argentinean, Palestinian and American terrorists, and that once these groups are eliminated, or their political demands are satisfied, then terrorist activities will end. Some groups may indeed be vanquished, but other groups are likely to appear. As long as there are social issues, as long as there are deeply discontented individuals, there will be terrorism. And terrorism is international: terrorists strike across national boundaries. A nation free of indigenous terrorism may suddenly find itself struck by terrorists of another country. Note the Palestinian attack on the Olympic Games in West Germany. And terrorism is not the weapon of political groups alone. It can be and increasingly is being used by criminal gangs. And it can also be utilized by the lone individual, whether he be a political fanatic, a criminal or an insane person.

Many of you gentlemen are associated with companies that have branches or installations abroad. Many of you have traveled abroad, or have lived and worked abroad. Today foreigners, and as I said before, Americans in particular, and foreign businesses are a favorite target of terrorists because they are handy ideological targets for extremist groups, because they are vulnerable to different forms of attack, because they are willing to pay large sums of money for the release of kidnapped company officials, and because attacks on foreigners generally do not arouse the same popular ire that attacks on local citizens and businesses evoke.

Despite this, the situation for foreign businessmen is far from hopeless, even in those countries where terrorist activities are intense. There is a great deal that businessmen can do to protect themselves. Offices, plants, and top executives can be guarded. Electronic alarm systems can be installed in homes and offices.

Reliance on guards and electronic systems, however, is only a partial answer to the problem of terrorism. Few companies can afford to provide round-the-clock guards for all their officials and employees (and an employee is as susceptible to kidnapping as is an executive). Furthermore, bodyguards are of questionable value. If a kidnapping attempt is made, and the bodyguards resist, they as well as the intended victim may be killed. This has happened twice in recent months. As for alarm systems, these function only at the sites on which they have been installed; they provide no protection for the individual who is moving about.

A far more comprehensive concept of security entails instilling security consciousness in every businessman. In a sense, every businessman must become his own security officer, protecting himself, his family, his company, and the people with whom he works. This does not mean that every businessman must carry a weapon or know karate. Far from it. The best security is that which prevents attack, not fights it off. Realistically, if an attack is made, perhaps a kidnapping attempt, it would be folly for the businessman to try to shoot it out with the abductors. It is far better to prevent the kidnaping attempt from being made at all.

Terrorists are not invincible, they are not invisible. They are not supermen who descend out of the sky, seize a victim and then disappear. Terrorists are human beings who want to minimize the risk to themselves when they carry out an attack. They usually plan their attacks carefully in advance, and for this they rely on information they gather regarding their targeted victim. They may obtain this information from informants, or they may gather it themselves by watching the victim's activities over a period of time.

Without this information, the terrorists can do little. Security-conscious businessmen will, therefore, make it as difficult as possible for anyone to obtain information about himself that would be of use to terrorists. If the businessman is conscious of his security at all times, he can vastly minimize the chance that he will be the victim of terrorists.

The businessman need not be frightened. Fear accomplishes little. If the businessman is aware of what he must and must not do in the best interests of his security, and acts accordingly, he can justifiably feel confident and lead a relatively normal life.

Every businessman going abroad, whether to live and work in a foreign country or merely to visit branch offices, must learn the basics of self protection against terrorism. This must be his responsibility. It must also be his company's responsibility.

It is no longer sufficient to hire two or three guards and place them under the command of a security officer. The security officer himself was often looked upon as a bodyguard of sorts, an outsider to the main stream of the company's business. The security officer must now be brought in out of the cold. He must survey the company's security needs, he must have clout enough to obtain what is necessary, and he must also be an instructor of sorts, informing every official of the company and every employee of what precautions must be taken.

It is vital that the businessman overseas know how to minimize the possibility of being the victim of a terrorist assault, particularly a kidnapping. Preventive medicine is preferable to treatment, especially when treatment in the form of ransoms costs millions of dollars.

The businessman who knows what to do and conscientiously follows basic precautions is less likely to be kidnapped or to have a bomb explode under his desk. This businessman will be relaxed, knowing that he is taking wise precautions. And because he is more relaxed he will be more alert.

Four basic rules of precaution are recommended:

One. Maintain a low profile. Don't put your name or photograph in the society pages. Don't let your name appear in company advertisements. Don't allow company publicity releases to mention you and don't grant interviews to newspapermen. Take your name off the door. Don't deliver talks at luncheons and other public affairs. The less you are seen, the less likely terrorists will notice you. Several times terrorists placed bombs in the offices of one firm in Latin America. This stopped when the firm did a simple thing: it removed its nameplate from the entrance to the building.

Two. Don't follow any routines in your business or private lives and don't—I can't emphasize this too strongly—follow regular routes in traveling between your home and office. Don't eat at the same restaurant every day at the same time. Don't go to your club at the same hour of each day, or even the same days of the week. Don't meet other businessmen on anything even approaching a regular schedule or at the same locations.

Three. Insure that members of your family and those persons who work closely with you, such as your secretary, are discrete about your work, travel, and whereabouts. In the States we customarily warn children to shun strangers offering candy. The children of Americans abroad must learn to shun strangers entirely, but at the same time to notice any strangers who may be loitering near the home. And if your wife or child answers the phone and someone asks where father is, they must not tell him.

Four. Don't gratuitously provide terrorists with information about yourself. Don't discuss future meetings or travel plans over the phone if this can be avoided. Don't discuss plans within the hearing of maids, servants, or strangers, and don't leave mail or memos lying around when these might be read by prying eyes.

These are basic precautions. More detailed instructions are contained in the manual we have prepared. Fundamentally, every businessman must be conscious of his own security in everything he says or does. He must be his own security officer.

A company may wonder whether it wants to give an official who is going overseas instruction in counter terror precautions. Might this not frighten him into refusing the post? Certainly the possibility exists.

But what of the reverse? Suppose a man is sent abroad and finds that the city in which he is now living is the scene of frequent terrorist attacks. What does he do? Ask to be transferred home, thus doubling the expense of the company * * *.

APPENDIX K

Political Aspects of Soviet-American Détente

STATEMENT OF GEORGE MEANY, PRESIDENT, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, BEFORE THE FOREIGN RELATIONS COMMITTEE, U.S. SENATE

My name is George Meany. I am President of the American Federation of Labor and Congress of Industrial Organizations, and I am pleased to have this opportunity to present to this Committee the views of the AFL–CIO on the subject of detente.

I suspect, Mr. Chairman, that you are not altogether unfamiliar with my views on this subject. They have been reported in the press sometimes quite colorfully. Let me read to you from an editorial in a little newspaper called the Torrington, Connecticut *Register* under date of May 24, 1973—and I quote: "Once upon a time, organized labor in this country was in the vanguard of the liberal movement in foreign policy as well as domestic. But not any longer. Today its liberalism stops abruptly at the water's edge. On issues involving normalization of relations with the Communist world, the AFL–CIO as represented by aging George Meany, often makes the U.S. Chamber of Commerce sound like a cabal of wild-eyed Bolsheviks." Well, aging or no, I have no desire to undertake a defense of the Chamber of Commerce from the charge of wild-eyed Bolshevism. I might suggest, however, that what you see in their eyes isn't the Red Flag. It's dollar signs.

But, more to the point, I cannot help but wonder what has become of the word "liberalism." I always thought that liberalism had to do with the defense of freedom—and that the defense of freedom did not stop at the water's edge.

Now, I don't know how many liberals would accept the clear implication of this editorial that liberalism is to be defined as a softer or friendlier attitude toward totalitarian powers, whereas conservatism means a harder or more hostile attitude toward totalitarian powers.

I've always felt that this was a slanderous and silly notion of "liberalism"—a notion to which, I must admit, some liberals have contributed their own abundant confusion.

Nonetheless, I don't see any necessary connection between a liberal commitment to social and economic justice at home and a policy of appeasement of Communist aggression abroad.

We live in strange times. We live in a time when a man whose whole political career was built on rabid anti-communism can become President and overnight be transformed into the chief advocate of unilateral concessions to the Soviet Union.

We live in a time when the President of Pepsi-Cola is transported into ecstasy by Leonid Brezhnev, about whom he says he was tremendously impressed, "by the candor and sincerity of this man and by his clear commitment to pursue not only peace, but also . . . the enrichment of life in his country."

This is Don Kendell speaking. He's the man whose company fills our airwaves with jingles about "feeling free."

I am sure you have all heard the Pepsi jingle which winds up with these lines

> "Join the Pepsi people, feeling free, feeling free.
> All across the nation, it's the Pepsi generation.
> Here today. Here to stay. Feeling free."

What wonderful background music this would make to Soviet bulldozers breaking up art shows!

So in this topsy-turvy world, Mr. Chairman, we think we need to regain our bearings. We in the labor movement are not guided or influenced by the label-peddlers or by the demagogues who see a "cold warrior" under every bed. We are guided, rather, by the first principles of the labor movement. They were put very

well by Sam Gompers, who said: "I do not value the labor movement only for its ability to give higher wages, better clothes and better homes. Its ultimate goal is to be found in the progressively evolving life possibilities for those who work and in its devotion to advancing the basic idea of freedom for all people everywhere."

That's where we stand, Mr. Chairman—for "the basic idea of freedom for all people everywhere." And everywhere means everywhere, as far as American labor is concerned—from Little Rock to Moscow.

So, in appearing before this Committee, the AFL–CIO is not departing from the best traditions of the labor movement, but rather continuing a long tradition of involvement and concern—a tradition of caring about working people everywhere and about the cause of freedom everywhere.

And this is the vantage point from which we look at this thing called *détente.* What is it?

I think it makes a big difference how we define it. It's not an academic exercise. If we don't know what it is, then we can't really measure or evaluate it. If we don't know what it is, then we have no yardstick, no criteria, for determining whether we are making progress in our relations with the Soviet Union or whether we are moving backwards. How do we know if détente is working, unless we know what détente is?

And so I began to hunt around for a good definition of détente. And I discovered something interesting. I discovered that this détente has suddenly become very ambiguous. Suddenly this great idea—this "conceptual breakthrough," to use one of Secretary Kissinger's favorite phrases—is like gossamer. You can't grab hold of it.

I wondered how we could have gotten so excited about something that wasn't much of anything anyway.

The truth is, of course, a little different. What has happened is that, as public disillusionment with détente mounts, its proponents are retreating into a rhetoric of dampened expectations of fuzzy ambiguity. You might call it a revolution of falling expectations.

At least two members of this committee have, in my judgment, contributed to this process of obfuscation through excessive refinement. Here, for example, is Senator Church's idea of détente—and I quote: "In long-term perspective, a détente may carry promise, or at least the hope, of future friendship, but in present fact, it represents no more than the imposition of restraints on an otherwise costly and dangerous rivalry."

In other words, détente is the "imposition of restraints"—no more. Therefore, as Senator Church goes on to say: "There is no use asking, for instance, whether the Soviet Union has acted as a partner for peace in the Middle East. Clearly she has not, but that was not to be expected because we and the Russians are not friends; we are rivals. The right question from the standpoint of détente is whether the rivalry has been restrained by an awareness of the danger of confrontation."

The answer to that, the Senator says, is yes. Which goes to prove, I suppose, that if you phrase the question properly you get the answer you want. Détente is working because we didn't go to war with the Russians over the Middle East.

A similar view has been expressed by the Chairman of this committee. He has said—and I quote: "Détente in its essence is an agreement not to let these differences (that is, the differences between the two superpowers) explode into nuclear war."

And to the Secretary of State, Dr. Kissinger, détente means that—and I quote—"confrontations are kept within bounds that do not threaten civilized life."

Now a common thread runs through all these definitions of détente. They all boil down to the same thing: détente is the avoidance of nuclear war. Détente is the imposition of restrains so that the two superpowers don't blow each other up.

If this is the meaning of détente, then I have a question. What is the difference between détente and cold war? Isn't cold war also an avoidance of hot war?

If we have decided that this is all détente means—just that both sides restrain themselves—then what's all the fuss about? Why the vitriolic attacks, by Senator Church among others on the "old-time cold warriors?" Perhaps we owe the cold warriors an apology. Or perhaps, as the distinguished writer Theodore Draper has recently said, "It is time to stop using cold war as a scare term and détente as a sedative term; in their relation to nuclear war, they are not all that different."

Perhaps, as someone else has quipped, détente is the cold war pursued by other means—and sometimes by the same.

Be that as it may, this is not what the man of the street thinks is meant by détente. And I contend that what the man on the street thinks—in other words what the American people think—is important. And I also contend that this is not how détente was sold to the American people by Mr. Nixon and Mr. Kissinger, They didn't sell it as the cold war pursued by other means.

That's not how détente was sold to the American people when the Soviet wheat deal was being pulled off.

No, the American people thought they were buying something more. To them détente meant not just something negative but something positive—not just restraint but cooperation. Cooperation not only to reduce armaments, but to further world peace. To prevent small wars.

To the American people, détente meant a give-and-take on both sides, a kind of good-faith bargaining between adversaries.

Where did the people get this idea? Did they suck it out of their thumbs? Was it just "blowin' in the wind?" No. They got it from Mr. Nixon and Mr. Brezhnev, from their summit meeting of May, 1972. The two leaders declared that—and I quote:

"The U.S.A. and the U.S.S.R. have a special responsibility . . . to do everything in their power so that conflicts or situations will not arise which would increase international tensions."

This was no negative prescription for détente. It was positive. Cooperation between the superpowers is implicit. How else, but through cooperation, can they do "everything in their power"—not just to avoid confrontation, but to prevent situations from even arising in the first place that could increase tension.

There's nothing vague or amorphous about this. It's written out in twelve "Basic Principles of Relations Between the United States of America and the Union of Soviet Socialist Republics." The text is available from the Department of State. It's a specific code of conduct.

This is détente. Not what Secretary Kissinger says it is. Not what Chairman Fulbright says it is. Not what Senator Church says it is.

And it's not just what Mr. Brezhnev says it means on this or that day of the week.

Détente involves a specific code of conduct agreed to by Mr. Brezhnev and Mr. Nixon on behalf of their two countries.

According to this code, the two powers will "do their utmost to avoid military confrontations"—yes. But it goes further. The two powers will "prevent the development of situations capable of causing a dangerous exacerbation of their relations." Was not the Yom Kippur war such a situation?

The two powers will "recognize that efforts to obtain unilateral advantage at the expense of the other, directly or indirectly, are inconsistent with these objectives." Did not the Arabs launch precisely such an effort?

The Basic Principles go further still. The two powers would "make no claim for themselves and would not recognize the claims of anyone else to any special rights or advantages in world affairs. They recognize the sovereign equality of all states." Did the Soviet Union really recognize the sovereign equality of Israel?

There is more, but this should be enough to make the point. The point is that Senator Church is exactly wrong about what we were led to expect from détente—and especially in the Middle East.

The point is not whether we and the Russians are friends or rivals. Nor is the point whether the Soviet Union acted as "a partner for peace." That's mere phrase-mongering.

The question is whether the Soviet Union cooperated with us to "prevent the development" of a situation "capable of causing a dangerous exacerbation of our relations."

The question is whether the Soviet Union recognized its "special responsibility . . . to do everything in their power so that conflicts or situations will not arise which would serve to increase international tensions."

The question is whether in its Middle East policy the Soviet Union recognized "the soverign equality of all states."

This is the language, the specific language, agreed to by Mr. Brezhnev in May, 1972. This is not a matter of interpretation. These "Basic Principles" were not just thrown together. The idea for them was proposed by the Soviet Union in the first place. Several months were spent working it out to everybody's satisfaction. They were binding on both parties. The question is: did the Soviet Union live up to these twelve "Basic Principles" in the Middle East situation?

The answer, obviously, is no. There is no way that question can be answered ambiguously.

The Russians knew about the impending Arab attack on Israel at least four days before it happened. They had an obligation, spelled out in the Basic Principles, to warn us in advance. They did not.

Not only did they fail to warn us, not only did they fail to try to limit the scope of the October War, but they actually attempted to widen it.

For one thing, the Soviets transported Moroccan troops into the conflict. As if that were not enough, the Soviet leaders, according to the *Washington Post* of May 2, "immediately issued a decision for a partial alert of the Soviet forces. Seven Soviet military divisions were mobilized and put on the ready to be taken to fight on the Egyptian front. In fact, an advance group arrived in Cairo".

And then, Mr. Chairman, the same Leonid Brezhnev who smiled on Richard Nixon and promised to do everything in his power to prevent conflicts from arising "which would increase international tensions," delivered this message to Boumedienne of Algeria—some 72 hours after the Arab attack on Israel:

"Today more than ever, the Arab brotherly solidarity must play its decisive role. Syria and Egypt must not remain alone in their fight against a perfidious enemy."

This message was dated October 9—three days after the outbreak of the Yom Kippur War. The very next day—October 10—a similar message went out to all the other Arab countries.

But that's not all, Mr. Chairman. Believe it or not, twenty-four hours before he wrote his message to Boumedienne—on October 8, to be precise—Mr. Brezhnev gave a speech in Moscow in which he said that he hoped the war would not interfere with the Soviet-U.S. détente. He went on to call for—and I quote—"a just and stable peace" and "guaranteed security for all countries and peoples of the area."

Mr. Chairman, this is the high act of diplomatic hypocrisy as practiced by one of the all-time experts.

Thus did Mr. Brezhnev—this man of "candor and sincerity", this man "committed to pursue peace"—seek to push Algeria, Iraq, Jordan and other Arab countries into a war with Israel which should never have been allowed to develop in the first place according to the "Basic Principles."

The only impact of these "Basic Principles" on the Middle East situation appears to have been to confuse our own intelligence people.

They were so certain the Russians and their Arab clients would abide by the détente, that they concluded it must have been the Israelis who started the war.

That kind of détente we don't need. Even now the Russians are arming the Syrians to the teeth. This is how they discharge their "special responsibility."

Clearly, something is wrong here. I think most Americans have a pretty good understanding of what our side means by détente, what we want out of it. But do we understand what the Russians want?

I think we need to look at détente from their perspective. They mean something very different—and that is the source of the problem.

In a sense, détente is not really new. Lenin, in the days of N.E.P. (the so-called New Economic Policy) sought a kind of détente with the West as a way of attracting desperately needed capital investment into his war-torn country. In 1921 he wrote these words, which echo down the decades, with an eerie, prophetic quality:

"As a result of my own personal observations during the years of my emigration, I must say that the so-called cultural strata of Western Europe and America are not capable of understanding the contemporary state of affairs nor the actual alignment of forces; we must regard these strata as deaf mutes and act with respect to them accordingly. . . ."The capitalists of the entire world, and their governments, in their push of conquering Soviet markets, will close their eyes to the realities, and will thus become blind deaf mutes. They will open credits which will serve as a support for the Communist Party in their countries and will provide us with essential materials and technology thus restoring our military industries, essential for our future victorious attacks on our suppliers. Speaking otherwise, they will be working to prepare their own suicides."

This quote hardly needs comment.

If the objective of détente, from our point of view, is a relaxation of international tension, a reduction of conflict, we have a right to ask: do the Russians share that view, or are they interested in something else?

In this connection, Mr. Chairman, I was very interested to read—as I am sure you were, too—the editorial in last Thursday's New York Times, September 26. The Times, which has been closer to your views than to mine on the subject of détente, says—and I quote:

"The chief reservation about the policy of détente as conceived by Mr. Kissinger under two Presidents now, is that this country may find itself settling for minimal tangible benefit for itself in pursuit of a desirable abstraction, while the Soviet leadership successfully extracts real concessions in return for empty lip service."

That's putting it mildly. I would use different language. For the point is, Mr. Chairman, that it is significant when a publication like The New York Times begins to have the kind of reservations about this détente that we in the AFL–CIO have been expressing for some time.

All you have to do, Mr. Chairman, is read what the Russian leaders say.

Mr. Nixon did not end the cold war. Before Mr. Nixon became President, the Soviet Union had decided it was to its advantage to relax the cold war. Here's what Mr. Brezhnev told a conference of select Communist representatives at Karlovy Vary on April 24, 1967—before Mr. Nixon became President, and before Henry Kissinger became a household name:

"Experience teaches, in particular, that the 'cold war' and the confrontation of military blocs, the atmosphere of military threats, seriously hampers the activity of revolutionary democratic forces. In conditions of international tension in bourgeois countries the reactionary elements become active, the military raise their heads, anti-democratic tendencies and anti-Communism are strengthened.

"And, conversely, the past few years have shown quite clearly that, in conditions of slackened international tension, the pointer of the political barometer moves left. Certain changes in relations between communists and social democrats in certain countries, a noticeable falling off in anti-Communist hysteria, and the increase in the influence of West European Communist parties is most directly correlated with the reduction in tension which has taken place in Europe."

What does all this mean? What Comrade Brezhnev is saying is that détente should not be construed as signifying a change in Soviet international objectives. In fact, détente is simply a new tactic, a new means toward the old end—the world-wide advance and ultimate victory of Communism.

What he is saying is that the cold war should be ended, not in the interest of peace, but because it hampers the "activity of the revolutionary democratic forces"—that's the way they describe themselves even though they are neither revolutionary or democratic but static and totalitarian. And it activates the "reactionary elements" in the "*bourgeois* countries"—*that's us.*

In other words, the fundamental conflict between our two social systems will not be abated. In fact, in some ways it will be intensified. The influence of the Communist parties in Europe will grow, and they will make new overtures to the social-democratic forces in certain countries.

Certainly, in respect to the European situation, there is considerable evidence that the Communist détente strategy has enjoyed some success.

But Brezhnev's 1967 speech is not the only indication we get of the Soviet's view of détente. Three years later, and two years after Mr. Nixon entered the White House, Mr. Brezhnev boasted—and I quote: "the Soviet Union is on the offensive and the West on the defensive: the impact of our ideology is tremendous: it is mounting with every day, undermining the mainstay of the non-Soviet system from within."

How do you like that? "Undermining the non-Soviet system from within!" And I thought the Russians were against any interference in the "internal affairs" of other countries. I guess that's only when it comes to the right of emigration for Soviet Jews.

But there's more. Two years later, in June 1972, at a dinner honoring Fidel Castro, Brezhnev had these words of inspiration—and I quote:

"We are aware that success in this important matter (referring to the struggle for peaceful coexistence) in no way implies the possibility of relaxing the ideological struggle. On the contrary, we must be prepared for this struggle to be intensified and becoming an ever sharper form of the confrontation between the systems."

So, for the Communists, détente means an intensification of the ideological conflict—a sharper confrontation between the systems.

What does this mean in practice? In practice it means that the Soviet Union can maintain and accelerate its campaign of propaganda against the United States—*but* we cannot criticize the Russians.

Mr. Nixon and Mr. Kissinger could not even bring themselves to a manly defense of Alexandr Solzhenitsyn because that would be "interfering in the internal affairs of another country"—and that's a no-no. That makes the Russians very displeased.

It is quite all right, however, for the Russians to go full steam ahead with their continuing propaganda onslaughts against the United States.

Compare this self-confident Russian propaganda drive with the remarks of our Secretary of State in response to the appeal by Andre Sakharov. The best Mr. Kissinger could muster was—and I quote:

"Painful as I find the Sakharov document, emotionally connected though I find myself to him, I feel nevertheless that we must proceed on the course on which we are. And I continue to recommend most-favored-nation status for the Soviet Union."

Mr. Chairman, you will forgive me if I find that a less than vigorous and forceful defense of human rights.

And if ever we needed a forceful remainder of the state of human rights in the Soviet Union, it was sadly provided by those Russian secret policemen who disguised themselves as workers and dispersed an open-air art shown in the surburbs of Moscow.

My God, what kind of society is it that has to turn bulldozers loose on paintings!

But instead of a national leadership that expresses the outrage of a free people at such incidents, we seem saddled with a leadership eager to see signs of convergence and parallelism between our basically democratic society and Soviet totalitarianism.

How else can one explain Dr. Kissinger's craven comparison of our so-called military-industrial complex and the Soviet war machine?

To return to the Soviet view of détente, I was interested to read the following analysis by Arnaud deBorchgrave, the distinguished senior editor of *Newsweek*, in the July 2, 1973 issue of that magazine. He writes—and I quote:

"Only a few experts know or care that Soviet Party Chief Leonid Brezhnev won his arguments for a 'new look' foreign policy by convincing his colleagues that it would be the most effective way to break up NATO and neutralize Western Europe. While Moscow has made an important shift in tactics, policy planners say the goals the Kremlin has pursued since the early 1950s are unchanged. For practical purposes, Moscow has achieved two of its four main geopolitical objectives: conventional military superiority in Europe over the U.S. and its allies, and recognition of Moscow's hold on Eastern Europe. Next on the Kremlin's hit parade is the withdrawal of U.S. forces from Europe and the collapse of NATO. This, in the Kremlin scenario, is to come about as a result of internal pressures in the United States and growing European doubts about American reliability."

In other words Mr. Chairman, while détente has produced a silly euphoria in the West, it is viewed with cold calculation in the Soviet Union. While détente has made anti-communism unfashionable in the West—and you know, of course, that anti-communism is out of style with the "best" people—in the East, détente means and intensification of ideological struggle.

Here's how the Soviet Union sees détente:

Détente is based on U.S. weakness.
Détente means intensification of ideological warfare.
Détente means an undermining of NATO.
Détente means ultimate Soviet military superiority over the West.
Détente means recognition by the West of the Soviet Union's ownership of Eastern Europe.
Détente means withdrawal of American forces from Europe.
That's what détente means to the Soviet Union.

What does it mean to us?

Well, to American big business, it means beautiful visions of new profits and expanded markets—the old quest for the Almighty Dollar now transplanted to the land of the commissars.

Let me quote again from the Times editorial of last Thursday.

"While the Soviets envisage their many transactions in the broad context of

political and economic needs, the American side has too often been content to let private entrepreneurs make their own deals on a purely commercial basis. If the Government finally moves in to consider these transactions from a national interest viewpoint, it may be too late to matter."

Now, I have nothing against a man making an honest buck. But what's happening here is that some American businessmen are developing a vested interest in downplaying the repressive and inhuman character of the Soviet regime—or in selling the idea that this has nothing to do with us.

Is it possible that Adolph Hitler was born fifty years too soon?

They make sickening speeches about how wrong it would be for us to use our economic superiority as a weapon to force the regime to grant concessions to their own people. After all, they say, we wouldn't want the Russians to interfere in our internal affairs.

Mr. Chairman, I think there is something fundamentally wrong with businessmen who have gotten rich off this country—and its workers—comparing our pressures for greater freedom in the Soviet Union with Soviet intervention against human rights in other countries.

Not only would some of our businessmen like to "desensitize" American public opinion to Soviet abrogations of human rights, but they also feel compelled to foster the myth that trade is the road to peace.

Mr. Chairman, this idea sounds nice, very nice. It's very good for public relations—you know, "Businessmen for Peace, Businessmen for Trade." What's good for Pepsi Cola, Chase Manhattan or General Motors is not only good for America. It's good for the Soviet Union. It's good for the world.

There's one trouble with this idea. It's not true. There's not one shred of historical evidence to support it, and a considerable amount to support the opposite conclusion. Indeed, the argument could be made that trade and investment generates friction and conflict—even among friends.

After all, Germany was Russia's biggest trading partner just before each of the two World Wars.

And trade between Russia and China reached its peak just before the break in their relations.

Secretary Kissinger, on March 7 of this year, admitted in testimony before the Senate Finance Committee, and I quote: ". . . if you remember, prior to World War I there was essentially free trade in Europe, but, nevertheless, this did not prevent the outbreak of a cataclysmic war."

Friction and conflict have arisen between trading partners with the *same* economic and social systems. Why do we assume this will not happen between countries with diametrically opposed economic and social systems.

Have our businessmen given any serious thought to the problems of trade and investment in a country whose economy is run by the state, which can—and will—make economic decisions on a political basis, not just on a basis of profits?

How do our businessmen, who sing the praises of free enterprise at home, conduct themselves in relation to a society from which economic competition has been officially eliminated?

How do our business friends intend to conduct themselves in relation to a work force that is not represented by unions, that does not enjoy the blessings of collective bargaining, that does not have the right to strike—that is, in fact, enslaved.

I don't know whether our business friends have thought about these questions. I don't know whether these "wild-eyed Bolsheviks" at the U.S. Chamber of Commerce have thought about these questions. Perhaps they are the blind deaf mutes Lenin took them for.

But we have thought about it, Mr. Chairman. The labor movement has thought about it. And we don't want any part of it. We're not interested in seeing cheap goods made by Soviet slave labor pour into this country. We're not interested in seeing American workers displaced by slave labor.

And that's why we're against granting the Soviet Union most-favored-nation treatment. It is not one of our most favored nations.

Yet, it is being proposed today that we grant the Soviet Union MFN status in exchange for their agreeing to liberalize their emigration policies. In other words, we will bribe the Soviet Union to do what it is already obligated to do under international law.

You see, there's something called the International Covenant on Civil and Political Rights. Moscow signed that covenant in March of 1968. Article Twelve

of that covenant says—and I quote—"Everyone should be free to leave any country, including his own."

"Everyone"—"any country." That's pretty clear language, Mr. Chairman. Nothing ambiguous about it.

But the Russians decided to violate it. And what's the consequence? We give them MFN! Rewarding deception—that's a ——— of a way to run a foreign policy!

It has been said—in fact, by the Secretary of State, in this room—that MFN isn't that important anyway. Soviet imports into the U.S. don't, and won't, amount to very much anyway. The MFN is only a symbolic issue.

Well, there's some truth in that—in the sense that the Russians' main interest is not in exporting their goods to the United States but rather in receiving our credits and technology. I will have more to say about that in a moment. I do think, however, that it would be wrong for us to completely dismiss the symbolic and political importance of MFN for the Russians.

I think we will be under growing pressure to take whatever imports the Russians decide to send us in order to give them the means of paying for the credits we give them to buy our exports.

You may be interested to know that the latest U.S.-Soviet trade figures show that in the first half of this year, U.S. exports were down over 54 percent from the first half of last year, while imports from the Soviet Union rose by 125 percent.

There are no economic benefits for the United States in this deal. All the economic benefits flow to the Soviet Union. The most we can hope for are political benefits—but these are very, very doubtful. Let me quote to you from a Library of Congress study on U.S.-Soviet Commercial Relations: The Interplay of Economics, Technology Transfer and Diplomacy:

". . . The political benefits to the United States must by their nature be uncertain of fulfillment, especially in the short run. On the other hand, the economic benefits to the Soviet Union from improved commercial relations may be certain and significant. Thus, the risk of unfulfilled expectations appears greater for the United States than for the Soviet Union. More specifically, increased technology transfers to the Soviet Union may show only long-term benefits to the United States in the diplomatic and political area."

Mr. Chairman, these diplomatic and political benefits to us must be very long term indeed—because I don't see any sign of them whatever.

What I see is a one-way street in which the Soviet Union maintains all of its basic political objectives which are fundamentally antagonistic to the West, while it acquires from the West the technology it needs to help overcome the disastrous economic consequences of totalitarian planning.

And, make no mistake about it, this is the name of the game. Let me quote again from the New York Times editorial:

"Easing of nuclear tensions, formal recognition of the European status quo—these are desired goals of Soviet foreign policy: but the desperate, driving impulse of détente is access to Western advanced technology."

Any student of Soviet society will tell you how desperately the Soviets need our technological know-how. As late as 1971—three years ago—the productivity of Soviet labor was only about 40 percent of the American level.

The Soviet Union has 50 million more people than we do—yet its consumers can get only about one-third the goods and services available to the American people.

The distortions and imbalances in the Soviet economy are not due simply to backwardness, to the legacies of czarism. They are the direct product of Soviet concentration on military hardware, which is the inevitable companion to an expansionist, imperialist foreign policy.

This Soviet concentration on military and space hardware, to the neglect of the Russian people's need for food and consumer goods, is possible only because of the totalitarian political structures that snuff out the will of the people.

There is thus a direct connection between the brutal suppression of democracy in the Soviet Union, the Soviet crisis in agriculture and consumer production, and the foreign policies of the Soviet Union. There is no way you can separate all of these things and say, "their internal affairs are none of our business."

The decision to provide the Soviet Union with Western technology is a decision to bail out the Russian leaders. It is a decision to save them the hard choice between production for war and production for people.

It is, indeed—if I may say so, Mr. Chairman—a decision to give them what we were told a couple of years ago *we* could not have—guns and butter.

In this sense, the issue here cannot be narrowed down to whether this or that piece of technology has a military potential. Most modern technology *has* a military potential. And to the extent that this transfer of Western technology enables the Soviet regime to escape the consequences of its dictatorially imposed decisions upon is own people we help to rescue a regime which has shown in situation after situation that it is not healthy for children and other living things.

The volume of this one-way flow of American goodies is already alarming. Let's leave aside for the moment our huge food shipments to the Soviet Union since May of 1972—shipments which have cost the American housewife and taxpayer mightily.

Let's look at the operations of the Export-Import Bank. Here's an institution that is backed by taxpayers' money—not private enterprise. It was originally set up to encourage American exports by making loans available to foreign buyers. In this way, it was supposed to promote American sales and jobs.

But now it is playing the game of the multinational corporations. It is subsidizing overseas production that will hurt American exports and employers. And one of the beneficiaries of this largesse is the Soviet Union.

In the past year and a half, the Eximbank, lent the Russians almost $469 million dollars—most of it at six percent and a small portion at 7 percent.

What American worker can get a loan at 6 or 7 percent? You can't get a mortgage for under 10 unless you're lucky.

This isn't trade. This is an economic aid program! It's a welfare program!

It's not just the amounts that concern me—although I don't know why these sums are leaving our country when we have such tight money problems here. What really concerns me is how the money is being used.

Eximbank put up $180 million of American money at a low interest rate to develop nitrogen fertilizer production in the Soviet Union. What will the Russians do with this fertilizer? Export it back to the United States? Or will they sell it—at a profit—to some of the overdeveloped distressed nations of Europe? (Of course they can always withhold it, as the Arabs did their oil.)

But why don't we invest in our own fertilizer production here? Because we have to give the Russians a way to pay back credits. Why do we give them credits in the first place? So they can acquire our technological know-how. Why do we want them to acquire our technological know-how? So we can have détente—a more peaceful world. Then why did the Russians encourage Arab aggression in the Middle East—not to mention Arab oil blackmail? Because they are not yet our "partners in peace." We evidently have to give much more.

This is a circular argument, Mr. Chairman, and it leads no where—except to growing Soviet advantages.

Look at another Eximbank loan—$153,950,000 for the Kama River Truck project—again most of it at 6 percent. This is the largest truck production facility in the world. And this was a project approved by our government despite the fact that it had a military potential acknowledged by our own Department of Commerce.

The fact, Mr. Chairman, is documented in an important new book which I commend to your attention. It is entitled "Western Technology and Soviet Economic Development, 1945 to 1965" by Anthony C. Sutton of Stanford University. This book also documents the thesis that western technology is "the most important factor in Soviet economic development."

You may recall that it was an American firm, the McKee Corporation, that built the world's biggest iron and steel plant at Magmitogorsk. It was Ford that built the first Soviet automotive plant. It was General Electric that built the famous Dnieper hydro-electric dam.

In fact, some years ago, Stalin himself told the American industrialist Eric Johnson that—and I quote—"about two-thirds of all the large industrial enterprises in the USSR have been built with U.S. materials or technical assistance."

So, Mr. Chairman, American economic aid to the Soviet Union goes way back. American capital investment in the Soviet Union goes way back. And so does technological assistance.

Out of this history, the question inevitably arises: what good did it do? Did it bring us closer to peace? What it brought us was something we called "the cold war." Or was it really détente pursued by other means?

But it appears our big corporate executives don't read history. They're cutting their own private deals with the Soviets—giving them computer technology, integrated circuits, telecommunications, photo-optical equipment, sophisticated

machine tools, oscilloscopes, aircraft parts, ship and submarine quieting techniques—all that sort of thing and at bargain rate credits that are subsidized by the American taxpayers. That's the same taxpayer, incidentally, who subsidized the Research and Development costs of this technology in the first place.

Mr. Chairman, let me suggest that there is a limit to the patience of the average American citizen. He's no dope. He knows he's being ripped off from every angle. This is certainly true of the average worker.

He has seen his standard of living decline in the last couple of years.

He has seen prices go through the roof, while his wages increase only modestly.

He sees that a big part of the inflation is due to spiraling food costs—and he knows the Soviet wheat deal had a lot to do with that.

He sees his fuel bills rising geometrically—and he knows that Soviet-Arab oil blackmail had a lot to do with that.

He sees corporate profits going up astronomically, especially oil profits—while he is less and less able to make ends meet.

He sees American capital flowing out of this country into the Soviet Union at 6 and 7 percent—while his bank refuses to give him a mortgage.

He listens to Mr. Kendell sing the praises of the Soviet dictator, and he sees Mr. Kissinger and Mr. Brezhnev blowing kisses at each other—and he thinks of the dead in Vietnam and the sacrifices of the brave Israelis.

Mr. Chairman, how much longer do you think this American is going to tolerate this phoney détente?

How much longer do you think he's going to put up with the politicians who put this con game over on us? How much longer before this thing blows up in the faces of its authors—those who gave us Watergate, inflation, recession and countless other calamities?

Not much longer, in my opinion.

But that does not mean we are for nuclear war. It does not mean we are for confrontation. It does not mean that we are against negotiation. It does not mean that we are against détente.

We are for a real détente. We're for a genuine détente.

We are for a détente in which the Soviet Union stops its ideological warfare against the West. Only then can we realistically anticipate a relaxation of international tensions.

We are for a détente in which the Soviet Union shows an honest willingness to reverse the arms build-up and to abandon its goal of military superiority in the SALT II negotiations.

We are for a détente in which the flow of Western aid to the East is matched by a free flow of people and ideas in Eastern Europe and the Soviet Union.

We are for a détente in which the Soviet Union will stop sabotaging the efforts to build peace in the Middle East.

We are for a détente in which the Soviet Union will stop arming and encouraging guerrilla movements and other efforts of subversion.

Such a détente—a real détente—would be welcomed by the American labor movement, by the American people as a whole, and by all the peoples of the world.

But that is not what we have today. We are not building lasting structures of peace. We are building castles of sand on the watery foundations of petty greed, wishful thinking, irresponsibility, self-indulgence, and plain old ignorance.

The inability to face the world as it is, and to understand clearly the nature of freedom's enemies everywhere, is really the greatest threat to peace today. That threat is nowhere more clearly posed than in the decision we call détente.

APPENDIX L

Program for a Political Offensive Against World Communism

[A Memorandum by David Sarnoff]

INTRODUCTION

Our best and surest way to prevent a Hot War is to win the Cold War. Individual democratic leaders have long been aware of this truth, but it has not yet been fully grasped by the free world.

Because the label is of recent coinage, many people assume that the Cold War is a new phenomenon. Actually it has been under way ever since the Bolsheviks, entrenched in Russia and disposing of its resources, launched the Third or Communist International.

World Communism has been making war on our civilization for more than three decades. And the term "war" is not used here in a merely rhetorical sense. It has been a war with campaigns and battles, strategy and tactics, conquests and retreats. Even the postwar years, it should be noted, have seen Red retreats—in Greece, Iran, Berlin, for instance—as well as victories; but such retreats have occurred only when the West acted awarely and boldly.

I. HOW THE COMMUNISTS WAGE COLD WAR

There have been intervals of truce in the Cold War but not of true peace. Periods of seeming Communist moderation have been used as a cover for frantic buildups and deployments for the next big push. There has not been a single year when the Kremlin did not, with single-minded concentration, make the most of its opportunities by methods short of general war.

Not a single country today under Communist rule was conquered by outright military assault. Russia itself fell to the Bolsheviks through a political *coup*, after other parties had overthrown the old regime. The East European satellites were placed behind the Iron Curtain by cunning diplomacy and brute extortion. China was joined to the Soviet sphere by "rear operations" performed from inside.

It is useful to break down Moscow's political psychological techniques for easier observation. But it should be remembered that they are all inextricably intermeshed, that they are stepped up or soft-pedalled as required, that they are supplemented with physical force and the menace of such force according to circumstances. The listing that follows is therefore overlapping.

1. Propaganda

The massive use of all media of communications by the Soviet Government, its puppet governments, local Communist parties, and by ostensibly independent groups under Moscow control or influence, is vast but impossible to measure.

In 1948 Soviet broadcasting to foreign targets totalled 528 hours per week. By 1954 this figure was increased to 1,675 hours. In addition, the Soviet news agency "Tass" broadcasts 121 hours daily to the foreign press. By comparison, the Voice of America broadcasts only 716 hours a week.

It is estimated that over 1,000 Soviet transmitters are engaged in "jamming" our signals. The Kremlin spends more for jamming it than we spend on all operations of the Voice of America. The Soviet and satellite expenditures in all types of foreign propaganda cannot be accurately gauged—nearly everything Communists do has a propaganda content—but these costs run into billions of dollars annually.

Printed matter in tremendous quantities pours out of the USSR into the non-Soviet world. Several large publishing houses in Moscow and elsewhere

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do nothing else but feed this flood. Besides, the Kremlin operates a chain of large publishing enterprises on foreign soil. Their Red tide of books, pamphlets, reports, posters, etc. inundates the world.

In nearly every non-Soviet country and region there are newspapers, magazines, radio and TV stations, either overtly under pro-Communist control or in "liberal disguises. These speak in local tongues—but the voice is Moscow's. In addition, thousands of Kremlin-oriented individual writers, commentators, editors, and trained propagandists are smuggled into strategic non-Communist spots to plug the current Moscow lines.

All available forums, from the United Nations to cultural and sports gatherings, are exploited to advance the battle for men's minds.

Special emphasis is given in Communist plans to what is called the "propaganda of acts"—strikes, riots, demonstrations, mass meetings in support of Soviet objectives or in protest against local policies distasteful to the Soviets, and contrived events of every kind.

Soviet films are rated high in the Communist propaganda plans. Pure entertainment in films, of course, is almost non-existent. The result is that any and all pictures made in the Soviet sphere, however disguised as art, contain a "message" which contributes to their cumulative effort to brainwash the non-Soviet world.

2. Infiltration and subversion

Through Communists, fellow-travelers and assorted sympathizers, there is a systematic "colonization" of governments, labor unions, educational and scientific institutions and social organizations. The goal is to weaken the infiltrated bodies or to use their leverage to influence public opinion and official policy in the Kremlin's direction; to undermine traditions and subvert loyalties which block the road to Communist thinking.

In the infiltration of government agencies, espionage is by no means the chief purpose. Far more important to the Soviets is the subtle pressure an infiltree can bring to bear upon the shaping of national policy and the influencing of national moods. The theft of secret documents is routine. The subversion of a government's self-interest, the sowing of disunity, the careful sabotage of policies unfavorable to Soviet interests—these require and receive more polished methods.

3. Fifth columns and false fronts

Communist Parties, whether legal or proscribed, are the primary fifth column. They function under direct instructions from Moscow headquarters, usually under leaders assigned from outside.

But this is the beginning, not the end, of the apparatus of power reaching into every corner of the free world. Innumerable committees, congresses, leagues are set up—outwardly devoted to legitimate and even noble causes like peace, race equality, anti-fascism, but actually controlled and manipulated by Communists for strictly Communist objectives.

These false-front outfits are spawned continually, discarded when their purpose has been served. In the United States, where this technique has been widely practiced, they have run into scores. Every new situation produces its organizational instrument. At times a front started for one purpose is shifted overnight to its opposite: thus fronts for keeping America out of the war during the life of the Moscow-Berlin pact were converted into fronts for putting America into the war after the Germans attacked Soviet Russia.

Besides creating these fifth-column devices, the Communists also are expert at "capturing" organizations started by others. By joining some existing society or committee, acting as a disciplined minority bound by caucus decisions, a dozen persons have frequently succeeded in taking effective control of organizations with thousands of members.

4. Sabotage and terror

The use of these weapons in time of war is familiar, but its systematic use in peace-time, is the great Communist innovation. In all free countries the main targets of infiltration are defense industries, communications, transport and police systems—all of which offer ample opportunity for mischief affecting a nation's security. Strikes at strategic points and strategic times, as well as overt physical sabotage, can slow up a country's preparations for defense or actual war-making capacity.

In regions where it is useful and feasible, the Communists do not disdain

raw terror: incendiarism, kidnapping, assassination. A special research section of the MVD (Soviet secret police) is devoted to developing murder weapons, poisons and the like.

5. Civil strife

Internal discontents and economic crises are stimulated and then systematically exploited to produce inner disunity, chaos and actual civil insurrection. Guerilla forces under professional military leaders are frequently reinforced by "volunteers" from outside.

Para-military formations, underground organizations of every variety in line with local conditions and opportunities, are standard techniques. Genuine grievances are channeled and exploited through local "nationalist" or "anti-colonial" and "anti-imperialist" movements, either started by the Communists or infiltrated and captured.

6. Preparation of "cadres"

In Soviet Russia and now in its colonial states there are schools and universities of revolution. Students, drawn from all countries, are taught the theory and practice of political warfare, sabotage, guerrilla operations, and propaganda methods.

Virtually all heads of Red Satellite states and insurrectionary movements in Europe, Asia, Africa and Latin America are products of such institutions. Tito, Dictator of Yugoslavia; Ho Chi Minh, number one Communist of Indo-China; Rakosi the top leader in Red Hungary; Bierut, President of Red Poland; Liu Shao-Chi, Vice President of Communist China, and General Liu Po-Cheng, one of the foremost military leaders of Red China. The same is true of many leaders of Communist Parties in non-Soviet countries.

The job of preparing *cadres* to implement the Cold War and to provide generalship for civil conflicts and other revoluntionary actions has been going on since the 1920's. Even during the last war, while the Kremlin ostensibly was on terms of friendship with its allies, the training of leaders for revolutions in the allied countries was not slackened.

7. Preparation of reserves

The Communist high command does not depend only on the faithful Communists. It attaches great value to its peripheral "reserves"—groups of sympathizers or innocent collaborators willing to travel along the Communist road part of the distance. These are mobilized and brainwashed through the false-front organizations, United and Peoples Fronts, the spread (as required) of pacifist or naturalist sentiment, doctrines of class struggle, belief in the "inevitable" collapse of capitalism and free societies.

In advanced countries like the United States, Britain, France, some segments of the so-called "intelligentsia have proved, especially vulnerable to Communist indoctrination. Not only, their self-doubts and frustrations but their most generous idealistic instincts have been canalized and perverted to promote victory for the Soviets in the Cold War.

The turnover in these "reserves" is of course high. Fellow-travelers by the thousands are likely to become disillusioned with every new Soviet policy zig-zag. But expert manipulation of public opinion serves to retrieve such losses.

8. Treacherous diplomacy

In its Cold War operations the Kremlim enjoys the advantage of working on two levels—as a conventional State dealing with other states and as a conspiratorial movement embracing the whole globe. In its guise of "just another government" the Politburo can make promises and engagements which world Communism is under orders to violate.

Soviet diplomacy takes full advantage of the moral code and "political naiveté" of some free countries and especially of their eagerness for peace, sometimes peace at any price. It uses the threat of war as a species of blackmail, and is past master at playing off one country against another. It appeals to the profit motives of competitive economies, and in general exploits what it refers to as the "inner contradictions" of the free world.

It can make the most of amorphous slogans like "peaceful coexistence"—a phrase coined by Lenin, repeatedly used by Stalin and candidly defined in Communist literature as a "tactic" or "stratagem" to gain time, deploy forces, undermine enemy vigilance.

In the arena of foreign relations the Kremlin can blow hot or cold, inflame our fears or our hopes to any required temperature, and use trickery to induce

its enemies to drop their guard. Its announcements of policy, negotiations and talk of negotiations, tourists to Red areas, artistic and cultural missions abroad—everything is grist for the Cold War mills.

The Communist high command recognizes no restraints, no rules of fair play, no codes of civilized behavior. It regards its great "historical mission" as a mandate which cancels out traditional values in the relations between man and man or country and country. In pursuance of that commitment it considers any cost in life and substance to be justified. A system of power which has not hesitated to "liquidate" millions of its own citizens cannot be expected to hesitate to wipe out lives anywhere else.

Moscow has brought one-third of the human race under its iron control by means short of a Hot War—by shrewd diplomacy, deception, propaganda, the blackmail of threats, fifth-column subversion, guerilla forces and, where expedient localized shooting wars. These political and psychological methods—the Cold War—have paid off, at smaller risk and infinitely lower cost than a Hot War would entail.

Accordingly they are being applied without stint to the conquest of the rest of mankind. For world Communism, with its high command in the Kremlin in Moscow, the Cold War is not a temporary or holding operation, nor a prelude to a Hot War. It is the main bout, the decisive offensive, conducted on an unlimited scale, with total victory as its goal.

In a decision of the U.S. Supreme Court (Vol. 339, May 8, 1950) an opinion written by the late Justice Robert H. Jackson stated the case against Communism in language that is clear and penetrating. He said: "The goal of the Communist Party is to seize powers of government by and for a minority rather than to acquire power through the vote of a free electorate. . . .

". . . It purposes forcibly to recast our whole social and political structure after the Muscovite model of police-state dictatorship. It rejects the entire religious and cultural heritage of Western civilization, as well as the American economic and political systems. This Communist movement is a belated counter-revolution to the American Revolution, designed to undo the Declaration of Independence, the Constitution, and our Bill of Rights, and overturn our system of free, representative self-government.

"Goals so extreme and offensive to American tradition and aspiration obviously could not be attained or approached through order or with tranquility. If, by their better organization and discipline, they were successful, more candid Communists admit that it would be to an accompaniment of violence, but at the same time they disclaim responsibility by blaming the violence upon those who engage in resistance or reprisal. It matters little by whom the first blow would be struck; no one can doubt that an era of violence and oppression, confiscations and liquidations would be concurrent with a regime of Communism.

"Such goals set up a cleavage among us too fundamental to be composed by democratic processes. Our constitutional scheme of elections will not settle issues between large groups when the price of losing is to suffer extinction. When dissensions cut too deeply, men will fight, even hopelessly, before they will submit. And this is the kind of struggle projected by the Communist Party and inherent in its program.

"Violent and undemocratic means are the calculated and indispensable methods to attain the Communist Party's goal. . . . In not one of the countries it now dominates was the Communist Party chosen by a free or contestable election; in not one can it be evicted by an election. The international police state has crept over Eastern Europe by deception, coercion, coup d'etat, terrorism and assassination. Not only has it overpowered its critics and opponents; it has usually liquidated them."

II. WE DARE NOT LOSE THE COLD WAR

If we ignore these facts, or do not counteract them effectively in good time, we shall lose the Cold War by default. For the United States and other free nations, defeat of this sort would be as catastrophic and as final as defeat in a shooting war. Whether we freeze to death or burn to death, our civilization would be equally finished.

Were the Communists willing to settle for a permanently divided world, each half pledged not to interfere with the other, they could readily arrange it. But they are not interested in a stalemate. In the nature of their ideology and world-wide apparatus of action, they must continue to drive relentlessly toward their

ultimate objective. They are irrevocably dedicated to winning the Cold War. They prefer to attain world dominion by non-military means because:

(*a*) They consider themselves masters of Cold War techniques pitted against those whom they regard as amateurs; their chances of victory seem to them incomparably greater than in a conventional military showdown.

(*b*) Political warfare does not directly endanger their own territories, industry, manpower and above all, their mechanism of dictatorial power.

(*c*) Clear-cut victory in the Cold War would give them access to our technology and resources, our great cities and treasures, intact and ready for exploitation; whereas a military victory would give them only the ruins of nuclear devastation.

Now as in the past, they proceed in the conviction that they can gain world hegemony by methods that, in the phrase of Leon Trotsky, constitute "neither war nor peace." For Moscow, the real alternative to a nuclear slowdown is not "peace" but political-psychological warfare of a magnitude to weaken, demoralize, chip away and ultimately take over what remains of the free world.

III. TO PREVENT A HOT WAR, WE MUST WIN THE COLD WAR

Political psychological offensives are not new. They have frequently been employed in war-time, to supplement ordinary military action. We used them ourselves in both world wars. Their purpose has been to soften up the enemy's will to resist, to win friends and allies in hostile areas, to drive wedges between belligerent governments and their citizenry.

The democracies are familiar with war-making in the normal military sense and hence do not hesitate to make huge investments and sacrifices in its name. They do shrink from the prospect of casualties. All of that seems "natural." But they are startled by proposals for effort and risk of such dimensions in the life-and-death struggle with non-military means.

Under these circumstances it has become incumbent upon our leadership to make the country aware that non-military or Cold War is also terribly "real"—that the penalty for losing it will be enslavement.

Hot War is always a possibility. It may come through force of circumstances even if no one wants it. Limited, localized wars are also a continuing threat. Nothing in this memorandum should be construed as a substitute for adequate military vitality. On the contrary, superior physical force in being is the indispensable guarantee for effective non-military procedures.

We must maintain our lead, and accelerate the tempo of progress, in the race for ascendancy in nuclear weapons, guided missiles, air power, early warning systems, electronic know-how, chemical and bacteriological methods of warfare. We must maintain adequate and well balanced forces for the ground, sea and air. These conventional military forces must be ready and capable of deterring or meeting an outbreak of peripheral or small-scale wars this side of a general showdown. They will be indispensable in a general war, if one should be fought without nuclear weapons. We must stockpile and protect the sources of vital strategic materials.

But short of a blunder that ignites the Third World War which nobody wants, the immediate danger is the debilitating, costly, tense war of nerves that is part of the Cold War. Because there is no immediate sense of overwhelming menace, no thunder of falling bombs and daily casualty figures, we are apt to think of this period as "peace." But it is nothing of the sort.

The primary threat today is political and psychological. That is the active front on which we are losing and on which, unless we reverse the trend, we shall be defeated. Its effects are spelled out in civil wars in parts of Asia, legal Communist Parties of colossal size in some European countries, "nationalist" movements under Communist auspices, "neutralism" and rabid anti-Americanism in many parts of the world—in pressures, that is to say, of every dimension and intensity short of a global shooting war.

Unless we meet this cumulative Communist threat with all the brains and weapons we can mobilize for the pnurpose, the United States at some point in the future will face the terrifying implications of Cold War defeat. It will be cornered, isolated, subjected to the kind of paralyzing fears that have already weakened the fibre of some technically free nations. We will have bypassed a nuclear war—but at the price of our freedom and independence. I repeat: we can freeze to death as well as burn to death.

Our counterstrategy

Logically we have no true alternative but to acknowledge the reality of the Cold War and proceed to turn Moscow's favorite weapons against world Communism. We have only a choice between fighting the Cold War with maximum concentration of energy, or waiting supinely until we are overwhelmed. Our political counterstrategy has to be as massive, as intensive, as flexible as the enemy's.

We must meet the Cold War challenge in our own household and in the rest of the world, and carry the contest behind the Iron and Bamboo Curtains. We must seek out and exploit the weak spots in the enemy's armor, just as the Kremlin has been doing to us these 30-odd years. We must make our Truth as effective and more productive than Moscow's Lie.

Our political strategy and tactics should be in terms of a major enterprise, on a scale for victory, with all the inherent risks and costs. We cannot fight this fight with our left hand, on the margin of our energies. We have to bring to its resources personnel and determination to match the enemy's. This is a case where, as in a military conflict, insufficient force may be as fatal as none at all.

If obliged to make tactical retreats, moreover, we must not bemuse ourselves that they are enduring solutions. To do so would be to disarm ourselves and open ourselves to new and bigger blows. This is a principle of particular importance during intervals when negotiations with Moscow or Peking are being discussed or are in progress.

The question, in truth, is no longer *whether* we should engage in the Cold War. The Soviet drive is forcing us to take counter-measures in any case. The question, rather, is whether we should undertake it with a clearheaded determination to use all means deemed essential, by governments and by private groups—to win the contest.

Our counter-measures and methods must be novel, unconventional, daring and flexible. They must, moreover, be released from the inhibitions of peace-time, since it is peace only in outer forms.

Almost against our will, in point of fact, we have launched more and more Cold War activities. But they have been piecemeal, on an inadequate scale and often without the all-important continuity of action. Worst of all, they have not been geared for total victory, being treated as extras, as harassment operations while hoping against hope that there will be no outbreak of war or that there will be a miraculous outbreak of genuine peace.

Our current posture shares the weakness inherent in all defensive strategy. They hope of a real compromise is a dangerous self-delusion. It assumes that Soviet Russia is a conventional counrty interested in stabilizing the world, when in fact it is the powerhouse of a dynamic world movement which thrives on instability and chaos.

Our duty and our best chance for salvation, in the final analysis, is to prosecute the Cold War—to the point of victory. To survive in freedom we must win.

The enemy is vulnerable

The free world, under the impact of Moscow's Cold War victories, has tended to fix attention on Soviet strengths while overlooking or discounting Soviet weaknesses.

The Communists expertly exploit all our internal tensions, injustices and discontents. Yet within the Soviet empire the tensions are imcomparably greater, the injustices and discontents more vast. Our opportunity, which we have failed to use so far, is to exploit these in order to undermine the Kremlin, exacerbate its domestic problems, weaken its sense of destiny.

The nature of a malady can be deduced from the medicine applied. In its fourth decade of absolute power, the Soviet regime is obliged to devote a major portion of its energies, manpower and resources to keep its own subjects and captive countries under control, through ever larger doses of terror. There we have the proof that the Communists have failed to "sell" their system to their victims.

Even a ruthless police-state does not maintain gigantic secret-police forces, special internal security armies, colossal networks of forced-labor colonies just for the fun of it. These are measures of self-defense against actual or potential internal oppositions. After all discounts are made for wishful thinking and error, ample evidence remains that in the Soviet sphere the West has millions of allies, tens of millions of potential allies.

Whether the potential can be turned into actuality, whether the will to resist can be kept alive and inflamed to explosive intensity, depend in the first place on the policies of the non-Soviet world. Our potential fifth columns are greater by

millions than the enemy's. But they have yet to be given cohesion, direction and the inner motive power of hope and expectation of victory.

No one knows whether, let alone when, the internal Soviet stresses can reach a climax in insurrectionary breaks. It would be frivolous to count on such a climax. But we have everything to gain by promoting a spirit of mutiny, to keep the Kremlin off balance, to deepen existing rifts, to sharpen economic and empire problems for them.

For the purposes of our Cold War strategy it suffices that the potential for uprisings exists. Soviet economic conditions are bad, particularly in the domain of food production. Nations which used to be exporters of bread (Hungary, Poland, Russia itself) now lack bread for themselves. As Secretary of Agriculture Benson said recently: "Failure of the Soviet system to provide for the basic needs of its own people could be one of the most important historical facts of our time."

The Soviet peasants, still the overwhelming majority of the Kremlin-held populations, are everywhere bitter and restive. The Politburo knows that it cannot count implicitly upon the loyalty and allegiance of its subjects. At the same time it has failed utterly to assimilate the captive countries, so that it has no allies but only sullen colonial puppets.

In the last war the USSR fought on two fronts—against the foreign invaders and against its own people. There is reason to believe that Hitler's psychological blunders, in insulting and alienating the Russian peoples, helped save the Stalin regime from destruction by its own subjects. In the present Cold War, too, the USSR must maintain its fight against the Soviet citizenry, and at the same time deal with seething dissidence in the subjected countries.

The basic conditions for successful Cold War counter-strategy thus exist.

Guidelines for political offensive

Our guiding objectives in an all-out political offensive are fairly obvious. They must include the following:

1. To keep alive throughout the Soviet empire the spirit of resistance and the hope of eventual freedom and sovereignty. If we allow that hope to expire, the Kremlin will have perpetuated its dominion over its victims.

2. To break the awful sense of isolation in which the internal enemies of the Kremlin live—by making them aware that, like the revolutionists in Tsarist times, they have devoted friends and powerful allies beyond their frontiers.

3. To sharpen by every device we can develop the fear of their own people that is already chronic in the Kremlin. The less certain the Soviets are of the allegiance of their people, the more they will hesitate to provoke adventures involving the risks of a major showdown.

4. To provide moral and material aid, including trained leadership, to oppositions, undergrounds, resistance movements in satellite nations and China and Russia proper.

5. To make maximum use of the fugitives from the Soviet sphere, millions in the aggregate, now living in free parts of the world.

6. To appeal to the simple personal yearnings of those under the Communist yoke: release from police terror, ownership of small farms and homes, free trade unions to defend their rights at the job, the right to worship as they please, the right to change residence and to travel, etc.

7. To shatter the "wave of the future" aura around Communism, displacing the assumption that "Communism is inevitable" with a deepening certainty that "the end of Communism is inevitable."

8. To inspire millions in the free countries with a feeling of moral dedication to the enlargement of the area of freedom, based on repugnance to slave labor, coerced atheism, purges and the rest of the Soviet horrors.

This inventory of objectives is necessarily sketchy and incomplete. But it indicates the indispensable direction of the Cold War effort.

IV. THE MESSAGE OF FREEDOM

We must be quite certain of our destination before we can begin to figure out means of transportation. There is little point in discussing the how of it until a firm decision for an all-out political-psychological counter-offensive is reached.

In Hot War, you need a weapon and means of delivering it to the target. The same is true in Cold War. The weapon is the message; after it has been

worked out, we can develop the facilities for delivering it to the world at large and to the Communist-captive nations in particular.

The essence of that message (and its formulation is the critical first step) is that America has decided, irrevocably, to win the Cold War; that its ultimate aim is, in concert with all peoples, to cancel out the destructive power of Soviet-based Communism.

Once that decision is made, some of the means for implementing it will become self-evident; others will be explored and developed under the impetus of the clear-cut goal. Agreement on the problem must come before agreement on the solution.

"To be effective," as one student of the problem has put it, "our decision must be as sharp-edged and uncompromising as the Kremlin's; it must be spelled out as unequivocally as the Communists have done in the works of Lenin and Stalin and the official programs of the Comintern and Cominform."

Adjustment of our thinking in accord with such a decision to win the Cold War demands clarity on at least the following points:

1. The struggle by means short of general war is not a preliminary bout but the decisive contest, in which the loser may not have a second chance.

2. It must therefore be carried on with the same focused effort, the same resolute spirit, the same willingness to accept costs and casualties, that a Hot War would involve.

3. In order to establish credence and inspire confidence, our conduct must be consistent. Our philosophy of freedom must embrace the whole of mankind; it must not stop short at the frontiers of the Soviet sphere. Only this can give our side a moral grandeur, a revolutionary elan, a crusading spirit not only equal to but superior to the other side's.

4. We must learn to regard the Soviet countries as enemy-occupied territory, with the lifting of the occupation as the over-all purpose of freedom-loving men everywhere. This applies not only to areas captured since the war, but includes Russia itself. Any other policy would turn what should be an anti-Communist alliance into an anti-Russian alliance, forcing the Russians (as Hitler forced them during the war) to rally around the regime they hate.

5. The fact that the challenge is global must be kept clearly in view. Red guerillas in Burma, Communists in France or the U.S., the Huks in the Philippines, Red agents in Central America—these are as much "the enemy" as the Kremlin itself.

6. We must realize that world Communism is not a tool in the hands of Russia—Russia is a tool in the hands of world Communism. Repeatedly Moscow has sacrificed national interests in deference to world-revolutionary needs. This provides opportunities for appeals to Russian patriotism.

7. Though the Soviets want a nuclear war no more than we do, they accept the risk of it in pushing their political offensive. We, too, cannot avoid risks. (It might become necessary, Mr. Dulles said recently, "to forego peace in order to secure the blessings of liberty.") The greatest risk of all, for us, is to do less than is needed to win the Cold War. At worst that would mean defeat by default; and at best, a situation so menacing to the survival of freedom that a Hot War may become inevitable.

Our present lead in the possession of nuclear weapons and the ability to use them may be matched by the Communists in the next few years. This is the view expressed by competent statesmen, scientists and military experts. If and when nuclear parity is reached, the enemy's fanatics (and there may be a powerful madman—a Hitler—among them) might be tempted to use them against us by throwing a sneak punch. Since our policy is not to throw the first nuclear punch but only to retaliate if it is thrown against us, we may find as more horror weapons are unfolded, that to yield to the enemy the initiative of the first offensive punch, is tantamount to national suicide. All this further emphasizes the vital need for winning the Cold War and preventing a Hot War.

V. TOWARD COLD WAR VICTORY

1. Organization

An organizational framework for fighting the Cold War already exists. It needs to be adjusted and strengthened in line with the expanded scale and intensity of operations.

A Strategy Board for Political Defense, the Cold War equivalent of the Joint Chiefs of Staff on the military side, is suggested. It should function directly

under the President, with Cabinet status for its Head. Top representatives of the State Department, the Defense Department, the Central Intelligence Agency, the U.S. Information Agency, should sit on this Board. Liaison on a continuous basis should be maintained with all other agencies which can play a role in the overall effort.

There will be various operations which the Board would undertake in its own name, with its own facilities. But its primary function should not be operational. It should be to plan, initiate, finance, advise, coordinate and check on operations by other groups and agencies, whether already in existence or created by the Board for specific undertakings.

One cannot, however, be too specific at this point about the organizational forms. John Foster Dulles wrote in 1948:

We need an organization to contest the Communist Party at the level where it is working and winning its victories. . . . We ought to have an organization dedicated to the task of nonmilitary defense, just as the present Secretary of Defense heads up the organization of military defense. The new department of nonmilitary defense should have an adequate personnel and ample funds."

2. Financing

On the matter of funds, likewise, one cannot at this stage offer specific estimates. But let us recall that appropriations over the past four years for our Military Defense averaged approximately 45 billion dollars annually. In contrast, it is significant to note that for the fiscal year 1955 the total appropriation for the U.S. Information Agency was 79 million dollars, of which 17 million dollars is available for the world-wide activities of the Voice of America.

As a working hypothesis it is suggested that a specific and more realistic ratio between military and non-military appropriations be worked out: say an amount equivalent to 5 or 7½ percent of Military Defense appropriations to be granted to the Strategy Board for Political Defense—this, of course, without reducing the military budget and not counting foreign military aid and Point Four types of expenditure.

I am convinced that if the American people and their Congress are made fully aware of the menace we face, of the urgent need for meeting it, and the possibility of doing so by means short of war, they will respond willingly as they have always done in times of national crisis. They will realize that no investment to win the Cold War is exorbitant when measured against the stakes involved, and against the costs of the bombing war we seek to head off.

3. Implementing the counter-offensive

We must go from defense to attack in meeting the political, ideological, subversive challenge. The implementation of the attack would devolve upon specialists and technicians. In gearing to fight a Hot War, we call in military strategists and tacticians. Likewise, we must have specialists to fight a Cold War.

This implies in the first place the mobilization of hard, knowledgeable anti-Communists who understand the issues and for whom it is not merely a job but a dedication. The specialist in communications is important; but the message to be communicated is even more important.

The main weakness of our efforts to date to talk to the masses—and even more so to the elite groups (Army, intelligentsia, etc.)—in the Soviet camp is that we have not always been consistent in what we had to say to them. Our message has been vague and subject to change without notice. As long as we regard Communist rule as permanent, we can have no strong psychological bridges to those who are under its yoke. The only free-world goal that is relevant to them is one that envisages their eventual emancipation.

With the formulation of a message, we will at last have something to say that interests them, not only us, and can devote ourselves to perfecting the means of delivering the message.

Before essaying a breakdown of Cold War methods and techniques, we should recognize that many of them are already being used, and often effectively. Nothing now under way needs to be abandoned. The problem is one of attaining the requisite magnitude, financing, coordination and continuity—all geared to the long-range objectives of the undertaking. The expanded offensive with non-military weapons must be imbued with a new awareness of the great goal and a robust will to reach it.

No outline such as follows can be more than indicative. Operations are necessarily related to current developments and opportunities opened up by events.

In all categories the arena of action is the whole globe. Our Cold War targets are not only behind the Iron and Bamboo Curtains, but in every nation, the United States included. In the battle for the minds of men, we must reach the Soviet peoples, our allies, and the uncommitted peoples.

The agencies involved will be both official and private. The objectives must aim to achieve dramatic victories as swiftly as possible, as a token of the changed state of affairs. While the Kremlin has suffered some setbacks and defeats, its record in the Cold War has been strikingly one of success piled on success. This trend must be reversed, to hearten our friends, dismay the enemy, and confirm the fact that Communist Power is a transient and declining phenomenon.

4. Propaganda

If the weapon is our Message, one of its basic elements is propaganda. It is the most familiar element, but we should not underestimate its inherent difficulties. Hot War is destructive: the killing of people, the annihilation of material things. Cold War must be constructive: it must build views, attitudes, loyalties, hopes, ideals and readiness for sacrifice. In the final check-up it calls for greater skills to affect minds than to destroy bodies.

Propaganda, for maximum effect, must not be an end in itself. It is a preparation for action. Words that are not backed up by deeds, that do not generate deeds, lose their impact. The test is whether they build the morale of friends and undermine the morale of foes.

No means of communication should be ignored: the spoken word and the written word; radio and television; films; balloons and missiles to distribute leaflets; secret printing and mimeographing presses on Soviet controlled soil; scrawls on walls to give isolated friends a sense of community.

5. Communist targets

The Communist sphere must be ringed with both fixed and mobile broadcasting facilities, of a massiveness to overcome jamming. The Voice of America will acquire larger audiences and more concentrated impact under the new approach. Its name, it is suggested, should be expanded to "Voice of America—for Freedom and Peace." This slogan added to the name will, through constant repetition, impress the truth upon receptive ears.

Besides the official voice, we have other voices, such as Radio Free Europe and Radio Liberation. There are other popular democratic voices that should make themselves heard: those of our free labor movement, American war veterans, the churches, youth and women's organizations.

Already there is a minor flow of printed matter across the Iron Curtain, especially aimed at the Red occupation forces. The volume and effectiveness of this effort can be enormously enlarged. Magazines and newspapers which outwardly look like standard Communist matter, but actually are filled with anti-Communist propaganda, have brought results.

A greater hunger for spiritual comfort, for religion, is reported from Soviet Russia and its satellites. Programs of a spiritual and religious character are indicated. They should preach faith in the Divine, abhorrence of Communist godlessness, resistance to atheism. But in addition they can offer practical advice to the spiritually stranded—for instance, how to observe religious occasions where there are no ordained ministers or priests to officiate.

The enslaved peoples do not have to be sold the idea of freedom; they are already sold on it. The propaganda should wherever possible get down to specifics. It should expose the weaknesses, failures, follies, hypocrisies and internal tensions of the Red masters; provide proof of the existence of friends and allies both at home and abroad; offer guidance on types of resistance open even to the individual. It should appeal to universal emotions, to love of family, of country, of God, of humanity.

6. Free-world targets

The fighting front is everywhere. The program of the U.S. Information Agency should be reappraised with a view to improvement and expansion. "The Voice of America—for Freedom and Peace" has tasks to perform in many nations of the free world second in importance only to those in the unfree world.

Merely to point up the inadequacy of our present effort, consider Finland—a country on the very edge of the Red empire and under the most concentrated Soviet propaganda barrage. Soviet broadcasts beamed to Finland total over 43 hours weekly. A television station is now being built in Soviet Estonia which will be directed to a million potential viewers in nearby Finland. To maintain

their morale under this pressure, the Finnish people, still overwhelming pro-West and pro-American, have desperate need of our encouragement. Yet the Voice of America in 1953 was compelled to discontinue its daily half-hour broadcast to Finland to save $50,000 annually.

We need in every country, newspapers; magazines; radio and TV stations, consciously and effectively supporting our side. Those that exist should be aided materially to increase their range and vitality; others should be started with our help. The strongest individual anti-Communist voices must be provided with better facilities for making themselves heard in their own countries.

Mobile film units are already penetrating backward areas. The operation should be enlarged, its message and appeal perfected. In addition, mobile big-screen television units in black-and-white and in color can carry our message. Their very novelty will guarantee large and attentive audiences. Vast regions in Asia and elsewhere, where illiteracy bars the written word and lack of radios bars the spoken word, could thus be reached. To quote the Chinese saying: "One picture is worth ten thousand words."

The so-called backward parts of the world, particularly Asia, are under the most concentrated Communist psychological attacks. Of necessity the counter-offensive must take this into account, and develop special techniques for reaching both the masses and the elite of those areas.

7. Radio receivers and phonographs

Mass production of cheap and light-weight receivers tuned to pick up American signals are now feasible. They should be made available by the million at cost or gratis, as expedient, to listeners in critical areas and behind the Iron Curtain.

There are millions of persons in the world who do not have electric power receptacles, electron tubes, batteries or any of the electrical and mechanical marvels which the free world has and takes for granted. A simple, hand-operated phonograph device costing no more than a loaf of bread, could be produced in quantities and supplied gratis to millions of persons living behind the Iron and Bamboo Curtains and in other critical areas.

An unbreakable and intelligible record, made of cardboard and costing less than a bottle of Coca-Cola, could carry our messages to these people. Such records could be dropped from the sky like leaflets and the messages they carried could not be jammed.

8. Use of facilities in friendly countries

Nearly all European and many Asian countries possess broadcasting facilities. We should seek to enlist their use to supplement and intensify American broadcasting on a world-wide scale.

In some cases this could be negotiated on a quid pro quo basis where we are providing military or economic aid; in other cases we may have to buy the necessary time for transmitting our message. Our friendly allies, such as Great Britain, have vast short-wave facilities of world-wide scope and range and have the same reasons as we have for seeking to win the Cold War. We need their help in this field. We are fully justified in asking for such help and ought to receive it.

Propaganda is a large concept. In a sense it includes and exploits all other activities. Its successful use calls for imagination, ingenuity, continual technical research and, of course, effective coordination with all other operations that bear on the problems of the Cold War.

9. Passive resistance

Pending the critical periods when active resistance in one or another Soviet country is possible and desirable, full encouragement and support must be given to passive resistance. This refers to the things the individual can do, with minimum risk, to create doubt and confusion in the ranks of the dictatorship, to gum up the machinery of dictatorship government.

The worker in the mine and factory, the farmer, the soldier in the barracks, the office worker are able to do little things that in their millionfold totality will affect the national economy and the self-confidence of the rulers. It is the method that comes naturally to captive peoples, especially in countries with a long historical experience in opposing tyrants.

Our opportunity is to give the process purposeful direction. In this concept the individual opponent of the regime becomes a "resistance group of one." He receives, by radio and other channels, specific suggestions and instructions. The tiny drops of resistance will not be haphazard, but calculated to achieve planned results.

Special action programs of the type that do not require large organization—or at most units of two or three—would be worked out and transmitted. Our sympathizers in the Soviet orbit would feel themselves part of an invisible but huge army of crusaders. Symbols of protest would appear on a million walls. The rulers' morale would be deliberately sapped by a multitude of actions too small, too widespread, to be readily dealt with.

The special value of passive resistance, aside from its direct effects, is that it nurtures the necessary feeling of power and readiness for risk and sacrifice that will be invaluable when the passive stage is transformed into more open opposition.

10. Organized resistance

Pockets of guerilla forces remain in Poland, Hungary, the Baltic states, China, Albania and other areas. There is always the danger of activating them prematurely. But their existence must be taken into the calculations and, in concert with exiles who know the facts, they must be kept supplied with information, slogans and new leadership where needed and prudent.

Many of these resistance groups are so isolated that they do not know of each other's existence. The simple realization that they are not alone but part of a scattered network will be invaluable; methods for establishing liaison, for conveying directions, can be developed.

11. Insurrections

The uprisings in East Germany, the strikes and riots in Pilsen, Czechoslovakia, the dramatic mutinies inside the concentration camps of Vorkuta in the Soviet Arctic, are examples of revolutionary actions that failed. But they attest that insurrection is possible.

We must seek out the weakest links in the Kremlin's chain of power. The country adjudged ripe for a breakaway should receive concentrated study and planning. A successful uprising in Albania, for instance, would be a body blow to Soviet prestige and a fateful stimulus to resistance elsewhere. (That little country is geographically isolated, ruled by a handful of puppets; able leadership is available in the Albanian emigration.)

Eastern Germany is among the weakest links. Its revolt would ignite neighboring Czechoslovakia and Poland. The time to prepare for such actions is now—whether the time to carry them out be in the near or distant future. Meanwhile we must not allow the Soviet propaganda to make unification appear as the Communist's gift to the Germans. It is a natural asset that belongs to West Germany and her allies.

12. Collaboration with emigres and escapees

Tens of thousands of self-exiled fugitives from Communist oppression emerge eager to plunge into movements for the freeing of their homelands. When they fail to find outlets for their zeal, disillusionment and defeatism set in.

Minimum exploitation of this manpower and moral passion is indicated. They must be drawn into specific, well-organized, well-financed anti-Communist organizations and activities; utilized for propaganda and other operations; enabled, in some cases, to return to their native lands as "sleeper" leaders for future crises.

Officers' corps of emigres can be formed: perhaps groups of only a score to a hundred, but available for emergency and opportunity occasions. The existence of such nuclei of military power—a fact that will be widely known—should help generate hope and faith among their countrymen back home.

13. Planned defection

Escapees have come, and will continue to come, spontaneously, now in trickles, other times in rivers. Beyond that the need is to stimulate defection on a selective basis. Individual "prospects" in Soviet missions and legations, in Red cultural and sports delegations, can be carefully contacted and developed. Types of individuals needed to man Cold War undertakings will be invited to escape, assured of important work. Special approaches can be worked out to encourage defection of border guards, Army officers, secret-police personnel disgusted by their bloody chores, scientists, important writers, etc.

Escapees today are often disheartened by their initial experience. They are taken into custoday by some foreign Intelligence Service, pumped for information, and sometimes then left to shift for themselves. Their honest patriotism is offended by the need to cooperate with foreigners before they are psychologically ready for it.

It is suggested that emigre commissions be set up, composed of trusted nationals of the various countries. The fugitive would first be received by the commission of his own countrymen. Only when found desirable and prepared for the step, would he be brought into contact with American or British agencies.

14. Training of cadres

The immediate and prospective activities of the Cold War offensive will require ever larger contingents of specialized personnel for the many tasks; to provide leadership for resistance operations; to engage in propaganda, subversion, infiltration of the enemy; even to carry on administrative and civic work after the collapse of Communist regimes in various countries, in order to stave off chaos.

Already, limited as our political efforts are, there is a shortage of competent personnel. Meanwhile thousands of younger men and women among the emigres are being lost to factories, farms, menial jobs. This amounts to squandering of potentially important human resources.

We need a network of schools and universities devoted to training cadres for the Cold War. The objective is not education in a generic sense, but specific preparation for the intellectual, technical, intelligence and similar requirements of the ideological-psychological war.

This training, of course, should not be limited to people from the Soviet areas. A sort of "West Point" of political warfare—analogous to the Lenin School of Political Warfare in Moscow—might be established. Staffed by the ablest specialists obtainable, it would seek out likely young people willing to make the struggle against Communism their main or sole career.

The present "exchange of persons" program is clearly valuable. Hundreds of foreign students go back home with a better and friendlier understanding of America. But beyond that, it is possible and necessary to educate invited young people from abroad, carefully selected, along lines of more direct and specialized value to the Cold War effort.

In a sense these shock troops of democracy would be like the "professional revolutionaries" on the Communist side. They would be equipped to operate openly or as secret infiltrees wherever the enemy's assaults need to be neutralized. Trained anti-Communists from Asian areas, dedicated and knowledgeable, would be available for countries under Red pressure, as today in Southeast Asia; Latin Americans, Europeans, would serve similar functions in their respective regions.

Thus, from a largely amateur enterprise, our counteroffensive would gradually be transformed into a professional undertaking.

15. Campaigns by special groups

An American trade union in the clothing field played a major role in preventing Communist victory in the Italian elections in 1948. The International Confederation of Free Trade Unions (in which both the A. F. of L. and the C.I.O. are active) is conducting important psychological drives in many countries and offsetting the mischief worked by the Moscow-controlled labor international.

Speaking as workers to workers, trade unionists have a legitimate approach to the laboring masses in the Soviet sphere. They have a special justification for exposing and publicizing forced labor, onerous laboring conditions and laws, phony totalitarian "trade unions."

In many countries—France and Italy, for instance—there are competing Communist-controlled and democratic unions. Free labor of all countries can throw its moral and material support to the anti-Communist federations. It can take the lead in breaking Moscow's grip on influential segments of world labor.

Corresponding political campaigns should be mounted on a telling scale by other non-official, popular groups: farmers' organizations and peasant unions would concentrate on the evils of Red collectivization; great church groups on the immoral and atheistic aspects of Communist theory and practice; youth organizations on the perversion of youth under Communism, etc.

The scope of such focussed group and class appeals is enormous. Some of them are being made already, but without the coordination of effort and continuity of impact that is called for.

What a specialized group can achieve has been demonstrated by the society of Free Jurists in West Berlin, which indicts and condemns in absentia persons guilty of Communist crimes. Its work is sowing the fear of retribution in East Germany. Radio Free Europe has made successful forays of the same

order—identifying brutal officials, exposing Red agents, etc. But the surface has only been scratched in this type of psychological pressure.

VI. DIPLOMACY IS A WEAPON

The Kremlin treats foreign affairs as a primary arena of ideological and psychological effort. It makes moves on the diplomatic chessboard for their propaganda impact: to rally its friends in the outside world, to win over a particular element in some country, to embarrass its opponents. In the measure that democratic diplomacy fails to do likewise, it is defaulting in a vital area of the Cold War. Let us bear in mind:

1. Day to day conduct of foreign affairs is pertinent to the struggle for men's minds. The rigid observance of protocol, in dealing with an enemy who recognizes none of the traditional rules, can be self-defeating. We must make proposals, demands, exposés, publications of official documents, etc. that are carefully calculated to show up the true motives of the Kremlin, to put a crimp in Moscow political campaigns, to mobilize world opinion against Soviet crimes and duplicities.

For ten years we have made one-shot protests against Soviet election frauds in satellite countries, against violations of treaties and agreements, against shocking crimes in the areas of Human Rights as defined by the U.N. Charter. The archives are packed with these documents. These should be followed up through consistent publicity, renewed protests, etc.

Even when nothing practical can be immediately accomplished, the facts of slave labor, genocide, aggressions, violations of Yalta, Potsdam and other agreements must be kept continually before the world. Diplomacy must champion the victims of Red totalitarianism without let-up. At every opportunity the spokesmen of free nations should address themselves to the people in the Soviet empire over the heads of their masters; to the people of free countries in terms of universal principles of morality and decency.

2. The measures of reciprocity should be strictly applied to Soviet diplomats, trade and other representatives. These should enjoy no more privileges, immunities, access to information than is accorded to free-world representatives in Communist lands. Even socially they should be made aware of their status as symbols of a barbarous plexus of power. The desire to belong, to be respectable, is by no means alien to Red officialdom.

3. Economic leverages, too, must be applied. Trade can be turned into a powerful political weapon. The stakes are too high to permit business-as-usual concepts to outweigh the imperatives of the Cold War. Where acute distress develops in a Communist country, our readiness to help must be brought to the attention of the people as well as their bosses. If and when food and other relief is offered, it must be under conditions consistent with our objectives—to help the victims, not their rulers.

4. In virtually all countries outside the Communist sphere there are large or small organizations devoted to combatting Communism, at home or abroad or both. There is little or no contact among such groups—no common currency of basic ideas and slogans, no exchange of experience. Without at this stage attempting to set up a world-wide anti-Communist coalition, or Freedom International, we should at least facilitate closer liaison and mutual support among anti-Soviet groupings already in existence.

VII. SUMMARY

No claim is implied that the foregoing outline is complete, or that all of it can or ought to be launched at once. The program here suggested should not be judged on the basis of this or that specific proposal but on the over-all concept and its underlying philosophy. As a practical matter, methods flow from correct policies, the availability of funds and trained manpower, the existence of leadership and organization prepared to take advantage of unfolding events.

Summarized, my observations and conclusions are:

1. We are in the midst of a Cold War which the Communists are prosecuting vigorously on all fronts in an unswerving determination to win.

2. We dare not lose this Cold War, because defeat may be as fatal as would defeat in a Hot War. We can freeze to death as well as burn to death.

3. Our best and surest way to head off a Hot War is to win the Cold War which is already in full blast all over the world. But for the reasons mentioned, such as insufficient funds and inadequate tools, our efforts in this decisive field are strikingly little compared with the enemy's and are wholly inadequate to

achieve victory. We must meet the political-psychological challenge of world Communism fully and on a scale geared to winning the struggle.

4. We should organize our efforts to win the Cold War on a basis comparable to our organization for winning a Hot War which we seek to prevent. To this end it is recommended that a Strategy Board of Political Defense (or some other suitable name) be set up to function as the Cold War equivalent of the Joint Chiefs of Staff, on the military side. Top representatives of the State and Defense Departments, C.I.A. and U.S.I.A., should be members of this Board. Its activities must be effectively coordinated with all Departments and Agencies of our Government concerned with this effort. This new Strategy Board should function directly under the President and its Head should have Cabinet status.

5. Our decision to win the Cold War should be communicated to the entire world as a fixed goal of American policy. This will not rule out conventional relations on the governmental level, where the Kremlin, too, functions despite its clear commitment to world revolution.

6. The American public should be made promptly and fully aware of the nature of the present Cold War, the importance of our winning it, the costs and sacrifices that this may entail. The significance and urgency of the problem should be conveyed to the American people, through discussion over Radio, TV, and in the Press.

7. The idea of our determination to win the Cold War must be presented for what it actually is: a project that can be carried through successfully and thereby prevent a general war that could force a devastating nuclear showdown. Once grasped, this prospect would help to offset the fears and frustrations generated in the public mind by constant emphasis on the horrors of Atomic War. The alternative presented, is understandable and hopeful. Instead of concentrating on the perils of defeat, we can dwell on the prospects for victory.

8. Key leaders in Congress should be drawn into the philosophy and purposes of the Cold War counter-offensive from the outset. No program of the scope suggested here can be undertaken and executed without adequate funds that only Congress can appropriate. In addition to legislative support the Congress can aid immeasurably by stimulating united, patriotic effort as complete and non-partisan as in a Hot War.

9. To wrest from the Communists the advantages they gain through constant use in their propaganda of the appealing word "peace"—while casting us in the role of "war-mongers"—it is recommended that the present name of the "Voice of America" be extended to the "Voice of America—for Freedom and Peace."

10. Our Diplomacy should be used as a weapon against World Communism and our Message to their captive peoples should contain the hope for their eventual freedom. Our Message of Truth should tell the world the truth about Communist objectives, methods and practices as well as the truth about ourselves .

INDEX

(NOTE.—The Senate Internal Security Subcommittee attaches no significance to the mere fact of the appearance of the name of an individual or organization in this index.)

A

	Page
Abel, Rudolf Ivanovich	61
Abuse of Psychiatry for Political Repression in the Soviet Union (SSIS publication)	54
Activities of U.S. Citizens Employed by the U.N. (SSIS publications)	51
Adams, Nathan	106
Africa	39, 139
Afro-American Liberation Army (*See also* Black Liberation Army)	116
Agency for International Development (AID)	50
Agriculture, Department of	50, 119
Albania	92, 148
Albertson, William	10
Al Fatah	35
Algeria	130
Algiers	115
Alien Registration Act	77, 94
All-African Peoples Revolutionary Party	39
Allen	79
American Bar Association	90, 91, 93, 98, 109
Journal	21, 25, 64, 79
Special Committee on Communist Tactics, Strategy and Objectives	93
American Committee for the Protection of the Foreign Born	25, 74
American Communications Association (ACA)	29
American Federation of Labor (AFL)	29, 149
American Federation of Labor-Congress of Industrial Organizations (AFL–CIO)	43, 44, 62, 63, 127, 128, 131
Convention	29
American & Foreign Power Co., The Necessity For All of Us To Fight (publication)	93
American Law Institute	27, 104
American Rights (publication)	77
American Society for Industrial Security	35, 36
Amtorg Trading Corp	60
"Anarchist Cookbook, The" (book)	118
Andropov, Yuri	46
Annenkov, I. U	5
Annual Report (SISS publication)	52
Annual Report of the Attorney General of the United States	49
Antieau	82
Aptheker, Herbert	23, 95
Arabs	67
Argentina	121, 123
Artkino Pictures	60
Asia	139, 141
Assault on Freedom (SSIS publication)	53
Association of American Law Schools	98
Association-Sterling Films	60
Athens	121
Atlanta	39
Atomic Energy Commission	50

53-696—75——11

Page

Attica Brigade ---------- 116
Attorney General ---------- 9–13, 23, 26, 43, 49, 60, 65, 74, 86, 94
Attorney General's Annual Report ---------- 60
Attorney General's list of subversive organizations ---------- 13–15, 43, 49, 52, 64
Augusta, Ga ---------- 39

B

Babylon (publication) ---------- 115
Ballentine's Law Dictionary ---------- 75
Bamboo Curtain ---------- 142, 146, 147
Barenblatt, Lloyd ---------- 31
Barnes, Judge Wilson K ---------- 20
Baton Rouge ---------- 21
Bayo, General Alberto ---------- 118
Benson, Secretary of Agriculture ---------- 143
Berger, Raoul ---------- 99
Berlin ---------- 93, 137
Berns ---------- 82
Bierut ---------- 139
Bill of Rights, The (book) ---------- 99
Black, Hugo L., Justice ---------- 20, 21, 82, 84, 86, 87, 103, 106
Black Liberation Army (BLA) (a.k.a. Afro-American Liberation Army) -- 38, 115–117
Black Muslim ---------- 106
Black Panther Party ---------- 38, 39, 115–117, 119
Black September Movement ---------- 41, 121
Bohlen, Charles ---------- 2
Boston University Law Review ---------- 79
Boumedienne of Algeria ---------- 130
Brazil ---------- 116
Brennan, Justice ---------- 19, 79, 80, 86
Brezhnev, Leonid ---------- 44–46, 63, 67, 127, 129–132, 136
Brownfeld, Allan ---------- 53, 65
Brumberg, Abraham ---------- 45
Brzezinski, Zbigniew ---------- 46, 47
Buckley, Senator James ---------- 20
Budget of the U.S. Government (publication) ---------- 13
Bulgaria ---------- 92
Burger, Chief Justice ---------- 99, 105
Burma ---------- 121
Burns International Investigation Bureau ---------- 35
Butler bill ---------- 9
Butler, Senator ---------- 9

C

California ---------- 34, 36, 115, 119
  Attorney General ---------- 37
  Attorney General's office ---------- 36
  Law Review ---------- 82
  Men's Colony (San Luis Obispo) ---------- 108
Cambodia ---------- 15
Cardozo, Justice Benjamin N ---------- 27, 104
Carmichael, Stokely ---------- 39, 115, 116, 118
Cases cited:
  Aldridge v. *Williams* ---------- 79
  American Committee for the Protection of Foreign Born v. *Subversive Activities Control Board* ---------- 74, 75
  Anderson v. *Mt. Clemons Pottery Co* ---------- 81
  Aptheker v. *Secretary of State* ---------- 13, 23, 95
  Baggett v. *Bullitt* ---------- 95
  Barenblatt v. *U.S* ---------- 31, 37, 40, 95
  Bates v. *City of Little Rock* ---------- 84, 95
  Baumgartner v. *United States* ---------- 94

Page

Blau v. *United States* ---- 79
Board v. *SACB* ---- 12
Boston Sand & Gravel Co. v. *United States* ---- 79
Braden v. *United States* ---- 95
Burroughs v. *United States* ---- 84
Cantwell v. *Connecticut* ---- 95
Carey v. *South Dakota* ---- 79
Cole v. *Young* ---- 30
CPUSA v. *SACB* ---- 10, 13, 19, 26, 33, 73, 75, 77, 78, 83, 84, 86, 87, 95
Communist Party, USA v. *United States of America* ---- 11
Cooper v. *Aaron* ---- 97
Counselman v. *Hitchcock* ---- 11, 79, 81
Dennis v. *United States* ---- 1, 26, 80–82, 87, 94, 96
Ellerman Lines v. *Murray* ---- 79
Fixa v. *Heilberg* ---- 13
Gerende v. *Board of Supervisors of Elections* ---- 95
Harriman v. *I.C.C* ---- 79
I.C.C. v. *Oregon Washington R. Co* ---- 79
Konigsberg v. *State Bar* ---- 95
Lamont v. *Postmaster General of the United States* ---- 13
McCullough v. *Maryland* ---- 84
Marbury v. *Madison* ---- 97–99, 105
Miller v. *Taylor* ---- 79
NAACP v. *Alabama* ---- 84, 95
NAACP v. *Button* ---- 95
Nelson v. *County of Los Angeles* ---- 95
Noto v. *U.S* ---- 24, 77, 83, 96
People ex rel Bryant v. *Zimmerman* ---- 96
Pine Hill Coal Co. v. *United States* ---- 79
Powell v. *McCormack* ---- 97
Russian Volunteer Fleet v. *United States* ---- 79
Scales v. *United States* ---- 11, 77–81, 83, 87, 95, 96
Shelton v. *Tucker* ---- 84
Sonzinsky v. *United States* ---- 85
Speiser v. *Randall* ---- 13
Thornhill v. *Alabama* ---- 95
United States v. *Communist Party* ---- 10
United States v. *Harriss* ---- 84
United States v. *Kahriger* ---- 85, 86
United States v. *La France* ---- 79
United States v. *Nixon* ---- 25, 28, 29, 97–99, 105, 106
United States v. *Robel* ---- 13, 37
United States v. *Sullivan* ---- 85
United States v. *Union Pacific R.R. Co* ---- 79
Uphaus v. *Wyman* ---- 95
Veterans of the Abraham Lincoln Brigade v. *Subversive Activities Control Board* ---- 73, 74
Viereck v. *United States* ---- 84
Waldron v. *British Petroleum Co* ---- 52
Wilkinson v. *United States* ---- 95
Yates v. *United States* ---- 26, 82, 83, 94–96
Castro, Fidel ---- 118, 131
Castro, Raul ---- 123
Castro's Broken Pledges (SSIS publication) ---- 53
Central America ---- 144
Central Intelligence Agency (CIA) ---- 46, 58, 88, 145, 151
Central Parcel Service (Vneshposyltorg, Moscow) ---- 60
Chamber of Commerce, U.S ---- 127, 133
Chase Manhattan ---- 133
Chicago ---- 39
Chicago, University of (Law School) ---- 27, 101
China ---- 43, 133, 143, 148
Church, Senator ---- 128, 129
Cincinnati Law Review (CLR) ---- 24

Page

Civil Aeronautics Board ---- 50
Civil Service Commission ---- 50
Clark, Justice ---- 30, 31, 95, 102, 103
Cleaver, Eldridge ---- 38, 107, 115, 117
Clutterbuck, Richard ---- 59
Coke, Lord ---- 105
Cold war ---- 57, 137, 139–147, 149–151
Columbia Law Review ---- 82
Columbia Law School ---- 27, 104
Columbia University (Research Institute on Communist Affairs) ---- 46
Commerce, Department of ---- 50, 135
Communism ---- 142
Communism Versus International Law (publication) ---- 90
Communist ---- 127, 131
Communist China ---- 139
Communist International (World Congress) ---- 92, 94, 137
Communist Manifesto ---- 88, 89
Communist Party ---- 1, 5, 7–9, 11, 12, 14, 15, 23, 24, 26, 29, 37, 38, 53, 58, 74, 77, 83, 85, 94–96, 116, 138, 140, 145
Communist Party (Brazil) ---- 116
Communist Party, U.S.A. (CPUSA) ---- 6, 10, 14, 19, 24, 26, 38, 40, 56, 71, 73, 94, 140
Communists Tactics in Controlling Youth Organizations (SSIS publication) ---- 53
Communist Threat to U.S. Through the Caribbean (SSIS publications) ---- 53
Communist Treatment of Prisoners of War (SSIS publication) ---- 54
Communists ---- 21, 88, 93, 144
Congress of Industrial Organizations (CIO) ---- 29, 30, 149
Congress and Subversion, A New Look at the Battlefield (book) ---- 50
Congress v. The Supreme Court (book) ---- 99
Congressional Findings of Fact ---- 1, 5–7, 9, 11, 21, 28, 33, 35, 59, 61, 70, 71
Congressional Record (publication) ---- 77, 80, 83
Congressional Research Service, Library of Congress (CRS) ---- 8–11, 13
Foreign Affairs Division ---- 52
Court of Appeals ---- 10, 12, 19, 20, 25, 73
Cox, Donald, Field Marshal ---- 116, 117
Crozier, Brian ---- 37
Cuba ---- 118, 123
Curran, Patrick ---- 106
Czechoslovakia ---- 92, 148

D

Daily Worker (publication) ---- 55
Dallin ---- 77
Davis, Justice ---- 79
Deakin, Thomas J ---- 39, 113
deBorchgrave, Arnaud ---- 132
Debray, Regis ---- 118, 119
Declaration of Revolutionary War ---- 115
Defeating Communist Insurgency (book) ---- 64
Defense Department ---- 50, 145, 151
Defense/Foreign Affairs Digest ---- 114
Demaitre, Edmund ---- 114
Denver ---- 39
Détente and the World Revolutionary Process (SISS publication) ---- 44, 63
Deuel Vocational Institution ---- 107
Dewey, Gov. Tom ---- 24, 83
Dirksen, Senator ---- 97
Dnieper hydroelectric dam ---- 135
Dominican Republic ---- 122
Douglas, William O., Justice ---- 19, 73, 82, 83, 86, 87, 95, 101, 104
Draper, Theodore ---- 128

Page

Dublin ---------- 121
Dulles, Allen W ---------- 62, 88
Dulles, John Foster ---------- 144, 145

E

Eastland, Sen. James O ---------- III, 43, 44, 63, 69
Egypt ---------- 67, 121, 130
Eisenhower, Dwight D ---------- 30, 55, 58
Emergency Detention Act ---------- 7
Engels ---------- 2, 42, 90, 91
Estonia ---------- 92
Ethiopia ---------- 121
Europe ---------- 131, 139
Europe, Eastern ---------- 132, 136, 140
Europe, Western ---------- 132
Export-Import Bank ---------- 50, 135
EXXON ---------- 59

F

Far East ---------- 35
Fascists ---------- 46
Fearey, Robert ---------- 37
Federal Agents Registration Act ---------- 84
Federal Bureau of Investigation (FBI) ---------- 14, 15, 34, 36–39, 41, 90, 102, 106, 108, 113, 121
Academy ---------- 111
Law Enforcement Bulletin ---------- 36, 40, 111, 113
Federal Communications Commission ---------- 50
Federal Housing Authority ---------- 50
Federal Prison (Leavenworth, Kans.) ---------- 108
Federalist, The (publication) ---------- 19
Feifer, George ---------- 59
Ferguson, Senator ---------- 80
Freedom, Virtue, and the Fifth Amendment (book) ---------- 82
Finance Committee, Senate ---------- 133
Finland ---------- 146, 147
Flynn, Elizabeth Gurley ---------- 23, 95
Folsom Prison ---------- 106
Food, Tobacco, Agricultural & Allied Workers of America ---------- 29
Ford (Motor Co.) ---------- 135
Ford, President Gerald ---------- 15, 105, 106
Foreign Agents Registration Act ---------- 49, 60
Foreign Relations Committee, Senate ---------- 127
Foster, Dr. Marcus ---------- 115, 117
Fortas, Justice Abe ---------- 103
Four Continent Book Co ---------- 60
France ---------- 57, 139, 144, 149
Frankfurter, Justice Felix ---------- 1, 10, 27, 75, 84, 86, 95, 101
Frelimo ---------- 115
Fromhold, Robert ---------- 106
Fulbright, Senator ---------- 129
Fundamental Liberties (book) ---------- 82

G

Ganon, Franz ---------- 36
Gaps in Internal Security Laws (SSIS publication) ---------- 53
Gary, Ind ---------- 39
Gellhorn ---------- 77
General Accounting Office (GAO) ---------- 50
General Electric ---------- 135
General Motors ---------- 133
General Services Administration (GSA) ---------- 50

Page

Georgetown University (Law Center) ---- 53
George Washington Law Review ---- 82
George Washington University (Graduate School) ---- 63
Germany, East ---- 92, 148, 149
Germany, West ---- 124
Giap, Vo Nguyen ---- 36
Goldberg, Arthur J ---- 28, 29, 105
Gompers, Sam ---- 128
Grant, Ulysses S ---- 103
Great Britain ---- 57, 62, 139, 147
Grechko, Marshal ---- 43
Greece ---- 62, 137
Green, Abner ---- 74, 75
Griswold, Erwin ---- 101
Gromyko, Andrei A ---- 46
Guerrilla Warfare (book) ---- 39, 118
Guevara, Che ---- 36, 39, 107, 118, 119
Guillien, Abraham ---- 118
Gulag Archipelago, 1918–1956 (book) ---- 59

H

Hand, Judge Learned ---- 99, 106
"Handbook of Revolutionary Warfare" (book) ---- 118
Harlan, Justice John M ---- 28, 31, 37, 77, 78, 80, 81, 95, 101–103
Harris, Louis ---- 101
Harvard Law Review ---- 79, 82
Harvard Law School ---- 101
Hastings Law Journal ---- 23, 94
Health Department ---- 50
Health, Education, and Welfare Department ---- 50
Hearst family ---- 123
Hearst, Patricia ---- 34, 38–41, 115
Hegel ---- 88
Herling, John ---- 62
Hitler, Adolph ---- 42, 133, 144
Ho Chi Minh ---- 39
Holmes, Justice Oliver Wendell ---- 27, 79
Holmesburg Prison ---- 106
Hoover, J. Edgar ---- 77, 90, 114
Horowitz, Harold W ---- 98
House Internal Security Committee ---- 12, 14, 15, 34, 65, 107
House Subcommittee on Appropriations ---- 40
House Un-American Activities Committee (HUAC) ---- 31
Huks ---- 144
Humphrey, Senator Hubert ---- 9, 30
Hungary ---- 92, 93, 139, 143, 148

I

ITT ---- 123
Ichord, Congressman Richard H ---- 14, 15
Illinois ---- 108
Immigration and Nationality Act ---- 13
Indochina ---- 139
Indonesia ---- 15
Inside Labor (column) ---- 38
Institute for the Study of Conflict ---- 37
Interior Department ---- 50
Internal Security Manual (SISS publication) ---- 13, 50
International Center ---- 41
International Confederation of Free Trade Unions ---- 149
International Covenant on Civil and Political Rights ---- 133
International Fishermen & Allied Workers of America ---- 29
International Fur & Leather Workers Union ---- 29

Page

International Institute for Strategic Studies ---- 113
International Longshoremen's & Warehousemen's Union (ILWU) ---- 29
International Publishers ---- 89
International Terrorism ---- 37
International Terrorist, The (book) ---- 59
Intourist ---- 60
Iran ---- 93, 137
Iraq ---- 130
Ireland ---- 121
Irish Republic ---- 121
Irish Republican Army (IRA) ---- 35
Iron Curtain ---- 91, 137, 142, 146, 147
Israel ---- 113, 121, 129, 130
Italy ---- 62, 121, 149

J

Jackson, Justice Robert H ---- 58, 87, 140
Jane's Fighting Ships (publication) ---- 45
Japan ---- 15
Jaworski, Leon ---- 98
Jefferson, Thomas ---- 103
Johnson, Eric ---- 135
Johnson, Lyndon ---- 55, 103
Joint Chiefs of Staff ---- 144, 151
Joint Committee on Continuing Legal Education of the American Law Institute ---- 98
Jones ---- 79
Jordan ---- 130
Justice Department ---- 14, 52, 65, 73

K

Kama River truck project ---- 135
Karlovy Vary ---- 131
Karst, Kenneth L ---- 98
Kefauver, Senator ---- 81, 83
Kelley, Clarence M ---- 34, 38, 40, 111
Kendell, Don ---- 44, 127, 136
Kennedy, John F ---- 28, 90
Kent State University ---- 39
Kern, Judge Michael ---- 102
KGB ---- 46
Khrushchev, Nikita ---- 2, 5, 45, 62, 89-94
Kilgore, Senator ---- 80
Kirchheimer ---- 77, 87
Kissinger, Henry ---- 45, 46, 128, 129, 131–13, 136
Kitson, Frank, Brigadier ---- 118
Konvitz ---- 82
Korea ---- 15
Korean conflict ---- 83
Kosygin ---- 44
Kitson, Frank, Brigadier ---- 118
Kremlin ---- 2, 30, 40, 45, 55, 56, 60, 61, 63, 77, 95, 132, 137–140, 142, 143, 146, 148, 150, 151
Ku Klux Klan ---- 23, 94, 96
Kulski, W. W ---- 61, 62
Kurland, Philip B ---- 27, 101

L

Labor Department ---- 50
Landis, James M ---- 79
Lane, Dr. Gary ---- 50, 51
Langer, Senator ---- 77

	Page
Laos	93
Lasswell	77
Latin America	35, 139
Latvia	92
Law Enforcement Assistance Administration	109
Law in the Making (book)	79
Lawrence, Thomas Edward (Lawrence of Arabia)	122
Legislative Reorganization Act	50
Leipzig	92
Lenin School of Political Warfare	149
Lenin, V. I	2, 5, 42, 53, 58, 61, 62, 89–91, 117–119, 122, 130, 139, 144
Lerman, Louis	60
Liberated Guardian	114
Liberties of an American (book)	82
Lithuania	92
Liu Shao-Chi	139
Liu Po-Cheng, General	130
Locke, John	65
Lod (airport)	121
Logan Act	52
London	37
Long, Senator	80
Los Angeles	39, 114, 115
Los Angeles Bomber	34, 36
Louisiana	80
Lovestone, Jay	62, 63
"Low Intensity Operations" (book)	118
Loyalty Review Board	50

Mc

McCarran	7
McCarran Act	11, 73
McGrath, Attorney General	10
McKee Corp	135

M

Ma'alot	121
Madison, James	19, 37, 65
Magmifogorsk	135
Mahan, John W	12
Malaya	64
Mallin, Jay	41, 121
Manion, Dean	20
Manion Forum (publication)	20
Mao Tse-tung	36, 107
Marighella, Carlos	36, 39, 59, 60, 113, 115–119
Marshall, Chief Justice	84, 105
Marx, Karl	2, 42, 88–91, 107
Marxism	33, 59
Marxists	21, 51
Masters of Deceit (book)	90
Meany, George	43, 44, 127
Medina, Judge	80
Meiklejohn	82
Mendelsohn	82
Methvin, Eugene H	26, 27
Metzl, Dr. Lothar	63
MVD (Soviet secret police)	57, 139
Mexico	121
MFN (most-favored-nation)	133, 134
Miami, Fla	41, 42
Middle East	128, 129, 135, 136
Montevideo	115

Page

Moscow ---------- 40, 43, 46, 51, 55, 56, 60, 132, 133, 140–142, 149
Moscow-Berlin Pact ---------- 56, 138
Moscow Institute of V. I. Lenin ---------- 5
Moscow-Warsaw joint declaration ---------- 2
Moss, Robert ---------- 113, 117
Mozambique ---------- 115
Multer, Representative ---------- 80
Mundt, Senator ---------- 80
Miller ---------- 79, 81
Mine, Mill and Smelters Workers of America ---------- 29
Minimanual of the Urban Guerrilla (publication) ---------- 39, 40, 115–117
Minton, Justice ---------- 30
Mississippi Law Journal ---------- 17, 22, 88
Missouri bar ---------- 17
Missouri Bar Association ---------- 88

N

National Aeronautics and Space Administration ---------- 50
National Commission on Executive Secrecy ---------- 70
National Labor Relations Act (NLRA) ---------- 9
National Labor Relations Board (NLRB) ---------- 50
National Lawyers Guild (NLG) ---------- 36, 108
National Prisoners' Reform Association ---------- 108
National Science Foundation ---------- 50
National Security Agency ---------- 8
National Security Council ---------- 50
National Security and Individual Freedom (book) ---------- 77
National Union of Marine Cooks & Stewards of America ---------- 29
NATO ---------- 132
Navy Department ---------- 50
Newsweek (magazine) ---------- 132
Newton, Huey P ---------- 115
New Left ---------- 113, 114, 117, 118
New Year's gang ---------- 114
New World Liberation Front ---------- 39, 115, 117
New York ---------- 123
New York City ---------- 38, 39, 102, 115, 116
New York State ---------- 80, 83, 108
Legislature ---------- 96
New York Times (newspaper) ---------- 2, 45, 46, 95, 131, 134
New York University Law Review ---------- 20
Nixon, President Richard ---------- 97, 129–132
Nkrumah, Kwame ---------- 116, 118
Nobel Prize ---------- 59
North Carolina, University of (Law School) ---------- 25
Northern Ireland ---------- 113
Notre Dame, University of (Law School) ---------- 21
N.T.S. Radio Free Russia ---------- 60

O

Oakland, Calif ---------- 38, 115
October War ---------- 130
Official Reports of the Expulsion of Communist Dominated Organizations From the CIO (publication) ---------- 30
Ohio ---------- 106
Oklahoma State Prison (McAlester) ---------- 108
Olympic games, Twentieth ---------- 121, 124
"On Organizing Urban Guerrilla Units" (pamphlet) ---------- 117
Oppenheimer, Martin ---------- 119
Organizing Urban Guerrilla Units (publiaction) ---------- 38
Overstreet, Bonaro ---------- 90
Overstreet, Harry ---------- 90
"150 Questions for a Guerrilla" (book) ---------- 118

Page

P

Palestinian ---------- 121–124
Pan American airliner ---------- 123
Paraguay ---------- 121
Peace Corps ---------- 50
Peaceful Coexistence, An Analysis of Soviet Foreign Policy (book) ---------- 61
Peaceful Co-Existence—A Blueprint for Disruption (publication) ---------- 90
Peking ---------- 43, 51, 142
Pennsylvania Law Review ---------- 79
Pentagon ---------- 114
People's Front ---------- 57
Pepsi-Cola Co ---------- 44
Perfect Park Home Grown Garden Society, The ---------- 114
Pfeffer ---------- 82
Phelps, James R ---------- 88
Philippines, The ---------- 15, 144
"Philosophy of the Urban Guerrilla" (book) ---------- 118
Pilsen, Czechslovakia ---------- 148
Podgorny, Nikolai ---------- 46
Poland ---------- 92, 139, 143, 148
Polish Embassy ---------- 2
Politburo ---------- 139, 143
Political Affairs (publication) ---------- 23, 95
Political Justice (publication) ---------- 77
Ponomarev, Boris ---------- 63
Portal-to-Portal Act ---------- 81
Potsdam ---------- 150
Possony, Dr. Stefan T ---------- 114
Post Office Department ---------- 50
Powell, William ---------- 118
Prairie Fire (publication) ---------- 36
Preview of United States Supreme Court Cases (publication) ---------- 98
Prison Law Collective ---------- 36
Prisons—A Target of Revolutionaries (publication) ---------- 36
Problems of Communism (publication) ---------- 117
Proctor, Roscoe Quincy ---------- 10
Procunier, Raymond ---------- 107
Proud Eagle Tribe ---------- 114
Public Housing Authority ---------- 50
Purple Sunshine Clan ---------- 114

Q

Quarter Moon Tribe ---------- 114

R

Radin ---------- 79
Radio Corporation of America (RCA) ---------- 55
Radio Free Europe ---------- 146, 149
Radio Liberation ---------- 146
Rakestraw, W. Vincent ---------- 65
Rakosi, Matyas ---------- 93, 139
Rankin, Representative ---------- 80
Rayne, Montague Fred ---------- 35
Reader's Digest (magazine) ---------- 6, 26–28, 36, 53, 59, 64, 101, 106
Reapportionment cases ---------- 97
Red Army ---------- 92
Red China ---------- 15
Reed, Justice ---------- 30
Register (newspaper, Torrington, Conn.) ---------- 127
Relationship Between the Teamsters Union and the Mine, Mill, & Smelter Workers (publication of SISS) ---------- 6
Report on the Communist Party of the United States of America (SSIS publication) ---------- 94
Report of the Internal Security Subcommittee (1974) ---------- 13

	Page
Reserve Officers Training Corps (ROTC)	114
Reston, James	45
"Revolution in the Revolution?" (book)	118
Revolutionary union	36, 119
Revolutionary War in World Strategy (book)	64
Rhode Island	108
Rhondda, Viscountess	79
Richardson	79, 82
Ridgeway, Matthew B	45
Riesel, Vic	37, 38
Right On! (newspaper)	116
Rise of Radicalism (book)	27
Robel, Eugene Frank	65
Rockefeller, Nelson	58
Roll Call (newspaper)	53, 65
Rome	121, 123
Roosevelt, Franklin D	103, 105
Rules of Procedure (publication of SISS)	1
Rumania	92
Russia	15, 23, 43, 56, 57, 59, 61, 91, 133, 137, 143, 144
Russian Revolution	6

S

SALT II	105, 136
St. Clair, James D	97, 98
Sakharov, Andre	132
Sanders, Jerry	107
San Francisco	38, 39, 108, 114
Police Department	39
San Quentin	107
Sarnoff, Gen. David	55, 58, 61, 137
Satterfield, John C	17, 21, 22, 88
Saturday Review World (publication)	6
Saxbe, William B	43
Scales, Junious	77
School segregation case	97
Schwarz, Frederick	37
Scott, Sen. William L	15
Seale, Bobby	39
Selective Service System	50
Selected Works (book [Lenin])	89
Seminar on Communist tactics, strategy and objectives	21, 22
Senate Foreign Relations Committee	44, 45
Singapore	15
Small Business Administration	50
Smiling Fox Tribe	114
Smith Act	1, 7, 11, 23, 26, 69, 77–82, 85, 88, 94
Smith, Lee Arthur	108
Socialist Workers Party	14
Society of Free Jurists	149
Solzhenitsyn, Alexandr	59, 132
South Vietnam	93
Southeast Asia	64, 93
Southern Ohio Correctional Institute	106
Soviet Disarmament Propaganda and the Strange Case of Marshal Grechko (SISS publication)	43
Soviet Estonia	146
Soviet Espionage (publication)	77
Soviet Intelligence and Security Services, 1964–1970 (SSIS publication)	52, 61
Soviet Jews	131
Soviet Life Magazine	60
Soviet Navy	45

Page

Soviet Union ---------- 2, 7, 8, 15, 19, 40, 43, 44, 46, 47, 52, 56, 64, 67, 77, 92, 127–129, 131–136, 139, 146
Spain ---------- 118, 121
Spanish Civil War ---------- 118
Special Cabinet Committee on International Terrorism ---------- 37
Spectrum (publication) ---------- 59, 60
Stalin, Joseph ---------- 58, 91, 116, 118, 119, 135, 139, 143, 144
Stanford University ---------- 135
Stanmeyer, William ---------- 53
State Department ---------- 37, 50, 145, 151
State Department Bombing (SISS publication) ---------- 37
State Penitentiary (Florence, Ariz.) ---------- 107
Statutory Construction (book) ---------- 79
Steel seizure case ---------- 97
Stewart, Justice Potter ---------- 102
Strategy Board for Political Defense ---------- 144, 145, 151
Strong, Frank R ---------- 25, 64, 97
Students for a Democratic Society (SDS) ---------- 114
Subcommittee on Labor and Labor-Management Relations ---------- 30
Subversive Activities Control Board (SACB) ---------- 8, 15, 19, 25, 43, 50–52, 61, 73, 74, 83, 84, 94
Twentieth Annual Report ---------- 51
Supreme Court Review (publication) ---------- 27, 101
Sutherland ---------- 79, 80
Sutton, Anthony C ---------- 135
Symbionese Liberation Army (SLA) ---------- 15, 34, 35, 38, 39, 106, 117
Syria ---------- 130

T

Taiwan ---------- 15
Taney, Chief Justice ---------- 79
TASS (Soviet News Agency) ---------- 60, 137
Technique of Soviet Propaganda (SSIS publication) ---------- 53
Terroristic Activity (SISS publications) ---------- 37
Thailand ---------- 15
Thomas ---------- 90, 94
Thompson, Dorothy ---------- 21
Thompson, Sir Robert ---------- 64
Thurmond, Senator Strom ---------- 15
Tito ---------- 139
Tombs (prison) ---------- 38
Tompkins, William F ---------- 49
Treasury Department ---------- 50
Tricontinental ---------- 117
Trotsky, Leon ---------- 141
Truman, Harry S ---------- 83
Tupamaros ---------- 35, 114, 115, 122
Turkey ---------- 62
Twentieth Olympic games ---------- 41, 113
21-Year Index (SSIS publication) ---------- 53

U

"Underground Manual Number 3" (book) ---------- 118
Union of Soviet Socialist Republics (USSR) ---------- 45, 46, 56, 60, 62, 89, 143
Embassy of ---------- 60
United Electrical, Radio & Machine Workers of America (U.E.) ---------- 29
United Farm Equipment & Metal Workers of America ---------- 29
United Front ---------- 57
United Nations ---------- 50, 138
Charter ---------- 150
United Office & Professional Workers of America ---------- 29

Page

United Prisoners Union ---------- 36
United Public Workers of America ---------- 29
United States ---------- 1,
7, 15, 19, 22, 34, 35, 46, 47, 56, 57, 61, 62, 64, 65, 67, 69, 70, 71, 77, 79, 99, 107, 108, 111, 113, 121, 122, 132, 138, 139, 141, 144
Air Force ---------- 50
Army ---------- 50
Capitol (re bombing) ---------- 114
Code (publication) ---------- 7, 8, 12, 19, 50, 52, 69, 77, 81, 84, 94, 96
Information Agency (USIA) ---------- 50, 58, 145, 146, 151
News-Letter (publication) ---------- 6
News & World Report (magazine) ---------- 6
Reports (publication) ---------- 19
Supreme Court ---------- 1,
8, 10, 13, 14, 20, 23, 25–31, 33, 37, 53, 58, 62, 64, 65, 72, 75, 84, 88, 94, 97, 98, 101, 103, 105
University of Cincinnati Law Review (publication) ---------- 77
University of Maryland Law Forum ---------- 114
University of Pittsburgh Law Review ---------- 7
UPI Editors' Conference ---------- 38
"Urban Guerrilla, The" (book) ---------- 119
Urban Guerrilla Warfare (publication) ---------- 113
Uruguay ---------- 114, 115, 122, 123

V

Vanderbilt Law Review ---------- 82
Velie, Lester ---------- 53
Venceremos Brigade ---------- 15, 36, 119
Veterans of the Abraham Lincoln Brigade ---------- 25, 73, 74
Veterans' Administration ---------- 50
Veterans of Foreign War ---------- 88
Vietcong ---------- 114, 121
Vietnam ---------- 15, 115, 123, 136
Vietnam, South ---------- 121, 122
Vietnam Veterans Against the War (VVAW) ---------- 108
Vietnam war ---------- 36
Vintage Books ---------- 118
Virginia Law Review ---------- 82
Vital speeches ---------- 90
Voice of America ---------- 137, 146, 147, 151
Voorhis Act ---------- 23, 94
Vorkuta, Soviet Arctic ---------- 148

W

Wall Street Journal ---------- 67
Walpole Prison ---------- 108
Warren, Chief Justice ---------- 86, 101, 102, 104
Warsaw ---------- 93
Washington Hilton Hotel ---------- 35
Washington Post (newspaper) ---------- 2, 28, 43–47, 62, 105, 130
Washington Star & Daily News ---------- 114
Watergate ---------- 28, 105, 136
Watergate tapes case ---------- 97
Weather Underground ---------- 34–37
Weatherman (SISS publication) ---------- 35
Weatherman ---------- 37, 114, 117
Wechsler, Herbert ---------- 27, 104
Weimer Republic ---------- 105
West Berlin ---------- 149
West German Government ---------- 121
West Virginia ---------- 106

	Page
"Western Technology and Soviet Economic Development, 1945 to 1965" (book)	135
What We Must Know About Communism (book)	90
White House, The	55, 58, 131
White, Justice Byron R	28, 37, 65, 95, 101, 102
Willrich, Dr. Mason	38
Winter Soldier Organization	108
Wolfe, Bertram	94
Words and Phrases (book)	75
World Drug Traffic and Its Impact on U.S. Security (SSIS publications)	54
World Health Administration	50
World War I	133
World War II	59, 116

Y

Yale Law Journal	9
Yalta	150
Yom Kippur War	129, 130
Younger, Evelle J	34–37
Yugoslavia	139

Z

Zebra killers	34, 35
Zorza, Victor	45, 46

○