SUPREME COURT OF THE UNITED STATES

Nos. 6, 7 AND 8.—OCTOBER TERM, 1956.

Oleta O'Connor Yates, Henry Steinberg, Loretta Starvus Stack, et al., Petitioners,
6 v.
United States of America.

William Schneiderman, Petitioner,
7 v.
United States of America.

Al Richmond and Philip Marshall Connelly, Petitioners,
8 v.
United States of America.

On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June —, 1957.]

MR. JUSTICE CLARK, dissenting.

The petitioners, principal organizers and leaders of the Communist Party in California, have been convicted for a conspiracy covering the period 1940 to 1951 [illegible] they were engaged with the defendants in *Dennis* v. *United States*, 341 U. S. 494 (1951). The *Dennis* defendants, named as co-conspirators but not indicted with the defendants here, were convicted in New York under the former conspiracy provisions of the Smith Act, 54 Stat. 671, 18 U. S. C. (1946 ed.) § 11. They have served or are now serving prison terms as a result of their convictions.

The conspiracy charged here is the same as in *Dennis*, except that here it is geared to California conditions, and brought, for the period 1948 to 1951, under the general conspiracy statute, 18 U. S. C. § 371, rather than the old

conspiracy section of the Smith Act. The indictment charges petitioners with a conspiracy to violate two sections of the Smith Act, as recodified in 18 U. S. C. § 2385, by (1) knowingly and wilfully teaching and advocating the violent overthrow of the Government of the United States, and (2) organizing in California through the creation of groups, cells, schools, assemblies of persons, and the like, the Communist Party, a society which teaches or advocates violent overthrow of the Government.

The conspiracy includes the same group of defendants as in the *Dennis* case though petitioners here occupied a lower echelon in the party hierarchy. They, nevertheless, served in the same army and were engaged in the same mission. The convictions here were based upon evidence closely paralleling that adduced in *Dennis* and in *United States* v. *Flynn*, 216 F. 2d 354 (C. A. 2d Cir. 1954), both of which resulted in convictions. This Court laid down in *Dennis* the principles governing such prosecutions and they were closely adhered to here, although the nature of the two cases did not permit identical handling.

I would affirm the convictions. However, the Court has freed five of the convicted petitioners and ordered new trials for the remaining nine. As to the five, it says that the evidence is "clearly insufficient." I agree with the Court of Appeals, the District Court, and the jury that the evidence showed guilt beyond a reasonable doubt.[1] It paralleled that in *Dennis* and *Flynn* and was

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[1] Petitioners Richmond, Connelly, Kusnitz, Steinberg, and Spector are set free.

Richmond at the time of his indictment had for many years been the editor-in-chief of the Daily People's World, the official organ of the Party on the West Coast. He had joined the Party in 1931 and received his indoctrination in Communist technique at the offices of the Daily Worker, the official Party paper on the East Coast. In 1937 he was chosen by the Party's Central Committee to be

equally as strong. In any event, this Court should not acquit anyone here. In its long history I find no case in which an acquittal has been ordered by this Court solely on the *facts*. It is somewhat late to start in now usurping the function of the jury, especially where new trials are to be held covering the same charges. It may be—although after today's opinion it is somewhat doubtful—that under the new theories announced by the Court

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managing editor of the Daily People's World and was transferred to California. From 1946 through 1948 he regularly attended secret meetings of the state and county boards of the Party, admission to which was by identification from a special list of Party members prepared by the Party chairman or its security chief. Party strategy was mapped out at "very secret meetings" attended by Richmond and the core of the Party machinery, including at least seven of the petitioners here. Richmond served on a special committee to help develop "preconvention discussion" with petitioner Yates; he represented the state committee at the 1950 convention; he addressed many Party meetings preaching the "vanguard role" of the Party and the importance of the People's World in the Communist movement; and his articles in the paper urged the "Leninist and Marxist approach."

Connelly, a Party member since at least 1938, was the Los Angeles editor of the People's World. During the mobilization effort early in World War II he devoted his efforts to "building up sentiment against . . . the war effort" among steel, aircraft, and shipyard workers. He attended the same secret meetings attended by Richmond.

There can be no question that the proof sustained the charges against Richmond and Connelly in the conspiracy. Their newspapers were the conduit through which the Party announced its aims, policies, and decisions, sought its funds, and recruited its members. It is the height of naiveté to claim that the People's World does not publish appeals to its readers to follow Party doctrine in seeking the overthrow of the Government by force, but it is stark reality to conclude that such a publication provides an incomparable means of promoting the Party's aim of forcible seizure when the time is ripe.

Petitioner Spector has been active in the California Party since the early 1930's. He taught "Marxism-Leninism" in Party schools

for Smith Act prosecutions sufficient evidence might be available on remand. To say the least, the Government should have an opportunity to present its evidence under these changed conditions.

I cannot agree that half of the indictment against the remaining nine petitioners should be quashed as barred by the statute of limitations. I agree with my Brother BURTON that the Court has incorrectly interpreted the

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and was Division Organizer in Los Angeles County. He attended "underground meetings" with petitioners Lambert, Dobbs, Healy, Carlson, and Schneiderman. The witness Rosser testified that these meetings were "so hid that you couldn't get to them unless you were invited and taken there." In 1946 he "conducted classes" for Party members in Hollywood, and in 1947 as a member of a committee of three Party officials examined the witness Russell, a student in one of his classes, on charges of being a Party "police spy."

Petitioner Kusnitz, following an organizational indoctrination period in New York City, became a Party leader in California in 1946, served as "section organizer," and later as "Organizational Secretary" in Los Angeles. Her position was directly below that of the local chairman in Party hierarchy. She attended many secret meetings and was present at a Party meeting with petitioner Yates when Yates advocated the necessity of "Soviet support" and "Marxist-Leninist training" as a means of bringing about the Soviet "type of government . . . all over the world." She contributed articles to Communist publications and was very active in the "regrouping of . . . clubs into smaller units"; conducting a "six session leadership training seminar"; carrying on campaigns for subscriptions to the People's World; and leading the "Party Building drive" for the recruitment of members.

Petitioner Henry Steinberg, active in the Young Communist League, and associated with the Party since 1936, was the "educational director." He took part in the creation of the program for the Party's training schools in Los Angeles County. His "education department" sponsored several meetings, one honoring the 25th anniversary of the death of Lenin. He worked with petitioner Schneiderman, the Party Chairman in California, attended meetings regularly, was active in circulation drives for the People's World, and was the principal speaker at many meetings.

term "organize" as used in the Smith Act. The Court concludes that the plain words of the Act,[2] "Whoever organizes or *helps* or *attempts* to organize any society, group, or assembly of persons" (emphasis added) embodies only those "acts entering into the creation of a new organization." As applied to the Communist Party the Court holds that it refers only to the reconstitution of the Party in 1945 and a part of the prosecution here is, therefore, barred by the three-year statute of limitations. This construction frustrates the purpose of the Congress for the Act was passed in 1940 primarily to curb the growing strength and activity of the Party.[3] Under such an interpretation all prosecution would have been barred at the very time of the adoption of the Act for the Party was formed in 1919. If the Congress had been concerned with the initial establishment of the Party it would not have used the words "helps or attempts," nor the phrase "group,

[2] 18 U. S. C. § 2385.

[3] Congressman McCormack's remarks on the floor of the House of Representatives on July 29, 1939, during the debate on the Smith Act reflect the underlying purpose behind that Act. He stated, *inter alia:*

"We all know that the Communist movement has as its ultimate objective the overthrow of government by force and violence or by any means, legal or illegal, or a combination of both. That testimony was indisputably produced before the special committee of which I was chairman, and came from the lips not of those who gave hearsay testimony, but of the actual official records of the Communist Party of the United States, presented to our committee by the executive secretary of the Communist Party and the leader of the Communist Party in the United States, Earl Browder. . . . Therefore, a Communist is one who intends knowingly or willfully to participate in any actions, legal or illegal, or a combination of both, that will bring about the ultimate overthrow of our Government. *He is the one we are aiming at . . . .*" (Emphasis added.) 84 Cong. Rec. 10454.

See also Hearings before Subcommittee No. 3 of the House Committee on the Judiciary on H. R. 5138, 76th Cong., 1st Sess. 84.

or assembly of persons." It was concerned with the new Communist fronts, cells, schools, and other groups, as well as assemblies of persons, which were being created nearly every day under the aegis of the Party to carry on its purposes. This is what the indictment here charges and the proof shows beyond doubt was in fact done. The decision today prevents for all time any prosecution of Party members under this subparagraph of the Act.

While the holding of the Court requires a reversal of the case and a retrial, the Court very properly considers the instructions given by the trial judge. I do not agree with the conclusion of the Court regarding the instructions, but I am highly pleased to see that it disposes of this problem so that on the new trial instructions will be given that will at least meet the views of the Court. I have studied the section of the opinion concerning the instructions and frankly its "artillery of words" leaves me confused as to why the majority concludes that the charge as given was insufficient. I thought that *Dennis* merely held that a charge was sufficient where it requires a finding that "the Party advocates the theory that there is a duty and necessity to overthrow the Government by force and violence. . . . not as a prophetic insight or as a bit of . . . speculation, but as a program for winning adherents and as a policy to be translated into action" as soon as the circumstances permit. 341 U. S., at 546–547 (concurring opinion). I notice however that to the majority

> "The essence of the *Dennis* holding was that indoctrination of a group in preparation for future violent action, as well as exhortation to immediate action, by advocacy found to be directed to 'action for accomplishment' of forcible overthrow, to violence 'as a rule or principle of action,' and employing 'language of incitement,' *id.*, at 511–512, is not constitutionally protected when the group is of sufficient

> size and cohesiveness, is sufficiently oriented towards action, and other circumstances are such as reasonably to justify apprehension that action will occur."

I have read this statement over and over but do not seem to grasp its meaning for I see no resemblance between it and what the respected Chief Justice wrote in *Dennis,* nor do I find any such theory in the concurring opinions. As I see it, the trial judge charged in essence all that was required under the *Dennis* opinions, whether one takes the view of the Chief Justice or of those concurring in the judgment. Apparently what disturbs the Court now is that the trial judge here did not give the *Dennis* charge although both the prosecution and the defense asked that it be given. Since he refused to grant these requests I suppose the majority feels that there must be some difference between the two charges, else the one that was given in *Dennis* would have been followed here. While there may be some distinctions between the charges, as I view them they are without material difference. I find, as the majority intimates, that the distinctions are too "subtle and difficult to grasp."

However, in view of the fact that the case must be retried, regardless of the disposition made here on the charges, I see no reason to engage in what becomes nothing more than an exercise in semantics with the majority about this phase of the case. Certainly if I had been sitting at the trial I would have given the *Dennis* charge, not because I consider it any more correct but simply because it had the stamp of approval of this Court. Perhaps this approach is too practical. But I am sure the trial judge realizes now that practicality often pays.

I should perhaps add that I am in agreement with the Court in its holding that petitioner Schneiderman can find no aid from the doctrine of collateral estoppel.