

[Civil  
Liberties]

1-25-65

Miss Scheffler:

Per phone call. Attached for  
your info.

Ginny Egelston  
Dept. of Justice

RECEIVED  
JAN 26 1965  
RECEIVED

STEPS TAKEN BY THE DEPARTMENT OF JUSTICE TO ENFORCE THE PROVISIONS  
OF THE INTERNAL SECURITY ACT IN ACCORDANCE WITH THE DECISION OF THE  
SUPREME COURT IN THE COMMUNIST PARTY CASE

Following ten and one-half years of litigation the Supreme Court on June 5, 1961 upheld the constitutionality of an order of the Subversive Activities Control Board which found the Communist Party to be substantially directed, dominated and controlled by the Soviet Union and required to register with the Attorney General as a Communist-action organization pursuant to the provisions of the Internal Security Act of 1950. The order of the Board became final on October 20, 1961.

Under the law the Communist Party was required to register with the Attorney General within 30 days after the order became final and to file a registration statement containing the names and addresses of its officers and members at any time during the preceding year. The Party was also required to furnish a complete accounting of its finances and to list all printing presses in possession or control of the Party. When the Party refused to register by November 20, 1961, as required by the law, evidence was presented to a grand jury in the District of Columbia and on December 1, 1961, the Communist Party was indicted on 12 counts, including one count for each of the 11 days it had failed to register and a count for its failure to file a registration statement. The maximum penalty on conviction of the organization for failing to register is a fine up to \$10,000 on each count of the indictment. The Party entered a not guilty plea. Trial of the case began December 11, 1962 and the jury on December 17 returned a verdict of guilty on all counts. The Court on the same day sentenced the Party to pay a fine of \$120,000. The Party appealed and argument before the Court of Appeals for the District of Columbia was heard June 25, 1963. The Court on December 17, 1963 reversed this conviction on the grounds that the officers of the Party who should have signed the registration forms could avail themselves of the privilege of self-incrimination. The Court further held that the Government had the burden of proof to show that a volunteer to register the Party was available. The case was remanded for a new trial if the Government requested it. On January 21, 1964 the Government filed a petition seeking a reconsideration of the decision by the full bench of the Court of Appeals which was denied on February 21, 1964. The Department of Justice filed with the Supreme Court a petition for certiorari to review the decision of the Court of Appeals and the Supreme Court on June 8, 1964 denied the application for certiorari. The Department has requested a new trial and the case has been set for March 15, 1965. Also under continuing study is the question whether the Government will seek a new indictment covering new offenses.

The Act provides that upon failure of the organization to register, certain officers must register for the organization within ten days after such default. Thus the officers of the Party who were responsible for effecting its registration were required to comply on or before November 30 which they did not do, thereby rendering themselves subject to the criminal liability of the Act. The default of both the Party and the officers imposed a duty upon current members of the Party to register themselves on or before December 20, 1961. No member has yet registered with the Department of Justice.

On January 24, 1962 the Department of Justice began the presentation of evidence of violations under the Act to an investigative grand jury in the District of Columbia. On March 15, 1962, this grand jury returned separate indictments against Gus Hall, General Secretary, and Benjamin J. Davis, National Secretary, for failing to register with the Attorney General for and on behalf of the Communist Party, USA. Each indictment contained five counts charging failure to register and one count charging failure to file a registration statement. Pursuant to warrants issued on these indictments, Hall and Davis were arrested in

New York, New York, on March 15. Upon furnishing bail in the amount of \$5,000 each as fixed by the Court they were released. They entered pleas of not guilty to the indictments on March 30, 1962 and were continued on bail. Each defendant, if convicted, would be liable to imprisonment up to five years and fines up to \$10,000 on each count of the indictments. On September 25, 1963 the Court consolidated the Hall and Davis cases and postponed the date for their trial until the Court of Appeals for the District of Columbia decided the Communist Party case. Benjamin J. Davis died on August 22, 1964. The Government's Motion for Dismissal of Indictment against Davis was granted on October 9, 1964.

Section 10(1) of the Act makes it unlawful for any organization against which there is a final order of the Board to register, or any person acting for or on behalf of such an organization, to disseminate through the mails or in interstate or foreign commerce any publication unless it is plainly marked as being disseminated by a Communist organization. Political Affairs, a Communist Party magazine, began to describe itself on its masthead as "A Theoretical Organ of the Communist Party, USA" as a result of testimony of a number of witnesses called before the grand jury in early 1962. It continued to carry that label until recently when it began to describe itself as "A Theoretical Journal of the Communist Party, USA". The Worker, the East Coast Communist Party newspaper, at the time the grand jury proceedings were in progress, described itself as a paper "which reflects the viewpoint of the Communist Party on the urgent and fundamental issues of the day and on fundamental socialist aims." Continuing review and evaluation of information received from the FBI is being made to determine if organizations or individuals are disseminating publications on behalf of the Party without appropriate labeling in violation of this section.

Before a criminal action against an individual member of the Communist Party for failing to register can be brought, it is necessary to obtain an order of the Subversive Activities Control Board, after a hearing, determining such individual to be a member of the Party and as such required to register. On May 31, 1962, the Attorney General filed separate petitions with the Subversive Activities Control Board against ten persons for a determination that they are Communist Party members and as such are required to register. All of these individuals were elected to the Communist Party National Committee at its last convention held December 1959. They are: William L. Patterson, Chairman of the New York State District Committee; Arnold Samuel Johnson, National Legislative Director; Betty Gannett Tormey, William Albertson, Miriam Friedlander and Louis Weinstock, New York State Committee members, all of New York City; Albert J. Lima, Oakland, California, Chairman of the Northern California District; Roscoe Quincy Proctor, Berkeley, California, member of the Northern California District Committee; Dorothy Healey, Los Angeles, California, Southern California District Chairman; and Burt Gale Nelson, Seattle, Northwest District Chairman. On December 6, 1962, four petitions were filed with the Board for orders requiring the registration of Claude Mack Lightfoot, Vice-Chairman of the National Committee of the Party; Samuel Krass Davis, National Committee member and Editor of the Mid-West edition of The Worker; Flora Hall, National Committee member and Labor Section official of Southern California District; Samuel Kushner, National Committee member and Los Angeles Editor of the Peoples World. Hearings on these fourteen petitions have been completed and the Board issued orders in all cases requiring the respondents to register. All of these respondents filed appeals from the Board orders with the Court of Appeals for the District of Columbia. By stipulation approved by the Court, the decision in the cases of Albertson and Proctor which were argued

before the Court would be dispositive of the other appeals filed with the Court. On April 23, 1964, the Court of Appeals affirmed the order of the Board requiring Albertson and Proctor to register as members of the Communist Party.

Six additional petitions for Board orders requiring registration were filed on April 11, 1963, against Mildred McAdory Edelman; Irving Potash; William Wolf Weinstone; Mortimer Daniel Rubin; Thomas Nabried; and George Aloysius Meyers, all National Committee members. The Board, on December 4, 1963, issued orders in all of these cases requiring the registration of the respondents. The appeals from these orders filed with the Court of Appeals were by stipulation to abide the decisions in the Albertson and Proctor cases which affirmed the Board orders.

On June 13, 1963, seven petitions were filed with the Board for orders requiring the registration of the following Communist Party functionaries; John Stanford, Executive Secretary Texas Communist Party; Benjamin Dobbs, National Committeeman from Southern California District; William Cottle Taylor, Southern California District leader; Aaron Libson, District Youth Secretary Eastern Pennsylvania District; James Tormey, National Committeeman New York District; Lionel Libson, National Youth Commission; and Frances Gabow, Organizational Secretary Eastern Pennsylvania District of the Party. Orders were entered by the Board requiring the registration of all respondents and appeals have been filed.

Section 6 of the Act, among other things, makes it unlawful for a member of the Communist Party to use or attempt to use a United States passport. The Secretary of State revoked the passports of Elizabeth Gurley Flynn\*, National Chairman of the Party and Herbert Aptheker, National Committeeman and former Editor of the Party's self-described theoretical journal Political Affairs. Separate actions were brought by the individuals in the District Court for the District of Columbia to test the constitutionality of Section 6 of the Act. A three-judge Court sustained the government's action and held that the travel restriction was a legitimate exercise of Congressional authority to regulate the travel of Communist Party members based on the legislative determination that such travel was inimical and dangerous to the security of the United States. The Flynn-Aptheker petition for review of this decision by the Supreme Court was granted and argument was heard by the Supreme Court on April 21, 1964. The Supreme Court on June 22, 1964 by a 6-3 vote, ruled that Section 6 of the Act was unconstitutional. The Department of Justice now has this decision under study in an effort to determine whether amendatory legislation is feasible.

Section 5 of the Act makes it unlawful for a member of the Communist Party to engage in any employment in any defense facility. On May 21, 1963 a Federal Grand Jury in Seattle, Washington, returned an indictment against Eugene Frank Robel charging him with engaging in employment in a defense facility while maintaining membership in the Communist Party. Robel was arraigned on June 7, 1963, entered a not guilty plea and was released on his own recognizance. Pre-trial motions were argued on October 21, 1963, and the proceedings were stayed by the Court pending the decision of the Supreme Court in the Flynn-Aptheker passport case. Subsequently the defendant moved to dismiss the indictment on the grounds of the Supreme Court's holding in Flynn-Aptheker. The District Court presently has the motion under consideration.

---

\* Elizabeth Gurley Flynn died at Moscow on September 5, 1964.



On October 30, 1963, Zena Druckman was indicted by a Federal Grand Jury in San Francisco, California, on a two-count indictment charging her with (1) applying for a passport while maintaining membership in the CP, USA, and (2) making a false statement in her application when she stated she was not then, nor had she been, a member of the Communist Party in the past 12 months. She was arrested the same day and is presently at liberty on \$1,000 bond. In light of the Supreme Court's holding in Flynn-Aptheker, the Department of Justice presently has under consideration what further action can be taken.

Ten additional petitions were filed with the Board on November 19, 1963, for orders requiring the registration of the following Communist Party leaders: Daniel Lieber Queen, Communist Party National Committee member and youth leader of the Northern Illinois District; Michael Saunders, Chairman of the Communist Party Teamsters' Commission; Betty Mae Smith, member of the Communist Party Minnesota-Dakotas District Board; Ralph William Taylor, Chairman of the Communist Party Minnesota-Dakotas District Committee; Marvin Joel Markman, Communist Party Youth Coordinator for New York State; Meyer Jacob Stein, member Communist Party Youth Commission of New York State; Donald Andrew Hamerquist and Milford Adolf Sutherland, members Communist Party Northwest District Committee; Norman Haaland, member Communist Party National Committee for Oregon District; and Benjamin Gerald Jacobson, member of Communist Party Oregon District Board. Hearings have been completed and the Board has issued orders requiring the registration of Saunders, Smith, Taylor, Hamerquist, Haaland, Queen, Sutherland and Jacobson.

Hearings on the Markman and Stein petitions were completed in New York, New York on April 10, 1964, and on July 2, 1964. the Hearing Examiner recommended to the Board that orders be issued requiring the registration of Markman and Stein. The Board's decisions on these cases are awaited.

On September 30, 1964, seven petitions were filed with the Board against the following Communist Party leaders: Hyman Lumer, Educational Director of the Communist Party and Editor of Political Affairs, the Party's theoretical journal; Ralph Nelson, Chairman of the Communist Party Oregon District; Elmer Kistler, Treasurer of the Northwest District of the Communist Party; Otis Archer Hood, Chairman of the New England District of the Communist Party; Ann Burlak Timpson, Treasurer, New England District of the Communist Party; Lewis Martin Johnson, Executive Secretary New England District Committee of the Communist Party; and Edward S. Teixeira, Chairman of the Communist Party New England Youth Organization. Hearings for the taking of testimony on the Hood, Timpson, Johnson and Teixeira petitions were completed at Boston, Massachusetts on December 14, 1964, and a hearing for the taking of testimony on the Lumer petition was completed in New York, New York on December 15. Decisions of the Hearing Examiners in these cases are awaited. The hearings on the Kistler and Nelson petitions are scheduled to take place in Portland, Oregon and Seattle, Washington during January 1965.

December 23, 1964

*File* *Am Civil Liberties Union*  
December 10, 1964 *Union*

MEMORANDUM

Re: Contempt Citations of Mrs. Dagmar Wilson and Mrs. Donna Allen

On December 7, 1964, Mrs. Dagmar Wilson, founder of Women Strike for Peace, and Mrs. Donna Allen, Legislative Chairman of the Women's International League for Peace and Freedom, appeared before a subcommittee of the House Committee on Un-American Activities in Executive Session in response to subpoenas. Prior to the hearing they were informed that they would be questioned in relation to visits they had made to the Department of State in 1963 to urge that a waiver be granted to permit the entry of a Japanese peace leader, Professor K. Yasui, who was scheduled for a 10-day lecture tour of the United States. Subsequently a waiver was issued by the Secretary of State and former Attorney General Robert Kennedy permitting Professor Yasui's entry into the country. At the hearing the two women and a third witness, Russ Nixon, General Manager of the National Guardian, refused to testify in an executive hearing but requested that the hearing be open to the public at which they promised to answer all questions.

The Subcommittee of the House Committee on Un-American Activities consisting of Chairman Joe Pool, D-Tex., August Johansen, R-Mich., Donald Bruce, R-Ind. (both lame ducks) and Richard Ichord, D-Mo., voted to hold them in contempt and subsequently the full House Committee on Un-American Activities also so voted.

Title 2 U.S.C. §194 provides:

Whenever a witness ... refuses to answer any question pertinent to the subject under inquiry before ... any committee or subcommittee of either House of Congress and the fact of such failure or failures is reported to either House while Congress is in session, or when Congress is not in session, a statement of such fact constituting such failure is reported to and filed with the President of the Senate or the Speaker of the House, it shall be the duty of the said President of the Senate or Speaker of the House, as the case may be, to certify, and he shall so certify, the statement of facts aforesaid under the seal of the Senate or House, as the case may be, to the appropriate United States Attorney, whose duty it shall be to bring the matter before the grand jury for its action.

This seems, at first blush, to indicate that a committee of Congress or a Subcommittee can hold individuals in contempt when the House is not in session without the Speaker having any discretion in referring the matter to the U. S. Attorney. This is in contrast to the situation when the House is in session when the House can exercise its discretion by either voting up or down a contempt citation. Such an irrational distinction could not have been the intent of Congress.

Accordingly, the Speaker must have some discretion in determining whether or not he shall certify a contempt citation either on the basis that a committee or subcommittee was violating the rules of the House in holding the hearing, or was not properly according witnesses the rights to which they were entitled, or was treading on the jurisdiction of some other committee in the holding of its hearing or for some other reason. (In this case, the announced purpose of the hearing at the time of the hearing by the committee was to investigate whether the Immigration and Nationality Act of 1952 was being properly executed by the executive branch of the government. This would fall clearly within the jurisdiction of the House Judiciary Committee rather than the House Committee on Un-American Activities.)

It should be pointed out that in the event the witnesses are cited for contempt and tried, that it would be necessary to subpoena both the Secretary of State and the former Attorney General as well as other members of those departments in order to show that there were no improprieties in the granting of the waiver to Professor Yasui.

Lawrence Speiser  
Director, Washington Office  
American Civil Liberties Union  
Attorney for Dagmar Wilson and  
Donna Allen



# Minnesota Historical Society

Copyright in this digital version belongs to the Minnesota Historical Society and its content may not be copied without the copyright holder's express written permission. Users may print, download, link to, or email content, however, for individual use.

To request permission for commercial or educational use, please contact the Minnesota Historical Society.



[www.mnhs.org](http://www.mnhs.org)