CONGRESSIONAL LEGISLATION AS A REMEDY TO PREVENT COMMUNIST INFLUENCE OF LABOR UNIONS AND UNION OFFICIALS

THESIS

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By

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CHAPTER I

INTRODUCTION

Statement of the Problem

The United States and other nations of the free world are presently engaged in a life and death struggle. This conflict is between democracy and Communism—freedom versus slavery. In the classical definition of war, opponents and battlefields were readily defined, but in this "Cold War" conventional arms are only a part of the over-all battle plan. The persistent effort of the Communists to infiltrate and dominate the American labor movement is one of these battlefields.

Domination and control of labor unions has been a primary goal of the Communist Party in the United States. In recent years, the power of organized labor has demonstrated its strength throughout our national economy. Labor organizations have the power to create, in this country, a state of national emergency. The problem is how this power can be controlled and protected for the American worker.

Historical Background

Abolition of labor unions and labor organizations is certainly not the desire of the Communist Party. Unions have done much to improve wages and working conditions for
the American worker. To the Communists, labor organizations represent the vehicle that will transport them to power, power to control the government, and thence to communize the nation. To illustrate this point, a passage from the "Constitution and Program of the Communist Party of America of 1921" is cited as follows:

The Communists must take an active and leading part in the every day struggle of the unions. They must carry on a merciless and uncompromising struggle against the social-patriotic and reactionary leaders, criticize and expose them and drive them out of power. The Communist Party will develop from its ranks the most determined fighters in the labor movement who, through courage, sacrifice, and class consciousness, will inspire the masses with a spirit of determined struggle and win them over for the proletarian revolution.¹

Communists in the United States are still aggressively pursuing the course of action for labor unions outlined in this passage of their 1921 party constitution. It should be noted that the strength of the Communist movement often bears little relationship to the number of its members; that, instead, its strength and effectiveness may be in direct ratio to the intensity of the efforts of the few, who are trained and disciplined agents. Lenin, in the "Childhood Disease of Communism," wrote the following which can stand as a law to all Communist infiltration:

We must learn how to make use of all stratagems, of ruse, adopt illegal methods, keep silent at times,

conceal the truth, with the sole aim of getting into unions, staying there and accomplishing the task of Communism there in spite of everything.\(^2\)

Events in the last few years seem to have reduced the domestic Communist movement. In reality the Communist movement has never ceased its subversive activities.

The Communists have had major setbacks, but they persist in their attempts to invade the labor movement in the United States. Communism's greatest success was achieved by operating under cover during the years when the labor movement was experiencing its first rapid growth. From 1935 to 1950, the covert branch of the Communist movement was very successful in trade unions and other social institutions, including the government. Communist success or failure cannot be attributed entirely to depressions or poverty. Social instability, however, is usually fertile ground for Communist activity. These activities began to make considerable headway in the United States when the effects of the depression of 1929-1940 were still fresh in the minds of the people. The greatest amount of progress was made when conditions were beginning to improve and intensive union organizing activity resumed. Labor leaders were badly in need of people with organizing and leadership ability, and in some cases, accepted the cooperation of Communists. Some people who understood the Communist policies

and tactics warned the public against them from the beginning. As early as December, 1937, Professor John Dewey, a devoted friend of the organized labor movement, said,

It is common knowledge that the C.I.O. in its eagerness for rapid growth at the beginning accepted many members and even used organizers who belonged to one or another of these Communist factions. . . . The danger lies in the fact that the tactics employed by these Communist groups have invaded the forces of labor and are attempting to divide it.3

Such warnings were usually ignored or discredited. Even as alert an historian and participant in the labor movement as Edward Levinson allowed his association with the Congress of Industrial Organizations to interfere with his objective observation of the facts when he said in 1938,

Communist influence in the C.I.O. is a figment of the imagination. American Communism, in or out of the labor movement, is most frequently a red herring used by political or economic demagogues. As a major aspect of American political or labor life, Communism does not exist.4

Employers as well as government administrative agencies did little to check Communist penetration of unions. Eventually definite action was stimulated chiefly through congressional and state committee investigation.

The "Cold War" as well as the hot war in Korea contributed greatly to the awakening of the nation to the Communist


threat. The Communists had attempted to infiltrate the American Federation of Labor and the Congress of Industrial Organizations with equal vigor. They were more successful in the Congress of Industrial Organizations and were able to penetrate even to its national headquarters.

There is no magic formula for detecting, combating, and controlling Communist penetration and domination of unions, but if their activities are exposed, legislation can be enacted to oppose and dislodge them.

Many times in the history of the world's labor movements, radicals have attempted to control or to replace an existing trade union movement that did not conform to their ideology. This was the philosophy the Russian Communists adopted as they established machinery and procedures for directing the Communist movement outside their borders. In the early days of trade union activities, the Communists used the infiltration tactic as well as dual unionism tactics. The dual unionism approach consisted of establishing an opposing movement to replace or destroy the existing movement. Sometimes they practiced both techniques simultaneously, but one was usually stressed as more important than the other.

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The first significant organization dominated by the Communists in the United States was the Trade Union Educational League (T.U.E.L.). It was founded in 1920 under the leadership of William Z. Foster. Although Foster was not yet known as a Communist, he had a reputation as a radical because of his accomplishments in the Chicago meat-packing industry.\(^8\) The Trade Union Educational League was designed to work within the labor movement and was to function in both political and trade-union areas. Its particular target was the American Federation of Labor.\(^9\)

Foster made a trip to Moscow in 1921 as the representative of the Amalgamated Textile Workers Union. While attending the Congress of the Red International Labor Union, then being held in Moscow, he and Russian leaders worked out a plan to infiltrate the American Federation of Labor.\(^10\) The Trade Union Educational League was accepted by the Russian Communists as the organization through which the Communists were to operate. Foster left Russia in the autumn of 1921, supplied with Soviet funds and the full support of Moscow.\(^11\)

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\(^8\)Saposs, *op.cit.*, p. 10.
\(^9\)Perlman and Taft, *op.cit.*, pp. 538-543.
\(^11\)Ibid., p. 79.
The new Communist movement was not always consistent in its approach in gaining power within the labor unions in the United States. For example, the Communist International meeting in July of 1921 decided that infiltration or boring-from-within was to be the Communist trade union policy.\textsuperscript{12} This policy of boring-from-within remained in effect until 1928, when Communist trade union policy, on orders from the Comintern, was changed to dual unionism.\textsuperscript{13} Consistent with this change the Trade Union Educational League altered its name to the Trade Union Unity League and established itself as an independent trade union center. The Trade Union Unity League was dissolved in 1935 and once again the Communists resorted to infiltration or boring-from-within tactics.\textsuperscript{14} The infiltration tactic has remained the basic Communist trade union policy in the United States up to the present day.\textsuperscript{15}

From the beginning of the Communist movement, the American Federation of Labor was on its guard. As early as 1923, its convention refused to seat William F. Dunne, a Communist

\begin{itemize}
\item \textsuperscript{12}Lewis L. Lorwin, \textit{Labor and Internationalism} (New York, 1929), pp. 229-231.
\item \textsuperscript{13}Philip Taft, \textit{Economics and Problems of Labor} (Harrisburg, 1942), p. 489.
\item \textsuperscript{14}Ibid., p. 489.
\item \textsuperscript{15}William M. Leiserson, \textit{American Trade Union Democracy} (New York, 1959), p. 167.
\end{itemize}
delegate from Butte, Montana Central Labor Union. This action and Dunne's defense attracted nationwide attention. After this, the American Federation of Labor issued periodic warnings.

In 1935 the Communists thought that the most fertile ground for their tactics was the American Federation of Labor. It was the only substantial trade union center, and nearly all of the international trade unions were affiliated with it. When the Committee of Industrial Organizations severed its affiliation with the American Federation of Labor in 1937 and began functioning as the Congress of Industrial Organizations, the Communists still regarded the American Federation of Labor as the most fertile one for infiltration. In 1937 when the Congress of Industrial Organizations began its rapid rise, the Communists began to exploit every opportunity to gain power in its unions.

In 1939 the American Federation of Labor adopted the following resolution at its convention: "Resolved, that we instruct the various national and international unions to refrain from taking into membership any known member of the

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17 Stolberg, op. cit., p. 146.
Communist Party, or any sympathizer. The Communists did have some success in penetrating the American Federation of Labor unions, although it was not as large or as spectacular as their success in the Congress of Industrial Organizations.

When the Congress of Industrial Organizations was founded, there were some people who advocated sweeping changes in policy, but not by revolutionary or militant means. These democratic radicals found themselves overshadowed because the Communists were welcomed openly. The Communists then began to represent themselves as leaders of radical and progressive ideas. They claimed this status by having at their disposal many local organizations directed by the National Communist Party and assisted by its numerous front agencies. They had profited by their earlier experiences, and their followers no longer declared themselves publicly as Communists. Instead they began labeling themselves as "progressives working for democratic causes and a progressive labor movement." They also discarded formal organizations like the Trade Union Educational League for the conduct of Communist trade union activities. Guidance and direction was to be provided secretly by the executive committee of the Party, and they were to be assisted by a labor secretary. Secret members and fellow travelers passed themselves off as progressives and began to operate


21 Ibid., p. 18.
in the open. Front organizations were also established and
operated in the open. This procedure was effective for a
long time, but eventually the Communists had to expose them-
selves in order to support certain issues affecting Russia's
foreign policy. 22

Significance of the Problem

The traditional area of concentration for Communist trade
union activity has been the fields of transportation, shipping,
fuel, metal trades, and other industries vital to a nation's
economy. 23 This was the pattern in Europe as well as in the
United States. In France, for example, Communist unions in
those industrial areas dominated the General Confederation
of Labor and through that control played a big part in French
politics. 24 Infiltration or domination in these areas is very
damaging to the national interests of any society, since the
primary loyalty of a Communist is to the Communist Party.
For example, it was only after Russia was invaded that the
Communists in France took an active part in the resistance.

The Communist Party in the United States has never rep-
resented a significant number of members. The largest number

22 Vernom H. Jensen, Nonferrous Metals Industry Unionism
23 Kampelman, op. cit., p. 4.
24 A. Rossi, A Communist Party in Action (New Haven, 1949),
pp. 102-130.
of members the Party has had in recent years was in 1944 when
membership reached a peak of 80,000.\textsuperscript{25} Even if as many as
one half of this number were union members, their numerical
strength would be insignificant compared to approximately
fifteen million total union members. It is significant to
realize that at the height of their drive for power within
the Congress of Industrial Organizations, the Communists domi-
nated between twelve and fifteen of the forty international
C.I.O. unions.\textsuperscript{26} The technique of this Communist domination
is not easy to describe, but the application of the Bolshevik
principles of minority control is basic to the domination.

Mr. Justice Jackson made the following comments on the
Communist plan for labor in the Supreme Court decision of the
American Communications Association C.I.O. v. Douds case:

The Communist Party has sought to gain leverage and hold
on the American population by acquiring control of the
labor movement. Old political parties have wooed labor
and its leaders. But what other parties seek is prin-ci-
pally the vote of labor. The Communist Party, on the
other hand, is not primarily interested in labor vote,
for it does not expect to win by votes. It strives for
control of labor's coercive power—the strike, the sit
down, the slow down, sabotage, or other means of producing
industrial paralysis. The most promising course of the
Communist Party has been the undercover capture of the
coercive power of strategic labor unions as a leverage
to magnify its power over the American people.\textsuperscript{27}

\textsuperscript{25} J. Edgar Hoover, Masters of Deceit (New York, 1959),
p. 5.

\textsuperscript{26} David Dubinsky, "A Warning Against Communists in Unions,"

\textsuperscript{27} American Communications Association C.I.O. v. Douds,
70 S. Ct., 700 (1950).
The basic unit of Communist organization is the "cell," and it is the same regardless of where it may be found. The "cell" may consist of from three to ten members of the Communist Party who know each other well and work closely together. If the assigned mission is to infiltrate and gain control of a union, either an existing cell will be given the task, or a few Communist members already in the union will form a new cell. For advice, the cells meet with Party officials called "functionaries" who are experts on organization. Within the cell, emphasis is placed on following the "Party Line" and on the necessity of acting as a rigidly disciplined group. Family and all other personal considerations must be secondary to cell responsibility and Party loyalty.

The next larger unit above the cell in the party organization is the "section." A number of sections constitute a state organization. Above the state organization there will frequently be a regional or district organization. Each unit chooses one or more representatives to send to the next higher group. A meeting of the full membership of any level above the cell is called a "Party plenum."

Communist strength in any community is based on five basic types of individuals. They are:

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28Hoover, op.cit., pp. 139-140.
29Ibid., pp. 163-178. For a discussion of Communist discipline see Chapter 13.
30Kampelman, op.cit., p. 5.
A. The Party member, who actually is a cell member, openly or in secret.

B. The fellow-traveler, who is not a member of the Communist Party but who is prepared to follow the Party line.

C. The sympathizer, who is either emotionally influenced by the Soviet Union or is essentially in agreement with its general objectives, even while he may disagree with one or more of the Communist Party policies.

D. The opportunist, who believes that Communists can be effectively used for the achievement of his own ends but who, himself, remains completely unaffected by them.

E. The liberal, who has fundamental disagreements with the Communist Party but who is willing to associate politically with Communists in attaining some of the immediate demands urged by the Communists.31

In a power struggle for control of a union, a basic pattern is usually followed by the Communist Party. Party members are urged to enter the industry and either help organize or join the union.32 If there is a trade union in existence and its leaders are friendly, Party members are usually assured of good jobs unless it is expedient for them to be elsewhere.33 In the case of a trade union whose leaders are friendly to the Communists, the result is that the Party has control over a large number of workers as well as assuring contributions to Party funds and causes. Where there is no trade union, the Communists act as a disciplined core and move first on the

31Ibid., pp. 5-6.
33Ibid., p. 204.
basis of personal contacts and individual solicitation. The group must give the impression of having some members before it can begin to act formally by issuing leaflets and making other appeals for support. At the same time they carefully conceal their identity with the Communist Party.34

Once within a trade union or any other kind of organization, the Communist element has some advantage over most of the other members. For example, most union members are indifferent to union business except issues related to wages and working conditions. The Communists, on the other hand, function as a disciplined body and arrive at the meetings well organized with their policies and strategies well mapped out.35 There is usually a specialist in the problems of each particular union, and the specialist usually directs the strategy of the Communist group. They hold meetings to decide what tactics are to be used and to assign particular roles in debates. Disciplined and organized as a solid front, they join freely in argument and debate for which they are well trained.36 They are masters at fighting delaying actions and many times they succeed in wearing out the opposition.37

Originally the national and state government played a rather negligible role in combating Communist infiltration, influence, and domination of unions. The first action was

by congressional committees who were charged with the duty of investigating the situation. The public hearings and reports caused much discussion and aroused demands for government action. The earliest specific legislation aimed directly at Communist domination of unions that Congress enacted was section 9 (h) of the Labor-Management Relations Act of 1947, popularly called the Taft-Hartley Act. This legislation passed and became law seventeen years after Congress first showed an interest in the Communist problem.38

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38U. S. Statutes at Large, LXI, 136 (1947).
CHAPTER II

LABOR LEGISLATION IN U.S.

Legislative Control of Subversive Activities Prior to 1947

Legislation as an effective remedy to prevent Communist influence and infiltration within the labor movement is a problem that has been debated by many educated men and has not been completely answered. The federal government has been required to enter this new area of legislative control because of the unscrupulous activities of the Communists within the labor movement. It is probable that the government's role will continue to expand in this area if labor organizations do not prove themselves capable of solving this problem.

A democratic nation cannot tolerate laws or administration which offend its closely-held sentiments of justice, decency, and fairness. The process of law constitutes one of the highest functions which our government performs, and the moral basis of our society depends in part on the legal, governmental structure. The government of men is primarily concerned with the stability and well-being of society.

Labor law is the voice of the society, acting through the Congress and the Judiciary, setting forth the limits of behavior and controls imposed upon employers on the one hand and upon individual employees and labor unions on the other.
These federal laws are regulatory in nature. When considering them it must be remembered that the social, political, and economic forces which bring about legislation build up slowly behind the dam of public opinion and group pressure.¹

Today, in America, laws are not made by a Congress motivated simply by abstract principles of justice and equality. Organized special interest groups tend to exert pressure on Congressmen to vote in favor of or against some particular piece of legislation, or to introduce bills designed to gain certain ends for the interests of the group. Selfishness and greed have placed the pendulum of justice into motion swinging from one side to the other.

Originally the government played a rather negligible role in counteracting and combating Communist infiltration, influence, and domination of unions. Prior to Taft-Hartley there were several acts under which the Communists could be controlled, but they were largely ineffective.

The Alien Registration Act of 1940 (Smith Act) made it a crime to advocate the overthrow of the government of the United States by force or violence.² Since force and violence is a basic principle of Communist strategy, the line of the Party, in order to evade this legislation, is to avoid the

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²U. S. Statutes at Large, LIV, 671 (1940).
open advocacy of force and violence and to resort to secret methods. As a result the Smith Act is rendered less effective in dealing with Communist activities.

The Foreign Agents Registration Act of 1938 (McCormack Act) required registration of individuals who are acting as agents of a foreign principal. The Communists are skillful in deceit and in concealing their foreign ties. As a result, the McCormack Act as well as the Smith Act have been of little value in combating Communism.

In 1939 Congress passed the Hatch Act which forbade federal employees to hold membership in the Communist Party. Also in 1940, by virtue of the Smith Act, it became a federal crime to advocate, abet, advise or teach the overthrow of the United States Government by force or violence.

In earlier years neither Congress nor the Courts clearly recognized the danger threatened by the Communist Party. The Communists are the most active trade unionists and the busiest trade union organizers because the Communist Party recognizes that the unions, with their millions of organized workers, are reservoirs of tremendous potential and dynamic power once the Communists can use the unions for their own purposes. If the Communists could gain decisive control of

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3 Ibid., LII, 632 (1938).
4 Ibid., LIII, 1148 (1939).
5 Ibid., LIV, 671 (1940).
a country's trade union movement, they could silence the wheels of industry and halt transportation on land, over the sea, and in the air. Almost any government would be sensitive to the economic and political power of the organized workers.

Under the Alien Registration Act of 1940 (Smith Act) which provides for the deportation of an alien who was at the time of entering the United States, or had been at any time thereafter, a member of or affiliated with an organization that believes in or advocates the overthrow of the government by force, the Supreme Court in *Bridges v. Wixon* refused to uphold an order for the deportation of a labor leader who, in co-operation with a Communist labor organization, sponsored a militant trade union journal. This journal urged the support of Communist literature and made use of addresses by Communists. The Supreme Court found that the evidence was insufficient to sustain a charge of membership in the Communist Party. Furthermore, the Court held that in sponsoring the journal Bridges was only advancing the cause of trade-unionism and that he merely used Communist assistance to attain this end.

The courts, in their customary manner, moved slowly and carefully in regard to Communist activities. The Communists aided in slowing the judicial process by resorting to every available

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7 Ibid., p. 120.

technicality to contest any action against them in the courts. The courts caused additional delay by adopting the narrow-interpretation principle which restricted other government branches in extending what they considered to be their implied powers.9

Labor-ManAGEMENT Relations Act of 1947

The Labor-Management Relations Act of 1947 (Taft-Hartley Act) was designed to accomplish two primary purposes, namely to lessen industrial strife and to place employers on a more equal footing with unions in bargaining and labor relations procedures. The declaration and policy of the act is cited in part as follows:

Industrial strife can be avoided or substantially mini-

mized if employers, employees and labor organizations

each recognize under the law one another's legitimate

rights in their relations with each other, and above

all recognize under the law that neither party has any

right in its relations with any other to engage in acts

or practices which jeopardize the public health, safety,
or interest.10

The Taft-Hartley Act adopted three methods of accomplishing the policy stated: first, important amendments to the National Labor Relations Act of 1935 (Wagner Act); second, creation of machinery in the government for mediation and conciliation services; and third, new provisions covering

9Ibid., 1443.

10U. S. Statutes at Large, LXI, 136 (1947).
suits by and against labor organizations, restrictions on payments to employee representatives, boycotts, political contributions by unions, etc.

As indicated previously, the first specific step against Communists in unions was Section 9 (h) of the Taft-Hartley Act. Section 9 (h) is cited as follows:

No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised under sub-section (c) of this section, no petition under section 9 (E) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under sub-section (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such Party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35A of the Criminal Code shall be applicable in respect to such affidavits.\(^{11}\)

Section 9 (h) thus required the union officials to sign the non-Communist affidavit. Unless the affidavit was on file, the National Labor Relations Board was prohibited from processing any representation case under Section 9 (c), nor could they give their attention to a petition for a union security election as defined in Section 9 (E) (1). Last, and most important, the National Labor Relations Board was

\(^{11}\)Ibid., LXI, 146 (1947).
prohibited from acting on charges by the union of employer unfair labor practices as defined in Section 10 (b).\textsuperscript{12}

Under the House of Representatives Bill (H. R. 3020), which constituted the bulk of the Taft-Hartley Act, no labor organization could be certified if one or more of its national or international officers, or one or more of the officers of the organization designated on the ballot, was or ever had been a member of the Communist Party.\textsuperscript{13} The Senate amendment contained a similar provision, differing from the House Bill only in not imposing the requirement that an officer "never has been" one of the described individuals. The "never has been" test that was included in the House Bill was omitted as unnecessary in the final draft.

The Taft-Hartley amendments to the Wagner Act were very controversial. Many union leaders branded it as a slave labor law. On the other hand, some employers acclaimed it as an emancipation of management from all restrictions in dealing with employees. In fact, the Taft-Hartley Act did neither; instead it clarifies the duties and obligations of each, it makes more specific the rights and responsibilities of an employer, and it imposes upon labor unions the obligation to "play fair" and to abide by their commitments in return

\textsuperscript{12}Ibid., LXI, 144, 145, 146 (1947).

\textsuperscript{13}United States Code, Congressional Service (1947), p. 1155.
for the protection and privileges which they enjoy under the law. The Taft-Hartley Act was not thought to be the final solution of all labor troubles, but it was recognized that the rights of the individual and the public interest may generally be adversely affected by improper acts on the part of labor organizations as well as on the part of employers. This act was an attempt to protect the individual and to protect the public from the unfair practices of both labor and management.

The non-Communist affidavit requirement \( \text{Section 9 (h)} \) of the Taft-Hartley Act was an area of special controversy. In the conference report on the bill it was noted that the effect of this provision \( \text{Section 9 (h)} \) was to penalize also those persons within the trade union movement who had been most active in attempting to rid the unions of Communist influence. It was argued that by placing all members of the union under the same penalties as its Communist officers, the Communist efforts toward infiltration would be strengthened instead of weakened. Consistent with this, it was noted that the denial of rights under the Taft-Hartley Act resulted not only where an officer of a local union fails to file the required affidavit but also where an officer of the international union fails to do so. Senator Murray was against Section 9 (h) on the ground that good union members would be affected adversely.\(^{14}\)

\(^{14}\)U. S. Senate, *Congressional Record*, XCIII, Part 5, 6497 (1947).
Senator Taft's explanation of the non-Communist affidavit provision was as follows:

Subsection 9 (h) of the conference agreement embodies the principle which would have prevented a labor organization from being eligible for certification if any of its officers were members or affiliates of the Communist Party. There was a similar provision in the House bill. In reconciling the two provisions the conferees took into account the fact that representation proceedings might be definitely delayed if the Board was required to investigate the character of all the local and national officers as well as the character of the parent body or federation. The conference agreement provides that no certification shall be made or any complaint issued unless the labor organization in question submits affidavits executed by each of its officers to the effect that they are not members or affiliates of organizations accepting the doctrine of violence in government.\(^{15}\)

After lengthy debate in the Senate and in the House of Representatives, the Taft-Hartley Bill was passed. The unions disliked the Taft-Hartley Act generally. In particular, they resented the fact that only labor leaders were required to sign the non-Communist affidavits, whereas employers were not. Regardless of merit, this objection confused the situation and temporarily shielded the Communists who were labor officials. Obviously the signing of the non-Communist affidavit would not serve Communist objectives, since it meant they would have to surrender their power in the unions.

On the other hand, noncompliance meant placing the unions they controlled at a serious disadvantage. The unions that did not comply with Section 9 (h) found it increasingly difficult

\(^{15}\)ibid., XCIII, Part 5, 6444 (1947).
to secure the assistance of the National Labor Relations Board; they could not go on the ballot in any Board elections, they could not secure authority to execute lawful union-shop agreements, and they could not obtain a remedy for unfair labor practices. The unions that did comply received important competitive advantages just as Congress had intended.  

Most of the non-Communist unions complied with the affidavit requirement after the Supreme Court decision in May, 1950, on the American Communications Association C.I.O. v. Douds case. The American Communications Association, a union in the Congress of Industrial Organizations, brought a suit against Charles T. Douds, individually and as Regional Director of the National Labor Relations Board, Second Region, to restrain the holding of a representative election. The Board would not permit the American Communications Association to place its name on the election ballot because it had not complied with the non-Communist affidavit requirement of the Taft-Hartley Act. In delivering the opinion of the court, Mr. Chief Justice Vinson held that the provision of the Labor Management Relations Act, 1947, conditioning recognition of a labor organization on filing affidavits by its officers


17 American Communications Association C.I.O. v. Douds, 70 S. Ct., 674 (1950).
that they do not belong to the Communist Party and do not believe in overthrow of the government by force, is constitutional. 18 This decision was also upheld in United Steel Workers of America v. National Labor Relations Board. 19 These two cases were very significant in regard to the controlling of Communists in the labor movement. The requirement of a person to state that he is not a member of or does not support any organization that believes in or teaches the forceful overthrow of the government was upheld as constitutional by the Supreme Court. The extent to which the statute requires disclosure of affiliation with or membership in the Communist Party five of the Justices upheld as valid. 20 The American Communications Association and the Steel Workers Union maintained that Section 9 (h) exceeded the power of Congress to regulate interstate commerce, infringed the constitutional right of free speech, free assembly, and the right to petition the government. The American Communications Association also contended that the statute was vague, that it constituted a bill of attainder, and that it required a religious test oath prohibited by the


19 United Steel Workers of America v. National Labor Relations Board, 70 S. Ct., 674 (1950).

Despite these objections, the non-Communist affidavit requirement was declared constitutional in these two important cases.

Mr. Justice Jackson, concurring in the Douds case, summed up the situation as follows:

Congress has legalized the strike as labor's weapon for improving its own lot. But where Communists have labor control, the strike can be and sometimes is perverted to a party weapon. In 1940 and 1941, undisclosed Communists used their labor offices to sabotage this nation's effort to rebuild its own defenses. Disguised as leaders of free American labor, they were in truth secret partisans of Stalin, who, in partnership with Hitler, was overrunning Europe, sending honest labor leaders to concentration camps, and reducing labor to slavery in every land either of them was able to occupy. No other important political party in our history has attempted to use the strike to nullify a foreign or a domestic policy adopted by those chosen under our representative system.

This labor leverage, however, usually can be obtained only by concealing the Communist tie from union membership. Whatever the grievances American workmen may have with American employers, they are too intelligent and informed to seek a remedy through a Communist Party which defends Soviet conscription of labor, forced labor camps and the police state. Hence the resort to concealment, and hence the resentment of laws to compel disclosure of Communist Party ties. The membership is not likely to entrust its bargaining power, its records and its treasury to such hands. When it does, the union finds itself a more or less helpless captive of the Communist Party. Its officers cease to be interested in correcting grievances but seek to worsen and exploit them; they care less for winning strikes than that they be long, bitter, and disruptive. They always follow the Communist Party line, without even knowing its source or its objectives.

The Supreme Court decision in the Douds case resulted in efforts by Communists to devise methods to get around the

\[21\text{Ibid.}, 70 \text{ S. Ct.}, 676 (1950).\]
\[22\text{Ibid.}, 70 \text{ S. Ct.}, 700 (1950).\]
provisions of the Taft-Hartley Act. Many times they were quite successful in doing this. Some leaders publicly announced their resignation from the Communist Party but still declared they believed in Communist doctrines. A few Communist-dominated unions amended their constitutions so that most of the leaders remained in their posts and carried out their former duties but were not designated as policy-making officials. A more common practice was merely to sign the affidavits and take a chance that fraud and perjury would have to be proved by the government. 23

**Judicial Decisions Related to Section 9 (h) Controversy**

In addition to the Douds case mentioned previously and the United Steel Workers case, the case of *Dennis v. United States*, while not directly involving the Taft-Hartley Act, was very significant. The Dennis case was decided June 4, 1951. 24 Eugene Dennis and ten others were convicted in the United States District Court for the South District of New York on ten indictments for violation of Section 3 of the Smith Act. 25 The indictment charged that the defendants conspired to organize the Communist Party of the United States as a group to teach and advocate the overthrow of the government

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by force and violence. The Court of Appeals affirmed the conviction.\textsuperscript{26} On appeal to the Supreme Court, Mr. Chief Justice Vinson held that the indictment under the Smith Act as applied to this case does not violate the first amendment and other provisions of the Bill of Rights and that it does not violate the first and fifth amendments because of indefiniteness. The defendants were convicted under Section 3 of the Smith Act for conspiring to violate Section 2 of that act which makes it unlawful to "organize or help to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow of the government by force and violence."\textsuperscript{27} The substance of the indictment stated that the defendants between April 1, 1945, and July 20, 1948, agreed to dissolve a body known as the Communist Political Association and to organize in its place the Communist Party of the United States. They were to assume leadership of the party and to recruit members for it. The purpose of the Party was to publish books and conduct classes, teaching the duty and necessity of the forceful overthrow of the government. The jury found all the defendants guilty. With one exception, each was sentenced to prison for five years and fined ten thousand dollars.\textsuperscript{28}

\textsuperscript{26}\textit{Dennis v. United States}, 183 F. Sup. 2nd., 201 (1951).
\textsuperscript{27}\textit{United States Code, Annotated}, Vol. XVIII, Section 2385.
\textsuperscript{28}\textit{Dennis v. United States}, 71 S. Ct., 871 (1951).
The Dennis case emphasized several rules of law. It was held that the Smith Act was not unconstitutional on the ground that it stifles ideas and violates guarantees of free speech and free press, since it is directed at advocacy not discussion. The first amendment guarantees free speech except when absence of limitation on speech will create a clear and present danger. The "clear and present danger," permitting restrictions on free speech, arises where the government is aware that a group aiming at its overthrow is attempting to indoctrinate its members and to commit them to a course whereby they will strike when the leaders feel the circumstances permit. These ideas were again upheld in the case of the Communist Party of the United States v. Subversive Activities Control Board in 1955. In this case it was stated that the constitutional right of free speech ceases at the point where it leads to harm to the government; that is, when there is a clear and present danger to the government.

Prior to the Dennis case the Communists had attempted to get the House Committee on Un-American Activities declared unconstitutional. In Barsky v. United States it was contended that the Congressional committee was unconstitutional because it authorized inquiry into political opinion and expression in violation of the first amendment. In upholding the

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29 Ibid., 71 S. Ct., 857 (1951).
constitutionality of the House Committee on Un-American Activities, the United States Court of Appeals, District of Columbia, stated:

The Resolution of the House of Representatives creating and authorizing the Committee on Un-American Activities to investigate "subversive and un-American propaganda that attacks the principles of the form of government as guaranteed by our Constitution," is sufficiently definite and authoritative to permit the Committee to make inquiry of an individual which may elicit an answer that the witness is a believer in Communism or is a member of the Communist Party.\(^2\)

After the procedure of the Un-American Activities Committee was declared constitutional, the Communists began to rely on the Fifth Amendment in order to thwart the effectiveness of the committee. In *Blau v. United States* in 1950 the United States District Court for the District of Colorado convicted the defendant of contempt charges. The Supreme Court reversed this decision and said that the questions asked by the grand jury, if answered, would have furnished a link in the chain of evidence needed in the prosecution for a violation of the Smith Act. The Fifth Amendment clearly gives the witness the privilege of remaining silent.\(^3\)\(^3\) The same rule was applied by the Supreme Court in reversing a conviction of criminal contempt in *Hoffman v. United States*.\(^3\)\(^4\) The same general rule was also upheld, under different circumstances, by the

\(^{2}\)Ibid., 167 F. 2d., 242 (1948).
\(^{3}\) *Blau v. United States*, 71 S. Ct., 223 (1950).
United States Court of Appeals for the District of Columbia in *Billeci v. United States and Lewis v. United States.*

During the hearings before the House Committee on Un-American Activities regarding Communist infiltration of labor unions, Julius Emspak declined to answer sixty-eight questions during the course of his testimony. Emspak, who was then General Secretary-Treasurer of the United Electrical, Radio and Machine Workers of America, based his refusal to answer on the First and Fifth Amendments to the Constitution. The District Court for the District of Columbia sentenced him to a term of six months and a fine of five hundred dollars. The Supreme Court reversed this decision. The court said that an answer of a witness to a question of alleged membership in the Communist Party might tend to incriminate the witness and consequently the witness is entitled to claim the privilege against self-incrimination. The privilege must be claimed, but when it is, it is guaranteed by the Constitution. A companion case to the Emspak case is *Quinn v.*

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United States. In the Quinn case the same rules of law were upheld.\(^3\)\(^8\)

It is ironic that Communist labor union officers use the legal protection of the government they intend to destroy.

Section 9 (h), the non-Communist affidavit requirement, was still a source of controversy, however. According to the National Labor Relations Board's understanding of the Taft-Hartley Act, the Board was supposed to accept affidavits and, if deception was suspected, refer the cases to the Department of Justice. As a matter of fact, Chairman Herzog thought it was fortunate that the Board did not have to perform this policing function:

> Whatever the difficulties of this arrangement, it has at least spared the Board the intolerable and delaying administrative burden which would have been imposed under an earlier legislative proposal: that of having the Board itself determine, as part of every representation proceeding, whether a particular labor organization had Communists among its officers.\(^3\)\(^9\)

The Senate Subcommittee on Labor and Labor-Management Relations disagreed with the Board. They believed that the National Labor Relations Board had the authority under existing law to protect its own processes from abuse. In fact the Board did go beyond the concept of simply acting as a filing agent on several occasions. The Board had taken steps

\(^{38}\) Quinn v. United States, 75 S. Ct., 668 (1955).

\(^{39}\) U. S. Senate, Communist Domination of Unions and National Security, op. cit., p. 91.
to prevent evasion of the law by union officers who resign from constitutionally designated posts and take so-called administrative positions in the union. Using this sort of procedure the officials would not fall under the affidavit requirement.

**Judicial and Administrative Interpretation of Section 9 (h)**

There was also considerable controversy in the courts as to how Section 9 (h) should be applied. In the case of the *National Labor Relations Board v. Dant* it was held that the benefits of the Taft-Hartley Act may not flow to a labor organization unless the non-Communist affidavits are on file. Also in the Dant case it was held that the purpose of Section 9 (h) was to stop the use of the National Labor Relations Board by union leaders unwilling to be limited in government by the processes of reason, and such purpose was sought by the elimination of such leaders rather than by making difficult the unions' compliance with the act. Another case that upheld the Dant rule was *National Labor Relations Board v. Atlanta Metallic Casket Company*. In further clarifying the implications of Section 9 (h), the Supreme Court held in

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the case of National Labor Relations Board v. Pecheur Lozenge Company that failure to file non-Communist affidavits, financial statements, and other reports required by the National Labor Relations Act as amended by Taft-Hartley, would bar unions from access to the processes of the Board but would not necessarily destroy the union's status as the bargaining representative.42

The United Mine Workers of America v. Arkansas Oak Flooring Company case rendered a similar decision. In this case the court maintained that the filing of affidavits is not mandatory and that compliance is necessary only in order to obtain the services of the National Labor Relations Board.43

At a later period, the Board did try to assume additional authority with respect to the filing of affidavits, but in 1950 it merely submitted cases of suspected deception to the Department of Justice. Beginning in 1951, over a period of about fourteen months, sixty-eight cases were referred to the United States Attorney in nineteen different judicial districts. By July, 1952, only one Grand Jury indictment was obtained. The Justice Department complained that it was virtually impossible to develop a case under Section 9 (h) as it presently read.44

43 United Mine Workers of America v. Arkansas Oak Flooring Company, 76 S. Ct., 559 (1956).
44 U. S. Senate, Communist Domination of Unions and National Security, op. cit., pp. 54-55.
On March 18, 1952, Paul M. Herzog, then Chairman of the Board, testified on Section 9 (h) problems during Senate hearings. During the course of his testimony he reported that in four years ending June 30, 1951, there had been filed with the Board 232,000 non-Communist affidavits. Obviously the Board's administrative processes would have been intolerable if the proposals originally contained in Section 9 (h) had been enacted into law. The current theory of Section 9 (h) evidently was that if these officers' refusal to sign affidavits deprived their constituents of all the Board's facilities, the spotlighting of that refusal would generate pressure from below to remove them from office. It seemed apparent from the beginning that the National Labor Relations Board's sole function was to make certain that the required persons filed these affidavits, and that once they had done so, the Board must process the cases without inquiring into the truth or falsity of the affidavits. If a question of falsity arose, the Board's duty was to refer the case to the Department of Justice for prosecution under Title 18, United States Code, Section 371. Originally Section 9 (h) violations were to be prosecuted under Section 35-A of the Criminal Code, but this was repealed by the Act of June 25, 1948, and is now covered by various sections of Title 18, United States Code.


\[46\] *U. S. Statutes at Large*, LXII, 993.
Title 18, United States Code, Section 371 is stated as follows:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years.47

During the period of 1951 and 1952 the Legislative intent of Section 9 (h) was generally defeated. The Justice Department could not obtain a conviction largely because of the requirement that the affidavit be written in the present tense, thus requiring proof that on the very day the affidavit was executed the affiant was a member of the Communist Party or affiliated therewith. It was a simple matter for the individual to discontinue, formally, the prohibited membership or affiliation and then execute the affidavit on the next day and thereby defeat the purpose of the law. Under these conditions the Justice Department suggested that the National Labor Relations Board was better equipped to handle such cases.48 On the other hand, the Board's assumption that the Communist officers would refuse to sign the affidavit, thereby harming the union, and as a result be voted out of office, was largely erroneous. This fact was illustrated in the course of hearings held by the National Labor Relations Board in regard to a non-Communist

47 United States Code, Title 18, Section 371.
48 U. S. Senate, Communist Domination of Unions and National Security, op. cit., p. 56.
affidavit filed by Maurice E. Travis. During the hearing it was found, among other things, that the Section 9 (h) affidavit filed by Travis in August of 1949 was false and that the union membership knew it was false, and yet they continued to re-elect him as an officer of the International Union of Mine, Mill and Smelter Workers.49

On November 10, 1953, the National Labor Relations Board issued a statement of policy which overturned its previous position. The Board concluded that conviction for filing a false affidavit would necessarily invalidate any certification or other official action taken by the Board in reliance on the truth of such affidavits. The extent of this change in policy was emphasized by the Board's further decision to hold in abeyance representation elections which concerned a union whose officers were under indictment for filing false affidavits.50 In addition the Board began to take administrative action on finding that a false affidavit had been filed and entering an order of noncompliance.

This change in policy was probably the result of a change in the Chairman, members, and General Counsel of the Board. The Senate Subcommittee on Labor and Labor-Management-Relations differed with the National Labor Relations Board on its position

49Maurice E. Travis, 111 N.L.R.B., 422 (1956).
50Federal Register, XVIII, 7185 (1956).
that it lacked authority in this matter. The Board ignored the urging of the sub-committee until a change in its administration resulted in a change of its members.

The case of Leedom v. International Union of Mine, Mill and Smelter Workers had a significant relationship to the Board's new policy. The question in the Leedom case was whether criminal prosecution under Section 9 (h) was the exclusive remedy for the filing of a false affidavit or whether the Board may take administrative action and, on finding that a false statement has been filed, enter an order of noncompliance. Mr. Justice Douglas delivered the opinion of the court:

The Board has no authority to deprive unions of compliance when a false affidavit is filed. The only remedy for filing a false statement is the criminal penalty provided in Section 35-A of the Criminal Code. The aim of Section 9 (h) is clear. It imposes a criminal penalty for filing a false affidavit so as to deter Communist officers from filing at all. The failure to file stands as a barrier to the union's use of the processes of the Board. The section, therefore, provides an incentive to the members of the union to rid themselves of Communist leadership and elect officers who can file affidavits in order to receive benefits of the act.

The Board has a duty to determine whether a filing has been made by each person specified in Section 9 (h) since its power to act on union charges is conditional on that filing.


The Board does not have the authority to look into the truth or falsity of Section 9 (h) affidavits. The rule written into Section 9 (h) is for the protection of unions as well as for detection of Communists. It is not fair to read it only against the background of a case where the members knew their officer was a Communist. 53

The same rule was upheld in Amalgamated Meat Cutters and Butcher Workmen of North America v. N.L.R.B. 54 The International Fur case also held that a false affidavit only affected the guilty union officer and did not alter the union's rights to the benefits of the Taft-Hartley Act, even where its members were aware of the officer's fraud. 55

The Supreme Court believed that the Board's authority was properly stated in the Craddock-Terry Shoe Corporation proceeding. In this proceeding the Board held it was not the purpose of the Board to investigate the authenticity or truth of the affidavits which have been filed and that persons desiring to establish falsification or fraud had recourse to the Department of Justice for a prosecution under the Criminal Code. 56

The Board was successful in disciplining one Communist-dominated union by applying subsections of Section 9 (h).

53 Ibid., 77 S. Ct., 65 (1956).
This action eventually led to the dissolving of one union, and it is the only case on record. On the basis of an administrative investigation, the Board found that the National Union of Marine Cooks and Stewards had failed to furnish all of its members copies of its financial report. As a result, the Board held that the union had not complied with the Taft-Hartley Act and could not bring cases to the Board, participate in representation elections, or make union shop agreements. Since the National Union of Marine Cooks and Stewards was disqualified, the Board ordered a representation election to determine what union would represent the workers in collective bargaining. The Cooks and Stewards Union contested the Board's ruling in the courts but lost. A rival union, the Sailors Union of the Pacific, won the election easily, and the National Union of Cooks and Stewards was eliminated as a bargaining representative.57

The Case of the International Union of Mine, Mill and Smelter Workers

In 1935 the International Union of Mine, Mill and Smelter Workers did not have enough Communists among its members to provide an effective base of operation.58 As a matter of

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fact there has never been a large number of Communists in the membership. Infiltration was the first task, and this had to be done quietly and inconspicuously. It was not enough just to get into the union and voice opposition to conservative trade union ideas; the Communists concentrated on persuading the union to change its policies.59

When the Communists occasionally voiced opposition to conservative policies, they were always careful not to discredit the concept of collective bargaining.60 As a matter of fact, they usually created the impression that they were great believers in bargaining and in defending the workers' interests. They were smart enough to know that they could not accomplish their real purposes unless they could show the general membership improvements in wages, hours, and working conditions.61 Many times they pushed grievances energetically to foster the belief that collective bargaining and the workers' interests were their main concern. This great emphasis on collective bargaining was only camouflage for gaining freedom to pursue other goals.62

The Communists were well trained in organizing techniques and were willing to devote themselves to the hard work of

60Jensen, op.cit., p. 296. 61Ibid., p. 296.
62Ibid., p. 297.
organizing. They would seek additional union duties or volunteer their services. They were willing to take the time to work out their program in strategic situations. They worked carefully and cleverly to obtain positions of control and influence within the union.63 One of their cardinal principles was to work in the background and not out in the open. Using tactics such as these, the Communists eventually penetrated to the Executive Board of the Mine, Mill and Smelter Workers Union.64

According to Jensen, World War II did much to increase the power of the Communists in the Smelter Workers Union. Until June of 1941, when the Nazis attacked the Soviet Union, the Communists were strongly opposed to participation in the war in Europe and had used their influence to establish formal policy in the organization along such lines.65 After Hitler's attack on Russia the Communists followed a new line and became strong supporters of national defense and of aiding our allies in Europe.66 They exploited the opportunity to work with government agencies. The attack by Japan upon Pearl Harbor and subsequent United States involvement in the war gave further opportunities to the Communists and provided

65 Ibid., pp. 178-182. 66 Ibid., p. 27.
them with a slogan of "Unity" which they used effectively. This slogan gave them a shield, for it served to neutralize the conservatives in the union or to set them against each other. 67 This was possible because the non-Communists lacked organization as a group, and without a special program they were not effective. For example, when some non-Communist members of the Smelter Workers Union took steps to alter the leadership of the organization, they found that some of their group had joined in "Unity" programs. This was a Communist-sponsored program to unify the various unions in the nonferrous metals industry. 68 The Communists always worked to keep their opposition off balance and divided, because they knew they could not win otherwise. 69

The merger was also used as a means of strengthening Communist control in the Mine, Mill and Smelter Workers Union. Amalgamation or merger may be used as a form of infiltration. The merger of the die casters with the Smelter Workers Union in 1942 assisted the Communists, inasmuch as several of the best organizers subsequently in the Smelter Workers Union were thus brought into the organization. 70

The war years, with the opportunity to reiterate again and again the slogan of "Unity" gave the Communists the opportunity to work quietly and with a minimum of opposition.

During this time there was constant undermining and badgering of opponents, careful and strategic placement of friendly organizers, and removal of uncooperative organizers. Maurice E. Travis, who later held office as president of the Smelter Workers Union, was advancing rapidly during this time. Secret meetings with Communist Party officials were held, as well as secret meetings within the organization. Travis was involved in all of these activities. After the war the Communists gained control of the Executive Board of the Mine, Mill and Smelter Workers Union. Dissention and secession followed. A special committee of the Congress of Industrial Organizations, of which the Smelter Workers Union was a member, recommended that Travis be removed, but the suggestion was ignored. As a result many other local unions disassociated themselves with the Smelter Workers Union. One of the reasons for this was refusal of Travis and the left-wing group to alter their policy of noncompliance with the non-Communist affidavit filing requirement of the Taft-Hartley Act.

The Congress of Industrial Organizations later formed a trial committee to investigate the policies of the International

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73 Jensen, op. cit., p. 189.
Union of Mine, Mill and Smelter Workers. The committee found that the policies and activities of the Smelter Workers Union were "consistently directed toward the achievement of the program and purposes of the Communist Party rather than the objectives and policies set forth in the constitution of the Congress of Industrial Organizations," and recommended to the Executive Board that the Smelter Workers Union be expelled.\(^7^4\)

Following their expulsion, the Smelter Workers Union was more successful in maintaining its membership than most people had thought likely. This was a result of two main factors. The first was the Congress of Industrial Organizations' mistake in not forming a new miners and smelter workers union and thereby claiming to preserve unionism in the industry. The second factor was the effective machine organization in the Smelter Workers Union and the tight hold it had without any rival union in the industry.

After the Smelter Workers Union expulsion in 1950, Maurice E. Travis, its Secretary-Treasurer, was still to play a significant role in regard to the non-Communist affidavit. Perhaps the most publicized case involving Section 9 (h) was that of Travis v. United States.\(^7^5\) Travis was convicted of violation of the false statements statute with respect to his affidavit


\(^7^5\)Travis v. United States, 269 F. 2d., 928 (1959).
that he was not a member of the Communist Party. The United States District Court for the District of Colorado rendered the judgment and the Circuit Court of Appeals affirmed the conviction.

Travis was convicted of executing false affidavits in 1951 and 1952, and was sentenced to a total of eight years in prison and fined eight thousand dollars on two counts. The most damaging evidence introduced was a public statement made by Travis in the Union newspaper. The statement, published August 15, 1949, is cited as follows:

Since the interest of the International Union is uppermost in my mind, I have been confronted with the problem of resigning from the Communist Party, of which I have been a member, in order to make it possible for me to sign the Taft-Hartley affidavit. I have decided, with the utmost reluctance and with a great sense of indignation, to take such a step. My resignation has now taken place and as result, I have signed the affidavit.

This has not been an easy step for me to take. Membership in the Communist Party has always meant to me, as a member and officer of the International Union, that I could be a better trade unionist: it has meant to me a call to greater effort in behalf of the union as a solemn pledge to my fellow members that I would fight for their interests above all other interests.

The very premise of the Taft-Hartley affidavits is a big lie, the same sort of lie that misled the people of Germany, Italy, and Japan down the road to fascism. It is a big lie to say that a Communist trade unionist owes any higher loyalty than to his union. On the contrary, trade unions are an integral part of a Socialist society, the kind of society in which Communists believe. Therefore, I believe that good Communists are good trade unionists.

At the same time, I want to make it absolutely clear that my opinion continues to be that only a fundamental change in the structure of our society, along the lines implied in the very words of the charter of our International, "Labor produces all wealth--wealth belongs to the producer thereof," can lead to the end of insecurity, discrimination, depressions and the danger of war.

I am convinced that capitalistic greed is responsible for war and its attendant mass destruction and horror, I am convinced it is responsible for depression, unemployment and the mass misery they generate.

Therefore, I want to make it crystal clear that my belief in Communism is consistent with what I believe to be the best interests of the members of this Union and the American people generally and that I am especially happy to be able constantly to remember that this is consistent with the finest traditions of the International Union.77

There are several legal differences between the Travis case and earlier cases. In the instant case the court said that a prosecution under the federal false statements statute with respect to non-Communist affidavits is not defeated by their temporary resignation for the purpose of signing the affidavit only, and evidence of active participation on a continuing basis before and after signing and filing the affidavit is sufficient evidence from which the jury might infer that membership continued during the time in question.

It was also brought out in the trial that Travis had attended a Communist labor meeting in New York which was called to decide whether the Party would advocate that its members sign the affidavit. It was decided that the Party would be against signing. However, after the Supreme Court decision

77Travis v. United States, 269 F. 2d., 934 (1959). Public statement made by Travis that was read into court record.
in the Douds case, which deprived non-complying unions their status as bargaining representatives, the Communists began to follow the teachings of Lenin (to the effect that Communists working inside unions must remain there at all costs) including the use of falsification when necessary. In addition the Communists were relying on the idea that labor leaders could circumvent the law since the terminology of the statute pertained to present membership, not past or future.

In 1956 the Justice Department began an active campaign of prosecuting Communist union leaders who had filed false affidavits. By this time the Justice Department had the advantage of the Subversive Activities Control Act of 1950 and the Communist Control Act of 1954. Both of these Acts will be discussed later. A number of convictions was obtained. Among them were such well known Communist trade union leaders as Hugh Bryson, president of the former National Union of Marine Cooks and Stewards, and Maurice E. Travis, former president and secretary-treasurer of the International Union of Mine, Mill and Smelter Workers.

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80 *U. S. Statutes at Large*, LXI, 146 (1947).

Apparently the Justice Department began to work on the principle that if a considerable number of Communist officers and staff personnel were removed simultaneously, the rank and file members would replace them with non-Communists. The Communist Control Act of 1954 listed fourteen factors (see appendix) to be considered in determining membership or participation in the Communist Party. The activities of Maurice Travis placed him within eleven of these indicators. In United States v. Pezzati the defendants were fourteen officials of the International Union of Mine, Mill and Smelter Workers. The indictment in this case charged a conspiracy to defraud the United States by impairing, obstruction and defeat of the lawful function of the National Labor Relations Board by filing false non-Communist affidavits. They were all convicted under Title 18, United States Code, Section 371.

The non-Communist affidavit requirement was repealed by the Labor-Management Reporting and Disclosure Act of 1959. Section 9 (h) was, indeed, controversial, and its effectiveness questionable. Its true value was perhaps the subsequent legislation it inspired.

83U. S. Statutes at Large, LXIV, 987 (1950).
Subversive Activities Control Act of 1950

Several legislative enactments designed to control Communists have aided the government in combating union domination. Some of the Communists convicted under the Smith Act, which makes it a felony to "conspire to teach or advocate the violent overthrow of the Government," also turned out to be active in trade union affairs. Among those convicted were Irving Potash, a union official in the International Fur and Leather Workers Union, and John B. Williamson, former labor secretary of the Communist Party. If they happened to be immigrants, they became subject to deportation. The Immigration and Naturalization Service has, in a number of cases, deported Communist labor leaders and took similar action against those convicted under the Smith Act. John B. Williamson was deported in 1955 after he had served his prison sentence. Irving Potash was deported in 1955. Potash was a national committeeman of the Communist Party and former manager of the New York Furriers' joint council. This individual was arrested while secretly entering the country in 1957 and is now serving a prison term.

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86 Dennis v. United States, 71 S. Ct., 857 (1951).
87 Kampelman, op. cit., p. 38.
88 Ibid., p. 144.
89 Williamson v. United States, 184 F. 2d., 280 (1950).
90 New York Times, January 5, 6, 12, 1957.
Congressional and other investigations and a growing public concern with the Communist problem forced Congress to recognize the need for more specific legislation to cope with the situation.\(^9\) These investigations on the part of Congress acknowledged that neither the labor movement nor employers could successfully combat Communist union activity. Congress also recognized that Section 9 (h) of the Taft-Hartley Act, other statutory legislation giving various government agencies implied power, and administrative action as in the Immigration and Naturalization Service were rather uncertain procedures, as many court decisions proved.\(^2\) None of these procedures was abolished, except Section 9 (h) in 1959, but it was recognized that they could not be relied on to do the job effectively. As a result the Congress sought a new method to control the Communist influence.

In 1950, Congress took the first step toward the control of Communist action and Communist front organizations. Previously, legislation and administrative procedures were directed against individuals. The Subversive Activities Control Act of 1950, which was the Title One of the Internal Security Act, introduced a new approach in that it sought to control organizations.\(^3\) The Congress felt strongly about the need for


\(^2\)Ibid., II, 3887 (1950).

\(^3\)U. S. Statutes at Large, LXIV, 987 (1950).
legislation in this area, and the law was passed over President Truman's veto.

The Internal Security Act of 1950 was the outgrowth of Senate Committee Report Number 2369, August 17, 1950, and House Committee Report Number 2980, August 22, 1950. As in the case of the Taft-Hartley Act, the House Bill was passed in place of the Senate Bill since the House Bill was more comprehensive. The conference report on these bills claimed the necessity for legislation to control Communist activities.

In considering the merits of the various proposals before it, the conference committee found that it was confronted with a very difficult problem. How could they design legislation to protect freedom from those who would destroy it, without infringing upon the freedom of all the people? This was a question about which the framers of the Constitution could have had little idea and one which required a great deal of study. The committee approached the problem with restraint because they believed that any legislation recommended would have to be strictly within the bounds of the Constitution. How they were to enact laws to defend the nation from those who would use liberties guaranteed by the Constitution to destroy it, presented a question full of constitutional and

practical difficulties. The committee stated that they believed the Constitution does not deny to the Congress the power to enact laws which would defend the nation from those who would use liberties granted by the Constitution to destroy it.

In their final recommendation the committee said:

Your committee believes that legislation of the type found in this bill is of supreme importance to the United States in combating the clear and present danger of the Communist organization to our national security. We of the committee sincerely feel that the enactment of this type of legislation will substantially aid in protection of the American people from this totalitarian dictatorship which threatens to engulf and destroy all of the free peoples of the world. We unanimously commend this bill to you for your consideration and approval.

The Subversive Activities Control Act, among other things, denied passports to members of Communist organizations, required registration and annual reports of Communist organizations, provided for a Subversive Activities Control Board, defined Communist action and front organizations, and amended several laws in regard to aliens, immigrants, and foreign agents. The exact definitions of Communist action and front organizations are of primary importance; they are cited as follows:

Section 3 (3) The term "Communist-action organization" means--
(a) any organization in the United States (other than a diplomatic representative or mission of a foreign government accredited as such by the Department of State) which (i) is substantially directed, dominated, or controlled by the foreign government or foreign organization controlling the world Communist movement referred to in section 2 of this title, and (ii) operates primarily to advance

96 Ibid., II, 3888 (1950).
97 Ibid., II, 3888 (1950).
the objectives of such world Communist movement as referred to in section 2 of this title:

and

(b) any section, branch, faction, or cell of any organization defined in subparagraph (a) of this paragraph which has not complied with the registration requirements of this title.

(4) The term "Communist-front organization" means any organization in the United States (other than a Communist-action organization as defined in paragraph (3) of this section) which (A) is substantially directed, dominated, or controlled by a Communist-action organization, and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement, referred to in section 2 of this title.\textsuperscript{99}

These Communist-action and Communist-front organizations are at times used as direction centers for Communist trade union activity.\textsuperscript{100} For example, when William Z. Foster formed the Trade Union Educational League in 1922 it was intended as a rallying center for Communist trade union activity.\textsuperscript{101}

The Trade Union Educational League would probably fall within the definition of a Communist-front organization, and as such would have been required to register and file annual reports. The United May Day Committee was another Communist-front organization. On March 15, 1956, the Subversive Activities Control Board declared this organization a Communist-front organization.\textsuperscript{102}

Since the United May Day Committee operated primarily through

\textsuperscript{99}U. S. Statutes at Large, LXIV, 989-990 (1950).

\textsuperscript{100}Kampelman, \textit{op. cit.}, p. 9. \textsuperscript{101}Ibid., p. 9.

unions, it had been in a position to exercise influence in the labor movement.¹⁰³ As indicated below, the Communist Party of the United States was required to register as a Communist-action organization in 1954. The primary importance of the Subversive Activities Control Act of 1950, as it relates to Communist labor union activity, was to diminish the effectiveness of these organizations as direction centers for Communist trade union activity.

**Subversive Activities Control Board**

When the Attorney General had reason to believe that an organization was either a Communist action or front, a petition would be served on the organization and filed with the Subversive Activities Control Board. The Control Board then had the duty to determine whether or not the organization in question is a Communist action or front organization and thereby subject to the requirements of the law. Section 13 of the Subversive Activities Control Act of 1950 outlined the factors (see appendix) the Control Board would take into consideration in making this determination.¹⁰⁴ The Subversive Activities Control Board has no power to initiate proceedings or to conduct investigations. It functions only after the Attorney General has filed the proper petition.¹⁰⁵

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¹⁰³ Ibid., p. 9.
¹⁰⁴ U. S. Statutes at Large, LXIV, 999-1000 (1950).
¹⁰⁵ Ibid., LXIV, 997 (1950).
The constitutionality of the Control Board's authority was contested in the 1954 case of the Communist Party of the United States v. Subversive Activities Control Board. It was held that the Party fell within the definition of a Communist-action organization and as such was required to register according to the provisions of the Subversive Activities Control Act.106 The defendants in this case maintained that the Act was designed to outlaw the Communist Party by legislative decree, that the Act violates the due process clause and is also a bill of attainder, that the Act violates the constitutional prohibition against compulsory self-incrimination, and that the Act violates the First Amendment to the Constitution.107 The Supreme Court reviewed this case in 1960, and in June 1961 the court reaffirmed the decision.108 Only the final decisions of this case are given here, but it should be noted that this was the first case brought before the courts under the Subversive Activities Control Act of 1950 and was evidently intended to be a test case. The hearings had taken fourteen months when the thoroughly documented finding was issued by the Control Board in April of 1953.109 The case

107 Ibid., 223 F. 2d., 540 (1954).
of the Communist Party of the United States v. Subversive Activities Control Board was not completely disposed of until the Supreme Court denied a rehearing October 9, 1961.110

Internal Security Subcommittee

Shortly after the enactment of the Subversive Activities Control Act, the Senate directed the establishment of an Internal Security Subcommittee in order to maintain a continuing surveillance over the administration of the Control Act and to conduct continuous investigations for the exposure of Communist activities.111 One of the principal objectives of the Internal Security Subcommittee was to detect any areas in the Internal Security Act or any other internal security legislation which needed strengthening, and to recommend to Congress the type of legislation needed to correct the situation.112

The studies and investigations by the Internal Security Subcommittee of the Senate Committee on the Judiciary revealed the following:

1. There are powerful Communist-controlled organizations masquerading as labor organizations which have bargaining rights for large segments of American labor.

2. The loyal rank and file members of such Communist-controlled organizations have neither the security


111 U. S. Senate, Congressional Record, C, Part II, 14097 (1954).

112 Ibid., C, Part II, 14097 (1954).
information available nor the facilities for ousting the Communist leadership or neutralizing the Communist influence.

3. Such Communist-controlled organizations do not come within the definitions of either a Communist-action organization or a Communist-front organization as used in the Subversive Activities Control Act of 1950.

4. The foregoing constitutes a serious danger to the security of the nation.113

In spite of the efforts of the labor movement to expel the Communist-controlled segments, the Communist influence, and the Communist threat, the danger still existed. Until the passage of the Communist Control Act of 1954, many of these infiltrated and dominated organizations continued to function with the sanction of the National Labor Relations Board. For example, it was not until 1959 that Maurice Travis, secretary-treasurer of the International Union of Mine, Mill and Smelter Workers, reluctantly resigned from the Communist Party.114

In a report by the Internal Security Subcommittee the charge was made that the United Electrical, Radio, and Machine Workers of America was essentially a Communist-dominated union. The subcommittee concluded as follows:


The testimony established that there exists in the area of Pittsburgh, Pennsylvania, a serious potential danger to the security of this nation. It is unthinkable that a large segment of the heavy industrial area of Pittsburgh, Pennsylvania, should be manned by a Communist-controlled organization masquerading as a labor union. All the forces of the government must be brought to bear promptly to meet this critical situation.\textsuperscript{115}

Another report by the Internal Security Subcommittee revealed that the American Communications Association, identified by the subcommittee as another Communist-controlled labor organization, had access to communications which were used exclusively by defense organizations of the United States.

The following testimony by Ellery W. Stone, president of the American Cable and Radio Corporation, tended to corroborate the findings of the Internal Security Subcommittee:

Despite the action by the Congress of Industrial Organizations expelling the American Communications Association because of its, and here I quote the C.I.O. language, "subservience to the interests of the Communist Party and through that Party to the Soviet Union," and despite the fact that key officers of the American Communications Association were, thereafter, identified as Communists by labor witnesses including former American Communications Association members before congressional committees, and despite the fifth amendment refuge taken by officers of the American Communications Association, the American Communications Association as of today continues to represent a large segment of employees in this sensitive and vital area.\textsuperscript{116}

The position of the American Communications Association played a significant role during Congressional debate regarding

\textsuperscript{115} U. S. Senate, \textit{Congressional Record}, C, Part II, 14097 (1954).

\textsuperscript{116} \textit{Ibid.}, C, Part II, 14097 (1954).
the Communist Control Act as illustrated in a portion of the record of the hearings by the Internal Security Subcommittee. Ellery W. Stone was testifying and this was used in the Senate floor debate and is quoted as follows:

Mr. Arens: (Attorney and appointed staff member of the Internal Security Subcommittee.) Could you pause there just a moment to relate for the purpose of the record some of the contracts which the American Communications Association, this Communist-dominated labor organization, has at the present time?

Mr. Stone: Yes; at the present time they represent the employees of the Western Union Telegraph Company both in the metropolitan division of that company, which means New York City and the surrounding area, and they represent the cable employees of the Western Union Telegraph Company, namely the employees engaged in the international business of Western Union, similar to the activities of my own company.

Mr. Arens: They service the cables of messages going overseas to Europe from the United States?

Mr. Stone: They handle all of the international messages of Western Union going to and from Europe and going part way to South America where they are turned over to a foreign company.

Mr. Arens: May I explore that first a little further for a moment? It is a fact, Admiral, is it not, that the employees in the American Communications Association have access to the messages which go overseas—all messages going over the North Atlantic?

Mr. Stone: Not all, but all of Western Union's.

Mr. Arens: All of Western Union's messages?

Mr. Stone: Yes, and all of the messages of the R.C.A. communication which is a subsidiary.
Sen. Butler: (R. Md.) Does that comprehend, Admiral, the leased cables out of the Pentagon, and other government agencies?

Mr. Stone: Any leases which government agencies have with Western Union and R.C.A. and with any company involve necessarily that our employees monitor and be familiar with what is passing over those cables, in the normal discharge of their duties.

Sen. Butler: In other words, then, the most confidential messages out of the State Department and the Pentagon or any other agency or department of the government going over these cables is monitored by these people who are members of a Communist-dominated union?

Mr. Stone: That is correct. But I should like to emphasize that not all members of the Communist-dominated unions are, by any means, Communists.

Sen. Butler: I was very careful in saying that, they are not Communists or may not be Communists themselves, but they are members of a union that has been proved to be Communist-dominated?

Mr. Stone: That is correct.

Sen. Butler: And they handle the secret messages going from the State Department and the Pentagon and other departments and agencies of the United States Government.

Mr. Stone: That is quite true, sir.

Mr. Arens: As a man who said you had considerable experience in Communist techniques, and who obviously appreciates the significance of the defense of this nation, what is your appraisal of a situation in which the tie lines and lease lines coming out of the Pentagon are serviced by personnel of a Communist-dominated labor organization?
Mr. Stone: Well, I think it is inimical to the security of this country. It is well known that one of the tenets of the Communist Party is to have their members astride vital lines of communications, both shipping and electrical communications, and I referred to some of these dangers, gentlemen, later in my prepared report. \textsuperscript{117}

This testimony, plus the fact that the American Communications Association \textit{v. Douds} was one of the first cases that contested the constitutionality of Section 9 (h) of the Taft-Hartley Act, had substantial impact upon Congressional attitudes. \textsuperscript{118} Another excerpt from the testimony of Ellery W. Stone which began a few pages later in the report was as follows:

\begin{quote}
Mr. Arens: It has been suggested, or was suggested in the past, that after all we need not be too concerned about this because defense secrets are transmitted by code or by messenger. Admiral, are there not certain messages which are not transmitted by code which we would not want the Communists to know about?
\end{quote}

\begin{quote}
Mr. Stone: That is true, and even as to coded messages, it is customary, in all military services, to intercept ciphered or coded messages of the enemy, with the expectation and hope of breaking them down.
\end{quote}


\textsuperscript{118}\textit{American Communications Association v. Douds}, 70 S. Ct., 674 (1950).
Mr. Arens: Do the codes go over these lines?

Mr. Stone: Certainly.

Mr. Arens: Then the code is available for interception by the Communists, is that correct?

Mr. Stone: The coded message is?

Mr. Arens: That is what I meant.

Sen. Butler: And it is constantly available to give them fresh opportunities owing to the situation in the world as it goes day by day, and they can take the cipher and relate it to the event and in that way it aids them in breaking the code.

Mr. Stone: That is one of the means intelligent people use in breaking coded messages.

Sen. Butler: You can take the ciphered message and try to relate it to the events of the day, and if you have many hundreds of examples, you are greatly aided in breaking the code, are you not?

Mr. Stone: That is quite correct, sir.\textsuperscript{119}

Testimony such as the above served to emphasize the need for legislation in this area.

Communist Control Act of 1954

The advocates of Senate Bill 3706, which constituted the bulk of the Communist Control Act, relied heavily on

\textit{Dennis v. United States} and the \textit{American Communications}.

The Dennis case held that the government had a right to limit free speech when there existed a clear and present danger and that the government had a right to protect itself against acts intended to overthrow the government by force and violence. The Douds case upheld Section 9 (h) of Taft-Hartley as well as qualifying the right of free speech. This decision of the Supreme Court in the Douds case was used to allay the fears of those in Congress who thought the Communist Control Act constituted thought control. Senator Butler of Maryland stated that the Communist Control Act of 1954 would provide a means whereby the members of a labor union, the rank and file, would be informed by the government, on the basis of proven facts, that their leadership constituted a threat to themselves and their country. Senator Morse objected to the bill because he believed it should have been considered by the Committee on Labor and Public Welfare, since that committee had the responsibility of advising the Senate in regard to Communist activities. There were some Congressmen, such as Senator Lehman of New York, who thought the National Labor

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120 Dennis v. United States, 71 S. Ct., 857 (1951); American Communications Association v. Douds, 70 S. Ct., 674 (1950).

121 U. S. Senate, Congressional Record, C, Part II, 14097 (1954).

122 Ibid., C, Part II, 14129 (1954).
Relations Board should control Communist activities, and some believed that Communism in American unions had been greatly exaggerated.\(^{123}\)

The Communist Control Act of 1954 amended Section 5 of the Subversive Activities Control Act of 1950. Section 5 concerned the employment of members of Communist organizations. By adding sub-paragraph (E) to Section 5, members of Communist organizations were prohibited from holding office or employment with any labor organization, or from representing any employer in any matter or proceeding or arising under the National Labor Relations Act as amended.\(^{124}\) The Subversive Activities Control Act was also amended to include a definition of a Communist-infiltered organization. Paragraph (4A) states:

\[ (4A) \text{ The term } "\text{Communist-infiltered organization}" \text{ means any organization in the United States (other than a Communist-action organization or a Communist-front organization) which (A) is substantially directed, dominated, or controlled by an individual or individuals who are, or who within three years have been actively engaged in, giving aid or support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in Section 2 of this title, and (B) is serving, or within three years has served, as a means for (i) the giving of aid or support to any such organization, government, or movement, or (ii) the impairment of the military strength of the United States or its industrial capacity to furnish logistical or other material support required by its Armed Forces: Provided however, that any labor organization which is an affiliate in good standing of a} \]

\(^{123}\)Ibid., C, Part II, 14129 (1954).

\(^{124}\)U. S. Statutes at Large, LXVIII, 777 (1954).
national federation or other labor organization whose policies and activities have been directed to opposing Communist organizations, any Communist foreign government, or the world Communist movement, shall be presumed prima facie not to be a Communist-infiltrated organization.127

The difficult question is whether, consistent with the first amendment, Congress may by statute exert pressures upon labor unions to deny positions of leadership to certain persons who are identified by particular beliefs and political affiliations.126 This was the leading question in the Douds case as well as a controversial issue regarding the Communist Control Act.

Although the first amendment provides that Congress shall make no law abridging the freedom of speech, press, or assembly, it has been established that those freedoms are dependent upon the power of the constitutional government to survive. If it is to survive, it must have the power to protect itself against unlawful conduct and, under some circumstances, against incitements to commit unlawful acts.127

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125Ibid., LXVIII, 777 (1954).
126American Communications Association v. Douds, 94 L. ed., 925 (1950).
American Communications Association v. Douds, 70 S. Ct., 674 (1950).
Dennis v. United States, 71 S. Ct., 867 (1951).
Freedom of speech does not give the right to speak on any subject at any time.\textsuperscript{128}

Using the provisions of the Communist Control Act of 1954, Attorney General Brownell announced and initiated a vigorous program against Communist-dominated unions. Now in addition to proceeding against Communist trade-union leaders, it was possible to act against unions directly.\textsuperscript{129} On July 28, 1955, the Attorney General petitioned the Control Board to declare the independent International Union of Mine, Mill and Smelter Workers a Communist-infiltrated organization. It was charged that the Smelter Workers Union was at the time and had been under the domination and control of members of Communist organizations and had been made into an instrument for the promotion and advancement of the aims and objectives of Communist organizations, foreign Communist governments and the world Communist movement.\textsuperscript{130} The Attorney General brought a similar case against the United Electrical, Radio and Machine Workers of America in 1955. In this case the union claimed that the Communist Control Act of 1954 was invalid and demanded an injunction against the Attorney General

\textsuperscript{128}Schenck v. United States, 39 S. Ct., 247 (1919).  
Gitlow v. United States, 45 S. Ct., 625 (1925).  
Whitney v. California, 47 S. Ct., 641 (1927).  
Dennis v. United States, 71 S. Ct., 857 (1951).

\textsuperscript{129}U. S. Statutes at Large, LXVIII, 775 (1954).

\textsuperscript{130}New York Times, July 29, 1955.
and the Control Board. The United States Court of Appeals of the District of Columbia, having previously pronounced the 1950 act as constitutional, dismissed the suit.\textsuperscript{131}

The judicial process is slow, as is commonly known. It will take years before some provisions of these acts can be enforced, if at all. By way of penalty, the Communist Control Act provides that unions found to be Communist-infiltrated be denied the facilities of the National Labor Relations Board. This action would make the union ineligible to act as a representative or bargaining agent for its members. In addition the Labor Relations Board would require the union to hold a representation election if twenty per cent of the membership so petitioned.\textsuperscript{132} With the Communist-infiltrated union excluded from the ballot, the employees would have no choice but to vote for a rival union if they wanted to continue having a labor organization to look after their interests. This prospect concerned the Communist labor leaders.\textsuperscript{133} They could not get around this act as they did Section 9 (h) of the Taft-Hartley Act when they signed the non-Communist affidavits. Under the 1954 act, these dominated unions would lose their collective-bargaining rights and their status

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{131}Communist Party of United States v. Subversive Activities Control Board, 223 F. 2d., 531 (1954).
\item \textsuperscript{132}U. S. Statutes at Large, LXVIII, 780 (1954).
\item \textsuperscript{133}U. S. Subversive Activities Control Board, \textit{Fifth Annual Report} (Washington, 1955), pp. 5-6.
\end{itemize}
\end{footnotesize}
with the National Labor Relations Board. As a result they would become easy prey for rival unions.

As mentioned earlier, technicalities in the law many times defeat its purpose. Communists have attempted to escape the provisions of the Communist Control Act by way of the declaration in the act that "affiliates in good standing with labor organizations whose policies and activities have been directed to opposing Communism are presumed, prima facie, not to be infiltrated." There is some difference of opinion as to whether Communist-dominated unions could find complete protection under this clause by joining with American Federation of Labor and Congress of Industrial Organizations. At any rate, the Communist trade-union leaders began to seek cover in established non-Communist unions. Communist success in this area has not been significant partly because the leaders of the American Federation of Labor and the Congress of Industrial Organizations were aware of this tactic and warned against affiliation with any Communist-infiltrated union.

Since it has become common practice for some union officials and members, when appearing before legislative committees, to seek refuge in the Fifth Amendment, the American Federation of Labor and the Congress of Industrial Organizations have

134 Ibid., p. 6.
135 U. S. Statutes at Large, LXVIII, 777 (1954).
adopted the following in their *Codes of Ethical Practice*:

We recognize that any person is entitled, in the exercise of his individual conscience, to the protection afforded by the Fifth Amendment, and we reaffirm our conviction that this historical right must not be abridged. It is the policy of the A.F.L. - C.I.O., however, that if a trade-union official decides to invoke the Fifth Amendment for his personal protection and to avoid scrutiny by proper legislative committees, law enforcement agencies, or other public bodies into alleged corruption on his part, he has no right to continue to hold office in his union. Otherwise, it becomes possible for a union official who may be guilty of corruption to create the impression that the trade union movement sanctions the use of the Fifth Amendment, not as a matter of individual conscience, but as a shield against proper scrutiny into corrupt influences in the labor movement.137

While this policy refers only to corruption, some of the affiliated unions, such as the International Association of Machinists, have enlarged its meaning to apply to those who resorted to the Fifth Amendment when investigated on grounds of Communism.138

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and Disclosure Act of 1959. This act is more commonly referred to as the Landrum-Griffin Act, after the co-authors of House Bill No. 8400 which constituted the major part of the act. The Senate Bill (S. 1555) contained a non-Communist affidavit requirement which was not included in the House Bill (HR 8400). The House Bill prohibited Communists from holding office in labor organizations, and this was the idea that finally prevailed. The Landrum-Griffin Act contained the following provision:

Prohibition against certain persons holding office. Sect. 504 (a). No person who is or has been a member of the Communist Party or who has been convicted of, or served any part of a prison term resulting from his conviction of, robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, or a violation of Title II or III of this Act, or conspiracy to commit any such crimes, shall serve—

(1) as an officer, director, trustee, member of any executive board or similar governing body, business agent, manager, organizer, or other employee (other than as an employee performing exclusively clerical or custodial duties) of any labor organization, or

(2) as a labor relations consultant to a person engaged in an industry or activity affecting commerce, or as an officer, director, agent, or employee of any group or association of employers dealing with any labor organizations, during or for five years after the termination of his membership in the Communist Party, or for five years after such conviction or after the end of such imprisonment, unless prior to the end of such a five-year period, in the case of a person so convicted or imprisoned, (A) his citizenship rights, having been fully restored, or (B) the Board of Parole of the United

139 U. S. Statutes at Large, LXXIII, 519 (1959).

140 House of Representatives, Congressional Record, CV, Part 12, 15717 (1959).
States Department of Justice determines that such person's service in any capacity referred to in clause (1) or (2) would not be contrary to the purposes of this Act. Prior to making any such determination the Board shall hold an administrative hearing and shall give notice of such proceeding by certified mail to the State, County, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Board's determination in any such proceeding shall be final. No labor organization or officer thereof shall knowingly permit any person to assume or hold any office or paid position in violation of this subsection.

(b). Any person who willfully violates this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(c). For the purposes of this section, any person shall be deemed to have been "convicted" and under the disability of "conviction" from the date of the judgment of the trial court or the date of the final questioning of such judgment on appeal, whichever is the later event, regardless of whether such conviction occurred before or after the date of enactment of this act.\(^{141}\)

In addition to barring Communists and criminals from holding office in labor organizations, the Landrum-Griffin Act provided for the reporting and disclosure of certain financial transactions and administrative practices of labor organizations and employers. It further provided measures to prevent abuses in the administration of trusteeships by labor organizations and to provide standards with respect to the election of officers by labor unions.\(^{142}\)

The prohibition against certain persons holding office in labor unions and the supervisory powers, as indicated above, afforded by the Landrum-Griffin Act, combined with

\(^{141}\)U. S. Statutes at Large, LXXIII, 537 (1959).

\(^{142}\)Ibid., LXXIII, 537 (1959).
the power to proceed against Communist-infiltrated organizations (Communist Control Act), will continue to inhibit the "open" activities of the Communist labor movement. No longer is it possible for an avowed Communist to hold office in a labor organization. It appears that the Congressional intent of Section 9 (h) of the Taft-Hartley Act has finally been realized with the passage of the Landrum-Griffin Act.

The Landrum-Griffin Act represents the third phase of labor-reform legislation. First came the Wagner Act of 1935, and then the Taft-Hartley Act of 1947. The Labor-Management Reporting and Disclosure Act of 1959 may possibly remain on the statute books without substantial change until 1971 if the twelve-year cycle that has characterized federal labor legislation continues. In any event, if and when the 1959 law reaches its twelfth birthday, many questions as to its meaning and application will probably still be unresolved. The new labor law not only makes changes in basic American labor policy; it introduces the federal government into an entirely new area: the supervision of internal union affairs.
CHAPTER III

SUMMARY AND CONCLUSIONS

The Communists are making an effort to restore respectability to the Communist effort in this country and to cooperate with other groups. The new party line, in accordance with the ideas of the Russian Communists, is to achieve a protracted period of peaceful co-existence under the existing circumstances.¹

It is still not certain whether this strategy of informal infiltration can be easily detected. Ordinary methods of eliminating them are not practical; exposure through government investigation might serve the purpose. The best way to combat this type of infiltration is alert non-Communist union leaders and members.

Fortunately, there are certain factors peculiar to the Communist movement that automatically force it to expose itself. Changing international conditions require that the party line also change. To an aggressive world movement it is imperative to bring issues out in the open in order to gain mass sympathy. This requirement also creates a dilemma.

Benjamin Gitlow, formerly one of the highest Communist agents in the United States, describes this predicament which has aided in combating Communist penetration and domination of unions:

To maintain its trade union machine in such a way as not to expose the connection between the Party and its trade-union people was not an easy matter. Domestic Communist trade-union policies had to coincide with Moscow's interests. The Party was bodily tied up with a world-wide Communist trade-union machine. What the American Communists did had to jibe with the objectives of the world-wide machine. This position of the American Communist Party makes the development of the trade-union policies and the control of the trade-union machinery by the Party an exceedingly difficult task, especially when directives from Moscow rap counter to the patriotic instincts of American workers.²

With the passage of the Taft-Hartley Act the Communist labor union leaders were confronted with a problem. How could they reconcile their Communist Party membership with the non-Communist provision of the Taft-Hartley Act? The Communist trade union leaders developed three major techniques for meeting the affidavit threat. First was the resignation from the Communist Party of some of the leaders. Max Perlow, secretary-treasurer of the United Furniture Workers, started this trend. In a statement to the press of June 5, 1949, Perlow stated that his union had decided to file the affidavits. He said he was faced with a choice of continuing either as a union officer or as a member of the Communist Party. He also stated that he still believed in the Communist

doctrine and his right to advocate it.\textsuperscript{3} Perlow's action obviously violated the spirit and intent of Section 9 (h) of the Taft-Hartley Act.\textsuperscript{4} Maurice Travis, secretary-treasurer of the Mine, Mill and Smelter Workers Union, followed the same procedure and reluctantly resigned from the Communist Party.\textsuperscript{5}

A second strategy to avoid the intent of the non-Communist affidavit requirement was to amend the union constitution and juggle union officers. The first National Labor Relations Board test of this ruse was furnished by the United Shoe Workers, which changed its constitution so that there were only two national officers of the union. Other union leaders remained at their posts but without officer titles.\textsuperscript{6} At first the Board allowed this ruse to operate. Later, however, the Board changed its ruling in this matter.

The third method of evading Section 9 (h) was simply to ignore charges of Communist domination and sign the affidavit on the assumption that fraud and perjury would have to be proved by the Department of Justice.\textsuperscript{7}

\textsuperscript{3}New York Times, June 6, 1949, p. 1.
\textsuperscript{4}U. S. Statutes at Large, LXI, 136 (1947).
\textsuperscript{5}Travis v. United States, 269 F. 2d., 928 (1959).
\textsuperscript{6}In the Matter of Craddock-Terry Shoe Corporation and United Shoe Workers of America, C.I.O., 76 N.L.R.B., 842 (1948).
\textsuperscript{7}American Communications Association v. Douds, 94 L. ed., 425 (1950).
It is difficult to evaluate the effect of Section 9 (h) on the decline of Communist influence in the trade-union movement. It does appear, however, that the affidavit requirement helped in a number of situations to identify the Communists and thereby diminish their influence. This identification was particularly true in the days immediately following the passage of the Taft-Hartley Act.

As indicated previously, the Subversive Activities Control Act of 1950 imposed restrictions and controls on Communist-action and Communist-front organizations. The Communist Control Act of 1954 amended the Subversive Activities Control Act by adding a definition of a Communist-infiltrated organization.

These two Acts gave the Department of Justice the power to proceed against the organizations and require them to register and file annual reports. The requirements of the Subversive Activities Control Act and the Communist Control Act have exposed some organizations to public scrutiny and thereby diminished their effectiveness as a Communist base of operations.

The Landrum-Griffin Act prohibits any person who is or has been a member of the Communist Party from serving in a

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8U. S. Statutes at Large, LXIV, 989 and 990 (1950).
9Ibid., LXVIII, 777 (1954).
labor relations capacity during or for five years after the termination of his membership in the Communist Party.\textsuperscript{11} The presumption, apparently, is that termination of Party membership and five years lapse of time is sufficient to remove any threat of Communist affiliation. This may not necessarily be a correct assumption.

Labor union officials have in their control the welfare of many citizens in the United States. The following proposed amendment to the Landrum-Griffin Act would strengthen the protection against Communist infiltration:

1. Definition of the Communist Party as the instrumentality of a foreign conspiracy whose avowed purpose is to overthrow the government of the United States by any means possible.
2. Provision to ban any Communist Party member or avowed Communist from holding any public office and to prevent any Communist Party member or avowed Communist from holding any office in a labor-relations capacity as defined in Title V of the Labor-Management Reporting and Disclosure Act of 1959.
3. Provision to prohibit any person from serving in a labor-relations capacity who has ever been convicted of a felony.
4. Definition of persons serving in labor-relations capacities as being in positions of public trust and, as such, be required to meet certain qualifications (see 5 below).
5. Requirement for persons serving in labor-relations capacities to submit to security investigations by the Federal Bureau of Investigation. Procedure for investigation will be the same as is required for some public officials, civil servants, and military officers.

This proposed amendment would, undoubtedly, eliminate some Communist influence within the labor movement.

\textsuperscript{11}\textit{U. S. Statutes at Large}, LXXIII, 537 (1959).
This country faces many years of tension and conflict with the Soviet Union, with the possibility of all-out war increasing if the Kremlin continues to make territorial and power gains. During consultation with three political scientists the House Committee on Un-American Activities found that "the Communist strategy never has been, and is not now, a strategy of limited war such as that which has preoccupied many Western writers in recent years." The three political scientists, all associated with the Foreign Policy Research Institute of the University of Pennsylvania, flatly rejected the limited war theory. Dr. Robert Strausz-Hupe, Director of the Foreign Research Institute, stated:

The strategy of protracted conflict prescribes the annihilation of the opponent by a long series of carefully calibrated operations, by feints and maneuvers, by psychological and economic warfare, and by diverse forms of violence. . . . It encompasses all known forms of violent and non-violent conflict techniques, and fuses them into a weapons spectrum which begins on the left with the seemingly most innocuous political activities, such as the clandestine distribution of leaflets, and terminates on the right end of the spectrum with the megaton bomb.

This over-all problem can be compared to several historical crises that have confronted this nation. The basic elements, politically, are essentially the same as when this nation was created. As Alexander Hamilton said in his appeal for the adoption of the Constitution:


13Ibid., p. 1.
It has frequently been remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force.\textsuperscript{14}

Democracy can be built and preserved only by being lived. The emphasis upon self-government which has been so prominent in the history of American unionism is consistent with democratic ideals, but unless the rank and file members of the unions are continuously active, this self-government principle may become an obstacle of the worst sort. A strong control from the high union officers, no matter how motivated, will not preserve a wholesome democracy. A wholesome democracy means participation by the rank and file. It is only they who can really save and preserve democracy.

\textsuperscript{14}Alexander Hamilton, \textit{The Federalist} (Chicago, 1952), p. 29.
2. Subversive Activities Control Act of 1950. Section 3 (3).
3. Subversive Activities Control Act of 1950. Section 13 (e) and (f)
LABOR-MANAGEMENT RELATIONS ACT OF 1947

SECTION 9 (h)

No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35A of the Criminal Code shall be applicable in respect to such affidavits.
The term "Communist-action organization" means---
(a) any organization in the United States (other than a diplomatic representative or mission of a foreign government accredited as such by the Department of State) which (i) is substantially directed, dominated, or controlled by the foreign government or foreign organization controlling the world Communist movement referred to in section 2 of this title, and (ii) operates primarily to advance the objectives of such world Communist movement as referred to in section 2 of this title:
and
(b) any section, branch, faction, or cell of any organization defined in subparagraph (a) of this paragraph which has not complied with the registration requirements of this title.

The term "Communist-front organization" means any organization in the United States (other than a Communist-action organization as defined in paragraph (3) of this section) which (A) is substantially directed, dominated, or controlled by a Communist-action organization, and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement, referred to in section (2) of this title.
Sec. 13 (e). In determining whether any organization is a "Communist-action organization," the Board shall take into consideration—

(1) the extent to which its policies are formulated and carried out and its activities performed, pursuant to directives or to effectuate the policies of the foreign government or foreign organization in which is vested, or under the domination or control of which is exercised, the direction and control of the world Communist movement referred to in section 2 of this title; and

(2) the extent to which its views and policies do not deviate from those of such foreign government or foreign organization; and

(3) the extent to which it receives financial or other aid, directly or indirectly, from or at the direction of such foreign government or organization; and

(4) the extent to which it sends members or representatives to any foreign country for instruction or training in the principles, policies, strategy, or tactics of such world Communist movement; and

(5) the extent to which it reports to such foreign government or foreign organization or to its representatives; and

(6) the extent to which its principal leaders or a substantial number of its members are subject to or recognize the disciplinary power of such foreign government or foreign organization or its representatives; and

(7) the extent to which, for the purpose of concealing foreign direction, domination, or control, or of expediting or promoting its objectives, (i) it fails to disclose, or resists efforts to obtain information as to, its membership (by keeping membership lists in code, by instructing members to refuse to acknowledge membership, or by any other method); (ii) its members refuse to acknowledge membership therein; (iii) it fails to disclose, or resists efforts to obtain information as to, records other than membership lists; (iv) its meetings are secret; and (v) it otherwise operates on a secret basis; and

(8) the extent to which its principal leaders or a substantial number of its members consider the allegiance
they owe to the United States as subordinate to their obligations to such foreign government or foreign organization.

(f). In determining whether any organization is a "Communist-front organization," the Board shall take into consideration--

(1) the extent to which persons who are active in its management, direction, or supervision, whether or not holding office therein, are active in the management, direction, or supervision of, or as representatives of, any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and

(2) the extent to which its support, financial or otherwise, is derived from any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and

(3) the extent to which its funds, resources, or personnel are used to further or promote the objectives of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and

(4) the extent to which the positions taken or advanced by it from time to time on matters of policy do not deviate from those of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2.
COMMUNIST CONTROL ACT OF 1954

SECTION 5

Sec. 5. In determining membership or participation in the Communist Party or any other organization defined in this Act, or knowledge of the purpose or objective of such party or organization, the jury, under instructions from the court, shall consider evidence, if presented, as to whether the accused person:

(1) Has been listed to his knowledge as a member in any book or any lists, records, correspondence, or any other document of the organization;
(2) Has made financial contribution to the organization in dues, assessments, loans, or in any other form;
(3) Has made himself subject to the discipline of the organization in any form whatsoever;
(4) Has executed orders, plans, or directives of any kind of the organization;
(5) Has acted as agent, courier, messenger, correspondent, organizer, or in any other capacity in behalf of the organization;
(6) Has conferred with officers or other members of the organization in behalf of any plan or enterprise of the organization;
(7) Has been accepted to his knowledge as an officer or member of the organization or as one to be called upon for services by other officers or members of the organization;
(8) Has written, spoken or in any other way communicated by signal, semaphore, sign, or in any other form of communication orders, directives, or plans of the organization;
(9) Has prepared documents, pamphlets, leaflets, books, or any other type of publication in behalf of the objectives and purposes of the organization;
(10) Has mailed, shipped, circulated, distributed, delivered, or in any other way sent or delivered to others material or propaganda of any kind in behalf of the organization;
(11) Has advised, counseled or in any other way imparted information, suggestions, recommendations to officers or members of the organization or to anyone else in behalf of the objectives of the organization;
(12) Has indicated by word, action, conduct, writing or in any other way a willingness to carry out in any manner and to any degree the plans, designs, objectives, or purposes of the organization;
(13) Has in any other way participated in the activities, planning, action, objectives, or purposes of the organization;

(14) The enumeration of the above subjects of evidence on membership or participation in the Communist Party or any other organization as above defined, shall not limit the inquiry into and consideration of any other subject of evidence on membership and participation as herein stated.
COMMUNIST CONTROL ACT OF 1954

SECTION 7 (4a)

The term "Communist-infiltrated organization" means any organization in the United States (other than a Communist-action organization or a Communist-front organization) which (A) is substantially directed, dominated, or controlled by an individual or individuals who are, or who within three years have been actively engaged in, giving aid or support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title, and (B) is serving, or within three years has served, as a means for (i) the giving of aid or support to any such organization, government, or movement, or (ii) the impairment of the military strength of the United States or its industrial capacity to furnish logistical or other material support required by its Armed Forces: Provided, however, that any labor organization which is an affiliate in good standing of a national federation or other labor organization whose policies and activities have been directed to opposing Communist organizations, any Communist foreign government, or the world Communist movement, shall be presumed prima facie not to be a Communist infiltrated organization.
LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

SECTION 504 (a)

No person who is or has been a member of the Communist Party or who has been convicted of, or served any part of a prison term resulting from his conviction of, robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, or a violation of title II or III of this Act, or conspiracy to commit any such crimes, shall serve--

(1) as an officer, director, trustee, member of any executive board or similar governing body, business agent, manager, organizer, or other employee (other than as an employee performing exclusively clerical or custodial duties) of any labor organization, or

(2) as a labor relations consultant to a person engaged in an industry or activity affecting commerce, or as an officer, director, agent, or employee of any group or association of employers dealing with any labor organizations, during or for five years after the termination of his membership in the Communist Party, or for five years after such conviction or after the end of such imprisonment, unless prior to the end of such a five year period, in the case of a person so convicted or imprisoned, (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) the Board of Parole of the United States Department of Justice determines that such person's service in any capacity referred to in clause (1) or (2) would not be contrary to the purposes of this Act. Prior to making any such determination the Board shall hold an administrative hearing and shall give notice of such proceeding by certified mail to the State, County, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Board's determination in any such proceeding shall be final. No labor organization or officer thereof shall knowingly permit any person to assume or hold any office or paid position in violation of this subsection.

(b) Any person who willfully violates this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.
(c) For the purposes of this section, any person shall be deemed to have been convicted and under the disability of conviction from the date of the judgment of the trial court or the date of the final questioning of such judgment on appeal, whichever is the later event, regardless of whether such conviction occurred before or after the date of enactment of this act.
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