COPY

April 14, 1959

Personal

Dear Bill:

Your editorial struck a very tender spot as far as I was concerned. As you can imagine, I have always felt that men of Irving Kaufmann's courage should be recognized wherever possible.

I frankly do not know what factors entered into the nomination of Friendly, who I understand is a very able man. But you can be sure that I am going to continue to urge that Kaufmann be considered for the next appointment that comes up.

With kindest personal regards,

Sincerely,

Richard Nixon

Mr. W. R. Hearst, Jr.
Hearst Newspapers
959 Eighth Avenue
New York 19, New York

Hearst, W. R., Jr.

File Hearst papers

RHF/mc
(RN rewrite/rmw/rd)

COPY

April 7, 1959

Personal and Confidential

Dear Bill:

Knowing, as you do, the limitations of the office I hold, it is difficult for me to adequately respond to your provocative letter of March 31.

At the next appropriate opportunity, I believe I can provide you with some more insight into the general situation to which you allude. In the meantime, you can be certain that I will be continuing my "missionary work" wherever and whenever I can.

Sincerely,

Richard Nixon

Mr. W. R. Hearst, Jr.
Hearst Newspapers
959 Eighth Avenue
New York 19, New York

Hearst, W. R., Jr.

File
Hearst papers

RHF:mc

Senator Blasts Kaufman Delay

By ROGER STUART,
World-Telegram Staff Writer

WASHINGTON, Feb. 19.—Continued delay in the promotion of Federal Judge District Judge Irving R. Kaufman of New York to the Second Circuit Court of Appeals was criticized by Sen. Thomas J. Dodd (D., Conn.) today as "wrong" on two counts.

"In the first place," he said, "Judge Kaufman is eminently qualified for the post, and so deserving of advancement that it's strange his nomination wasn't submitted to the Senate long ago. Personally, I'm a great believer in the idea of filling higher court vacancies with judges who have proved their worth on the district bench.

"Secondly, this vacancy in the Second Circuit—which includes my own state of Connecticut as well as New York and Vermont—has existed for nearly a year, ever since the retirement of Judge (Harold R.) Medina in a period when the workload of all courts is exceptionally burdensome, allowing such a vacancy as this to go so long unfilled is unthinkable."

In commenting on the Court of Appeals vacancy, the Connecticut Senator strongly endorsed the World-Telegram's editorial stand in support of Judge Kaufman. The editorial stated that outstanding public service should be rewarded by promotion.

COPY

February 19, 1959

Dear Mendel:

This is just a note to thank you for your letter of February 3 concerning the Informational Media Guaranty Program.

I certainly agree with you on the importance and value of this activity. As you may know, the Congress in its last session drastically reduced the funds requested by the Administration for the operation of the program in the present fiscal year, but I sincerely hope that the full amount of funds requested will be made available for the coming fiscal year. You may be sure that I will do everything I can to accomplish this objective.

With every good wish,

Sincerely,

R.N.

Richard Nixon

Mr. Mendel B. Silberberg
6399 Wilshire Boulevard
Los Angeles 48, California

P.S. With regard to the status of the appointment of Judge Kaufman to the Second Circuit Court of Appeals, I understand that at the present time no recommendation has been made by the President for this position.

Silberberg, Mendel B. folder
x-Kaufman, Irving (Hon)

CKM:mm

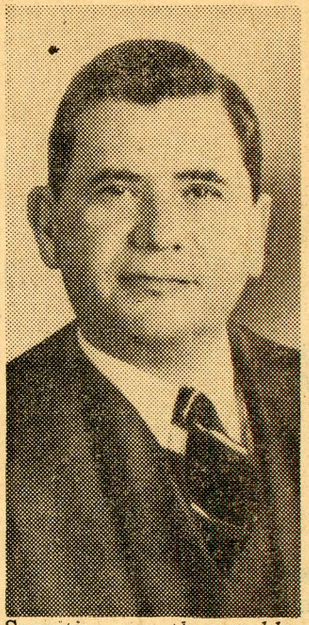
Solid Judge of the Law

Irving Robert Kaufman

Man in the News

THE blue-eyed girl used to wander in and out of the law office, but Irving Robert Kaufman limited his talk with her mainly to hello and goodby. Then he left to join the United States Attorney's staff. The story goes that his first nongovernmental move was to call the girl, Helen Rosenberg, for a date. A year later, he married her. He had deferred courtship until he was no longer employed by her father, Louis Rosenberg. He shied from appearing to be seeking to marry the boss' daughter.

The man who is now a Federal District judge and has just been slated for promotion to the Court of Appeals, has always set rigorous standards for himself and for others.



Sensitive on the problem of sentencing.

Solid Master of Law

Judge Kaufman is a meticulous, solid master of the law, in full control of the cases before him. He appears sensitive on the problem of sentencing. Letters and probation reports weigh heavily with him.

For more than two years Judge Kaufman underwent unusually severe strain even for a judge. The death sentence he imposed on Julius and Ethel Rosenberg, who were convicted of atomic espionage conspiracy, was the target of widespread appeals and propaganda. He was acclaimed; he was denounced.

Two days before Christmas in 1952, he gave an audience to Rosenberg's family, two days before New Year's, he listened all day to the defense counsel, Emanuel Bloch. That night the judge went home to ponder the case; at 1:30 A. M., he collapsed, gashing his head against a door.

But he reaffirmed the death penalty. He said the Rosenbergs' crime had been "worse than murder," and they had refused to admit guilt, contending that they had sought "justice, not mercy." He added:

"What they seek they have attained."

The American Civil Liberties Union found no evidence that the sentences had been motivated by political or religious considerations, or had involved any violation of civil liberties.

A B'nai B'rith award cited Judge Kaufman for "furthering the cause of democratic freedom."

The Rosenbergs were electrocuted June 19, 1953.

Judge Kaufman looks younger than his 47 years. His black hair is unstreaked by gray. He stands five feet six inches.

The judge, a native of New York, received his higher education at Fordham University. He was graduated from the law school in 1931 at the age of 20.

After working with Louis Rosenberg, he became a special assistant United States attorney here in 1935, and a regular assistant in 1936.

Helped Expose Coster

At 27, the future judge successfully prosecuted a ring that had defrauded life insurance companies of millions of dollars annually.

At 28, he got the case of F. Donald Coster, drug manufacturer accused of violating securities laws. When Coster said he was too ill to go to court, the prosecutor took a portable fingerprinting set to Coster's home in Fairfield, Conn. The prints exposed Coster as Philip Musica, an ex-convict.

At 30, Judge Kaufman went into private law practice, which was said to have netted him $100,000 annually before he gave it up for public service again.

In October, 1947, he became special assistant to the United States Attorney General. While serving ten months, he he set up a new unit to control lobbying.

On Oct. 15, 1949, President Truman named him a District Court judge. He was then 39, the youngest Federal judge in the country.

Lately Judge Kaufman has devoted much time to working on the system of pretrial screening of cases that has sharply reduced calendar congestion in the Southern District.

KAUFMAN SLATED FOR HIGHER BENCH

Continued From Page 1

the large commercial cases that tend to be brought in the New York area.

The court has a tradition of distinction in its personnel. Among its noted judges in recent years have been Learned Hand, Augustus N. Hand and Thomas W. Swan.

When Judge Jerome N. Frank died a year ago, a formidable struggle developed behind the scenes here and in New York over the choice of his successor. There were two major aspirants —Judge Kaufman and Leonard P. Moore, United States Attorney in Brooklyn.

Mr. Moore was said to have the backing of former Gov. Thomas E. Dewey and of New York's two Republican Senators, Irving M. Ives and Jacob K. Javits. In the end, he was selected by the Attorney General, Herbert Brownell Jr.

Judge Kaufman, who had made no secret in legal circles of his desire for promotion, was disappointed. His Congressional supporters were sufficiently annoyed to hold up the confirmation of Judge Moore for the rest of the session.

Representative Celler had thought he had had a promise from Mr. Brownell to give the next Second Circuit post to Judge Kaufman. After the Moore nomination, Mr. Celler was reported to have told the Attorney General that he would block all bills for additional judgeships unless the next promotion were promised to Judge Kaufman.

At length Mr. Brownell made a firm commitment to Mr. Celler and to Senators Bridges and Kefauver that the next appointment would be Judge Kaufman's.

A place on the Second Circuit opened recently when Judge Harold R. Medina retired. Mr. Brownell's successor, William P. Rogers, has indicated that he will observe Mr. Brownell's commitment.

Senator Bridges has praised Judge Kaufman particularly for his handling of the Rosenberg trial and subsequent proceedings. The Senator has said that Judge Kaufman's promotion would be deserved recognition of exemplary conduct under heavy attack.

Senator Kefauver and Representative Celler have not publicly explained their strong support for Judge Kaufman. They have joined Senator Bridges in saying that they are personal friends of the judge and respect his ability greatly.

Among lawyers here Judge Kaufman is regarded as ambitious, hard-working and exceptionally able as a trial judge. The one criticism heard has been that he has taken too active a part in seeking the promotion to the Second Circuit.

On the appeals bench Judge Kaufman's salary would be $25,500 a year, $3,000 more than he gets as a district judge.

Holidays Not Taken

Disaster never takes a holiday. Nor does the Red Cross take a holiday from the job of helping people in trouble. Many times the people who contribute to the Red Cross find themselves getting help from it. Anyone could need Red Cross help, tomorrow—for first aid after an accident, blood during surgery or disaster relief.

ON THE JOB FOR YOU

The Red Cross is not alms but neighborliness, not charity but service. And service costs the money of millions of Americans whose contributions have been translated into neighborly service. They are the Red Cross.

Keep the Red Cross on the job for you this year. Send your gift today to Red Cross, New York 16.

U.S. CHILDREN URGED TO WRITE TO ISRAELIS

Mayor Wagner appealed to American youth yesterday to exchange letters with children in Israel and other countries as a contribution to world peace.

Such an exchange of letters, the Mayor said, can result in an understanding by children that will "have an influence not only upon the shape of things to come, but also upon the course of world events in our own time."

The Mayor spoke at ceremonies marking World Jewish Child's Day at the Israel Consulate, 11 East Seventieth Street. They were held under the joint sponsorship of Hadassah, the Women's Zionist Organization of America, Pioneer Women and the Mizrachi Women's Organization of America.

World Jewish Child's Day, observed annually, calls attention to the work of Youth Aliyah, the international agency that has rescued and provided relief and rehabilitation of more than 85,000 homeless Jewish children from seventy-two countries since its inception in 1934. Hadassah is the American representive of Youth Aliyah.

The Mayor presented a synagogue menorah to Youth Aliyah that will be placed in the synagogue at Ramat-Hadassah-Szold, the Youth Aliyah reception center near Haifa. Yael Shoham-Sharon, daughter of Mrs. Tamar Shoham-Sharon, member of Israel's United Nations delegation, accepted the gift. Mrs. Henry Goldman of Hadassah presided.

Mrs. David Wohl, fund-raising chairman for Youth Aliyah, presented an Elath stone with a Youth Aliyah copper seal made of ore mined in Israel to Mayor Wagner.

tried experiments. New Jersey is a good place to work and a good place to live. Let us dedicate ourselves to keeping it this way; and when we think of taxes, let us remember that they must fit our environment, be tailored to our capacities, be adequate to our services, and equitable among our citizens.

Graduation-Day Address by Judge Irving R. Kaufman Before FBI National Academy

EXTENSION OF REMARKS
OF
HON. JACOB K. JAVITS
OF NEW YORK
IN THE SENATE OF THE UNITED STATES
Monday, June 10, 1957

Mr. JAVITS. Mr. President, I ask unanimous consent that there may be printed in the Appendix of the RECORD a distinguished address delivered by one of our Federal district judges in New York, Hon. Irving R. Kaufman, incident to the graduation exercises of the 59th session of the FBI National Academy, in this city on June 6, 1957. The address is entitled "A Judge Looks at Law Enforcement." It contains some very feeling and pointed references to the judge's personal experience with the FBI when he sat in a very trying case in New York which contributed so much to his stature with the American people.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

A JUDGE LOOKS AT LAW ENFORCEMENT

(Address by Hon. Irving R. Kaufman, judge, United States District Court, Southern District of New York, before the graduation exercises of the 59th session, FBI National Academy, Departmental Auditorium, Washington, D. C., June 6, 1957)

Members of the graduating class, Director Hoover, distinguished guests, perhaps it is not in accordance with strict protocol that I mention those who are about to become graduates of this Academy before addressing the noted personages who have made this occasion possible and honored it by their presence. But it is to congratulate the members of this, the 59th graduating class of the FBI National Academy, that we are gathered here today—to congratulate them, and to thank them for the splendid spirit of dedication which brought them to this Academy.

To you graduates, perhaps the most important message I can bring is a reminder that you are the successors to a proud tradition of efficiency and integrity—a tradition, I must add, that has its roots in the vision, the courage, and the devotion of one man—the distinguished Director of the FBI who has led his organization to its present position of international eminence, and who has provided the law enforcement agencies of the entire Nation with the tools, the techniques, and the training which are vital in modern society's constant war against crime. In a very real way, Director Hoover is a part of this graduating class, as he has been a part of each and every class before it, and before addressing myself to you graduates whom we have gathered to honor today, I would like to pay tribute to the man who paved the way for this symbolic moment, and to the devoted members of his staff who enable him to translate his ideals and ideas into reality. Their road has not been an easy one. You have but to read Don Whitehead's book on the FBI to appreciate the difficulties which the Director and the Bureau had to overcome. Less dedicated men would have been snowed under by the avalanche of propaganda thrown at them. America owes Mr. Hoover a debt of gratitude.

Were I just the ordinary man on the street whose only contact with the FBI has been through the newspapers, and whose only benefit was that indirect but so vital benefit of knowing that my country, my community and my family are safer because of its existence, I would cherish this opportunity to publicly express my thanks. My contacts with Director Hoover and the Federal Bureau of Investigation, however, have been much closer than have those of most of us fortunate people who call ourselves Americans. During the long trying months of the Rosenberg case, as many of you know, there were deliberate attempts to intimidate the Court—personal threats to me and my family unprecedented in the history of our Nation's judiciary. And during those interminable months when I feared for the safety of my wife and my three boys during my every waking hour, my chief solace was the protection of the FBI, and the kindness and concern of the various members of the Bureau who were assigned to protect my family. I have never before had the opportunity to publicly say to those men—"I thank you from the bottom of my heart."

Turning my attention from the FBI as a whole to this National Academy which it sponsors and to this specific graduating class representing police officers from 37 States and 1 Territory, I am compelled to state that as a Federal judge, probably more familiar than most laymen with the work of certain of our law enforcement agencies, I was most astounded and frankly tremendously impressed when I scanned the list of subjects offered at this academy. They run the gamut from firearms to fugitive investigations, from spectrography to sociology, and from training techniques to traffic control with numerous courses in the sciences—chemical, physical, biological, and even mathematical. Reeling them off makes me feel like Gilbert and Sullivan's modern major general.

I find in this unique training program a startling reminder of how far we have come from the time, not too long ago, when the typical community provided its law officers with a shield, a gun, and a club, but no training.

A shield, a gun, and a club—that this is not enough for efficient police performance is, of course, an axiom to all of us who are gathered here today—but I would remind you that a prime reason that this is not enough is because ours is a society of free men, and of government under law. The Nazi's Gestapo, Soviet Russia's MVD, the puppet Hungarian government's hated AVO, the thought police, and secret police who function today in all the totalitarian countries which compose the Soviet sphere of influence—they can operate with a gun and a club. But in America this is not enough.

The men and women who fled the old world to establish this country had had their fill of the physical anguish of the torture chamber and the refined mental pressures of star chamber inquisitions; they had learned that the coerced confession is often false; they had fought against the indignity of a man's being forced to bear witness against himself, and they had rebelled against the presumption of guilt and the capricious search and seizure. Thus they wrote into our Constitution safeguards against all these abuses—safeguards which can only be preserved by being punctiliously obeyed.

It is sometimes a temptation to the most scrupulous law enforcement officer to bypass one or more of these safeguards when he just "knows" a man is guilty or that valuable evidence will otherwise be lost. And I would be the last to deny that to operate under law sometimes seems harder than to operate outside it, but it has been demonstrated time and again that, in the long run, police operations within the framework of these restrictions can be just as effective, and the results much more enduring.

The Federal Bureau of Investigation, for example, has achieved a worldwide reputation for high standards and for operating strictly within the framework of our democracy. Yet when matched up with the Nazi intelligence machine at the outset of World War II, it proved its superiority by breaking the leading Nazi spy ring in this country, and it is noteworthy that not one single major act of enemy sabotage was committed within the United States throughout the war years. And in more recent times, the work of the FBI has led to evidence of the Communist conspiracy in America, and we have every reason to believe that the Bureau has today's major internal espionage problem well in hand.

Furthermore, the FBI's outstanding record in the fight against the ordinary criminal has proved time and again that police brutality and procedural shortcuts are not a necessary corollary to effective law enforcement. Indeed, I would venture to say that the wise criminal of today fears the net which is closed about him by the scientifically trained FBI agent or police officer far more than he fears the third degree.

In this latter pragmatic vein, as a judge, I could regale you for hours with stories of criminals who could never be brought to justice because the evidence against them was illegally seized and of convictions which were reversed or set aside because key confessions and evidence had been illegally obtained. Indeed, one of the best possible ways to insure that a probably guilty man will go unpunished is to deprive him of the basic safeguards which our Constitution affords him.

But there is yet another argument for consistent observance of these constitutional rights, an argument which is, to me, much more fundamental, for it goes to the roots of the American concept of law enforcement. In our society a man is presumed innocent until proven guilty—and this presumption has special meaning for you law-enforcement officers who must face the seemingly guilty every day. First, it means that you must work to find evidence that may avert the pointing finger of suspicion even as you try to find evidence pointing to guilt.

I said to you earlier that I appreciated the temptation to ignore certain constitutional requirements when dealing with a man who you just "know" is guilty—and, of course, that word "know" must be in quotes. Neither you nor I nor any man can "know" that a person is guilty until a duly appointed jury has rendered its verdict or until a plea of guilty has been accepted by the proper court. Thus, when you trammel the rights of a man you think guilty, no matter how odious his character or record, you are trammeling upon all our rights—setting yourself up as judge and jury and proclaiming to the world that our vaunted constitutional safeguards are mere privileges to be dispensed to the worthy. This you may not do, and, I say again, you need not do.

On the other hand, I deem it only fair to state that a judge who places unnecessary and hypertechnical roadblocks, with no foundation in law or the Constitution, in the path of lawful prosecution because of an antagonism which the judge harbors toward law-enforcement officers, has rendered as great a disservice to the American people as the overreaching police officer.

For the past 12 weeks you have been intensively studying the latest techniques in all phases of law enforcement. If you apply what you have learned here, if you teach it to the other members of your respective agencies, if you constantly improve upon

what you have learned, and pass that information on also, the rising tide of crime in this country will be arrested.

For you graduates, dedicated as you are to your career of community service, seeing your efforts succeed will probably be thanks enough. As for myself, I strongly believe that you and the thousands like you should also be thanked by a grateful citizenry which increases in pay and in prestige, and it is gratifying to me to be able to note that when a citizenry is alerted to the splendid job a topnotch police force can do it will often respond with the vital financial assistance which will enable you to attract, to train, and to keep the high caliber of men which society needs for its own protection. As a native New Yorker, it is natural that I should single out the work of academy alumnus Stephen P. Kennedy as a prime example. His success in making New York City a safer place in which to live has recently led to success in his plea for more and better paid policemen.

I have talked to you today of several aspects of your many faceted roles as law-enforcement officers—of your duty to uphold the Constitution and laws of the United States and the several States in which you serve, and of your constant job as scientific detectors and efficient deterrors of crime.

Before concluding, I would like to remind you of yet another responsibility which you must shoulder. As law-enforcement officers in your communities, you are often the only point of personal contact between the ordinary citizen and his government. Your bearing, your conduct, and your professional skill will have a subtle but strong impact upon the confidence your citizenry has in its government, and our Nation is only as strong as its people's faith in it. In an era of conflicting world ideologies, at a time when our youth has never known world peace and stability, the survival of the free world may well depend upon the maintenance of our faith in free government, and the depth of that faith will depend in large part upon how we who are in public service conduct ourselves.

Were this a unified world and a peaceful world in which all countries adhered to the same moral values, I would still say to you that the manner in which you demean yourselves in the performance of your daily duties, will have an important bearing on the strength of our democracy. But in today's divided world, with the Communist press ready to seize the slightest opportunity to proclaim that America's boasted freedom is a fraud—every time you violate the safeguards of due process or perform any act unworthy of an officer sworn to uphold our laws, you undermine the very foundations not only of our democracy but of our security. Soviet-sponsored communism today has enveloped half the world in slavery, and it is seeking to ensnare the rest of the world by every means available to a highly mobilized totalitarian and Machiavellian government.

The Soviets ignore their depredations in Hungary, the riots in Poland, and the slave-labor camps spread throughout the Iron Curtain countries like dark blots of corruption—the Communist press slurs over these events or denies their existence. And then to take the heat off, so to speak, the Communists will point to asserted deprivations of liberty in America. Any slight incident of police brutality or veniality will be enlarged upon and utilized skillfully as propaganda in the underdeveloped, uncommitted countries of the world.

A free nation cannot hide its officials' misdeeds behind a veil of censorship as can a dictatorship and, of course, none of us would have it otherwise. But this freedom and this world spotlight impose upon those in positions of authority a tremendous responsibility—a responsibility of enforcing our laws in such a manner that there are no untoward incidents to report. This is a challenge we must never forget and I know that all of us will meet it with wisdom and courage.

Foreign Aid

EXTENSION OF REMARKS
OF
HON. J. W. FULBRIGHT
OF ARKANSAS
IN THE SENATE OF THE UNITED STATES
Monday, June 10, 1957

Mr. FULBRIGHT. Mr. President, I ask unanimous consent to have printed in the Appendix of the RECORD an editorial entitled "Will Ike Now Fight for Foreign Aid?" published in the Arkansas Gazette of May 23, 1957.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

WILL IKE NOW FIGHT FOR FOREIGN AID?

There were patches of eloquence in President Eisenhower's televised defense of that much abused commodity "foreign aid."

In the first place, as the President ably pointed out, most of what we refer to as "foreign aid" is simply defense spending by another name, armament placed in the hands of allies who are willing to stand up against the same enemy for less material reward than we ourselves are wont to demand.

But beyond that somewhat mercenary point, Mr. Eisenhower's remarks on the impossibility of national isolationism were evocative of John Donne's celebrated words on the impossibility of personal isolationism. At one point, for example, the President was moved to say: "America cannot exist as an island of freedom in a surrounding sea of communism."

At another: "We must recognize that whenever any country falls under the domination of communism, the strength of the free world, and of America, is by that amount weakened and communism strengthened."

Toward the end, the President sought to answer that considerable body of criticism which is always wondering why we should spend a single penny abroad so long as a single unfilled need still is felt at home: "We live at a time when our plainest task is to put first things first. Of all our current domestic concerns—lower taxes, bigger dams, deeper harbors, higher pensions, better housing—not one of these will matter if our Nation is put in peril. For all that we cherish and justly desire, for ourselves or for our children, the securing of peace is our first requisite."

This is one theme which keeps recurring throughout President Eisenhower's public utterances: Nothing much will matter if we fail to prevent Armageddon.

The President personally thinks that continuation of a meaningful mutual-security program will help prevent world war III. So does this newspaper.

What remains to be seen now is how hard the President will fight for his revised mutual-security budget and all the rest of his new spending recommendations in the private showdowns with congressional leaders, particularly with leaders of the President's own party. This is where Presidents of the United States usually have been able to do the most for their legislative programs.

So far, Dwight Eisenhower has been willing to do occasional battle with dedicated opponents of his program, but only in the most generalized and impersonal of terms.

The effect of Mr. Eisenhower's first TV appeal for the whole of his new budget was seriously diluted the next day when he said that he did not regard it as his duty to "punish anybody (in this context, such Republican congressional leaders as Senators KNOWLAND and BRIDGES) for voting what he believes."

Those GOP worthies were as unmoved by the President's second TV appeal as by the first, and so the President was asked again at yesterday's press conference what he proposed to do about the fact that practically every key congressional figure in his party is opposed to the program he himself had defended so vigorously the night before.

About all that Mr. Eisenhower would admit this time was that he was not so namby-pamby a person as not to have degrees of enthusiasm between those who stand with him and those who oppose him.

Question. What about Senator KNOWLAND who is against more often than he is for?

Answer. Senator KNOWLAND is a man of very strong convictions.

This newspaper has made the point before that it cannot presume to speak for any part of the Republican Party.

We trust, however, that the leaders of the Democratic Party in Congress will react as Americans first and as Democrats second as they weigh the President's new mutual security appeal.

The early reaction from such leaders as Senate Majority Leader LYNDON JOHNSON and our own Senator FULBRIGHT, neither of whom is a soft touch for administration blarney, was most encouraging.

Price Increases in Steel

EXTENSION OF REMARKS
OF
HON. HUBERT H. HUMPHREY
OF MINNESOTA
IN THE SENATE OF THE UNITED STATES
Monday, June 10, 1957

Mr. HUMPHREY. Mr. President, I ask unanimous consent that an article in the June 7 issue of the Wall Street Journal reporting on a recent speech by David J. McDonald, president of the United Steelworkers of America, be printed in the Appendix of the RECORD. Mr. McDonald's comments on pending price increases in the steel industry warrant serious thought and consideration.

There being no objection, the article was ordered to be printed in the RECORD as follows:

MCDONALD SAYS STEEL FIRMS CAN ABSORB PAY RISE, MAKE GOOD PROFIT—STEELWORKER CHIEF SINGLES OUT UNITED STATES STEEL FOR USING UNION AS SCAPEGOAT FOR PRICE HIKES

WASHINGTON.—United Steel Workers president David J. McDonald charged the steel industry with a long history of irresponsibility in its pricing policies that has resulted in higher costs to helpless consumers.

In an attack on what he termed "industry profiteering," Mr. McDonald singled out United States Steel Corp. for using his union as a scapegoat for unnecessary price boosts over the years.

The union chief declared the companies could absorb higher labor costs coming soon under a long-term contract without raising prices at all and still show a substantial profit increase over last year.

26 FEB 16 1959

New York World-Telegram
and
The Sun
A SCRIPPS-HOWARD NEWSPAPER.
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FRIDAY, FEBRUARY 13, 1959.

Editorials

Hunt Solution On Promotion For Kaufman

IRVING R. KAUFMAN.

By ROGER STUART,
World-Telegram Staff Writer.

WASHINGTON, Feb. 13.—An end to behind-the-scenes political maneuvering which has long delayed filling of a vacancy on the United States Court of Appeals in the Second Circuit is being sought by administration leaders.

But the shape of the key with which Attorney General William Rogers hopes to unlock the door to bi-partisan agreement isn't at all [illegible] Telegram has learned.

Several factors are involved. Foremost is a high-level attempt to withhold from Federal District Judge Irving R. Kaufman of New York the one available appointment to the appeals court, whose jurisdiction includes the four districts of New York, together with Vermont and Connecticut.

Strong Backing.

Judge Kaufman, highly regarded as a jurist, has received strong backing for promotion. Ever since the vacancy was created by the retirement of Judge Harold R. Medina, nearly a year ago, it was generally supposed his nomination would be sent to the Senate. Among those recommending such a course of action was Judge Medina.

Meanwhile, despite a belated move in behalf of Henry J. Friendly, council for Pan American World Airways, neither the White House nor Attorney General Rogers is committed to name him, it was learned. The Justice Department is now making an inquiry of New York bar asso-

learned. The Justice Department is now making an inquiry of New York bar associations concerning him.

It is understood that Judge Kaufman will be assured of his long-postponed promotion subsequent to—but not before—the new Rogers-engineered "peace" plan is effected.

Omnibus Bill.

This would envisage early adoption of an omnibus bill, urgently sought by the legal fraternity, whereby two additional appeals court judgeships would be created in the Second Circuit. The same measure would increase the total number of federal judges throughout the country to 45—or 14 percent more than the present total.

New York's two Senators, Jacob K. Javits and Kenneth B. Keating, both Republicans, disclosed they favor legislation carrying out the multiple judgeship plan.

Rep. Emanuel Celler (D., N. Y.), chairman of the House Judiciary Committee, who has been one of Judge Kaufman's strongest supporters, told the World-Telegram he is ready to spearhead a drive for omnibus legislation along the same lines as that which he sponsored last year.

Bill Stymied.

Rep. Celler's committee approved the bill and reported it out, only to see it stymied by the House Rules Committee.

Both Sen. Javits and Rep. Celler have backed the Kaufman appeals court candidacy from the first. Each made it clear that, as far as he is concerned, there has been no change of position.

"The Kaufman recommendation stands," insisted Sen. Javits.

"I recommended Judge Kaufman and we have waited a year for the President to send his nomination to the Senate," the Senator continued. "Judge Kaufman has received strong backing from Democrats and Republicans alike. But the President—or the Attorney General, if you prefer—has not yet been willing to nominate him."

Keating Agrees.

Sen. Keating has been a member of the Senate for only one month, but said that he and his senior colleague are "standing together."

"On top of that," the junior Senator added, "I have a supremely high regard for Judge Kaufman, who would make a distinguished addition to the Circuit Court bench."

Judge Kaufman's record in the Southern District of New York, particularly in his handling of the Rosenberg espionage trial when it became necessary for him to impose death sentences on Julius and Ethel Rosenberg, has earned him wide support for promotion.

refused to show [illegible]

grieved transit employees who don't happen to like Quill domination and monopoly.

Politics as Usual

It has been nearly a year since the retirement of Judge Harold R. Medina from the U.S. Court of Appeals in the Second Circuit.

Federal District Judge Irving R. Kaufman, distinguished jurist whose masterful handling of the Rosenberg espionage case will long be remembered, was considered a logical successor. To that end he had, and has, the support of Republicans and Democrats alike—and the indorsement of Judge Medina himself.

But his nomination has yet to be sent to the Senate. The indications are it won't be, either, until Attorney General William Rogers wraps up a deal whereby Congress would create two additional appeals court judgeships in the Second District and increase the number of federal judges generally throughout the country.

We have always contended that outstanding public service should be rewarded by promotion.

Judge Kaufman, in our opinion, richly merits and qualifies for the appeals court promotion. It should be made on the basis of his excellent record and qualifications, not made contingent on political horse-trading or blocked by blind partisanship.

UNITED STATES DISTRICT COURT
CHAMBERS OF
JUDGE IRVING R. KAUFMAN
UNITED STATES COURTHOUSE
NEW YORK 7, N. Y.

for file

July 3, 1956

Honorable Richard M. Nixon
Vice-President of the United States
Senate Building
Washington, D.C.

My dear Mr. Vice-President:

You have expressed a deep interest in the Rosenberg-Sobell case. I thought, therefore, that you would be interested in the latest Opinion in this matter.

With best wishes, I am

Sincerely yours,

Irving R. Kaufman

Enclosure

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA :

vs. : C. 134-245

MORTON SOBELL :

- x

O P I N I O N

IRVING R. KAUFMAN, D.J.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA :

VS. : C. 134-245

MORTON SOBELL :

- - - - - - - - - - - - - - - - - - - X

A P P E A R A N C E S:

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of Counsel

IRVING R. KAUFMAN D.J.

On March 29,1951, a jury of eleven men and one woman found Morton Sobell guilty of conspiring to commit espionage by transmitting to the Soviet Union, intended for its benefit, "documents, writings, sketches, notes and information relating to the national defense of the United States." Their verdict was returned at the end of an exhaustive trial, at which Sobell's two extremely able attorneys and the able lawyers of his co-defendants, Julius and Ethel Rosenberg, skillfully but vainly tried to stem the avalanche of evidence against them. The trial was held in a manner which impelled the defense attorneys to compliment the Court for its fairness and courtesies on three separate occasions, and to state that the trial had been conducted "with that dignity and that decorum that befits an American trial." (1)

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(1) At the start of his summation, Mr. E.H. Bloch stated:

"I would like to say to the Court on behalf of all defense counsel that we feel that you have treated us with the utmost courtesy, that you have extended to us the privileges that we expect as lawyers, and despite any disagreements we may have had with the Court on questions of law, we feel that the trial has been conducted and we hope we have contributed our share, with that dignity and that decorum that befits an American trial." (Printed Record, pp. 1452-53, hereafter R-1452-53).

Now five years later, Morton Sobell has petitioned this Court pursuant to 28 U.S.C. Sec.2255 to set aside this verdict and judgment, alleging that his constitutional rights have been violated and that the court was

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(1) cont'd After the verdict of guilty was returned against all defendants, the same counsel was moved to say the following:

"Mr. E.H. Bloch: I would like to restate what I said when I opened to the jury. I want to extend my appreciation to the Court for its courtesies, and again I repeat I want to extend my appreciation for the courtesies extended to me by Mr. Saypol and the members of his staff, as well as the members of the FBI, and I would like to say to the jury that a lawyer does not always win a case; all that a lawyer expects is a jury to decide a case on the evidence with mature deliberation. I feel satisfied by reason of the length of time that you took for your deliberations, as well as the questions asked during the course of your deliberations that you examined very carefully the evidence and came to a certain conclusion." (R-1583).

Even at the time of sentencing counsel said:

"Mr. E.H. Bloch: ... I believe that in this posture of the case, in retrospect, we can all say that we attempted to have this case tried as we expect criminal cases to be tried in this country; we tried to keep out extraneous issues; we tried to conduct ourselves as lawyers, and I know that the Court conducted itself as an American judge." (R. 1603).

without jurisdiction to try him. The contentions now raised by Sobell relate to procedural and constitutional issues which do not go to the question of his guilt or innocence. Even if every one of the contentions now raised by petitioner was to be sustained, it would not follow that he is innocent.(2)

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(2) Although the question of a petitioner's guilt or innocence is almost never material in a motion pursuant to Section 2255, I feel constrained to make this point clear, in light of the publicity which has been attendant upon this case over the years.

The finding of Sobell's guilt resulted from the collective and unanimous judgment of twelve conscientious jurors, who had an opportunity to observe the witnesses while they testified and thus adjudge their credibility. The importance of this opportunity to see and hear witnesses as they testify has been attested to time and again by our appellate courts. It is clear, therefore, that this so-called demeanor evidence is of prime importance and that those who have attempted to adjudge the credibility of the witnesses in this case without having observed them testify are proceeding on tenuous ground.

FORMER JUDICIAL PROCEEDINGS IN THIS CASE

The convictions of Sobell and his co-defendants were affirmed by the Court of Appeals for the Second Circuit in a detailed opinion which contained the following language:

> "Since two of the defendants must be put to death if the judgment stands, it goes without saying that we have scrutinized the record with extraordinary care to see whether it contains any of the errors asserted on this appeal." (U.S. v. Rosenberg and Sobell, 195 F. 2d,583, 590 (C.A.2,1952).

Thereafter, defendants filed a petition for a writ of certiorari to the United States Supreme Court, and this was denied. In the following two years, Sobell participated in two motions brought under Section 2255 of the Judicial Code, each seeking to vacate the judgment on constitutional grounds; both motions were found to be without merit and were denied in the District Court. The denials were affirmed on appeal by the Court of Appeals and a petition for a writ of certiorari filed after the first motion, was denied by the Supreme Court. After almost every-one of the above decisions, petitions for rehearing were also considered and denied. In addition, numerous applications for relief were made by the Rosenbergs, and although Sobell

did not join in them, it is worth noting that none of the attacks on the judgment was sustained.

This then is the background against which petitioner makes his present allegations and accusations of infringement of his constitutional rights. The record shows that in one form or another the case was before the United States Court of Appeals six times, always concluding with an affirmance, and before the United States Supreme Court six times on applications of one sort or another, always ending with the conviction remaining undisturbed, and this tally does not include the numerous proceedings at the District Court level and the various applications to other judges of the District Court.

SOBELL'S PRESENT CONTENTIONS

The basic factual allegations set forth in Sobell's moving papers are not new to this Court. Indeed, they were first raised five days after the verdict on a motion in arrest of judgment. The denial of that motion was specifically affirmed on Sobell's initial appeal to the Court of Appeals, and it was set forth as one of the grounds supporting his prayer for reversal in the defendant's first petition for certiorari to the Supreme Court, which was denied. He argues, however, that although certain of these allegations have been made before, the legal consequences

now urged as stemming from them have not been previously considered.

Despite the lack of novelty in petitioner's present assertions, and despite the numerous hearings he has been accorded, the Court has again painstakingly re-examined the record in the light of his instant allegations. Such is the way in which a democratic society administers justice--carefully, meticulously, and even repetitiously -- lest an error go undetected. Under our judicial system we impose a strong check upon the manner in which a prosecution may be conducted.

It is difficult to find a case in the history of American jurisprudence, or indeed in the judicial annals of any other country, where the defendants' convictions and contentions have received the attention of so many judges at so many levels of a judicial system, as well as that of the President of the United States on applications for executive clemency. Not a single legal recourse has been or will be denied to Sobell.

In his present petition, Sobell avers that he was kidnapped from Mexico by agents of the Mexican Secret Police who were acting under the orders of the FBI, and that he was thus forcibly and illegally returned to the United States against his will. He does not assert, however, that

this alleged abduction deprived this court of any jurisdiction over his person. On the contrary, he not only concedes that he waived any such claim (assuming he would have had one) but he also asserts that he would have returned willingly to stand trial.

The first argument he now makes concerning this so-called abduction is that it denied him the opportunity to return to the United States willingly, and that it was staged for the sole purpose of permitting the prosecution to represent to the jury that Sobell was a fugitive from justice. He asserts that when the government introduced evidence to show that he had been "deported" from Mexico, this was subornation of perjury on the part of the prosecutors, as they then well knew that Sobell had not been deported in accordance with established Mexican procedures. He alleges further that the government deliberately suppressed evidence relating to this abduction and made misrepresentations to the Court about it -- and that any one of these alleged improprieties, if established, would show a deprivation of petitioner's constitutional rights.

His second attack, set forth in a separate motion under Section 2255, is that this alleged kidnapping violated a treaty between the United States and Mexico. He argues that since this extradition treaty is the law of the

land, its violation deprived the courts of this country of jurisdiction over the subject matter of this offense. Since unlike jurisdiction over the person, lack of jurisdiction over the subject matter cannot be waived by a defendant, Sobell claims that this defect vitiated the entire trial, and that his conviction is a nullity.

THE LAW GOVERNING MOTIONS PURSUANT TO SECTION 2255.

Section 2255 of the Judicial Code permits a convicted prisoner to move to set aside the sentence if it was imposed in violation of the Constitution or laws of the United States, or if the sentencing court was without jurisdiction to impose that sentence. The court then has a duty to order a prompt hearing upon the petitioner's allegations "unless the motion and the files and the records of the case conclusively show that the prisoner is entitled to no relief."

In opposing the instant motions, the government has taken the position that Sobell's factual allegations regarding the prosecution's misconduct during the proceedings are completely contrary to the record, and that his legal arguments stemming from the allegations of his kidnapping are totally devoid of merit. In short, the government urges that Sobell's present allegations furnish no basis

for vacating his conviction either because of violation of his constitutional rights or because this court was without jurisdiction to try him, and thus no hearing on their veracity is necessary. In passing on these motions, therefore, the Court is required to accept all of petitioner's averments as true insofar as they are not inconsistent with the record. Pelley v. United States, 214 F. 2d 597 (C.A.7) cert. denied 348 U.S. 915 (1954); United States v. Sturm, 180 F. 2d 413 (C.A.7) cert. denied 339 U.S. 986 (1950.)

Basically, the petitioner's allegations are that he and his family went to Mexico City in the spring of 1950, where they resided openly and under their own name. On the night of August 16, 1950, he says agents of the Mexican Secret Police entered the Sobell apartment there and arrested him without a warrant. When he tried to resist, he adds, they beat him into unconsciousness and took him to an unidentified building where he was detained overnight - held completely incommunicado. The next day, he continues, he was forced to enter an auto with several of these agents, and they drove towards the border, stopping occasionally for the agents to make telephone calls -- presumably with regard to Sobell. When he reached the border bridge, a United States agent entered the car -- though still on Mexican territory -- and he rode with them to the U.S. Customs Office. There Sobell found that his wife and children had also been brought

back. He was "directed to sign a card", he says, and after his baggage was searched he was placed under arrest and taken to jail. He avers that this whole abduction was in violation of Mexican law and that the Mexican Secret Police had no legal authority to treat him in this fashion; -- he charges that they were merely acting as agents of the Federal Bureau of Investigation. He further avers that at the time of his seizure he had been planning to return to the United States -- his trip being but a vacation jaunt -- and this abduction prevented him from returning voluntarily.

With reference to his motion challenging the court's jurisdiction to try him, Sobell makes the further allegation that his expulsion was in violation of the Treaty of Extradiction between the United States of America and the United States of Mexico. 31 Stat. 1818. It is upon this last allegation that he bases his argument that this court was without jurisdiction to try him. I shall deal with that contention first.

MOTION I.
SOBELL'S CONTENTION THAT THIS COURT LACKED JURISDICTION TO TRY HIM.

It is Sobell's position that the United States breached the extradition treaty with Mexico in two ways; first, because the offense with which he was charged

was not among those enumerated in the treaty as extraditable[3], and second, because the manner of this removal from Mexico "flouted the treaty requirements for specified official removal arrangements with duly constituted authorities of the Government of Mexico and for proceedings under Mexican law to determine probable guilt and justification for removal." (Petitioner's Second Memorandum, p. 22). These two facts, he charges, operate to invalidate the subsequent proceedings against him, because "(a)n existing extradiction treaty fully controls the national power to conduct criminal proceedings involving alleged fugitives found in another treaty country. Absent treaty compliance, the power of the

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(3) Actually this first allegation is two-pronged: his first assertion is that espionage was not one of the crimes listed in the treaty and this is certainly true - although the conclusions he draws from that fact are incorrect. His second is that the treaty specifically excludes political offenses and he claims his was a political offense. This latter contention is, of course, completely meritless. Sobell was charged with and tried for conspiracy to commit espionage - a non-political crime. The fact that he was a Communist was introduced to show motive for the crime, because unless some reason for his actions were shown, such as devotion to the cause of the Soviet Union, it would be difficult to understand why an American would thus spy upon his country for the benefit of the Soviet. And the fact that Sobell and Elitcher were associated

nation -- and thus of its judiciary -- fails ab initio." (Petitioner's Second Memorandum, pp. 11-12). Further, Sobell contends, this lack of judicial power is not merely lack of jurisdiction over the person of the accused who has thus been wrongfully seized, it is total lack of judicial power over the subject matter of the offense.

This final argument defining the type of jurisdictional defect is vitally necessary to petitioner here, as concededly, any question as to the trial court's jurisdiction over his person was voluntarily waived by him, and the court's jurisdiction over his person has been specifically upheld by the Court of Appeals. Indeed, defense counsel stated on oral argument of this motion: "I am not here urging the matter of personal jurisdiction of the

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(3) cont'd. in this case also gave probative weight to Elitcher's story that he was approached several times by Rosenberg and Sobell to join their conspiracy; the fact that he was in sympathy with their ultimate cause undoubtedly was what impelled the defendants to trust Elitcher not to divulge their machinations despite his own decision not to take an active role. The jury was specifically and continually warned that Sobell was not being tried for Communism, and I might point out that the jury which was selected was one with which the defense indicated satisfaction before they had used up all their peremptory challenges.

defendant .... That was litigated .... and Judge Frank said they raised that too late and ... it had been waived. Your Honor, if we were dealing with the matter of personal jurisdiction, we are out of court." (Transcript of Oral Argument, p. 34 - hereafter T-34).

Accepting defense counsel's assertion, I find that this motion is raising the precise issue of personal jurisdiction, and that on that score alone, to paraphrase, Sobell is "out of court". Further, even assuming the jurisdictional question could be reached, I find that there was no violation of any treaty, that Sobell has no standing to raise this question and that the court properly had jurisdiction of his person.

A. THIS IS A QUESTION OF PERSONAL JURISDICTION

The entire question of the effect of this alleged kidnapping upon the legality of Sobell's trial was first raised by the defense by a motion in arrest of judgment made five days after the trial, at which time they submitted an affidavit setting forth the circumstances of Sobell's seizure. The motion was denied on the ground that if these facts existed, they were admittedly within the knowledge of defendant and his attorneys before and during the trial, and that the defense had made a deliberate decision not to call them to the court's attention. (R-1590-1595).

On appeal to the Court of Appeals, the question of the trial court's jurisdiction over Sobell was specifically argued in defendant's brief which cited United States v. Rauscher, 119 U.S. 407 (1886), and Cook v. United States, 288 U.S. 102 (1933), the two cases chiefly relied on in the present motion. Their contentions were rejected. Speaking through Judge Frank, the Court stated:

> "Sobell waived his right to challenge personal jurisdiction in this trial .... (H)e made no move to bring to light the facts of his alleged illegal abduction. He preferred to take his chances on the verdict, withholding his trump card until the trial was over. The Federal Rules of Criminal Procedure allow no such tactic." United States v. Rosenberg and Sobell, 195 F. 2d 583, 603 (C.A. 2) cert. denied 344 U.S. 838; rehearing denied 344 U.S. 889 (1952).

Despite that flat statement, the defendants contend that they are free to raise this question again because they now allege that this abduction deprived the Court of jurisdiction over the subject matter, and the Court of Appeals has not considered that point. It is difficult to see how counsel can make that argument in good faith in light of the fact that a court is duty bound

to raise the question of jurisdiction over the subject matter on its own motion, even if the issue is not placed before it, e.g. Defiance Water Co. v. Defiance, 191 U.S. 184 (1903); United States v. Bradford, 194 F. 2d. 197 (C.A. 2) cert. denied 343 U.S. 979 (1952), and here the operative facts and chief cases were brought to the Court's attention.(4) The contention that three extremely able and experienced judges -- Chief Judge Swan and Judges Chase and Frank -- did not consider this point because petitioner used the label "personal" jurisdiction, is not only an insult to their intelligence but it completely ignores the Court's specific statement that "(u)nder Rule 34, motions in arrest of judgment are allowed only (1) where the indictment charges no offense and (2) where the court has no jurisdiction over the offense charged. This situation we think, falls into neither category." 195 F. 2d at 603 (Emphasis supplied).

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(4) Indeed, both Sobell's brief on appeal and his petition for writ of certiorari set forth substantially the same arguments he now raises. Moreover, in his petition for certiorari, the allegedly misleading "personal" label was dropped from his discussion of the jurisdictional problems raised by the alleged kidnapping.

Further, Sobell's counsel concede that there would have been no question of the court's power to try Sobell for the offenses charged had it not been for the manner of his apprehension (T-95). Thus by counsel's own admission the only lack of power was that over Sobell's person, and the rule is clear that in a criminal case a court has jurisdiction of the subject matter if it has jurisdiction of the crime charged. Moreover, without exception, every single case which petitioner cites to uphold his position makes it patently clear that the jurisdictional question involved in all cases of irregular seizure of fugitives is the question of jurisdiction over the person of the defendant.(5) In the Cook case,

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(5) Johnson v. Browne, 205 U.S. 309 (1907); Cosgrove v. Winney, 174 U.S. 64 (1899); United States v. Rauscher, 119 U.S. 407 (1886); United States v. Mulligan, 74 F. 2d 220 (C.C.A. 2, 1934); United States v. Ferris, 19 F. 2d 925 N.D. Calif. 1927

All the other cases cited in petitioner's brief similarly point up the fact that irregular seizure raises solely the question of defendant's personal right to be free of the jurisdiction of an otherwise competent court. These other cases are not relied on by petitioner, however, as they are all completely contra to his present position, and he cited them only in an attempt to distinguish them. The futility of his attempt and the inapplicability of even those cases he has relied on will be discussed infra.

upon which defense relies so heavily, jurisdiction over a "person" was not involved as the case concerned the court's jurisdiction to forfeit a British vessel, illegally seized on the high seas, and it was clear that the sole question was the court's power over the specific vessel.(6) Further, in every one of the cases where relief was granted, the jurisdictional issue was timely raised.(7) Indeed in the case of Ford v. United States, 273 U.S. 593 (1927) - a case on all fours with Cook -- petitioners were denied relief because the jurisdictional question had not been raised on time. It is apparent, therefore, that no jurisdictional question other than that of personal jurisdiction was raised by the problem of irregular seizure, or else the Court would not have found a waiver.

It is clear that petitioner's present

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(6) I shall spell out the details of the Cook case, infra.

(7) See the five cases cited in footnote (5) supra and United States v. Cook, supra

argument re jurisdiction is but a twice-told tale in new semantic guise. He seems to believe that by the mere device of changing attorneys and relabeling his claims, he may return to court time after time with the same basic argument. The petitioner speaks of justice, "(b)ut justice though due to the accused, is due to the accuser also,"(8) and it is due also to the Court which in its role of defender of justice must conscientiously wade through the voluminous briefs, affidavits and cited materials seeking merit in a contention so devoid in legal basis as to make its presentation tantamount to an abuse of process.

B. THE TRIAL COURT HAD JURISDICTION

Although the fact that this motion is but another attack on the court's personal jurisdiction is sufficient reason in itself to deny the first petition, I find that the jurisdictional argument presented is totally lacking in merit, and I shall briefly consider it here, regardless of the principles of waiver and res judicata, lest petitioner urge that he is being deprived of his freedom on a mere technicality. Although this Court cannot consider these basic rules of waiver and res judicata to be "a mere technicality", nevertheless in the case of this petitioner

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(8) United States v. Insull, 8 F. Supp. 310, 313 (N.D. Ill. 1934)

I prefer that my decision not be based solely upon these fundamental legal principles but that it also rest upon a consideration of the merits.

Petitioner's contention with regard to this jurisdictional question is that his seizure violated a treaty, and the courts are bound to uphold the treaty which is the law of the land by finding the United States government to be devoid of power to proceed against him. He argues that Cook v. United States, 288 U.S. 102 (1933) is controlling here. In that case, the United States had seized a British vessel on the high seas and had started forfeiture proceedings against it for violation of the prohibition laws. Because of the liquor smuggling problem during prohibition, the United States and Great Britain had entered into a treaty which permitted British ships to enter United States ports with personal liquor stores on board in return for permitting the United States to seize British smugglers while still on the high seas, if they were within one hour's sail of this country. The ship Mazel Tov had been seized beyond that distance; thus the seizure had been in direct violation of the treaty provisions and the court held that it had no jurisdiction to condemn the vessel. The court at that time distinguished situations where American ships had been seized in foreign waters for violation of American law. Such seizures were

in violation of international law, but the Court said this did not operate to deprive the courts of jurisdiction. The Richmond, 13 U.S. (9 Cranch) 102 (1815); The Merino, 22 U.S. (9 Wheat.) 391 (1824). Thus the distinction that petitioner relies upon is that where a specific treaty is violated, as opposed to general international law, the courts will find themselves powerless to act.

This distinction is vital to his argument, as he leans upon it entirely in his attempt to avoid the controlling principle of law which the courts of this country have followed for seventy years. The rule is that a seizure of a fugitive on foreign soil in violation of international law will not deprive the courts of the offending state of jurisdiction over the person of the fugitive when he is brought before them. The question of violation of international law, they have continuously reiterated, is to be left to the proper consideration of the political and executive branches of the government should the offended state choose to raise the issue. (9)

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(9) Ker v. Illinois, 119 U.S. 436 (1886); United States v. Dixon, 73 F. Supp. 683 (E.D. N.Y. 1947);

In In re Johnson, 167 U.S. 120, 126 (1897)

the Court used the following language to explain its rationale:

> "The law will not permit a person to be kidnapped or decoyed within the jurisdiction for the purpose of being compelled to answer to a mere private claim, but in criminal cases the interests of the public override that which is, after all, a mere privilege from arrest."

This principle has been followed again and again, in case after case involving charges of illegal abduction of a criminal defendant from another state or country -- cases which petitioner has tried to distinguish on erroneous grounds completely contrary to the language of the courts themselves (See cases cited footnote (9) Supra). This principle was most recently re-affirmed in Frisbie v. Collins, 342 U.S. 519 (1952). That case - decided after McNabb v. United States, 318 U.S.332

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(9) Cont'd United States v. Insull, 8 F. Supp. 310 (N.D. Ill. 1934);
Ex parte Lopez, 6 F. Supp. 342 (S.D.Texas 1934);
United States v. Unverzagt, 299 Fed. 1015 (W.D. Wash. 1924); aff'd 5 F. 2d 492 (C.C.A.9), cert. denied 269 U.S. 566 (1925).

This listing does not include the numerous decisions reaching similar conclusions regarding interstate abductions, e.g. Pettibone v. Nichols, 203 U.S. 192 (1906); Mahon v. Justice, 127 U.S. 700 (1887).

See also 1 Moore on Extradition, Chap. VII., Irregular Recovery of Fugitive.

(1942) had extended the courts' role as supervisors of the administration of justice - indicated clearly that not only are there no jurisdictional issues raised by such abductions but there are no due process problems involved either. Speaking for a unanimous Court, Mr. Justice Black stated:

> "This Court has never departed from the rule announced in Ker v. Illinois, 119 U.S. 436, 444, that the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a 'forcible abduction'. No persuasive reasons are now presented to justify overruling this line of cases They rest on the sound basis that due process of law is satisfied when one present in court is convicted of crime after having been fairly apprized of the charges against him and after a fair trial in accordance with constitutional procedural safeguards. There is nothing in the Constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will."

One exception to this general rule follows where the United States has invoked an extradition treaty in order to compel a foreign state to surrender a fugitive. In such circumstances, if the United States then tries the fugitive for a crime other than the one for which extradition was granted, it will be held to have violated the contractual obligations of the treaty and the courts will find themselves to be without jurisdiction over the defendant, unless he waives

this issue. This rule was enunciated in United States v. Rauscher, (supra); and followed in United States v. Mulligan (supra); Cosgrove v. Winney (supra) and Johnson v. Browne, supra. The compatibility of the Rauscher and Ker doctrines is illustrated by the fact that both were decided on the same day with the same Justice writing for the Court. Ker clearly distinguished the Rauscher situation as one in which the fugitive is clothed in the rights of the treaty.

It is patently obvious that Sobell is clothed in no such treaty rights. He urges that the fact that there was an extradition treaty in force in itself protected him from seizure or surrender save with reference to it and that his seizure was thus violative of its provisions. This same argument was made by Ker who was kidnapped from Peru by a United States emissary despite the existence of an extradition treaty, and his contentions were rejected. The Court pointed out that the sole obligation the surrendering state undertakes in an extradition treaty is that it will bind itself to extradite fugitives sought for certain enumerated offenses, where formerly it could have used its own discretion. And the sole obligation of the demanding state is that if it invokes formal extradition proceedings, it will try the surrendered fugitive only for the specific crime charged. Informal expulsion procedures are still available to the

surrendering state both for enumerated and certainly for non-enumerated crimes, see IV. Hackworth, Digest of International Law, Chapter XII., and if the demanding state recovers its fugitives through illegal channels in violation of another nation's sovereignty, that creates a question for the political branches of the government, but does not raise any concerning judicial jurisdiction. See Moore, op. cit.

Thus the petitioner is certainly not within the rule of the Rauscher case, nor is his situation even remotely similar to that of the British ship seized in Cook. (10) Further, his own allegations indicate that the Mexican Police were the chief actors in his abduction, although he charges that they were acting illegally. This means his argument is blocked also by the rule that even a diplomatic demand for the return of an illegally seized fugitive need not be honored where officials of the asylum state took part in the illegal seizure. Note, Kidnaping of Fugitives from Justice on Foreign Territory, by Lawrence Preuss, 29 American Journal of International Law 502, 507 (July 1935). It is noteworthy that the petitioner has not even suggested that

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(10) The sole remaining case cited by Sobell as supporting his position is United States v. Ferris, 19 F. 2d 925 (N.D. Calif. 1927), and that case is on all fours with Cook.

such a demand was ever made by Mexico.

It is clear that Sobell's argument that this Court lacked jurisdiction to try him because of his alleged illegal abduction would have been rejected as completely fallacious even had it been timely raised, and this is undoubtedly the reason his adroit lawyers refrained from making this motion among their numerous other applications for pre-trial relief.

Since the trial courts undoubtedly had jurisdiction over the subject matter, we shall now proceed to examine the second motion in order to determine whether the prosecution's actions were of such a nature as to deprive the petitioner of his constitutional rights, and vitiate the proceedings.

II. SOBELL'S CONTENTION THAT HE WAS DENIED DUE PROCESS OF LAW.

Sobell's contentions here are that the prosecution suppressed evidence, knowingly introduced perjured testimony and false evidence, and made misrepresentations to the court.(11) Since his contentions are based in

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(11) The law is clear that if the prosecution knowingly either introduces perjured evidence against a defendant, or suppresses evidence favorable to him or makes misrepresentations to the court during the

part upon occurrences at the trial, I shall set forth the relevant background briefly.

The direct evidence against Morton Sobell fell into two categories. First, Max Elitcher, a close friend, testified that Sobell had taken an active part in the conspiracy and had attempted to get him to reveal secret information concerning the national defense. This testimony was totally damning and convincing to the jury, and he was subjected to an intensive and exhaustive cross-examination by the attorneys for both defendants.(12) The court charged the jury specifically that they were to acquit Sobell if

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(11) cont'd trial, that defendant is entitled to relief pursuant to Section 2255. The cases cited by petitioner all merely illustrate these well known maxims by which I must be guided. I do not set them forth at length here because there is no controversy as to the guiding rules of law, there is merely a question as to whether petitioner's allegations make out a case under them.

(12) Elitcher's cross-examination lasted two days and occupied 121 pages in the printed record. R-264-379, R-388-394.

they did not believe Elitcher. The jury convicted. In short, the defendant was clearly proven to be an arch conspirator with the Rosenbergs in their plan to commit espionage against the United States by trafficking in our deepest military secrets -- a crime of the highest magnitude.

The second category of evidence against Sobell related to his intent to flee the country. It had been brought out previously by David Greenglass that Julius Rosenberg, the head of the espionage ring, had urged him and his family to flee if the FBI started to close in, and had given Greenglass $4,000. to flee to Mexico and thence to Europe via Tampico. (R-522-537). Subsequently, it was established that Sobell had gone to Mexico with his family in the spring of 1950. He had gone openly and under his own name;[13] however, it was shown without contradiction

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(13) It is noteworthy that the prosecution made no mention of Sobell's manner of departing from this country, and that his own attorneys did not see fit to introduce the airline manifests which showed that the family had traveled under its own name, although the defense did argue this point in summation. (R-1502-1504).

that while in Mexico Sobell had traveled to both Tampico and Vera Cruz using aliases; that he had inquired as to how he might leave Mexico for Europe without proper papers; that while in Tampico and Vera Curz he had enclosed letters to his wife in Mexico City in unmarked envelopes sent to a neighbor; and that while in Mexico he had sent letters to his family in America, not directly, but enclosed in envelopes which listed false names as return addressees, and he had sent these envelopes to a friend requesting that he forward the letters. These facts were brought out by six disinterested witnesses, and the defense made no attempt to cross-examine them and even conceded the use of several of these different aliases.

William Danziger, an old friend of Sobell's, testified that he had received letters from an M. Sowell and M. Levitov as the return addressees residing in Mexico; that he had opened them and found a note from Sobell requesting that he forward the enclosed letters to other members of the Sobell family. Sobell also requested Danziger to tell another relative that Sobell could be reached under the name of M. Sowell at a specified street address in Mexico. Danziger was not cross-examined. (R-857-867).

Thereafter, the government called to the stand Manuel Giner De Los Rios, a neighbor of the Sobells in Mexico City. De Los Rios testified that Sobell had approached him for information as to how a person could leave Mexico without papers, saying that he was afraid to return to the United States because he did not want to go back into the Army, having already experienced one war. (R-922). It was subsequently shown that Sobell had never been in the Army, having been continually deferred. (R-955). De Los Rios also testified that Sobell had left his family and traveled to both Tampico and Vera Cruz. He knew this because during Sobell's absence, he had received two unmarked envelopes bearing postmarks from those two cities; inside each he found a letter beginning "Dear Helen" (the name of Sobell's wife), and he had turned both letters over to Mrs. Sobell. Again there was no cross-examination. (R-924-926).

Subsequently, Minerva Bravo Espinosa, a clerk in a Vera Cruz optical store, testified that Sobell had ordered a pair of glasses from her using the name M. Sand, and defense counsel conceded this fact. (R-927-930). Similarly, Jose Broccado Vendrell testified that Sobell had registered at his hotel in Vera Cruz as Morris Sand;

again this fact was conceded and there was no cross-examination. (R-931-932). Dora Bautista, a hotel clerk in Tampico, testified that Sobell had registered in her hotel as Marvin Salt, and this too was conceded. (R-933-934). Glenn Dennis, an official of the Mexican Airlines, was called to testify, and via his testimony and defense concessions it was established that Sobell had flown from Vera Cruz to Tampico under the name of N. Sand, and from Tampico to Mexico City under the name of Morton Solt. (R-935-938).

Not once during the trial did the defense attempt to explain the strange actions of this man and thus eradicate the impression of flight and guilty consciousness thus created. In summation defense counsel merely referred to these actions as "a brainstorm" which he said was none of anyone's business. (R-1503-1504).

Immediately after these "flight" witnesses were called, the government attempted to introduce an immigration manifest card noting Sobell's return to the United States; the card was marked "deported from Mexico". The government attempted to introduce it as a record made in the ordinary course of business by the Immigration Service, but upon objection, the card was not allowed into evidence until the following day when James S. Huggins, the Immigration Inspector who had filled out the card, was flown to New York from Texas

to authenticate it. He testified that the card was made out in the regular course of his duties, that he had obtained the information on it from Sobell himself when Sobell was brought to the border, except for the information regarding Sobell's "deportation". He explained that he had made the notation based on his personal observation that Sobell had been brought across the border by Mexican police. Despite repeated insistent questioning by defense counsel, he never suggested that he had made the entry because of any official information given him by the Mexican authorities or agents. He reiterated that the entry was based solely upon his observations at the time, and that he obtained Sobell's signature by telling him that all deportees must sign such cards. (R-1025-1037).

It is largely upon Huggins' testimony that petitioner bases his claims regarding suppression of evidence and perjury.

A. THERE WAS NO PERJURY

It is the petitioner's contention that Huggins perjured himself when he testified that Sobell had been deported as he then well knew that Sobell's seizure had been contrary to Mexican deportation procedure; and the prosecution was allegedly in possession of this information

also. Petitioner urges that this was harmful as it erroneously gave the jury the impression that Sobell's expulsion had been ordered after Mexico had made a prior determination of his guilt via a legal deportation proceeding.

This contention is clearly refuted by the cold record which shows that time after time Huggins insisted that his notation was not based on official sources, but was based solely upon his own observations of Sobell's summary ejection. It is entirely clear that he was using the word "deported" to mean expelled or ejected, and clearly even Sobell must have understood the notation to have that meaning as he himself signed the card when told that all deportees must do so.

It should also be noted that in summation, Mr. Kuntz, Sobell's attorney, pointed out that Sobell had not been legally deported from Mexico; he argued that if Sobell had been deported the government would have shown it by other more competent evidence. (R-1505-1506). When Mr. Saypol, the prosecutor, summed up, he nowhere stated -- or even inferred -- that Sobell had been legally deported, but stated instead that "the FBI caught up with him and brought him back and you have him here." (R-1534). Patently, this does not show an attempt by the prosecution to create the impression of legal deportation as is now charged. Manifestly, it was the

prosecution's intention to use Huggins' testimony to point up that Sobell's return to this country had been involuntary. Thus it was the natural capstone to the clear and convincing testimony regarding Sobell's attempt to flee. Obviously, the defense attorneys also believed this was the sole purpose of introducing that evidence. They did not even attempt to bring the question of improper deportation procedures to the attention of the Judge out of presence of the jury -- a device they had frequently employed throughout the trial -- despite the fact that 24 hours elapsed between the time defense counsel saw the immigration manifest and the time that it was finally introduced into evidence via Huggins' testimony.(14)

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(14) Upon oral argument of the present motion, the petitioner's counsel made an issue of the fact that the prosecutors have not submitted affidavits with regard to their purpose in introducing Huggins' evidence. This type of argument completely disregards the cold, stark reality, that it is not what the prosecution intended that matters but what Huggins actually said and did. And I am sure that had such affidavits been introduced to show that the prosecution sought only to establish involuntary return, not legal deportation, the petitioner's attorneys would have insisted just as vehemently that the prosecutors' state of mind was completely immaterial.

Clearly Huggins' testimony was not perjurious, nor was the manifest false, as it could rise no higher than Huggins' explanation regarding the "deportation" notation. Thus petitioner's allegations of perjury are completely unfounded.

B. THE GOVERNMENT DID NOT SUPPRESS ANY EVIDENCE

(1) It did not suppress evidence regarding Sobell's alleged abduction.

Sobell's first contention regarding suppression of evidence is that the government suppressed the fact that he had been illegally abducted, both before trial and during it. I shall first deal with the prosecution's conduct before trial.

It is hornbook law that the prosecution cannot suppress evidence or facts if they are known to the defense, and if it is true that Sobell was abducted, this fact was clearly and admittedly within the possession of Sobell and his counsel before the trial. Indeed, his affidavit makes it clear that Sobell knew that this alleged illegal seizure was highly irregular. The petitioner now alleges that the defense was not in possession of sufficient facts showing that the FBI had instigated this procedure as is charged now -- but this is hard to believe in light of Sobell's assertions in his first affidavit, submitted in

support of his motion in arrest of judgment, - that an FBI agent was waiting for him on the Mexican side.

Further, there is no duty upon a prosecutor to present to the court a question which an intelligent and well-represented defendant sees fit not to raise on his own behalf, and which if raised, would be based necessarily on an argument that the Supreme Court should reverse a 70 year old rule of law.(15)

Dealing next with the contention that the prosecution should have brought out the facts regarding the alleged kidnapping during the trial -- I cannot see in what way this would have been beneficial to Sobell, nor quite obviously, could Sobell's trial attorneys for they saw fit not to raise the issue before or during the trial. Even if this story might have created some sympathy for the defendant, it was incumbent upon the defense to raise this issue, if indeed the embellishments were not a figment of Sobell's imagination.

Since the defense had not seen fit to object to Sobell's alleged abduction, there was no ground upon which

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(15) That this jurisdictional issue could be waived and that the law would have been contrary to the petitioner's assertions, assuming he had decided to raise this issue, was spelled out in my discussion of his first motion infra.

evidence regarding his involuntary return could be kept out, and as I previously pointed out, Huggins did not perjure himself. He merely stated that Sobell had been brought to the border by Mexican Secret Police and he stated further that the FBI was waiting for him.

The petitioner now contends that to rebut Huggins' testimony of seemingly routine expulsion, the defense would have had to put Sobell on the stand and that forcing this choice was unconstitutional. There are three grounds for rejecting this argument, each sufficient in itself.

First, factually, this is not so. There were other available means of telling Sobell's story: (a) Sobell's own affidavit attests that Mrs. Sobell was a witness to the abduction; she was in court, but Sobell saw fit never to ask her to testify. (b) The record indicates that the defense had subpoenaed certain Mexican official documents -- but decided not to introduce them. Indeed, a representative of the Mexican government was in court and was excused by the defense. (c) The defense did not even cross-examine Huggins on this point in an attempt to elicit from him that Sobell was in an obviously dazed condition, garbed in blood spattered clothes and that he complained to Huggins of his mistreatment, as

petitioner now avers. As the Court of Appeals for the District of Columbia Circuit stated in Smith v. United States:

> "The right to impeach ... witnesses and to bring out on cross-examination the facts as to the alleged misconduct of the police are safeguards of appellant's right under the due process clause to a fair trial." 187 F. 2d 192, 199 (C.A.D.C. 1950) cert. denied 341 U.S. 927 (1951)

Second, the fact that Sobell might have had to take the stand to present his story does not mean he was denied his rights.

> "The Constitution safeguards the right of a defendant to remain silent; it does not assure him that he may remain silent and still enjoy the advantages that might have resulted from testifying." Stein v. N.Y. 346 U.S. 156, 177 (1953).

And it is obvious that Sobell had more to explain than just the testimony of Huggins; Huggins' notation that he was "deported" from Mexico would have been practically meaningless except in the context of the other witnesses regarding his flight; witnesses to whom I have referred and whose testimony Sobell does not challenge even now. It is interesting to note that Sobell's first attempt to explain his actions in Mexico came in an affidavit submitted on his original appeal to the Court of Appeals, a most unusual procedure, wherein he stated that the arrest of Julius Rosenberg made him think America was about to enter a state of totalitarian

repression of free speech, that he decided to flee and used aliases trying to find out how to leave Mexico illegally and that he then changed his mind. This belated explanation was never put before the jury, as he and his attorneys undoubtedly decided it would be wiser not to do so. Sobell may not now be heard to urge that he is entitled to a new trial because the defense strategy on the first trial was not as soundly based as second guessing and fictional fantasies subsequently created indicate to him that it might have been.

> "(It is) of the essence of orderly trials that the right to counsel accorded to defendants by the constitution be not regarded, as the argument here would seem to regard it, as a mere one way street such that, if the strategy and tactics of his trial counsel, in determining not to raise constitutional questions, prove unsuccessful, defendant ... may many years later set it aside in order that, on another trial with another counsel, another course raising these questions may be taken and so on ad infinitum." Bowen v. United States, 192 F. 2d 515, 517 (C.A. 5, 1951) cert. denied 343 U.S. 943 (1952).

This principle set forth in Bowen is equally applicable to the third grounds for rejecting Sobell's argument. Even assuming that the introduction of the evidence regarding his testimony was improper -- and I have pointed out that this is not the case -- he is barred from

raising that question now. Time after time the courts have held that whenever knowledge was in the possession of defense counsel during trial of facts which either established the impropriety of certain evidence, or even cast doubts upon its admissibility, they are barred from raising this question on a motion to vacate judgment. Questions on the admissibility of improper evidence may be raised solely upon appeal from the conviction.(16)

> "Where parties, even in a criminal case, knowingly and deliberately adopt a course of procedure which at the time appears to be to their best interest, they cannot be permitted at a later time, after a decision has been rendered adverse to them to obtain a retrial according to procedure which they have voluntarily discarded and waived." Carruthers v. Reed, 102 F. 2d 933 (C.A. 8) cert. denied 307 U.S. 643 (1939).

(2) No other evidence material to Sobell's case was suppressed.

The petitioner also contends that two documents which were seized from him at the time of his abduction were suppressed; they are his tourist card and a vaccination certificate. This contention is farcical on its

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(16) United States v. Lawrence, 216 F. 2d 570 (C.A. 7, 1954); Dauer v. United States, 204 F. 2d 141 (C.A. 10) cert. denied 346 U.S. 889 (1953); Klein v. United States, 204 F. 2d 513 (C.A. 7, 1953); Smith v. United States, 187 F. 2d 192 (C.A.D.C. 1950) cert. denied 341 U.S. 927 (1951)

face, as Sobell knew of the evidence. He also knew who had it and never sought its production, though he sought the production of numerous other documents. Further, the two items in question were not material to petitioner's case.

The first of these, his tourist card, could have established merely that Sobell went to Mexico under his own name; this was never denied or mentioned by the pro - secution, and was specifically referred to by Mr. Luntz in summation. Further, defendant's exhibits in this motion indicate that Sobell's attorneys had manifests of the airline on hand which clearly show ed he traveled in his own name. They obvio usly decided, for trial strategy, not to introduce them.

As for the vaccination certificate, Sobell claims this shows he intended to return to the United States as it would be necessary for re-entry; he neglects to mention that this was an international certificate equally valid and equally necessary for entry into many foreign countries.

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(16) cont'd. Hilliard v. United States, 185 F 2d 454 (C.A.4,1950); Howell v. United States, 172 F. 2d 213 (C.A.4) cert. denied 337 U.S.906 (1949); United States v. Kranz, 86 F. Supp. 776 (D.N.J. 1949); United States v. Cameron, 84 F. Supp. 289 (S.D. Miss. 1949)

C. THE PROSECUTION MADE NO MISREPRESENTATIONS TO THE COURT.

Both alleged misrepresentations which I shall hereafter set forth, were made to the Court by Mr. Saypol after the verdict had been rendered, upon argument of the motion in arrest of judgment. It is difficult to see how by the wildest stretch of the petitioner's vivid imagination these comments could have influenced the jury's verdict. Moreover, his comments had no effect on post-trial proceedings. Aside from my own personal recollections, it is clear from the record that Mr. Saypol's remarks were completely immaterial to the reasons behind the initial denial of the motion in arrest of judgment; the denial was based solely upon waiver, and Mr. Saypol's remarks did not deal with that question. Finally, even if Mr. Saypol's remarks could conceivably be considered as having had any influence upon the trial court- to say nothing of the Court of Appeals' later independent determination of this question -- any possible harm done was negatived by the fact that petitioner has here been given an opportunity to relitigate in full the questions he raised on that first motion.

Since the remarks charged to Mr. Saypol were not false, however, and since I do not like to see men smeared by baseless accusations, I shall deal with them briefly.

First, when Sobell's initial petition was read to the Court on the motion in arrest of judgment, it contained language to the effect that, when arrested, Sobell had tried to show the agents his visa. Mr. Saypol pointed out "this very affidavit contains a falsehood in the statement that there was exhibited amongst other things to the Mexican authorities visas. Counsel ought to know that his client never went into Mexico with a visa." (R-1598). That Sobell never had a visa is now conceded by his attorneys; he had a tourist card, and there is an appreciable difference between the two.

Second, Mr. Saypol is charged with having told the Court that Sobell was "kicked out" as a deportee, whereas in fact, Sobell was not legally deported. Mr. Saypol's statement has been lifted completely out of context; he made that comment when characterizing the contents of Sobell's own affidavit. He stated: "The whole affidavit portrays certainly that this defendant was not honorably escorted from Mexico but that literally he was kicked out as a deportee." That sentence speaks for itself.(17) (R-1598-1599).

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(17) It is also interesting to compare petitioner's present unfounded accusations against the prosecution with the statement by his defense counsel after the jury delivered its verdict. Mr. Kuntz stated: "I want to say to Mr.

C O N C L U S I O N

My consideration of the contentions urged in petitioner's second motion leads me to the conclusion that they are as utterly lacking in merit as are his contentions regarding the Court's lack of jurisdiction. (18)

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(17) cont'd Saypol as an officer of this court, as one officer to another, I am willing to shake his hand after a job that we both had to do." (R-1583)

(18) In short, I am led to the same conclusion that was reached by my colleague Judge Ryan after he had examined the contentions of all three defendants on their first motion pursuant to Section 2255.

"I have concluded ... that the petitioners are entitled to no relief, that the court which rendered judgment had jurisdiction, that the sentences imposed were authorized by law and are not otherwise open to collateral attack on any of the grounds urged by the petitioners, and that full and complete enjoyment of the constitutional rights of petitioners has been extended them and has in no way been denied or infringed." United States v. Rosenberg and Sobell, 108 F. Supp. 798, 800 (S.D.N.Y.), aff'd. 200 F. 2d 666 (C.A.2, 1952), cert. denied 345 U.S. 965, rehearing denied, 345 U.S. 1003 (1953).

This petition is so entirely devoid of merit that perhaps it has been unduly dignified by the minute consideration and analysis it has received in this opinion. However, an effort has been made to lay to rest with finality baseless contentions and accusations which have been repeated not primarily to aid the petitioner but rather to embarrass and injure our courts and country.

The ancient writ of habeas corpus -- to which Section 2255 is analogous -- is one of the basic safeguards of America's freedom. Its purpose is to ensure that no man may be held in confinement in violation of due process of law, and it imposes a strict duty upon all officials connected with the government -- state, local or national. But there is an equal duty imposed upon attorneys whose obligation it is to uphold the law, and the dignity and integrity of the courts. It is their duty as officers of the court to ensure that this great writ shall not be stripped of its deep meaning through a corrosive process caused by repeated abuses of its processes. Four lawyers argued these motions for Sobell, California counsel among them, and petitioner also had the services of an expert on Mexican law. The two legal memoranda submitted, which ran to over one hundred pages, and the numerous lengthy affidavits and exhibits indicate that an inordinate amount of time, money, effort and ingenuity was put into this motion on petitioner's behalf. If Sobell

were an unlettered prisoner, friendless and without funds, attempting to cry out "unfair", his lengthy and utterly meritless petition might not be such a gross misuse of the judicial processes.

Under the governing rules of law, Sobell has been given the benefit of any doubt. For that reason all his allegations concerning the alleged brutality and illegality of his abduction were assumed to be true for the pruposes of these applications. Therefore, I have not considered in this opinion the question of his veracity. But I find it difficult to believe that a man who was seized and blackjacked, as he claims, would not have immediately shouted out this injustice to the world and would have held silent for six months prior to his trial and then throughout the trial, holding back his story as a sort of trump card. Experience dictates that human beings do not re-act that way.

The ease with which the petitioner tars all associated with the prosecution in the face of a clear record which proves the contrary is truly startling. As was recently said of another prisoner who engaged the courts endlessly with meritless petitions, " 'He is smart, shrewd and resourceful.' Thus he knows how to make

charges so wild ... as to induce a concern for their refutation that otherwise he would not command." United States v. Tramaglino, Court of Appeals for the Second Circuit, June 4, 1956.

From petitioner's unfounded attacks against the men who conducted the prosecution of his case, it is obvious that he believes in the broadside attack, painting with broad stroke and recklessly maligning all who participated in the process of bringing him to justice.(19)

During the course of my deliberations on this matter, as on other matters involved in this case from its inception, there have been many attempts to bring extra-judicial utterances and actions to my attention. Many of these have been designed to influence judicial determination in a way that is alien to our judicial process --- and in some instances they constituted a subtle attack upon it. Freedom of speech should and does permit untrammeled discussion and differences of opinion, but judicial impartiality requires that the courts be free from extraneous and con-

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(19) In this connection, it is interesting to note that the petitioner brands the FBI as an agency of oppression, ignoring its reputation for high standards of fairness. These high standards were recently praised by the Court of Appeals for this Circuit in an opinion by Judge Frank, who is well known for his outspoken attacks on any form of police brutality. See United States ex rel. Santo Caminito v. Murphy, 222 F. 2d 698, 703-704 (C.A.2,1955).

flicting pressures. Therefore, the American judicial system has evolved its own safeguards and procedures for arriving at the truth -- procedures which have withstood the test of the centuries. These procedures and safeguards have been the sole guideposts for this Court.

The motions and the files and records of this case show conclusively that the prisoner is entitled to no relief. Motions denied.

Dated: New York, N.Y.
June 20,1956.

IRVING R. KAUFMAN
U.S.D.J.

Appendix

Address by Judge Irving R. Kaufman at an Americanism Seminar Sponsored by the Minnesota American Legion

EXTENSION OF REMARKS
OF
HON. HUBERT H. HUMPHREY
OF MINNESOTA
IN THE SENATE OF THE UNITED STATES
Tuesday, May 22, 1956

Mr. HUMPHREY. Mr. President, recently one of America's distinguished jurists, the Honorable Irving R. Kaufman, judge of the United States district court in the State of New York, addressed an Americanism seminar sponsored by the Minnesota American Legion in the city of St. Paul, Minn. Judge Kaufman used as his theme the Bill of Rights and commented extensively upon the historical background relating to the fifth amendment and the recent abuse and misuse of that amendment by the Communists.

Judge Kaufman said:

Democracy can be preserved only by democratic methods. When we stifle honest criticism and when we ostracize the dissenter, we are not practicing democracy, but are adding fuel to the Communist fire.

The editorial in the St. Paul Dispatch on April 17, 1956, summarized Judge Kaufman's address in these words:

True Americanism includes living up to our principles of liberty under law and making democracy work for minorities and dissenters as well as for majority groups. The Legion's seminar has been a constructive force in this direction.

It was Judge Kaufman who presided at the espionage trial of Julius and Ethel Rosenberg. Judge Kaufman is known as one of the great legal minds of our time. He is a strong defender of freedom and is an effective anti-Communist. His dedication to liberty and his abhorrence of any form of tyranny is well known.

I ask unanimous consent that the editorial of the April 17 St. Paul Dispatch be printed in the Appendix of the RECORD, I also ask unanimous consent that the news story from the Minneapolis Sunday Tribune of April 15 entitled "United States Must Guard Liberties, Judge Says," be printed at this point in my remarks; also the editorial from the Chicago Daily News of April 26, and the lead article in the Minnesota Legionnaire of Wednesday, April 18, along with the news item of the St. Paul Pioneer Press of April 15.

These editorials and news stories bring to our attention the importance of Judge Kaufman's address and the courage and brilliance of his remarks.

There being no objection, the editorials and articles were ordered to be printed in the RECORD, as follows:

[From the St. Paul Dispatch of April 17, 1956]

JUDGE KAUFMAN ON POSITIVE AMERICANISM

Positive Americanism requires a good deal more than mere denunciation of communism, as Judge Irving R. Kaufman of New York emphasized in his American Legion address here Saturday.

Appearing before the Legion's annual Americanism seminar, the judge who presided at the espionage trials of Julius and Ethel Rosenberg pointed out that it is not always easy or popular to stand up for basic American principles of freedom.

It is an irony of human nature that periods of emotional superpatriotism tend to develop support for restrictions on personal liberty not countenanced by the United States Constitution. In such times the defenders of traditional constitutional safeguards may find themselves assailed as unpatriotic, or as Communist sympathizers.

"Democracy can be preserved only by democratic methods," Judge Kaufman said. "When we stifle honest criticism and when we ostracize the dissenter, we are not practicing democracy, but are adding fuel to the Communist fire."

Judge Kaufman's defense of the fifth amendment illustrated his warning against impatience with democratic processes. The fifth amendment has been used by Communists for their own protection, but this does not alter the fact that this safeguard against forced self-incrimination "is fundamental to our idea of justice," he stated. When borers attack an apple tree, the judge commented, "you eliminate the borer—you don't chop down the tree."

Another point made by the jurist was that at times the Communists pay lip service to certain good causes and ideals. Then honest citizens who stand up and defend these same principles are sometimes "branded as Communists or fellow travelers." This, said Judge Kaufman, "is playing right into the hands of the Communists both here and abroad."

True Americanism includes living up to our principles of liberty under law and making democracy work for minorities and dissenters as well as for majority groups. The Legion's seminar has been a constructive force in this direction.

[From the Minneapolis Sunday Tribune of April 15, 1956]

UNITED STATES MUST GUARD LIBERTIES, JUDGE SAYS

Soviet Russia's efforts to "co-exist capitalism to death" must be met by renewed vigilance over American liberties, Judge Irving R. Kaufman said in St. Paul Saturday night.

The New York Federal jurist, presiding judge at the espionage trial of Julius and Ethel Rosenberg, said in a speech prepared for a Minnesota American Legion seminar this country can beat the Communists at their own game if it honestly portrays its way of life to the world.

The new Red line, he said, clearly means Russia "will aim a barrage of Communist propaganda and espionage at freedom-loving countries the like of which we have never seen," and try to "coexist capitalism to death."

Thus it is essential that the entire world be made aware of our success story, Kaufman said.

But, he added, Americans must guard against striking "blindly at all who espouse an honest and decent cause merely because the Communists are also paying it lip service."

"Democracy," he said, "is based on a calculated risk, a belief that free men exercising a free choice out of various competing ideas will exercise the widest choice possible."

By smothering honest criticism "when we ostracize the well meaning dissenter, we are not practicing democracy but are adding fuel to the Communist fire," he said.

He cautioned against weakening the fifth amendment, preserving the right against self-incrimination, although he acknowledged there is "justifiable frustration among Americans because the Communists have been invoking this privilege consistently."

Americans who want to abolish the amendment because Communists have abused it, he said fall into the Red trap by endangering the same liberties the Communists want to destroy.

He said the Nation must maintain a continuing vigil on two fronts, against Red subversion and against the danger of labeling as Communists all who disagree with the majority.

This is complicated by the fact that Communists "often parade in false dress as advocates of liberal causes," he said, adding.

"We cannot let certain worthwhile causes become Communist property. We cannot permit a worthy movement to be defeated merely because a few Communists are attempting to infiltrate it."

[From the Chicago Daily News of April 26, 1956]

GUARDING LIBERTIES

United States Judge Irving R. Kaufman, of New York, will be remembered as the judge who sentenced Julius and Ethel Rosenberg, the convicted spies. He thereby became the target of a worldwide campaign of abuse, sparked and fed by the Communists.

As one thus singled out for persecution, it is interesting to hear Judge Kaufman's views on the subject of Communist causes. It has not clouded his thinking, as evidenced by his remarks to an American Legion audience in St. Paul the other day.

He noted that Communists "often will be heard hypocritically in defense of certain of our precious liberties—but these liberties do not become any less precious because Communists have temporarily decided to pay them lip service.

"Yet, all too often, others who then speak out in favor of these same vital rights are branded as Communists, or fellow travelers, for some believe in the old saying that: 'Where there is smoke, there is fire.' I urge you, the next time you hear that familiar theme, don't rush blindly with an ax at the smoke thus created—you may chop a fire fighter instead of a fire."

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[From the Minnesota Legionnaire of April 18, 1956]

JUDGE KAUFMAN WARNS THAT DEMOCRACY CAN ONLY BE PRESERVED BY DEMOCRATIC METHODS—SEMINAR STRESSES POSITIVE ASPECTS OF AMERICANISM

(Condensed text of Judge Kaufman's address.)

Continued vigilance against Communist subversion while "equal vigil is maintained to insure that not all who disagree with the majority, politically or economically, are labeled Communist" was urged by United States District Court Judge Irving R. Kaufman, of New York City, in a banquet address at the department's second annual Americanism Seminar in St. Paul Saturday.

Judge Kaufman, presiding judge at the trial of Ethel and Julius Rosenberg who were convicted of espionage for revealing atomic secrets to a foreign government, declared that democracy can be preserved only by democratic methods—"slow and plodding though they be."

Warning that "when we stifle honest criticism and when we ostracize the well-meaning dissenter, we are not practicing democracy, but are adding fuel to the Communist fire," he emphasized that an "important basic concept of our democracy is that only when people are given free access to all different competing viewpoints can they recognize the truth and thus choose wisely."

Judge Kaufman was the principal speaker at the banquent, concluding event of the 1-day seminar. Speakers at the afternoon session included Department Commander Dan Foley, Wayne Murphy, national research director of the American Legion, Hennepin County Sheriff Ed Ryan, and National Committeeman Carl Lundgren. The afternoon program included a dramatic and revealing skit on Communist tactics presented by the University of Minnesota theater. Miss Gasperlin, of St. Cloud Cathedral High School, gave the prepared talk she gave as a finalist in the department oratorical contest.

Emphasis was placed on the positive aspects of Americanism and how the various programs of the American Legion can be utilized as a potent force in the battle against communism and all forms of subversion. Although stressing the positive approach, the various speakers warned against relaxing our vigilance against the ever-increasing Communist menace.

Wayne Murphy, one of the Legion's leading authorities on subversion and counter-subversion, pointed out that the basic aims of the American Legion have not changed since 1919 and emphasized that "teamwork is our greatest asset."

Although warning that "we can't win this kind of warfare by remaining silent," Murphy declared "we don't need any vigilantes."

Sheriff Ryan, stressing the importance of combating bigotry at home, also warned against the vigilante method, and urged that anyone having information about suspected Communists turn that information over to the Federal Bureau of Investigation.

Murphy called the Legion's Americanism program a two-fold program consisting of the positive or educational phase and the actual fight against subversion. In discussing counter-subversive activity, he said it "requires mental and moral courage that many people are unwilling to demonstrate." He sees the chief problem of counter-subversive activity as getting people on the local level aware of a definite responsibility to advance both phases of the Americanism program.

Judge Kaufman, meanwhile, pointed out that "democracy is based on a calculated risk—a belief that free men exercising a free choice out of various competing ideas will exercise the widest choice possible—America's history over the past 175 years has justified continued faith in that belief."

Emphasizing that the fifth amendment of the Constitution is "fundamental to our idea of justice, to our belief in man's inherent dignity, and to our tradition that a man is innocent until proven guilty," he warned against weakening the strength of the fifth amendment even though there is a "justifiable frustration among Americans because the Communists have been invoking this privilege consistently."

He declared that when Americans react by summarily condemning the whole doctrine of the fifth amendment and urge its abolition "we fall into the Communist trap by endangering the very liberties they seek to destroy."

Stating that, "the best way to sell democracy is to show that it works," Judge Kaufman declared that failure to speak up for the rights of the honest dissenter is not only a failure "to live up to that heritage of freedom which our ancestors fought to preserve, but we also lose another battle of words and ideals we are waging with Moscow."

The Federal jurist concluded by warning that, "we must never become so completely consumed with this ever-present Communist threat that our thinking is motivated by what we hate rather than by our love of the American way. Unfortunately, some of us have begun to hate each other—particularly when we are in disagreement over some fundamental issue. It was a condition that led a contemporary philosopher to warn that, "If we permit our hatred of Russia to replace our love of the American dream as the motivation of our lives, we will have accorded Communism the greatest tribute to which any dogma may aspire, the power to dictate the thinking of its enemies."

Highlights of the afternoon session was the skit presented by University of Minnesota dramatic club members under the direcction of Dr. Arthur Ballet. It graphically demonstrated how Communists infiltrate an organization and take over a meeting without well-meaning members even knowing what has happened. It stressed the importance of being ever alert to these undermining tactics and demonstrated how doing things in the democratic way is the best safeguard against the Communist threat.

Featured players were William Phelps, Neil Hofland, James Stapleton, Thomas Quigley John Blue, Jerry Rumley, Jerry Ness, Janis Benson, Philip Benson, and Kallista Mavroulis. The script was written by Phillip Gelb, of KUOM, the University radio station.

C. B. Howard, special agent for the Federal Bureau of Investigation, was also scheduled to speak at the afternoon session, but was unable to appear.

[From the St. Paul Sunday Pioneer Press of April 15, 1956]

NEW YORK JUDGE SPEAKS HERE—FIFTH AMENDMENT DEFENDED

A prominent New York jurist Saturday cautioned against any weakening of the fifth amendment despite its use as a refuge by Reds.

Judge Irving R. Kaufman, the United States district court judge who presided over the trial of atom spies Ethel and Julius Rosenberg, said Americans who want to abolish the amendment fall into a Communist trap "by endangering the very liberties the Communists seek to destroy."

Speaking at an Americanism seminar sponsored in St. Paul by the Minnesota American Legion, Judge Kaufman said the idea that a man should not be compelled to bear witness against himself "has been fundamental to our idea of justice in the courts, to our belief in man's inherent dignity and to our tradition that a man is innocent until proven guilty."

Casting out that doctrine and labeling as Communists all who want to retain the privileges of the fifth amendment "is playing into the Communists' hands," he said.

"All the Communists need to do is take refuge behind the very civil rights which we know they are pledged to destroy and then others, fearful of being labeled subversive, will shun the term 'civil rights' as a Communist label," he added.

Democracy can be preserved only by democratic methods—"slow and plodding though they be," he said.

INFILTRATION DANGER

Warning against Communist infiltration, he said:

"If a few Communists try to infiltrate your organization, don't abandon ship and hand them the organization as a gift. Fight back and clear them from your group."

The United States can beat the Communists at their own game if it honestly portrays its way of life to the world, he said. The new Communist line means that Russia "will aim a barrage of propaganda and espionage at freedom-loving countries the likes of which we have never seen. They will try to coexist capitalism to death."

Thus it is essential the entire world be told the American success story, he added, and that freedomwise "we practice what we preach."

The seminar was held at the Hotel St. Paul.

Low-Cost Electric Power Systems

EXTENSION OF REMARKS

OF

HON. ROBERT S. KERR

OF OKLAHOMA

IN THE SENATE OF THE UNITED STATES

Tuesday, May 22, 1956

Mr. KERR. Mr. President, I ask unanimous consent to have printed in the Appendix of the RECORD an article entitled "People's Electric Systems Must Work Together for Abundant, Low-Cost Power," written by Clyde T. Ellis, and published in Public Power magazine for May 1956.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

PEOPLE'S ELECTRIC SYSTEMS MUST WORK TOGETHER FOR ABUNDANT, LOW-COST POWER

(By Clyde T. Ellis)

Today, 20 years after the passage of the Rural Electrification Act of 1936, not only the farmers' rural electric systems, but many of the municipally-owned systems as well, are in trouble.

They are in trouble first, because in most of the country no good method has been found for tying together for maximum efficiency those consumer-owned electric systems better known as municipals, power districts and cooperatives. They are in trouble secondly, because the so-called private-power companies, having themselves achieved the efficiencies of integration by fair means and foul, are now pouring fabulous sums into propaganda, lobbying, and public relations campaigns to convince the American people that their monopolies typify the American way and that the consumer-owned systems do not.

All of them realize more and more that the cooperative position is vulnerable and insecure, but perhaps few know that there are certain interests who would like to eliminate entirely the REA cooperatives. To most cooperative members, the Hoover Commission report is something vague and remote. They do not see that those who support the Hoover

United States District Court
United States Courthouse
Foley Square, New York 7

CHAMBERS OF
JUDGE IRVING R. KAUFMAN

May 2, 1956

My dear Mr. Vice-President:

I was certainly touched by your kind letter of April 26th.

I particularly appreciate the fact that you would take time out during your terribly busy schedule to write me as you did.

I, too, hope there will be an opportunity for us to talk again in the near future.

With every good wish,

Very cordially,

Irving R. Kaufman

Honorable Richard M. Nixon
Vice-President
Senate Building
Washington, D.C.

COPY

April 26, 1956

Dear Judge Kaufman:

The April 23 issue of the Congressional Record proved to be an especially interesting one for me because the full text of your recent address before the Minnesota American Legion annual Americanism seminar was inserted by Styles Bridges.

To my mind, it is a particularly excellent and timely speech, and it served to remind me of our pleasant visit here in the office last Summer.

I hope there will be an opportunity for us to sit down for a talk like that again before too long.

With every good wish,

Sincerely,

Richard Nixon

The Honorable Irving R. Kaufman
Judge, United States District Court
United States Courthouse
Foley Square
New York 7, New York

Kaufman, Irving R. (The Hon - Judge) folder
Congressional record 4-26-56 lgg

clearest kind of official statement by the Government of our country that we will not tolerate a breach of the peace in the Near East. In the name of our passion for peace, in the name of right and our own self-respect, let us make it indubitably clear that the United States intends to stick to its word and that we will not allow war to happen.

* * * * *

You may ask: Why should we pinpoint our policy on the 1950 declaration which in essence operates outside the United Nations; why should not the threats to the peace in the Near East be handled entirely by the United Nations?

There is, I think, good reason for not changing our policy of relying on the 1950 declaration.

Of course, the U. N. must be supported and made a world vehicle for peace. Unless we all back the U. N. and give it more and more power there will be no lasting peace. We must support the work of the present Hammarskjold mission and all future efforts of the U. N. to help avoid war.

But we should not now cast on the world organization the main responsibility for the problems of the Near East. We will be doing harm to the U. N. if we ask it to handle matters for which it is not prepared. To ask the U. N. to bring about a solution of the problems of the Near East at the present time is to ask it to mediate between the great powers; and the U. N. is not ready to take on this, the most difficult of tasks. We will serve the U. N. better if the free world settles its own problems in the Near East and establishes stability in the area. We cannot, I believe, deal with Russia in the Security Council until this stability has been established.

* * * * *

With determined action of this kind we may retrieve a dangerous situation. Then will come the time for the long-term program.

It seems fruitless to talk of long-term projects now, when the house is afire. I shall suggest only some broad lines of the long-term solution.

The first and most important thing to do is to get a definitive peace treaty signed between Israel and Israel's neighbors.

As long as there is no peace treaty the emergency will continue, the threat of war will be with us, and we cannot think of long-term solutions.

The boundaries in the peace treaty should be the armistice lines which were guaranteed by the 1950 declaration, with only minor mutually agreed upon adjustments.

The peace treaty must solve the refugee problem. The United States must be prepared to help financially in this solution, and so must Israel within her capabilities.

The responsibility for the Arab refugees is wider though than this. The reestablishment of the refugees in Israel is completely inconsistent with the continuation of the State of Israel. The Arab refugees are world responsibility, just as the plight of the Jews in Europe and north Africa was and is a world responsibility. The Arabs should now join the United States and Israel and the rest of the free peoples by accepting a special share of the responsibility for the reestablishment of those who have been displaced.

I think too that the peace treaty should call for a substantial measure of disarmament among all the states of the area. The present armaments of the Near Eastern countries are enough to enable them to fight each other but are not enough to enable them to defend themselves against an invasion from without by Russia.

Once the peace treaty is signed the conditions for peaceful progress will exist. Then we can set up a great cooperative effort for the development of the economy of the area for the benefit of all the peoples who live there.

There is, I think, no point in discussing the form such an arrangement might take. It is sufficient to say that there must first be the willingness of the peoples of the area to work for their common good, and that it is for those outside the area who are able, such as the United States, Great Britain, France, and I hope India, to contribute to the peoples of the Near East whatever material help these people may wish, all to be given, I may add, without strings and without any attempt whatsoever to gain influence by the aid which is given.

But none of these things will be possible until the conditions of peace are established. The definitive peace treaty is therefore the critical point which will establish whether we can or cannot go forward to develop the Near East for the benefit of all the people who live there, and thereby to solidify the cause of freedom in that part of the world.

All of this is for the longer run. The immediate steps must be the arming of Israel and the firming up of the stand of the United States on a policy of seeing to it that there shall be no violence by anyone in the Near East.

With these two policies firmly carried out by our country I believe that we may look forward to many more celebrations in honor of the courageous, pioneering spirit of the people of Israel.

Americanism: Its Positive Aspects

EXTENSION OF REMARKS

OF

HON. STYLES BRIDGES

OF NEW HAMPSHIRE

IN THE SENATE OF THE UNITED STATES

Monday, April 23, 1956

Mr. BRIDGES. Mr. President, I ask unanimous consent to have printed in the Appendix of the RECORD the address entitled "Americanism: Its Positive Aspects," delivered by Judge Irving R. Kaufman at the dinner concluding the annual Americanism seminar of the American Legion Department of Minnesota, at St. Paul, Minn., on April 14, 1956.

This is an outstanding address by a distinguished jurist and a great American. I feel that it is worthy of the attention of the Members of the Congress and the general public.

The Public Printer has advised me that the cost of this insertion will be $240.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

AMERICANISM: ITS POSITIVE ASPECTS

(Address by Judge Irving R. Kaufman at the dinner concluding the Annual Americanism Seminar of the American Legion, Department of Minnesota at St. Paul, Minn., April 14, 1956)

Man's liberties never appear so precious to him as when he is in danger of losing them. Thus it is, that in times of our Nation's greatest crises, we as a people have become acutely aware of our heritage of freedom.

All of us here tonight have lived through at least two terrible wars, many of us can remember a third. As former servicemen, you each have your own most vivid memories of those harrowing years, but all of us share in common the vivid memory of those first agonizing months after Pearl Harbor when all we loved stood endangered. There is not one among us who did not pause at that time to take stock of the wonderful way of life that was ours.

Today, we are again engaged in a mortal struggle which has been thrust upon us. In this dread struggle, often called the cold war, our weapons are political, economic and ideological. This means that in the present conflict, even more so than in former ones, it is vitally necessary that we fully understand this heritage that is America, so that we can make it understandable to those whose trust, friendship and support is vital to our survival. The importance of our awareness of the meaning of our heritage and the necessity that we all have an understanding of our constitutional system can best be demonstrated by a consideration of the problems we face in this all-out struggle we call the cold war.

In a conventional war, the problems of the combatants are relatively simple. We know the enemy and the goal is to destroy him. But with the advent of hydrogen bombs and intercontinental ballistic missiles, it has become increasingly apparent, even to the Russians, that neither side can win another hot war. It is clear that a third world war probably would lead to annihilation of both sides, and destruction of civilization as we know it. The fantasies of science fiction writers who describe the ruins of a post-atomic world are becoming less fantastic day by day, as word is revealed to the public of the invention of more and more destructive and ultimate weapons against which there is no defense, leaving us only to guess at the scope of the implements of destruction still shrouded in a veil of secrecy, created either by us or by the masters of the Kremlin.

This is not to say that the Russians have completely abandoned all thoughts of another hot war; a nation which has not hesitated to liquidate millions of its own citizens cannot be expected to shrink from the thought of destroying lives elsewhere. But, if we maintain our constant military vigil, Russia will undoubtedly continue to keep our struggle at the political and economic level.

Indeed, the recent new line emerging from Moscow indicates quite clearly that the new Communist line is to co-exist capitalism to death. At the recent 20th Communist Party Congress, Nikita Khrushchev admitted that "coexistence is only a means to an end—the world transforming * * * complete triumph of communism."

Speaking of the 900 million members of the Communist conspiracy throughout the world, he proclaimed that they were "in a position to capture a stable majority in Parliament and to transform the latter from an organ of bourgeois democracy into a genuine instrument of the people's will." If Russia plans to convert the world to communism by so-called parliamentary methods, this clearly means that Russia will aim a barrage of Communist propaganda and espionage at freedom-loving countries, the like of which we have never seen.

That these tactics have been successful in the past was clearly pointed out last year by the able Gen. David A. Sarnoff, chairman of the board of RCA, and now Chairman of the National Security Training Commission by appointment of the President. He said:

"Moscow has brought one-third of the human race under its iron control by means short of a hot war—by shrewd diplomacy, deception, propaganda, the blackmail of threats, fifth-column subversion, guerrilla forces, and, where expedient, localized shooting wars. These political and psychological methods—the cold war—have paid off, at smaller risk and infinitely lower cost than a hot war would entail.

"Accordingly they are being applied without stint to the conquest of the rest of man-

kind. For world communism, with its high command in the Kremlin in Moscow, the cold war is not a temporary or holding operation, nor a prelude to a hot war. It is the main bout, the decisive offensive, conducted on an unlimited scale, with total victory as its goal."

The question is, therefore, how can we beat the Russians at their own game and with this main bout. Beat them, we can, for most assuredly, our way of life if properly and honestly portrayed has infinitely more appeal than that found in the countires behind the Iron and Bamboo Curtains. Basically, all people the world over want a decent home and a decent job—a chance to live free of fear and free from want, and an opportunity to exercise their religious beliefs freely. These are the ends which our way of life has been providing for Americans—and it is essential that the whole world know our success story.

Since, unlike our Communist opponents, we do not rewrite history or suppress news of the mistakes we make and the problems we cannot resolve, these men and women whose understanding and friendship we seek have constant access to the stories of our failures, stories which are always grist for the Communist propaganda mill with its branches throughout the world. Every time these people hear of the isolated race riot, or of some overzealous police officer running rampant over the rights of an accused, or of a trial conducted in an atmosphere of prejudice, our counteroffensive suffers a serious setback, as the Communists jubilantly point out that we Americans don't practice the liberty we preach. Working to insure a climate of social and political opinion where these failures cannot occur is my idea of a program of positive Americanism, the results of which will be felt throughout the world.

Essential to any such program of positive Americanism is an understanding of just what that term implies—a reevaluation of our American heritage. That you and I are in agreement as to the need for such constant reevaluation is shown by your gathering here tonight—and I am privileged to have the opportunity to discuss such a program with this fine group, for you who are veterans of the wars we have waged to retain our freedom have demonstrated your dedication to the American way of life on bloody battlefields throughout the world.

Further, when you returned to your peacetime pursuits, you were among those who realized that the fight to preserve decency and democracy was not yet over—and indeed would never be over—and as sober responsible citizens who understood full well that the duties of citizenship mean much more than a periodic trip to the polls, you joined the American Legion and assumed an obligation under the preamble of its constitution "to inculcate a sense of individual obligation to the community, State and Nation" and "to foster and perpetuate a 100 percent Americanism."

Since then, as veterans, legionnaires, and responsible citizens you have constantly been attempting to evaluate just what "100 percent Americanism" is because, unlike other isms, Americanism has no one narrow creed, no one comprehensive solution to all the world's ills.

America's heritage is diversity, and the breath of her life is constant progress—new ideas and new horizons. As members of a veterans' group whose sole yardstick for membership is war-tested citizenship without regard to differences in rank, race, creed, color or birth, you are aware of the wide variety of cultural and ethnic patterns from which our Nation has sprung—and from your work through your national organization, you have become aware of the differences in viewpoint between Americans of different walks of life who live in settings as dissimilar from each other as the crowded sidewalks and subways of New York City and the rolling pasturelands and sparkling lakes of this fair State.

Yet, through all these differences, you have perceived a sense of unity, a common set of goals, ideals and aspirations that link the city dweller to the farmer, and the northerner to the southerner in ties that bind so closely that their other local differences cannot pull them apart.

At this day-long seminar, you have been attempting to probe into this sense of oneness that is America, and to evaluate its credo in terms of Americanism, and in terms of a philosophy of everyday life. This awareness of our country's diversity and faith in its unity is a basic necessity to any program of positive Americanism. Tonight, I would like to go further into this program of evaluation of our American heritage and of our living by the Constitution.

The basic feature of our constitutional system is that the rules by which we live have been written down so that no ruler or government can ever say that certain rights are not ours. This idea of a written embodiment of rights can be traced to the 13th century—to the Magna Carta—when the British barons forced King John to grant them certain rights—and they put these rights in writing, under his sign and seal, so he could never renege on his promise.

When our own young country was formed, not only was its basic governmental document set forth in writing; but, despite the fact that the Federal Government was to be one of strictly limited powers, the First Congress insisted upon 10 amendments to the Constitution which set forth certain basic liberties of the people with which the Government was forbidden to tamper. Thus, the slogan of the wise businessman, "Put It in Writing," has in a sense been the slogan of our country's political heritage—"Put It in Writing"—so that all men may know their rights and know the rules by which they live.

In considering the importance of understanding these rules by which we live, I am reminded of the story of the boy of very tender years who presented something of a problem to his troubled parents. Although they had tried every known inducement, they simply could not get him to eat. After a number of meals at which the boy sat indifferently fingering his tableware, the concerned father used as a last resort the promise that the boy could have anything he wanted to eat. After thinking a bit, the boy said he wanted a worm for dinner. After the initial shock had subsided, the father left the table fuming, and said that if that's what the boy wanted he would have it. He thereupon went to the garden, dug up the fattest worm he could find, and dashed back to the house with it. Slapping the worm on the boy's empty plate, the father told him that there it was and now he was to eat it. The boy set up an immediate howl and said he would not eat it unless it were fried. At that, the father jumped up from the table and flung the worm into a frying pan with a piece of butter. When it was done to a crispy brown, the worm was put back on the empty plate with the admonition "Now, eat it." But again the boy howled. The father indignantly demanded that the boy eat the fried worm, as that was what he had asked for; but the boy refused, protesting that he wouldn't eat until has father first ate half.

With purplish countenance and shaking hands, the father grabbed a fork, whacked the worm in two and gulped half. Now, with victory at hand, the father lifted the plate with the uneaten half on it, held it under the boy's nose, and demanded that he eat. The boy burst into a rage of tears and refused. Seizing him by the shoulders the father roared to know why after his every demand had been met, he now refused to eat the worm. "Because," the boy triumphantly smiled through his tears, "you ate the half I wanted."

Homely anecdotes often yield powerful themes—and to me this story is a classic reminder that it is a good idea to check the rulebook before getting into the game. Similarly, when we attempt to formulate a program of positive Americanism, it is wise to look to the constitutional rulebook.

A reading of the provisions of the Consituation which comprise a comprehensive scheme of governmental checks and balances, and of the Bill of Rights with its safeguards for freedom of the individual and the individual's right to speak—and a knowledge of the way that, from its inception, this constitutional blueprint has been effectuated by a system of opposing political parties—make it apparent that a basic rule of our form of democratic government is the agreement that there is a right to disagree.

Our Constitution provides a framework within which all men are free to express their opinions and to advocate their acceptance in the free market place of ideas. So long as the dissenter, the dreamer, or the dissident is content to purvey his ideas in this free market place, not attempting to stifle others, but to answer them, and so long as he does not attempt to destroy this constitutional framework by force and subversion, but rather is content to work within that framework and seek changes through the ballot box, we have a duty to let him be heard.

And when we do not perform that duty, when we fail to speak up for the rights of what I will term the honest dissenter, we not only fail to live up to that heritage of freedom which our ancestors have fought to preserve, but we lose another round in the battle of words and ideals we are waging with Moscow. As I mentioned earlier, we are, in a sense, attempting to sell democracy to the world, and the best way to sell democracy is to show that it works—to show that unlike the masters of the Kremlin who also utter high-sounding phrases about freedom, we here in America actually practice what we preach.

When the Russians speak of their country as democratic, we call them hypocrites, because under their system, no man is free to disagree with the regime. When the party line changes, all too often those officials whose views are no longer considered orthodox lose their lives as well as their jobs. But when we stifle honest criticism and when we ostracize the well-meaning dissenter, we are not practicing democracy either, but are adding fuel to the Communist fire. We must never forget that it is the underlying belief of our democracy that in a free and open encounter of opinions, truth will ultimately prevail over falsehood. And it is a second basic concept of our democracy that it is only when the people are given free access to all the different competing viewpoints that they can recognize the truth and thus choose wisely.

The phenomenal advance of our country in its relatively short history is due in large part to the fact that to our shores have come men of vision, men with new ideas—social, economic, political, and scientific—who felt stifled in the Old World, and came to this land of youth and opportunity to make their dreams a reality. And as our young country grappled with the many problems that arose over the years—the question of slavery, the rise of industry, the threat of monopoly and the struggle of labor and farmers for better conditions—there were always many voices urging different solutions—pointing out evils and suggesting remedies. Had their voices been stifled—our country could not have grown, as time and again our history has shown that the starry-eyed dreamer of today is the conservative of tomorrow. You here

in Minnesota need little reminder of the Farmers Alliance, the Grangers, and finally the Populist Party which in 1892 campaigned in the national elections with a platform far too radical to be adopted by either major party. Among measures urged in their program were Government loans to farmers at low-interest rates, a graduated income tax, tariff reduction, postal savings banks, shorter working hours, laws protecting labor unions, and popular election of Senators. Today the most conservative members of all political parties would never dream of advocating the abolition of any of these once progressive ideas.

It is because our Constitution contemplates these continual variations in political and social opinion, and provides for peaceful elections to carry out the ever-changing mandate of the people, that we have no need for, and cannot permit groups to organize who advocate violent changes in our form of government. For those who advocate the overthrow of our Government by force must admit that their program does not have popular appeal, and cannot win out in the free and open exchange of ideas—were their ideas capable of such a victory, violence would be unnecessary.

We are all well aware of the fact that the Communists are such a group. This fact was forthrightly recognized by the late Justice Jackson of the United States Supreme Court in 1950. Concurring in the decision which upheld the requirement of the Taft-Hartley Act, that union leaders file non-Communist affidavits, he said:

"The goal of the Communist Party is to seize powers of government by and for a minority rather than to acquire power through the vote of a free electorate."

He added: "The American Communists have imported the totalitarian organization's disciplines and techniques, notwithstanding the fact that this country offers them and other discontented elements a way to peaceful revolution by ballot."

Because of the resort by Communists to violence, treachery, and intrigue as the means to their ends, he maintained, Congress has rightly decided that they should not be permitted to occupy key posts in the labor movement—from which positions they could attempt to paralyze the country economically.

Similarly, measures have been taken to prevent Communists from serving in sensitive positions in government and in our public schools, and the Supreme Court has approved these measures. Further, by security checks, Communists are prevented from obtaining positions in industrial plants vital to our Nation's defense. These decisions and security measures are sound, and we must constantly maintain our vigilance against those who seek to destroy our heritage—but we must always remember that basic to these decisions is the fact that the Communists would use violence in their attempt to make us accept a regime which they know will never gain acceptance by constitutional means.

In urging that while you maintain your vigil against Communist subversion you maintain equal vigil to insure that not all who disagree with the majority, politically or economically, are blindly labeled Communists, I realize that I make no simple request. It is complicated by the fact that while on the one hand, Communists often parade in false dress as advocates of liberal causes, on the other hand, we cannot permit a worthy movement to be defeated merely because a few Communists are attempting to infiltrate it. We cannot let certain worthwhile causes become Communist property—and yet we are in danger of doing so. The Communists, who we know have abolished all civil rights in the countries under their yoke, will often be heard hypocritically in defense of certain of our precious liberties—but these liberties do not become any the less precious because the Communists have temporarily decided to pay them lip service. Yet, all too often, others who then speak out in favor of those same vital rights are branded as Communists, or fellow travelers, for some believe in the old saying that: "Where there is smoke there is fire." I urge you, the next time you hear that familiar theme, don't rush blindly with an ax at the smoke thus created—you may chop at a firefighter instead of at the fire. When we strike blindly at all who espouse an honest and decent cause merely because the Communists are also paying it lip service, we play right into the hands of the Communists both here and abroad.

All the Communists need to do is take refuge behind the very civil rights which we know they are pledged to destroy, and then others fearful of being labeled subversive, will shun the term "civil rights" as a Communist label.

A specific case in point is the fifth amendment. If our Founding Fathers had been told that there would come a time in American history when many would urge the repeal of the privilege against self-incrimination, they would have been numbed with disbelief that we could so easily suggest relinquishing a right that was won by a slow and costly process in the fight against tyranny and torture. The idea that a man should not be compelled to bear witness against himself has been fundamental to our idea of justice in the courts, to our belief in man's inherent dignity, and to our tradition that a man is innocent until proven guilty. But the consistency with which Communists have been invoking this privilege in recent years has led some peoeple, in their justifiable frustration, summarily to condemn the whole doctrine, to urge its abolition, and to label as Communists many who speak out in favor of retaining the privilege. And when we react in this manner, we fall into the Communist trap by endangering the very liberties which they seek to destroy. As farmers, many of you know that if a borer attempts to eat into your prize apple tree—you eliminate the borer—you don't chop down the tree.

This need for not letting worthy causes fall into Communist hands by default, and the necessity for perceiving the difference between Communist dogma and solid American ideals being perverted by the Communists, and the importance of differentiating between Communists and honest liberals in our fight against communism was pointed out by that very able and dedicated American, J. Edgar Hoover, Director of the Federal Bureau of Investigation in an article published in Newsweek magazine as far back as June 1947. He opened by saying:

"Our best defense in the United States against the menace of communism is our American way of life."

He continued: "We can successfully defeat the Communist attempt to capture the United States by fighting it with truth and justice implemented with a few 'don'ts.'"

He then proceeded to list 10 "don'ts."

"Don't label anyone as a Communist unless you have the facts.

"Don't confuse liberals and progressives with Communists.

"Don't take the law into your own hands. If Communists violate the law, report such facts to your law enforcement agency.

"Don't be a party to the violation of the civil rights of anyone. When this is done you are playing directly into the hands of the Communists.

"Don't let up on the fight against real Fascists, the KKK, and other dangerous groups.

"Don't let Communists in your organization or labor union outwork, outvote, or outnumber you."

On this last point, I might add, that Mr. Hoover's advice means that if a few Communists try to infiltrate your local organizations—don't abandon ship and hand them the organization as a gift. Fight back and clear them from your group. But in order for people to be able to follow this advice, it means that all of us must distinguish between the Communist dominated group, and the group which a few Communists are trying to infiltrate. To the members of the latter group, who are trying to combat this infiltration, we must lend our wholehearted support, and be careful of where we pin the Communist label. And yet we must do this while following Mr. Hoover's other "don'ts."

"Don't be hoodwinked by Communist propaganda that says one thing but means destruction of the American way of life. Expose it with the truth.

"Don't give aid and comfort to the Communist cause by joining front organizations, contributing to their campaign chests or by championing their cause in any way, shape, or form.

"Don't let Communists infiltrate into our schools, churches, and moulders of public opinion, the press, radio, and screen."

As I mentioned earlier, we are living today through one of the free world's most trying periods; the intense global nature of the Communist conspiracy confronts us with threats within and without our border. We must not grow weary and frustrated at the continuing high cost imposed upon us in defending ourselves against this threat. Too often as these frustrations mount, we hear seductive voices from within ourselves, as well as from our fellow men. These voices call upon us to take short cuts, to invoke expedients, strike for what seem to be quick and easy solutions. When these seductive voices tell us, "Deal with the enemy or suspected enemy within our midst the way he would deal with us, and strip him of his rights the way he would have stripped us"—these voices are actually spreading Communist doctrine.

We must never become so completely consumed with this ever-present Communist threat that our thinking is motivated by what we hate rather than by our love of the American way. Unfortunately, some of us have begun to hate each other—particularly when we are in disagreement over some fundamental issue. It was this condition which led a contemporary philosopher to warn that, "If we permit our hatred of Russia to replace our love of the American dream as the motivation of our lives, we will have accorded communism the greatest tribute to which any dogma may aspire, the power to dictate the thinking of its enemies."

It is interesting to note, that Mr. Hoover, who has been in this fight against communism longer than most Americans concluded his list of the 10 ways to fight communism with the following admonition:

"Don't fail to make democracy work with equal opportunity and the fullest enjoyment of every American's right to life, liberty, and the pursuit of happiness."

This necessity for faith in our democratic processes and for constant vigilance against both extremes which Mr. Hoover expressed so ably, keeps us engaged in a difficult and trying process. Over 100 years ago, an old American political leader, Fisher Ames, described democracy with pardonable vulgarity. He said "Democracy is like a raft. You never sink but damn it, your feet are always in the water." And I believe, and I am sure you do too, that our democratic system is well worth the discomfort of constant wet feet.

Striving to create a better America would be sufficient end in itself were there no Communist menace, but such actions take on new importance in the context of the cold war. Every time a group of Americans take positive action to prevent some miscarriage of justice, that means there is one less incident for the Communists to seize upon in their current propaganda offensive—and it

also means that there is one more incident that an alert American press can seize upon to aid us in our cold war offensive.

And on this point, I might add that I believe we should reorient our thinking toward the part our press should play in our national and international life. We should recognize that it not only reports news to Americans, who, as citizens, are anxious to learn of mistakes which have been made that need correction, and who usually take it for granted that no news on any issue means good news. Rather, our press today also serves as source material for foreign news services, and this latter role means that equal emphasis and equal space should be devoted to reporting accomplishments in our country which we here take for granted, and to relating the numerous small instances of Americanism in action which occur throughout the Nation. I urge this because if our news reports lay more stress on our occasional miscarriages of justice than they do on the good we practice daily, there will be conveyed to the world a distorted picture of American life.

In this regard, I am reminded of a heartwarming incident which was related by Dr. Mordecai Johnson, president of Howard University in Washington. It seems that, while Dr. Johnson was on a train trip in the South, not too long ago, he noticed a fellow passenger, a young Negro boy, who seemed very upset and ill at ease. When Dr. Johnson asked what was troubling him, he replied: "I am the first Negro to be admitted to the University of Arkansas and I don't want to enter. I feel that I will have a most unpleasant experience, but all my relatives and friends insist that it is my duty to go there." The boy's anxiety increased as the train drew closer to Fayetteville, Ark., where the school was located, and he became deeply concerned when, looking out the train window as he pulled into the station, he saw 35 white boys waiting on the platform. He was sure that the only motivation which could have brought that group to the station was to give him a hostile reception—a confirmation of his worst fears. However, his concern quickly turned to relief when, as he stepped from the train, one of the boys approached him, extended his hand, and said: "Last night a group of us were talking about you and how you would feel on coming to the university, and we decided to come here and offer you our friendship." Those students were practicing positive Americanism in its best and truest sense. They were not antisegregation crusaders, but southerners born and bred who had been brought up to believe that segregation was proper. But now that its end was decreed, they had come as fellow human beings and fellow Americans to offer their friendship to one whose struggle to adjust to the new way of life seemed to be just that much more difficult than their own.

It is a story like this that makes one proud to be an American, and I believe that it is vital in this cold war that we give a fair measure of publicity to these heartwarming incidents which occur day by day in all our communities, and in all types of situations, and which make our American tradition so wonderful.

Perhaps one way to summarize the thoughts that I have attempted to convey to you tonight is to briefly delve back into history. During the 16th century, an Italian named Machiavelli wrote a handbook for despots, called The Prince. In telling rulers how to obtain absolute power and then retain it, he advised them to be guided by the principle that the ends always justify the means. Ever since that time, tyrant after tyrant has resorted to Machiavelli's theme. In those earlier days, these absolute rulers made no pretense about the fact that they wanted power for power's sake; modern libertarians, however, have made it impossible for dictators to confess that their ends are self-seeking. Instead, in recent years we have seen the rise of several totalitarian movements, naziism in Germany, fascism in Italy, and communism in Russia. All three groups have professed that their purpose was to better the lot of their citizens.

In particular, the Communists made claim to being the representatives of the downtrodden—their revolution was to herald a brighter day, a classless society.

But then, they urged, since their ends were so glorious, all means conducive to them should be employed. Thus began an era of horror while the Russians collectivized their farm citizens, shooting rebellious kulaks and herding thousands of others off to Siberia. Similarly, they purged many of the middle class intelligentsia who challenged their actions. Dissent was stifled, and many of the men who had suffered so long for the sake of the revolution were shot as traitors by the heirs of that revolution—all as I say, in the name of progress and what the Russians called democracy—all on the theory that the ends justify the means.

Conversely, our Anglo-Saxon heritage has always been one of insistence on proper procedures. Our police cannot make arrests without warrants—unless of course they actually come upon a crime being committed. Our criminal defendants are given every procedural aid, and are deemed innocent until proven guilty beyond a reasonable doubt. Men of all shades of political opinion are free to express their opinions verbally and in writing. Because we have a truly representative Government, and our Congressmen represent diverse views from all over the country, our legislative processes move slowly—and we don't all agree with every law. Our courts impose rigid checks to make sure that no man is deprived of life, liberty or property without due process of law—which means without proper procedures safeguarding his interests.

If this insistence on proper procedure sometimes seems cumbersome, if we cannot make decisions with the lightning rapidity of totalitarian governments—we have always felt that this was a small price to pay for liberty. And this is something we should never forget.

When, with our eyes fixed on a wonderful goal, we insist on short cuts in the name of expediency—when we stifle honest dissent while we preach safeguarding freedom—we are taking a page from Machiavelli's handbook. Democracy can only be preserved by democratic methods—slow and plodding though they be—for democracy is based on a calculated risk—it is based on a belief that free men exercising a free choice out of various competing ideas will exercise the wisest choice possible, and our country's history over the past 175 years has justified continued faith in that belief.

Marshall Field National Awards for Contributions to Childlife

EXTENSION OF REMARKS

OF

HON. HERBERT H. LEHMAN

OF NEW YORK

IN THE SENATE OF THE UNITED STATES

Monday, April 23, 1956

Mr. LEHMAN. Mr. President, Mr. Marshall Field, who is one of our great philanthropists and civic leaders, has established a program of national awards for contributions to childlife. This is another demonstration of Mr. Field's outstanding public service. I congratulate him very heartily on making possible this fine program, which I am certain will be very effective in bringing the needed manpower and money into the field of furthering the well-being of children.

I ask unanimous consent that a statement outlining the establishment of the awards be printed in the Appendix of the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

MARSHALL FIELD ESTABLISHES NATIONAL AWARDS FOR CONTRIBUTIONS TO CHILDLIFE

Marshall Field announced today the formation of Marshall Field Awards, Inc., a nonprofit organization, "to recognize and reward fundamental and imaginative contributions to the well-being of children."

Six to nine awards will be made annually to individuals, organizations, and communities in the fields of education, physical and mental development, social welfare, and communications. Each award will consist of $2,000, a scroll, and a statuette. The winners will be selected by a board of directors which is composed of recognized authorities in child life. The first awards will be made this year.

In announcing the awards program, Mr. Field stressed the considerations that led to its establishment: "Although few would quarrel with the controlling importance of children to America's future, I believe we have not done all we can or should to assure for our young people the opportunity for their fullest physical, mental, and social development. I think the reasons for this deficiency are: first, that we have not devoted a large enough portion of our national resources in manpower and money to the professional fields which serve children, and, second, that we have not made those professional fields sufficiently high in prestige or reward to attract adequate numbers of top-notch personnel needed to make new and important contributions to the well-being of children.

"Our awards are designed to help meet these deficiencies. It is our hope that they will focus public attention on children's needs and on the areas in which improved services are urgently required. The awards will call attention to constructive programs which set an example for others to follow. We hope, too, that the granting of these awards will, in some measure, raise the status of the professions devoted to children and will stimulate the making of additional significant contributions to the betterment of childlife."

Mr. Field has long been active in work devoted to children both through the Field Foundation, which he established in 1940, and, as president, since 1951, of the Child Welfare League of America.

Nominations for possible award winners will be solicited by the new organization on a nationwide basis. All nominations will be screened and final selections will be made by the board of directors. International awards may also be granted at the discretion of the directors.

The following criteria will be used in judging work nominated for awards:

1. Does it directly help children?
2. Does it benefit a large or significant group of children?
3. Can it be applied or adapted for use by others?
4. Is it consistent with professional standards in the field?
5. Does it represent an original or extraordinary service?
6. Will it promote sound development of children?
7. Will it stimulate public interest in the needs of children?

COPY

September 28, 1955

Dear Judge Kaufman:

Thank you for your good letter of September 6 with which you returned the copy of the U. S. News & World Report, about which I spoke.

My own judgment is reinforced by your own opinion concerning Max Eastman's article.

I must say too that I am most grateful for your letter of September 1 which contained such warm words about my appearance before the Veterans of Foreign Wars and the American Bar Association.

It was certainly nice to see you and I too will look forward to our next visit, which I hope will be not too long in the making.

Sincerely,

Richard Nixon

The Honorable Irving R. Kaufman
~~Judge, United States District Court~~
United States Courthouse
Foley Square
New York 7, New York

RLK:rah

United States District Court
United States Courthouse
Foley Square, New York 7

CHAMBERS OF
JUDGE IRVING R. KAUFMAN

September 6, 1955

7.4.I.

My dear Mr. Vice-President:-

I am returning herewith the copy of the U. S. News & World Report, containing the condensation of Mr. Eastman's book, which you were kind enough to let me have. Your enthusiasm over this writing by Max Eastman was completely justified. I can't remember when I have read anything finer on the subject.

Again, may I say that I look forward to seeing you in the very near future.

With best wishes, I am

Sincerely yours,

Irving R. Kaufman

Honorable Richard M. Nixon
Vice-President of the United States
Senate Office Building
Washington, D.C.

UNITED STATES DISTRICT COURT
CHAMBERS OF
JUDGE IRVING R. KAUFMAN
UNITED STATES COURTHOUSE
NEW YORK 7, N. Y.

Bob
acknowledge
my signature

September 1,1955

Unofficial
Personal and Confidential

Honorable Richard M. Nixon
Vice-President of the United States
Senate Office Building
Washington, D.C.

My dear Mr. Vice-President:

At the outset may I state what a distinct pleasure it was to visit with you yesterday. It is interesting that you are in agreement concerning the pattern followed by the Communists in attacking those who have ever opposed them.

Your observation over capturing the minds of the so-called intellectuals was indeed an interesting one. I wonder if some sort of a survey could not be made by some organization or foundation to ascertain to what extent the college professors and the school teachers have been deceived by Communist propaganda. The Communists, by clever and insidious methods, have made a distinct effort to impress the intellectuals. I like to think that they have failed because the professors and school teachers are an intelligent group capable of probing and deep thinking. While superficially it may appear that the propaganda has been effective, I believe a poll would show that by and large this group is a very discerning one.

I returned last evening with General Sarnoff and we talked about you at great length. He is very much concerned over the atmosphere since the Geneva Conference. I have read the excerpts from your speeches before the Veterans of Foreign Wars and the American Bar Association which you were good enough to let me have. I believe your speeches were excellent. They served to go far in putting the Geneva Conference in its proper perspective. The General expressed

himself quite vociferously last night on this subject. Everyone wants peace. But, as you pointed out in your speech, there are certain things the Communists must do toward proving that they are honest in their intentions to reduce the tension. In addition to the "road blocks in the path of peace" enumerated in your speech, the General was very much concerned over the extent to which Russia goes to jam the Voice of America from coming through to Russia and the satellite nations. He thought that an element of good faith would be the removal of this road block. His point is, and it seems to be well taken, that we afford Russia every possibility of expressing herself in this country through our free press. When the Voice of America attempts to do the same, Russia does everything to prevent our message from reaching her people.

I began to read Max Eastman's article yesterday in the U.S. News & World Report, which you were good enough to give me. I would like to keep this over the week-end. It is so interesting that I want to read every word of it. I promise to return it next week.

Again may I tell you how much I enjoyed my talk with you. I do hope that we will be able to meet from time to time and discuss some of our common problems.

With best wishes, I am

Sincerely yours,

Irving R. Kaufman