



EARL BROWDER

TAKES HIS CASE

TO THE PEOPLE

NOTE

Earl Russell Browder, General Secretary of the Communist Party of the U.S.A., was sentenced to four years in a Federal penitentiary, and to a fine of \$2,000, in the U. S. District Court in New York on January 22, 1940, fifteen minutes after a jury had declared him "guilty" on a charge involving a technical violation of passport regulations.

This pamphlet, in which "Earl Browder takes his case to the people," contains two speeches which he made on that day: his own summation before the jury at the conclusion of the trial, and his speech that same night at Madison Square Garden, New York, before 20,000 people gathered to honor the memory of V. I. Lenin on the 16th anniversary of his death.

In his Garden speech, Browder brings before the American people what the rulings of the court would not permit him to say to the jury about the motives of the prosecution, the forces behind it, and about the national and international background of this case.

PUBLISHED BY
WORKERS LIBRARY PUBLISHERS, INC.
P. O. BOX 148, STATION D, NEW YORK, N. Y.
JANUARY, 1940



209

PRINTED IN THE U.S.A.

“To the People Will Belong the Victory”

Text of speech of Earl Browder, General Secretary of the Communist Party, U.S.A., at Madison Square Garden, New York, January 22, 1940.

FRIENDS, I am very happy to be able to speak to you this evening and to take part in this commemoration of the anniversary of the death of our great leader, Lenin.

Lenin taught us much. Very often we forget how much of the understanding that we have of the world about us, of the struggles that are taking place, we owe to the teachings of Lenin. How often we forget that if we can look upon this turbulent and chaotic scene of American social and political life and make some meaning out of it and see ahead what is coming, we must thank the teachings of Lenin for that ability. And it is well that we have these meetings every year to remind ourselves of that great source of wisdom, and to remind ourselves that although Lenin died, Leninism lives, and that Lenin left a worthy successor who is continuing the work which he did with brilliant success, that great pupil and continuer of Lenin, our dear comrade Joseph Stalin. The international working class movement—the Communist movement of the world—that can produce such leaders and teachers can never be defeated.

One of the outstanding characteristics of Lenin and of Lenin's best co-worker is this—they never allow themselves to be carried away with the joys of victory, and in moments of sharp struggle or defeat, they never get panicky, they never get excited, they never whine. The more difficult the moment, the more steadfast and steel-like and cool they stand in the midst of the storm until, with the great rising mass movement, they not only ride the storm but control the storm and bring the ship of the working class to port.

Today, I received on your behalf the sentence against our

movement. I consider it a great honor. At the same time, carrying our appeal from this court of the ruling class of America to the people of America, we must warn the people that this verdict of this case is only one incident in the drive of the American ruling class toward war, and especially in converting the present imperialist war into war against the Soviet Union. In this court today I was prohibited from speaking, except within the limits that were laid down by the judge. I observed those limits which he laid down, even though in the observation of those limits I was constantly coming into collision with them. But what was it that the judge wanted above all to prevent me from speaking about in that court? The one thing above all that was prohibited from even being whispered there was the motive of the prosecution. A great deal was said about the motive of the defendant. But in order to discuss the motive of the prosecution, we have to get outside the courtroom. And while we still have this privilege of discussing outside the courtroom, let us make the most of it. It is not enough to say in a general way that the motive of this prosecution lies in the general campaign of our ruling class to prepare our country for war. That is true. We have to concretize it a little, a good deal more than that.

The New Deal Drives for War

Since last summer, the powers that be have been preparing their drive against the Communist Party, and we have been warning that this was only the opening gun of the drive against the whole labor movement and against American democracy. Up until last summer this drive was being carried on outside the Administration of the Federal Government and was directed in the first place against the New Deal Administration. Since last August, a great change has come about. The drive is carried on through the Administration because the New Deal lamb has lain down with the reactionary lion. Unity has been achieved. The lamb has been eaten and the lion stands now in the robes of the Administration carrying out the policies of a generally united American bourgeoisie—united on the program to scrap the progressive social legislation of the New Deal, to revise the budget

in favor of the economic royalists and against the people, to cut down on all the social services and unemployed benefits and all the money saved thereby, by this economy at the expense of the people, to dump into a great program of war preparations.

That's what's happened—a great shift of class forces and the crystallization of a great drive in a particular direction against the living standards of the people, against their civil rights and against their peace.

Up until the last months in which this change has taken place, the Communists were supporting the New Deal against the reactionary camp of the Republicans and the anti-New Deal Democrats. So long as the camp of reaction found any obstacle in the New Deal camp, we supported it. But when peace was made with the economic royalists, they could not carry us along with them. The whole progressive democratic bloc was broken up. We Communists were a part of that bloc. We never were officially recognized, of course. We were the poor relations, even though Governor Lehman of New York occupies his position instead of Thomas E. Dewey on account of the votes of the Communist Party. But we were a part of the progressive bloc that protected New Deal legislation against the assaults of the reactionaries before it was broken up by the surrender of the New Deal leadership and their passing into the camp of their former opponents. When these gentlemen thought that they could use the support of the Communists, we became almost respectable. Never quite respectable. Almost. They knew us then. They knew almost everything about us. One thing they did not know about us. They did not know that they could not handle us as servants when they betrayed the cause of the people. When we were in agreement on protecting New Deal legislation and a peace policy, these gentlemen were very glad to receive our support, as long as we did not make too much noise about it.

A Hero for One Campaign

When the Governor of Michigan in 1938 was deserted by his own political machine and faced a stiff fight with the Republicans without a machine behind him, he was glad to get the sup-

port of the Communist Party in conducting his campaign for re-election. He will not deny it. He is a God-fearing man. He would not lie about it. He would not deny he had long intimate conferences with Communists as to how best to conduct his campaign for governor. But he lost his election by 2 per cent of the vote. We were not able to win the election for him. And he was a hero only for one campaign. After he was defeated, he saw a great light. He became convinced he had made a great mistake when he had failed to heed the advice of some of our "best families." He demonstrated he had learned his lesson and would be a good boy thereafter. And there was opened up the prospect for him to retire to the most exclusive old men's club of America. But before he could do that, he had to present certain guarantees. He had to present some "head on a charger" according to the ancient tradition. He had to seal his bargain, metaphorically speaking, with the blood of the associates who had tainted his past. That is one of the smaller angles to the sentence in the Federal District Court today.

Well, we never wasted any time weeping about those who have deserted from the fight, and surrendered to the enemy and entered into their service. As a matter of fact, we never had many illusions about these people. We had read our Marx and Lenin and had understood that while sections of the petty bourgeoisie and some of the bourgeoisie may occupy progressive positions in certain historic moments—and when they do, we join forces with them for that moment against the reactionaries—we knew it is in the very nature of these class forces that they cannot follow a consistent position from one year to another, for any long period, and rarely can occupy a consistent position from month to month except when they are solidified and led by their most reactionary section.

The Threat to American Labor

And that is what is taking place today. The trial today is the opening gun in a great campaign to curb and harness the labor movement. It belongs along with the campaign to scrap and hamstring the National Labor Relations Board, along with the war and hunger budget in Congress, and along with the campaign

to "get" labor leaders, which is now broadening out. How rapidly this campaign is developing in our country we can note if we remember that a few months ago the newspapers never threatened any labor leaders except the C.I.O. But reading the *World-Telegram* editorial this afternoon—the leading editorial—it is directed to William Green and it says: William Green, your name is on the list too. You come next. Well, that's only according to the well-known laws of class struggle. The only people who are surprised are the people to whom Marxism-Leninism is a closed book. If we want to be able to understand and to a certain degree to foresee events we must study the science and history of the workers, of the great masters of the science of history, which is the science of Marx, Engels, Lenin, Stalin. Yes, these temporary associates of ours in the democratic progressive bloc had gathered rather tentatively around progressive New Deal measures for a certain historical period. These former associates of ours don't need us any more. What use are we to them now? When they were fighting for social betterment, well, they not only needed us to round up the people for these things, they even needed us often to help them draft their speeches. They didn't know how to do it. They don't need us for these things any more. They are not making that kind of speeches and they don't want to rouse the masses. In the days when they did want to rouse the masses, we had the peculiar experience with them that we had to restrain them. They were ultra-leftists, and very often we had to warn them that that kind of tactics is not good—you had better lay off of it. We were a sobering and restraining influence upon them. Just as now they need a sobering and restraining influence from another direction.

'That instability arises out of the very class nature of these people; constantly torn by contradictions, they have interests here and interests there, and they cannot be reconciled. The daughter-in-law may be married to a munitions family and there is a contradiction to it if we have a peace policy. Another member of the family may have entered the employ of their once greatest political rival. These contradictions have to be reconciled some way and the family and national unity have to be re-established some way, and how can it be done?

Well, a very touching unanimity is being built up now. But it is a unity that's directed against the welfare and peace of the people of America. And the more rapidly we shout this from the housetops of the country, the less painful and difficult is going to be the road which our country will have to travel in the stormy days ahead.

Yes, peace has been made between the economic royalists and their former chief critics. No more do we hear these glowing speeches which arouse the hope and enthusiasm of the masses of the people. Today the new hero, the new inspiration, the symbol of this unity is the figure of Alexander Hamilton who is edging out Thomas Jefferson. Thomas Jefferson made the great mistake of being carried away by enthusiasm for the French Revolution.

Defend the Communist Party

These are the things that show the road that is being prepared for our country by the gentlemen who occupy positions of power. These are the things that are threatening disaster for our people. The people will be asked to pay, but that's nothing compared with what they will have to pay unless we begin to get the expression of an answer to these things. How can we let the gentlemen in the seats of power know what the people are thinking and feeling? At this moment, unfortunately, the only organized expression of this is the Communist Party, and we are still quite small, weak. We must build our Communist Party faster and stronger than ever, and build our *Daily Worker* more and more, stronger than ever—because the *Daily Worker* is just like air for us today; without it we cannot breathe. But we must not be content with that. We must organize, find ways of giving expression to that great broad mass—the majority of the people who are not with us as Communists yet, but are absolutely at one with us to stop the reactionary campaign in this country, to bring back a social budget instead of a hunger budget and to keep us out of war. The majority of the people are with us in that.

We can and we must go to the people of America. On this

message we don't want the monopoly of the effective struggle for peace. We will go to the people with this message and will organize around it—with our Party—a great mass people's peace party, a social party, a party of a social budget instead of a hunger budget, a party of peace and prosperity for the people. That is what is needed now.

As a first little step towards that, I venture to think it might be a good idea to carry out this proposal to send me to Congress from the 14th Congressional District.

Some people have said that it is not practical. "What is the use of sending a Communist down there? He would only be a white crow, one among four or five hundred men. What could he do? It is not practical: If you want something practical, you must send a Democrat down there, or at least, a Republican."

That is a great mistake, speaking in purely practical terms. If you send a Democrat, the Administration will say: "That district is safe; we don't need to worry about that district." If you send a Republican, they will say: "Oh, gee, now we must buy this guy off and make him be good." But if you send a Communist, they will get all excited, will rush down and give you all the favors in the world in the 14th Congressional District.

The only way to get anything out of this Administration is not to be safe; they give only to those who fight them. Fight the Administration a little bit and you will get something out of it. And quite aside from this immediate practical proposition, if you want to vote for peace, the only possible way to do that is to vote Communist.

Well, it is getting late. When I came up here I didn't know what I would talk about. I have been so busily engaged otherwise, I didn't have time to prepare my speech. But I think, after all, long speeches are not necessary any more; events and issues are beginning to stand out so that they can be seen by the masses; you don't have to give long-winded explanations any more; the people see these events and issues. They understand that what they need is a voice to express it for them, an organization to rally them.

The people are going to march forward — and to the people will belong the victory.

Speech to the Jury

Text of Earl Browder's summing up of his case to the jury, from the official court record.

THE COURT: *I understand that the defendant wants to sum up his own case?*

MR. BATTLE: *Yes. He prefers to sum up the case himself. I made that application to your Honor and your Honor has granted it.*

THE COURT: *I will permit him to do so, but I think he should understand that he has to confine himself to the evidence in this case.*

(The defendant, Earl Russell Browder, summed up the case to the jury in his own behalf as follows:)

MR. BROWDER: *YOUR Honor, and Ladies and Gentlemen of the Jury: My request of the Court that I be permitted to sum up this case was in no sense a judgment that I am a better lawyer or advocate than my distinguished counsel, Mr. Battle, and I want to say just in the beginning a word of appreciation for what I consider the most able, the most excellent handling of this case on my behalf by my chief counsel especially, and by his associates. I think he has done about all that could have been done to make the real issues appear out of the mass of evidence that has been presented.*

My own qualifications to argue this case are that I am intimately familiar with the facts and that I have had a little training at law myself, holding a degree in law. True, it is a degree obtained from a correspondence school.

MR. CAHILL: *If your Honor please, I don't like to interrupt at the outset, but it should be plain that matters not in the record should not be referred to.*

THE COURT: *That is quite correct.*

MR. BROWDER: *I think the first question that is probably in the minds of the jury is the question: Why didn't the defendant take the stand?*

MR. CAHILL: *That I will object to, your Honor.*

THE COURT: *Objection sustained.*

MR. BROWDER: I will not discuss it, therefore, if there is objection, although I am quite ready to discuss that question if it is a question which needs to be answered. But if it is understood and agreed that that question does not and cannot play any role in the minds of a single juror in arriving at any decision, I am quite content to leave it there.

In discussing the evidence my arguments are, of course, subject to correction by you as to the facts. Your memory is quite clear on these considerations on the facts and the evidence, and in my argument I am only relying on my own memory, as refreshed by reference to the minutes.

The Real Issues

It is my belief that the real issues in this case have been obscured by a mask of irrelevant or trivial details, that in order to find the real issues we must first of all understand what are not the issues. There is no charge for which I am being tried here for the use of other names on passports. There is no charge that I have in any way secured rights that I am not entitled to, that any persons have been injured by any action of mine, nor has it been shown that any damage has flowed, directly or indirectly, from the acts upon which the two counts of the indictment are predicated. I am on trial for having entered the port of New York with my own passport under my own name in the full light of the publicity of the New York press, of the newspaper reporters present, photographers flashing their bulbs and taking pictures, crowds gathered to see every detail of that entry. This is the crime. In so far as the evidence presented upon the indictment places the issues, in so far as the issues are not to be inferred from the situation in the world and in this country outside of this courtroom, outside of the evidence presented here, such issues must be explicitly delimited.

The basic ones are: are there any facts or circumstances connected with the entry described in the evidence when I came back into the port of New York on April 30, 1937, and on February 15, 1938, with my own passport in my own name—is there any evidence which can transform those two entirely normal and matter of fact events into crimes against the peace and dignity of the United States? That is the sole issue. If at any time in our argument it should seem to you that I am relying upon technicalities, I ask you to remember that the prosecution itself has presented a case compounded of technicalities. It is a thin web of technicalities, and everything of seeming substance in the case consists of matter which on its own merits would be excluded from consideration, but is brought in only on technicalities, and in facing a technical prosecution it is necessary to make a technical defense as well as a substantive one of law and evidence.

Just to remind you from the language of the indictment itself that this is the sole issue—the two entries—the indictment says in two counts, “did use and attempt to use Passport No.” so and so, “in the name of Earl Russell Browder.”

The second count in the indictment says, “did use and attempt to use this passport for the purpose of gaining and securing admission into the United States; against the peace of the United States and their dignity and contrary to the form of the statute.”

Now let us review the facts of those entries. That is the starting point. We can very well start our argument with this. These facts are simple. Extraordinarily simple.

On the 30th of April, 1937, I entered the harbor of New York on the steamship *Berengaria*. I presented my passport to the Immigration Inspector as evidence that I was no alien. I presented a Customs declaration on the dock, cleared my baggage, and proceeded to my home and family.

The Alleged Crimes

On the 15th day of February, 1938, I similarly entered the port of New York, on the steamship *Aquitania*, again presented my passport to the Immigration Inspector, again presented a Customs declaration, and again rejoined my family.

These two incidents are the alleged crimes. Without these there could not even be a pretense of any prosecution on any of the evidence brought before you.

Now let us put these two events under a microscope, so to speak, somewhat in the manner that our scientific witness with samples of handwriting the other day, although this time to try to determine something at issue in the case. These two acts of entrance have been described in the evidence with a wealth of details that leaves very little to the imagination. We may analyze them from every angle and try to identify, to localize, to put our finger on them, on those features or aspects of the two acts of entry which might conceivably transform them into crimes, crimes that would call into action the great machinery of justice.

First, perhaps, I, the defendant, whose entry is the subject of examination, perhaps I was not entitled to enter the port of New York. Perhaps I was not entitled to enter the territory of the United States. Perhaps my right of entry was questionable. Perhaps that was the subject of possible dispute. No, that is not the case. Mr. Cahill himself on behalf of the prosecution has signed a stipulation that is in the evidence, setting forth that I am and always have been a native born citizen of the United States. As a citizen I had a right to enter the port of New York or any other port. That right was an absolute one, an unchallengeable one. It could not be abridged or limited by any authority. The manner of defendant's exercise might be regulated by measures of public order, but only in so far as the absolute right to enter was not thereby infringed upon. In the act of entry, therefore, as an exercise of an absolute right, there is not and there cannot be the slightest taint of illegality. There is no such thing in law as the illegal entry of an American citizen into the United States. There is no such thing in law. And I am sure His Honor will so charge you before you deliberate upon this issue. There is no such thing as the illegal entry of a citizen. In those voluminous records, the ship's manifests that were introduced in evidence by the prosecution to prove beyond all doubt that I did in truth enter the United States, you can find interesting indications of this absolute right of citizens to enter the United States. Citizens are

carefully listed separate from aliens. On the bottom of the list is clipped a warning in big black type, which you will see when you examine those manifests, not to unduly delay the debarkation of citizens. Lists of aliens are accompanied by certificates of the examination by health officials that those named are not suffering from any specific diseases. But no such certificate is applied to citizens. Why? Because even if citizens suffered from the bubonic plague they could under no circumstances be excluded or denied entrance.

The Immigration Inspectors who have testified here, and testified very clearly and honestly, have each explained what is one of the essential points of the defense—that their only business with citizens is to distinguish them from the aliens, because it is only with the aliens that they have any business to transact. It is only with the aliens that the Immigration Inspectors are concerned. If the act of entry is itself impermeable to any taint of illegality, was there any incident or feature of these particular acts of entry which could be taken separately from the entry itself and shown to be illegal? Was it not the entry that was illegal, but some act in connection with the entry which was illegal? Look over the records. The Customs declarations are in evidence. Anything wrong there? Nobody pretends there was. Was there anything in fact secretive or hidden about the entries? Was anything concealed from these entries? Nothing whatever. On the contrary, evidence introduced by the prosecution has shown that these entries were highly publicized, newspaper reporters were gathered because of this entry, photographers were there to take pictures of this entry. They recorded everything, or sufficient to impress the events so clearly upon the minds of case-hardened port officials so that they clearly remember the details nineteen and thirty-two months later. Surely a great deal of attention was concentrated upon the entrances at the time they took place. The prosecution has found nothing in the circumstances of the entries to single out, except this one thing, that the defendant did display his passport issued in his own name before the Immigration Inspector as evidence of his citizenship, as evidence of the fact that the inspector had no business to transact with him, that he

did not come within the category of persons whom the inspector was authorized to examine to determine whether entry could be permitted or not.

By what theory can it be urged that this display of my passport in my own name to an Immigration Inspector furnished the body of a crime, regardless of any question concerning the origin of the passport, to which we will come later? Did this display of a passport, to use the language of the indictment again, secure entry and admission into the United States for me? It did not. The Immigration Inspector under no circumstances had the slightest authority to exclude me from entry, and the display of my passport merely informed the inspector that I was a person with whom he could not interfere, that his authority did not extend to me, and that information being correct, that information corresponding to the true situation, absolutely nothing had taken place which could be tainted in any way by anything that might have happened at any other time or place. I received nothing from the Inspector of Immigration except the recognition that if he interfered with me he would be violating the law. I did not receive the right to enter from the inspector, for he held no rights and had no way to regulate those rights. I did not receive the entry from the passport; I received it from my status as a citizen, which is unchallenged here.

No Deception, No Fraud

Summing up the evidence on the specific acts named in the indictment, without which there is nothing to consider, namely, the entry into the United States on April 30, 1937, and February 15, 1938, with all the surrounding circumstances, including the presentation and display of the passport before the Immigration Inspector, we must conclude that there is no wrongdoing, there is no deception, there is no fraud, there is no obtension of any right that could have been denied by anyone by any exercise of discretion, no taint of illegality of any kind can be found in those two acts, no inference or imputation of illegality can be drawn from any other acts at any other time and place. Therefore there can be no crime found to be committed by me on

those days from the evidence presented here, or any evidence that could be presented.

Now if this basic proposition is established, that there can be no crime inferred from or predicated upon the act of entry of a citizen into this country, then the whole indictment and the evidence presented upon it falls; and that fact could be proved by citing a thousand legal decisions, it could be proven by citing the everyday evidence of men who go in and out of United States territory, by fishermen who go out beyond the three-mile limit to fish and come back. They don't have to have any special papers to re-enter. It can be proven by pleasure boats going in and out. No papers are necessary. They leave and enter the territory of the United States, and every one of such acts of leaving and entering is of exactly the same legal significance as leaving and entering with an ocean liner from Europe.

If this is established, no further argument is necessary. The verdict of acquittal must automatically follow. If that proposition is rejected, if it is maintained that there are circumstances under which a citizen could be excluded, could be exiled from his country, then it becomes necessary to follow up our argument further to the next link in the chain of evidence, a long, complicated, flimsy thing, upon which the Government relies to link 1937 and 1938 with events in the past, in many instances the dim past.

This next link, when we go behind events of the two entries charged in the indictment, is the document displayed upon entering, that passport that was issued in 1934. Was it the passport issued in 1934 that was presented in 1937 and 1938? The prosecution has insisted that it was. But the prosecution itself has given the evidence that it was not. The evidence shows conclusively that the passport issued in 1934, issued to me in my own name, had become null and void, had expired, its validity had expired—

MR. CAHILL: *I must object to this, because it seems clear that the defendant is arguing upon the law, which is for the Court.*

THE COURT: *That of course is true, Mr. Browder.*

MR. BROWDER: *I would submit, your Honor, that this is not*

only a point of law, but a point of evidence which is properly a subject for the consideration of the jury.

THE COURT: *With all due respect to you, Mr. Browder, I am inclined to disagree with you. I think those questions of law, insofar as they are applicable to the case, have already been determined. Therefore you will confine yourself to the record in the case.*

MR. BROWDER: *Yes, I am arguing on the evidence as presented.*

THE COURT: *I understand. All right.*

MR. BROWDER: That passport had the potentiality of being renewed. In fact it was renewed, as the evidence has clearly shown. It was renewed on February 2, 1937. It was renewed, as the evidence shows, upon the basis of a new application, the payment of a new fee, and in the new application it is not and has not been contended by the prosecution that there was any false statement.

You have had that application before you. You have seen it. You can refresh your memory. That evidence shows that the renewal was made without reference to the original application of 1934. And this evidence you can very properly weigh and consider. In fact, the application for the renewal, you will find when you look it over, had a form on it—printed form—which anticipated that the renewal would specifically renew not only the passport but the original application together with the passport. But you will also see when you examine it that that form which anticipated such a thing was not used; it was stricken out from that form, and the act of striking it out was the act of a Government agent and not my act. This evidence presented by the prosecution itself contains the proof. If you will examine it you can test it yourself by looking at the document and comparing that document with the evidence that was presented; that the Government's agents themselves specifically excluded, by their own act, the renewal of the application, together with the renewal of the passport.

The prosecution relies upon the theory that because this passport contains the same proof as 1934 and that it is composed of

the same physical body, that therefore it is the same document with exactly the same attributes and connotations as the original. But determine whether that is so or not—

MR. CAHILL: *Here again I must interrupt*

MR. BROWDER: *That is a question of law, but it is also a question of fact to be presented by the evidence.*

MR. CAHILL: *I press my objection that the question is one of law and that the Court has ruled.*

THE COURT: *I think that is so, Mr. Browder.*

MR. BROWDER: *I think, your Honor, that it is competent to discuss the evidence presented by the prosecution to determine as a matter of fact whether this evidence indicates that the renewal created a new document, or whether the renewal merely extended an old document. I think that is not only a question of law; this is also a question of fact. The prosecution has accepted it as a question of fact by presenting evidence on it in this case, and I think that therefore we must discuss this evidence before the jury.*

THE COURT: *I am afraid I don't agree with you.*

MR. BROWDER: *Do I understand then that you request me not to continue my arguments on this point?*

THE COURT: *I would rather not put it that way. I can say that I think you should confine yourself to the record in this case, leaving the questions of law to the Court.*

MR. BROWDER: *Exactly what I thought I was doing, your Honor.*

THE COURT: *If the Court has determined those questions of law improperly, you have your remedy in another forum.*

MR. BROWDER: *Of course, if at any time it is understood, ladies and gentlemen of the jury, that if I make any statement about the law, I do it with the understanding that you don't take the law from me. You take it from his Honor. I am not trying to lay down the law to you; I am trying to argue the significance of the evidence. And of course the significance of the evidence always has to be considered in the light of one's interpretation of the law. If I should argue wrongly, I think Mr. Cahill will have ample opportunity to refute me.*

MR. CAHILL: *Not on the law.*

MR. BROWDER: *And I am arguing on the evidence, and I maintain, if I may be permitted to sum up this case so there won't be any more useless argument about it—*

MR. CAHILL: *I object to that. This is the third time—*

THE COURT: *I didn't want to get into any argument about it, though. It seems to me that this case should be summed up by the defendant and by the District Attorney on the evidence in the case. That is all I can say at this time. I don't want to have any argument between the defendant and the Court, and between the District Attorney and the Court, except if it is absolutely necessary, which I don't think it is.*

MR. BROWDER: *I agree entirely with your Honor, and I have at all times.*

THE COURT: *Suppose you continue with your argument before the jury.*

The Word "None"

MR. BROWDER: It is my contention that the evidence presented in the renewal application constitutes evidence of a break in the chain of the prosecution's argument. The law aspects of that you will get from the Court. You will take from me only, for whatever it may be worth, the arguments on the weight of the evidence.

If it is found by the jury, despite the evidence under the law, that the documents presented in 1937 and 1938 were in truth the selfsame document issued in 1934, that will bring us back to another link further removed from the acts charged in the indictment, that is, to the application upon which the passport was issued.

As to the passport itself, there is no contention that it was illegally issued, or that it misrepresented the true status of the defendant. It was a passport in my own name, setting forth my status unquestioned in its form and content. It is to the application that the prosecution has gone with the claim that the passport itself was tainted by the false statement in the application, that false statement being the word "None" written into a blank following the printed words "My last passport was obtained

from," although the phrase cited is not a question, and even if it were a question, the word "None" is not an answer to it as it stands in any event. As the prosecution contends, this meaningless series of words is susceptible of the meaning that it is a statement that the defendant had never before had any passport, that it was therefore false, and that such falsity induced the issuance of the passport.

If in your consideration of the case you must go as far back as the 1934 application, because you have rejected the other considerations, you will then be faced with the decision in judging the 1934 application—whether that word "None" was a statement—whether it was false, and whether such falsity induced the issuance of the passport. The indictment, and the prosecution in presenting its case, had studiously, systematically omitted all references to the fact that the phrase "My last passport was obtained from" was only half a sentence. The other half was the phrase "and is submitted herewith for cancellation." It is highly significant that the prosecution suppressed the other half of the sentence in the indictment, has studiously omitted reference to it in the presentation of the evidence. Why? The prosecution must have felt that a full citation of the sentence would weaken or even destroy the case; and that is the fact. When half presented, as in the indictment, that sentence is either meaningless or false. You can take your choice. But you have no other. Meaningless or false. But when the whole sentence is presented, you have three choices—meaningless, false or true. It is impossible to construe it as true when only half the sentence is cited, and that is why the prosecution cited only half of the sentence. But when the whole sentence is cited it is possible to construe it as a true statement and such construction would correspond to the obvious character of the statement on its face. Among the three possible interpretations when you cite the whole sentence, the interpretation that the answer "None" meant "I do not have any present passport to present for cancellation as I have destroyed it," that is the possible interpretation when you take it in the context of the full sentence. That interpretation is excluded from your consideration when you are given only part of the sentence.

But even assuming, as will be strenuously argued—as must be

strenuously argued by the prosecution, because this is the point upon which their whole case must be established, or completely fall—the prosecution's case hangs upon this completely—the defense case does not—but the prosecution's case stands or falls on this one point, and they must argue, therefore, the more strained and less obvious interpretation of that sentence.

The Government Knew

Assuming that you agree with the prosecution, there is yet no competent proof that such an answer deceived the Government, and therefore induced the issuance of the passport which otherwise would not have been issued. For that answer to have deceived the Government it must be shown that the Government otherwise had no knowledge of the previous issuance of any passport to the defendant. If the Government had knowledge it could not be deceived by such an ambiguous statement, and that the statement is ambiguous is unquestioned. To make it false it must be interpreted. I think even the prosecution only contends that it is susceptible of the interpretation that it is false, not that it is false on its face.

The evidence presented here has conclusively and unquestionably proved that the Government did have knowledge of previous passport issuance when it issued the 1934 passport, and that such knowledge was officially noted on a document presented by a prosecution witness in evidence here, the notation "Recorded in Fraud File as Suspect, 12-2-29," signed "Wright."

This was further confirmed by the prosecution's witnesses, although it is highly significant that these facts were not presented by the prosecution until they had been brought out on the following day by the very able cross-examination by Mr. Battle. But the redirect examination of these witnesses further confirmed this fact and established it beyond all question. It was not refuted, not denied. It was assumed to be a fact by the prosecution itself in the redirect examination of that shifty, forgetful witness Powers, brought forward by the prosecution as its own witness. There is no room for the slightest doubt that the Government had knowledge of the previous passport issuance

prior to the 1934 application, that it had not considered the question serious enough to warrant prosecution, that it dropped the matter, that therefore it did not consider it serious enough to warrant the denial of a passport in 1934.

This assumption is given additional weight by further facts that the 1934 passport, after expiration in 1936, was renewed by the Government on February 2, 1937, after it had more than two years' additional time to check up and consider the question whether such a passport should properly be issued. In the fall of 1937 the Government extended the privilege of a passport by an amendment endorsed thereon personally by the chief of the Passport Division to include Spain, which it heretofore and specifically excluded from the document. In September, 1938, the chief of the Passport Division personally received the application for another passport, issued it to myself, and the offices of the State Department in Washington, as Mr. Bell, I think it was—

THE COURT: *I think you are going a little bit beyond the record, Mr. Browder.*

MR. BROWDER: *May I ask exactly how? I thought I had stuck very close to the record, your Honor.*

THE COURT: *I don't think I need to remind you of the fact that the evidence with respect to that particular passport, to my recollection, has been excluded.*

MR. BROWDER: *I was referring to the testimony of Mr. Bell, which was received, your Honor.*

THE COURT: *I may have misunderstood you then.*

The Proof

MR. BROWDER: I was referring to the testimony of the Government's expert witness, Bell, who, having no knowledge of this case or any particular facts concerning this case, did have knowledge of some circumstances concerning events which followed the acts charged in the indictment, which he placed into the record on the questioning of the prosecution. We were not able to bring out these things in their full implications because of ob-

jections, as you witnessed. But I again refer to the testimony of the witness Bell, and ask you to interpret that in the same sense as these other facts that I have just cited. I can't give you the exhibit in evidence for you to examine, but you have a right to infer that such evidence does exist, if it is necessary.

Every one of those three acts of renewal, extension and issuance of the passport privileges to me after 1934, two of which were made directly through the Chief of the Passport Division in Washington to me in person, these are additional proof, if proof is needed, that prior passports were no bar to the issuance of the 1934 passport itself, for if it was a bar in 1934 it was equally a bar in 1937 and 1938. Even this accumulation of overwhelming proof, proof that the Government had prior knowledge that it did not consider the matter of sufficient seriousness to warrant prosecution when the supposed offense was alive and current, that the Government did not consider it sufficient to warrant the denial of a passport in February, 1934, February 2, 1937, on November 26, 1937, and on September 26, 1938. Even this accumulation of proof does not stand alone in the record. It is further buttressed by important circumstantial evidence from the Government's own witness, from persons in its employ. Even the information clerk, Miss Hayes, who guided me in filling out the 1934 application, she did it very courteously, as a good public servant, I must say, and she frankly stated that she has an individual recollection of that event after more than five years, that those few moments stand out clearly in her memory among the hundreds of thousands of such instances that she must have had in her own experience. But she says—and she explains it very logically—that she remembers that incident more than five years ago because she immediately recognized me when I made the application, when I filled out the application before her. She recognized me. Not that she had ever seen me before. She recognized me from newspaper pictures.

Now what is the significance of that, when the information clerk immediately recognized me from newspaper pictures when I walked in to fill out the 1934 application. Miss Hayes further explains she not only recognized my face and my name, she recognized the connection with a certain political organization.

She did not name it, but you all know what it is. It is the Communist Party. She recognized me as the Secretary of the Communist Party because of what she had read about me in the newspapers. And I think it was one of the jurors who in the examination made the remark that it would seem to him dishonest for one to deny that he had some prejudice or preconceived opinion about this case, because everyone has read in the newspapers about it, and everybody has formed some kind of an idea about it. But in 1934 Miss Hayes testified also that my face and name and public role were sufficiently known through the newspapers that she, the information clerk, immediately recognized them. Can anyone believe that such a recognition was not accompanied by an understanding that I had been abroad before? At least half of all the publicity surrounding my name has been connected with my trips abroad. Can anyone assume that I was recognized by someone who was dealing with business of trips abroad without also understanding that he was recognizing someone who had been abroad before? And if this applies to Miss Hayes, how much more, how much more does it apply to the higher officials through whose hands this document passed in 1934 clear up to the head of the Passport Division, who later personally dealt with me twice?

A Red Herring

We submit to you, ladies and gentlemen of the jury, that the evidence presented by the prosecution and brought out on the cross-examination of its witnesses is convincing, it is overwhelming, it is conclusive proof that prior to 1934 the Government had knowledge of prior passport issuance, that it did not consider the matter merited further action on its part, that it placed it away in the files for reference. It was therefore not deceived by the 1934 application. The statement, a word "None" in the 1934 application, even if it is given the interpretation that would make it false, which is not a necessary interpretation—even it were given that interpretation, could not have been effective in inducing the issuance of the passport because of the prior use of the Government. In any event the prior passports were not, and are not

now, conceived to be a bar to the issuance of passport rights and documents, and that was so proven in 1934, 1937 and 1938.

Therefore, when we are forced step by step to go back to 1934 and the application, again we find that this thin web of technical material, by which it is attempted to bind together all these things, breaks down, and the evidence submitted by the prosecution is insufficient to prove its indictment.

It has been and is consistently maintained and emphasized by the defendant from the beginning of this trial, as a matter of weighing the evidence by the jury, that the matters of the Dozenberg, Morris and Richards passports have no proper significance in weighing the evidence about the entries and the issuance of the passport in 1934, and that it violates the long-established rule. But since our position as a matter of law has been overruled by the Court, we cannot argue it here. We are left on this general question, with no remedy at law except such as, should it become necessary, may be later found in other instances. These matters, which we consider extraneous and prejudicial, are therefore before you despite our efforts, and we must deal with them as best we may. Frankly, I must say that this task is not pleasant. Absolutely we refuse—I refuse—to dwell upon these matters any more than is absolutely necessary for overcoming prejudice, because I consider that they were introduced for the purpose of creating prejudice, and that detailed answers would merely forward that purpose. Whatever may have been the legal aspects of the Dozenberg, Morris and Richards passports when they were current questions, the important point is this: that the Government—not I; the Government—demonstrated for ten years that it did not consider these matters important. As to the detailed evidence brought forward on these extraneous issues, all of it merely serves to cover the issues, to draw a red herring across the trail and divert your attention from the issues raised by the indictment.

What is the statute of limitations? Is appeal to the statute of limitations an evasion of responsibility? Taking refuge in technicalities? No, it is not. On this point you have a right to take note that the statute of limitations was not created to serve the interests of defendants. The purpose is to serve the public interest.

And the more strictly it is observed, the more the public interest is served.

Let us examine that question a little more, because I am afraid I cannot anticipate what Mr. Cahill will say.

MR. CAHILL: *Do I understand that Mr. Browder intends to go further into the matter of the statute of limitations, from that statement?*

THE COURT: *I don't want to get into any argument with him?*

MR. CAHILL: *But as I understand it, your Honor has ruled on the point.*

The Question of Prejudice

MR. BROWDER: I am not referring to the statute of limitations, as it has been ruled upon by the Court; I am referring to the fact that the statute of limitations does exclude certain evidence that is before the jury from being considered by the jury and weighed as to whether it is a crime or not, because any imputation of a crime is excluded by the statute of limitations. That crime is not being tried here, and it is within my province to argue against any prejudice that might have arisen in the jury on this count.

I am directing myself against prejudice in the jury that might arise from these matters. Therefore it is permissible for me to note that the statute of limitations is not operating in my favor and that I am claiming no privileges that the statute of limitations, in so far as it operates, is in the public interest and is generally understood that its strict application is in the public interest, and that this statute establishes that upon its expiration, what may have been crimes are to be treated as having been condoned because of the failure of prosecution, that it is no longer a crime, that it is the same as if an absolute and unconditional pardon had been granted.

MR. CAHILL: *If your Honor please, I must object. I think it goes far beyond—*

THE COURT: *I don't think it touches the issue in the case. Furthermore, as a matter of law I think it has been determined that in so far as the issues in this case are concerned, there is no question of limitations. I think that you either fail to understand, or*

that you don't understand the issues in this case to concern a use in 1937 and a use in 1938 of a passport which is alleged to have been procured or secured on the basis or by reason of a false statement.

MR. BROWDER: *I am very glad that you emphasized that, your Honor. That is what I am trying to emphasize, but I fear that there has been a different impression—*

THE COURT: *I think the jury understands that perfectly.*

MR. BROWDER:—which I am directing myself to overcome. If everything was already clear to the jury there would be no function whatever in a summation. And I think it is the assumption upon which I must go, if I speak at all, that I have something to contribute to clarify the issue. I assume that I speak on that basis, and at this moment I am directing myself to overcoming any prejudice that may be in your mind because you have been faced with evidence about Dozenberg, Morris and Richards, that this may create prejudice in your mind, and I am citing as against such prejudice to argue with you that you should not entertain such prejudice—I am trying to argue, if I am permitted, that my argument has been sanctioned and backed up by the most eminent legal authorities of the American bar. If that is wrong I can only apologize for my lack of legal training. That is my understanding of the laws of evidence in summation and argument. If I am wrong I withdraw it and apologize.

I would like to point out to you a great danger that might arise if it were permitted to become a practice in this country for charges to be accumulated over years and not prosecuted, accumulated in the files for five, ten, fifteen years, no action taken, but suddenly for some reason somebody wants to take action after fifteen years, they can go to the files and take them all out and by some strained construction of the law can take all of that accumulation from the files and put all the accumulated odium upon the act, upon an act, a simple, commonplace, everyday act.

MR. CAHILL: *There is no proof in the record of any such statement.*

THE COURT: *There is no proof, and there is no charge whatever.*

MR. BROWDER: I must submit, of course, to the opinion of the Court, and I must confine my argument entirely within those lines which the Court lays down.

If I Had Lost My Passport

I want to further argue, however, I want to further establish that you are not trying me for the Dozenberg, Morris or Richards passports, nor for the 1934 application, nor for the 1930 passport. All of those things are excluded from any charge that is made against me. I have already cited the facts established in the evidence of the Government's witnesses. These things were known to the Government. And in weighing the seriousness of these things, you can take into account that the Government for ten years did not consider them serious enough to act upon. If you have any more doubt of this, refer to the language of the indictment. Under this indictment, in the statute invoked, the charges would have had exactly the same force, no more no less, if the previous passports were all in the name of Earl Browder and not Dozenberg, Morris and Richards. These names are absolutely immaterial to the indictment, because if every passport cited had been under my name the charge would be equally valid and subject to the same punishment.

And, further, in 1937, instead of presenting my passport to the Immigration Inspector to notify him that he had no business with me, if instead of that I had lost my passport, dropped it overboard from the boat and merely informed the inspector, "I am Earl Browder. The newspaper men and photographers will identify and confirm my citizenship"; if that had happened there would have been no crime. Not even Mr. Cahill could have charged a crime then, if I had lost my passport. This little example is very illuminating to show you the fabric of this case.

I am constrained from going any further into the background of the case. The case has a background. It does not stand by itself. But in arguing before the jury it is not permitted to go into that background. This constraint is not one which I have put upon the case; it is one which is imposed by the Court.

I will conclude. From the whole conduct of the case before us,

from the indictment through the trial, up to this very moment, this case has been upon a level, and of such a nature characterized by the evidence relied upon, its manner of presentation, the reluctance with which certain facts within the possession and knowledge of the Government were finally brought before this Court, from all this it would be possible to conclude upon the face of it that this is a frivolous one, belated and delayed, without substance, incredible and unprecedentedly thin. I say, on the face of it, it could be so understood. Upon its face the Government's case can be best described by a quotation from Lincoln. Abraham Lincoln was speaking about the Supreme Court's interpretation of the doctrine of popular sovereignty, in 1857, when he started the big fight against the Dred Scott decision. And in that fight, and during those debates, Abraham Lincoln used these words, which he applied to the Supreme Court's doctrine in the Dred Scott case, but which can be given a more humble use to describe this case of the prosecution. Lincoln said: "It is as thin as homeopathic soup made by boiling the shadow of a pigeon that is starved to death."

Historic Parallels

But if the gigantic machinery of justice of our Federal Government moves into action upon such a thing, such a case, it must be assumed that there exists somewhere adequate reasons which we are precluded from looking for and searching for. We are, however, permitted by the rules of this and all other courts to take judicial notice of things which are not in the record here, but which are well established public knowledge. We can refer to past periods in our country's history, some of them within the memory of the generation still living, when cases were brought which were on their face equally flimsy, but were considered serious and vital, and did play serious and vital roles in the determination of what happened to our country. Such periods were those of 1796, 1800, just before Jefferson came to power, when a long series of cases came into our Federal courts which on their face were equally flimsy to this one. We can refer to the period

of 1916 and 1917 when there were cases in our courts which also appeared on their face to be flimsy and which later opinion may have predominantly adjudged to have been flimsy and frivolous. But these cases played a great role in the history of our country. They had the most serious significance in spite of their frivolousness. And I am not one to argue that this case is not serious. I would emphasize the serious consequences, not for myself—which, after all, however important it may be for me, is incidental—but for the general structure of American civil liberties, of the rights of American labor, and the American working people.

MR. CAHILL: *There is no proof in the record that anybody—*

THE COURT: *I don't like to interrupt you, Mr. Browder, but this is a lawsuit, you must remember.*

MR. BROWDER: *I am arguing that this case is serious in spite of what I consider a frivolous appearance, and which does not—*

THE COURT: *Nobody disputes you for one moment on that. It is a very serious case, not only from the standpoint of the Government, but also from your personal standpoint.*

MR. BROWDER: *It is.*

THE COURT: *And I don't think there is anything that anybody can say on that subject to add or detract from that statement.*

MR. BROWDER: *Am I permitted to add anything to it if I think it would serve my case before this jury?*

I want to say, if it is permitted and since it has been testified to by some of the witnesses, that I am a Communist, the General Secretary of the Communist Party.

THE COURT: *That has nothing whatever to do with this case. Every member of this jury, before the jury was impaneled, stated under oath to you and to the Court that those extraneous considerations would have nothing whatever to do with the decision; and I am certain, as this case is closing, that every member of this jury is going to abide by what he or she said at that time.*

MR. BROWDER: *I don't question that, your Honor. And if I speak of the statements made from the witness chair—*

THE COURT: *I don't want to get into any argument about it. I am sorry I brought it up.*

"I Am Proud To Be a Communist"

MR. BROWDER: If I speak about the evidence presented from the witness chair by the prosecution's evidence, the prosecution's witnesses, and it is to the effect that I am the General Secretary of the Communist Party, it is not to make a political argument about it. It is merely to make it clear for the record, for the jury, and for everyone interested in this case, that I am a Communist, the Secretary of the Communist Party, that I am proud of it, and I have nothing to apologize for because of it at all.

And one final word. I want to join with the Court in urging upon the jury to deliberate and consider the evidence most thoroughly and carefully, to fix the issues accurately, to weigh the evidence with exactness, to discard all prejudices, preconceptions, and to render a verdict that will be consistent with the best American traditions.

Defend Earl Browder and Other Communist Party Leaders! Defend the Bill of Rights!

The conviction and sentence of Earl Browder to four years in prison, on a charge involving a passport technicality, is a direct attack against the rights and civil liberties of the American people. It is the first step in the drive of Wall Street and the Roosevelt Administration to outlaw the Communist Party—the most determined fighter against imperialist slaughter—and to plunge the United States into war.

An appeal from this outrageous sentence will be taken at once and to the highest courts, if necessary. Help us to do this now by rushing CASH CONTRIBUTIONS for Defense Funds and BAIL LOANS of cash or U. S. Government Bonds.

DEFENSE COMMITTEE FOR CIVIL RIGHTS FOR COMMUNISTS

ROBERT MINOR
Chairman

ELIZABETH GURLEY FLYNN
Secretary-Treasurer

Room 525, 799 Broadway, New York City Phone: ALgonquin 4-6799