LABOR ACTION

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NEXT TARGET: ISL Fight Against 'List' Gets Big Boost from Passport Victory

Attorney General (on a Hot Tin Roof) Makes Offer of a Hearing at Long Last

By ALBERT GATES

Seven years after its listing by the Attorney General as "subversive" and "Communist," the Independent Socialist League has finally been offered a hearing to challenge this arbitrary and uncalled-for action.

Five years of the Truman administration, two and one-half years of the Eisenhower regime—seven years of repeated and fruitless attempts to state the case of the ISL.

Sinc the original drawing up of the "subversive list," what was put forward as a guide for federal employment has become a National Blacklist, used by state and municipal governments and private industry and for such remote purposes as "loyalty oaths" for tenants in federally financed housing. Yet the manner and motivations of the oriignal listing back in 1948 remain a *secret* to this very day.

So far as we know, the proffered hearing to the ISL is the first of its kind any organization initially listed has obtained from the Department of Justice. Its implications should be of broad import and extreme interest.

The date of July 18 has almost been set, but not quite. There are still several important matters that have to be worked out to which we shall refer in this article.

The offer of a hearing was something of a surprise, although we must confess that since the hearing before the Court of Appeals on the Shachtman passport case back in February, our counsel, Joseph L. Rauh Jr., had advised us of the possibility of such a move in view of the imminence of a decision by the court.

But as the weeks since February rolled by, the prospect of such an offer seemed less real. Then, in April, about midway between the Court of Appeals hearing and its decision of June 23, William F. Tompkins, assistant attorney general and head of the Internal Security Division of the Department of Justice, quite suddenly informed the ISL that it might have a hearing.

In other circumstances, this might be considered the normal thing, the result of the "natural" workings of the Department of Justice in getting around to its tasks. But after seven years of effort to obtain a hearing we know that the "natural" workings of the Department were *not* to grant hearings.

Under President Truman's Executive

(Continued on page 5)

By HAL DRAPER

On Thursday, June 23, the federal Court of Appeals handed down a unanimous decision in the Shachtman passport case, finding against the government's position, and upholding the right to travel as a "natural right" which can be abridged only by "due process of law" and not by a bureaucrat's decree. The court stated 3-0 that Shachtman had been denied due process of law when he was refused a passport on the ground that he belongs to and is chairman of an organization listed as "subversive" by the attorney general.

The decision easily equalled, if not surpassed, the most optimistic expectations we entertained for the outcome of this court battle against the witchhunt climate in the United States. It is without doubt the outstanding civil-liberties victory of the year; and, in the field of passport rights, the climactic judicial pronouncement in a hard-fought running battle lasting over a number of years, involving a variety of cases, from the Bauer case under the Acheson regime to the Nathan case of only a month ago.

It has proved once again that, in the present stage, court battles against the witchhunt can have important results and that at least partial victories can be won. In brief, it proves that we can fight, and therefore must fight.

But this victory in the Court of Appeals was not *only* a victory on passport rights. As all commentators have clearly recognized, it also dealt the government a hard, if glancing, blow against the use of the attorney general's notorious "subversive list" as a generalized witchhunt instrument.

This thrust against the subversive list may prove to be even more

(Turn to last page)

TRAVELING PAPERS

Senate Hearing Due On Passport Czardom

Three days after the government's rout in the Court of Appeals on the Shachtman passport case, the Senate Judiciary Subcommittee on Constitutional Rights announced that it will begin public hearings soon on the State Department's policy of granting or withholding passports.

Subcommittee chairman Sen. Hennings said on the 27th that "representative leaders of the community," as well as government officials, will be asked to testify. He added that his group's investigation "will in no way interfere with the right of the State Department" to appeal to the Supreme Court against the Shachtman ruling, if it so decides.

According to Henning, the subcommittee has been investigating the subject for "some time" with a view to "constructive action"; but in point of timing the announcement of public hearings has come only now, after the State Department's licking.

New Test of 'List' Before the Courts

The fight against the government's use of the attorney general's "subversive list" to evict people from housing projects is coming to a boil in the courts, on the basis of the slapdown which the Court of Appeals ruling on the Shachtman passport case gave to the government's use of the list for expanded purposes.

In New York, the City Housing Authority served eviction notices on 241 families in 18 projects. The CHA acted after a state Supreme Court referee ruled in favor of the housing agency in a test case started in January 1953 by Mrs. Peters, a Brooklyn housewife. This week Mrs. Peters announced she was appealing the ruling. A CHA spokesman conceded that the test case could possibly hold off the evictions for months.

In 1953 the Peters case challenged the constitutionality of the Gwinn Amendment to the 1952 housing act. This "loyalty oath" amendment was held unconstitutional in July 1953 by Brooklyn Supreme Court Justice Martuscello, on the ground that it deprived tenants of due process of law. On appeal, the Appellate Division reversed the decision; in turn the Court of Appeals reversed the Appellate Division, but failed to rule on the constitutional question, leaving the door open for the referee ruling on the basis of which the CHA is now acting.

The new Peters case, it is hoped, will finally get a clear-cut decision, aided by the impact of the Shachtman passport decision on extended uses of the subversive list for purposes other than government employment.

Norman Thomas and Shachtman Meet the Press in Conference

A press conference held by the Workers Defense League on Friday, June 24, had Max Shachtman and Norman Thomas answering questions for two hours as the significance of the Court of Appeals passport decision was explored. Rowland Watts, national secretary of the WDL, introduced both. Thomas, who was there as a member of the national board of the WDL as well as an SP leader, has been active in supporting both the passport case and the ISL's fight against its "subversive" listing by the attorney general.

One of the first points which Watts had to explain was the possibilities for the future course of the case. The State Department had 20 days to appeal the decision to the Supreme Court, at the end of which it might also ask for a 30-day extension. There was no way of knowing, he thought, whether such an appeal would actually be made, but he was confident that the top court would uphold the Appeals decision.

Thomas, whose capacity for witty and cogent comment on government policy was prominently in evidence throughout the interview, remarked that "Max still has a chance to die before he actually gets his passport, but still it's a notable victory." Shachtman added: "I have a lot of confidence in the State Department's ability to stall, but whether the courts will tolerate further stalling is still to be seen."

The UP man present wanted to know whether Shachtman had applied for a passport because he wanted to go to Russia. The question occasioned some useful explanation of the ISL's anti-Stalinist position. For Shachtman to get into Russia, "would require a special extension of the New Look," said Thomas. Shachtman jocularly amended this to say that he would have no difficulty getting *in* but....

Analyzing the decision's blow to the government, both Shachtman and Thomas vividly showed the anti-democratic nature of the passport policy.

The State Department's policy "resembles the former Japanese government's policy of a 'hermit nation,'" charged Thomas. "Imagine all this fuss about a man who's been abroad repeatedly" without any visible catastrophe resulting to the United States, he said, after details had been given in answer to questions about former trips to Europe by Shachtman.

Referring to the point that, for Shachtman, the right to travel to Europe was necessary for his occupation, i.e., gathering material for speaking and writing, Thomas told the press, "Besides, it's the case of a man who has to travel to make his living, and in this capitalist civilization we always honor that, don't we?—sort of the 'right to work,' isn't it?"

" My interest is not in what Max Shachtman believes, or whom he sees, but in the right of Americans to travel, to talk to people.... Denial of passports in State Department policy is a perhaps unconscious confession of weakness on the part of the government, that it should feel menaced when a man goes and talks with whomever he may."

ADVOCATES NO RESTRICTIONS

Reminding that a rationalization for the restrictive passport policy was talk about "Communist couriers," Thomas argued that, not only was there no question about Shachtman in this regard, but also, even as far as Stalinists are concerned, "I don't even think we're better off that [Paul] Robeson can't go abroad. ... I've had it thrown up to me repeatedly.... The same goes for Corliss Lamont.... Such a policy weakens our indictment of the Iron Curtain policy of the Kremlin.... It is not up to the government to pass on the opinions of a man who wants to travel abroad.... The State Department policy is an insult to the intelligence of the American people. It gives extraordinary powers to a bureaucracy."

A reporter picked up the question of no-bars-on-passports and asked whether the interviewees really advocated that there should be no restrictions.

"I'm opposed to the State Department having the right to withhold a passport from any citizen," replied Shachtman. "A passport should be granted on request, to come or go as he pleases. If a person is engaged in criminal activity, then that is a matter for the police, not for the State Department or its Passport Office. This position was further explained in answer to questions.

"I think I'd buy that," said Thomas. "In my old age, I'm afraid of too great absolutes, but I think this is a sound position."

Discussing what possible "damage" might be done by American citizens traveling abroad, Thomas commented: "More damage is done by some congressmen traveling abroad. Among Americans cited to me as discrediting the U. S., some of the worst cases were congressmen—I mean *some* congressmen, not all congressmen who have gone on foreign trips...."

At another place in the discussion Shachtman explained that friends and sympathizers of the Independent Socialist League had also had passport applications denied or delayed. The evil was far more widespread than many people were aware, he made clear. "The average person, even the average radical, doesn't challenge the Passport Office; that would take a great deal of money, a good attorney, it would mean exposing oneself in a sense, it may imperil one's job; and so the State Department's action is not contested. That applies also to Communists, whose rights of this sort I support in spite of political antagonisms."

"Yes," said Thomas, "it is sometimes argued 'Look how few have been denied passports,' but this is an evasion, for only a few are willing to fight."

Thomas proceeded to give a couple of representative cases—that of the Socialist Party member Walter Bergman in Detroit; and that of a young couple whom he had recently helped.

EFFECT ON LIST

Watts introduced the important reminder that another aspect of the Appeals Court decision dealt with the subversive list. "This decision is of importance in other fields too," he said, such as the use of the subversive list to harass draftees in the army.

"The decision will still further impair indiscriminate use of the attorney general's list," said Thomas. "That seems to me the effect of the decision." He gave a rundown on his efforts in Washington to get some action on the subversive list. "When I saw Brownell," recounted Thomas, "he assured me there would be hearings on the list, and soon, for any organization that wanted one," but none was held. When the ISL received its notorious Interrogatory from the attorney general's office—implying that it was opposition to capitalism that was "subversive"—he protested; and, he related, when he finally heard from the assistant attorney general, the latter explained that he hadn't meant to inquire into opinion *per se* "but only into opinion as connected with action"... a distinction, Thomas indicated, that was simply doubletalk.

"The decision," Watts explained, "will not invalidate the list, but it should modify the *use* of the list for matters extraneous to government employment, such as with regard to army 'loyalty,' private employment, housing, etc."

"It's a definite bar on any use of the list for denial of passports," elaborated Thomas, "and the language used by the court indicates the probability that you can get similar decisions on many other uses of the list.... This is a much harder blow against the State Department than the decision on the Nathan case. There the State Department evaded final determination on its power by granting Nathan a passport."

The subject shifted to another angle. Shachtman made the point that, ironically enough, Stalinist espionage agents, couriers, etc., against whom the passport restrictions are ostensibly directed, have no difficulties whatsoever in traveling in and out of the country as they please, being technically equipped to do so, not to speak of the diplomatic staffs of the Stalinist regimes; yet socialists who have been fighting Stalinism for decades find it impossible to leave the U. S. even to visit Europe.

A strange interlude was briefly provided when the New York *Post* man who was present insisted on questioning the statement that Stalinist undercover agents had no difficulty getting in and out, demanding evidence; he even sarcastically remarked that apparently Shachtman "knew more than the FBI." It was no surprise, though disconcerting, to find later in the day that this savant's story on the press conference in the *Post* got practically every fact garbled that possibly could be fouled up, including identification of Shachtman as secretary of the Workers Defense League and identification of the WDL itself as being on the subversive list!

Somewhere in the course of this exchange, Thomas informed the *Post* reporter about Shachtman's credentials to discuss Stalinism, including: "This man had a debate with Browder, which has been published, and it's far and away the most devastating thing on the Communists that I know."

ROWLAND WATTS HAILS VICTORY FOR WDL

In a release to the press last Thursday immediately after the announcement of the Shachtman passport decision, Rowland Watts, national secretary of the Workers Defense League, hailed the victory as "a long step toward ending the State Department's capricious approach to the denial of passports to certain citizens."

It was through the work of the Workers Defense League that the case was brought to the courts, and that Joseph L. Rauh Jr. was secured as chief counsel.

"Highly important," Watts declared, "is Chief Judge Edgerton's separate concurring opinion which avers that the Attorney General's list was designed specifically for the purpose of determining eligibility for government employment, and had nothing to do with the right of travel—and that freedom to leave a country is as much a part of liberty as freedom to leave a state."

At the same time Watts made the announcement that the attorney general's office had agreed to hold a hearing on the ISL's listing. (See story on this elsewhere in this issue.)

"Our belief, based on substantial evidence," said the WDL's national secretary, "is that the Independent Socialist League is neither subversive nor Communist, and that it has been unlawfully and unjustly included in that roster of security risks."

What the Press Said

Telling Blow

The decision of the United States Court of Appeals in the Shachtman case should have a healthy effect. Coming on top of the judicial spanking administered to the State Department in the Nathan case, it should insure needed reform in handling passports. Beyond that the decision opens up major constitutional questions.

In the immediate case the court upheld the appeal of Max Shachtman against the denial of a passport. He is chairman of the Independent Socialist League, and the State Department withheld a passport on the ground that the League is on the attorney general's list. Chief Judge Edgerton pointed out, however, that the list was prepared for screening federal employees, not travelers abroad; also that Mr. Shachtman had been unable in six years to get a hearing looking to removal of his organization from the list.

The broad base of the decision, however, was a declaration that citizens have a "natural right" to travel abroad which can only be denied under "due process of law." This strikes a telling blow at the exceedingly arbitrary administration of the Passport Division for many years. More fundamentally, it opens visions of new—or old—freedoms in the whole area of the individual's right to move about....

When totalitarianism is in the air it is essential to support every right of the individual against arbitrary rule. Freedom of movement is a broad area in which the possibilities deserve more attention. —*Christian Science Monitor*

Far-Reaching Effect

The decision... ought to have far-reaching effect in modifying a State Department policy on passports that has sometimes seemed to be harsh, unrealistic and harmful to the basic interests of the United States....

In his significant concurrent opinion Chief Judge Henry W. Edgerton of the Court of Appeals asserts that due process is not something negative, but requires that a deprivation of liberty "be based on facts that are sufficient and are found after a hearing." In this case the passport of Max Shachtman was evidently denied solely because the Independent Socialist League, which he heads, is on the attorney general's list of subversive groups. But the court went to some pains to point out that this organization has vainly attempted for nearly six years to get a hearing before the attorney general to prove it is not subversive and, anyway, the mere fact that it is on the subversive list is not of itself sufficient reason to deny its leader a passport. Although the attorney general's list was not at issue here and the court pointed out that it "is not subject to collateral attack in these proceedings," it is impossible to avoid noting an implied reflection by the court on the exaggerated importance which the list has in recent years tended to assume. If this decision helps put the attorney general's list in its proper perspective, then that would be a major step toward restoration of a calm and sensible approach to the problem of internal security. —*N. Y. Times*

Tyranny Overthrown

At last the tyranny of the State Department's Passport Division is being overthrown. It has taken a long time, and the country will probably never know the full toll of human damage inflicted by the tight little despotism which the Passport Division became long ago. But yesterday's U. S. Court of Appeals decision heralds the doom of the notion that this agency of government is a law unto itself....

During Mrs. Shipley's regime [as director of the Passport Division] there were intermittent disclosures of the abuse of this autocratic power; but the "queen" of the Passport Division, as she came to be known, reigned unchecked....

There was every reason to fear that the restrictive and intolerant aspects of Mrs. Shipley's rule would be even more pronounced under Miss Knight.

Now all that is abruptly changed....

Yesterday's court decision should complete the demolition of the Passport Division's dictatorship....

In rejecting the [State] Department's position the Appeals Court pronounced the simple doctrine that the right to travel is a "natural right" which cannot be arbitrarily denied, and that the Department must abide by "due process of law" in handling passport applications. In the specific case, the court rules, it was insufficient to show that the [Independent] Socialist League was on the attorney general's list; the League has been unsuccessfully trying for several years to get a hearing before the Justice Department....

Once again it looks as though democracy is catching up with the little despots who use the serious business of national security as a justification for undermining freedom and justice alike.

—*N. Y. Post*

More on page 6

'PROPER PERSPECTIVE'

The "subversive list" received another cuffing Tuesday when the Senate Internal Security subcommittee issued a report saying that the list has been "widely misunderstood and misapplied" and should be put into "proper perspective." This is interpreted as a recommendation that the wide use of the list for witch-hunting purposes in all fields should be curtailed. The N. Y. *Times* the next day editorially ascribed this move to the impact of the Shachtman passport ruling and the speeches of ex-Senator Cain.

SHACHTMAN DISCUSSES WHAT—AND WHOM—IT TOOK TO WIN A VICTORY FOR LIBERTY

PASSPORTS and the FIGHT FOR DEMOCRACY

By MAX SHACHTMAN

The victory won in my passport case by the decision of the federal Court of Appeals for the District of Columbia is a smashing defeat for the State Department.

The court decision does not provide me with the passport I have vainly tried to get for three years. But the suit I filed against Secretary Dulles and his State Department did not ask that the court grant or direct the granting of the passport; nor was the suit meant to ask for such a grant even if it were considered desirable. It was designed for the purpose of achieving the proposals so carefully drawn up in the brief by Attorney Joseph L. Rauh, which were tantamount to wiping out the ground upon which the Passport Division of the State Department took its stand with such stupid firmness in denying me the right to a passport.

In this, the suit has succeeded brilliantly and, to put it plainly, up to our extremist hopes. If the decision of the court, expressed in the opinion of Judge Fahy and even more pregnantly in the opinion of Judge Edgerton, does not wipe out the ground which the State Department stood on, it pulverizes it, and that is good enough for now.

Whether the State Department will grant the delayed passport without further procrastination, as it found it expedient to do in the case of the executor of Einstein's estate, Dr. Otto Nathan, after an earlier decision of the same Court of Appeals, or whether it decides to stall in the hope that the case, or I myself, may cease to be on the active list, will soon be evident. I do not doubt that the department has plenty of formal opportunity and no insurmountable aversion to picayune temporizing, shifting of responsibility, strangulation with red tape and all the other artful dodges that distinguish the bureaucrat from the human being.

OVERCONFIDENT BUREAUCRAT

As I understand it, the department has some time in which to decide for or against an appeal to a higher judicial body; it has some additional time it may reasonably ask for in order to arrive at this decision; and if it decides to make the appeal to the Supreme Court, it has all the time required to prepare the case and bring it before the court.

But its representative, in the person of the former head of the Passport Division, the renowned Madame Shipley, who believed that the essential qualification of a bureaucrat, maliciousness and arrogance, needed rounding out with obtuseness as well, once informed me triumphantly that I was helpless to do anything further about her decision to deny me a passport. It turned out, at least in the view of the Court of Appeals, that her confidence was exaggerated.

If the State Department decides to fight the decision of the Court of Appeals on the theory that I am helpless against all efforts to drag out this case indefinitely, it may turn out again that there has been a miscalculation.

Be that as it may, the decision of the court is indeed "historic," as the New York *Times* is so right in calling it. The *Times* editorial then goes on to say many things that are very true about the importance of the decision; and an even more emphatic approval came from the New York *Post*, which speaks for middle-class liberalism as the *Times* does for bourgeois liberalism. [See quotations from these editorials elsewhere in this issue—Ed.]

These comments, which are typical of what was said about the court decision by the more responsible newspapers in the country, are very welcome. But apart from the sentiment of gratitude evoked when a worshipful lordship condescends from preoccupation with the grand affairs of the manor to say a kindly word for the peasant in the sectarian hut, the editorials bring two thoughts to mind on certain reservations which they lightly touch on.

First of all: why am I (and along with me, any other citizen of the republic) not "automatically" entitled to a passport?

"AUTOMATIC" RIGHT

I hold the view that I and everyone else (that is, should be) automatically entitled to the passport and all it means and implies today in travel abroad (ease of obtaining visas for entry into other countries, protection and good offices of the government of the U. S. and its representation abroad, etc.). I hold the view that the State Department should confine itself, in this field, to the function of a convenient issuing office with no powers to withhold the granting of a passport except in the case of verified criminal information against the applicant.

Do the vague references in the *Post* and *Times* editorials cover a different view? If they do, it would be interesting to see exactly what it is.

If I am a member of a narcotics ring seeking to travel abroad for the sale and purchase of narcotics, I am violating the law and am therefore a criminal. Federal or local police can apprehend me with a legally issued warrant; they must go through a legally clear procedure before a court which has not been appointed by them and is not responsible to them (that is, to the arresting police authorities); I must be indicted with clearly worded charges of violating this, that or the other law or laws; I must be allowed counsel with adequate leeway in court to defend me; the prosecutor must openly present evidence and corroborating witnesses, if he has any; a fairly chosen jury must be installed to judge the case; and so on and so forth, as is familiar. If I am found guilty and sentenced to a term in prison, it is generally conceded that I do not have the right to a passport and to travel abroad while I am serving my term.

But it is not the State Department which has arrogated to itself police powers and with them the power of public condemnation and defamation. Those powers remain where they have always been and the State Department keeps its nose in its own business where, good or bad, it belongs—and nowhere else.

The same holds for me if I am a member ef an espionage ring or a spy in the service of a foreign government; or if I am subject to criminal proceedings of any other sort; or if I am trying to escape criminal investigation by flight from the country; or the like. In such a case, again, there are, presumably, properly instituted and competent authorities to deal with me and I, in turn, have the right to deal with them on the basis of such relations as are generally recognized as valid.

But here too, it is not the State Department that has (or should have) the right to treat me as a criminal offender *when the police authorities do not treat me as one!*

For if, as the court has ruled, the denial of a passport causes a "deprivation of liberty" because the right to travel is a "natural right" (for senators, editors and even for peasants in sectarian huts); and if, as Judge Edgerton adds in his excellent opinion, "freedom to leave a country or a hemisphere is as much a part of liberty as freedom to leave a state" (i.e., one of the 48 states of the Union); then I cannot for the life of me see how it can be considered permissible for the State Department to deny me the right to travel abroad (a passport) any more than it would be considered permissible for, let us say, the Interstate Commerce Commission to deny me the right to travel on a train inside the United States; or for any other governmental body to deprive me of either liberty (travel abroad or travel at home), *except* a regularly constituted court which denied me all personal liberty by confining me to prison after going through all the familiar antecedent procedures.

I hold that the State Department is not such a court, that it cannot function as a court, that it cannot designate anyone under its supervision or control to function as a court, and that therefore it has no right to act or fail to act in such a way as to cause me a "deprivation of liberty." And, as the *Times* says with an eloquence which it does not pursue to its conclusion, "Americans are not lightly to be deprived of their liberty." (It goes without saying that, where I write that the State Department "cannot," it means the State Department should not.)

IS THIS "EXTREMISM"?

One of our tragedies is this: it is nowadays necessary to urge this view as an "extreme" and "ultra-radical" standpoint. Only yesterday, so to speak—when any citizen of the country could travel abroad at will (so far as the U. S. government was concerned) because a passport was a convenience and not a necessity — my point of view was "normal" and generally accepted.

Today, the two outstanding spokesmen of bourgeois and petty-bourgeois liberalism, while greeting the decision of the Court of Appeals, find it necessary to add vague, qualifying statements about the denial powers that must still be reserved to the State Department in matters of passports.

And if these indefensible qualifications are defended on the ground that they are needed to watch out against Stalinist espionage, I can only say: It is hard to believe that we still have people who think Stalinist spying has any important need for the good offices of the State Department's Passport Division (the Stalinists have a "Passport Division" that makes Washington's look like a village post-office); or that the latter is in a position to do beans about Stalinist espionage movements.

The picture of Madame Shipley or her successor as an impassable roadblock against the comings and goings of spies whom the police are unable to apprehend is one of the few things that bring hilarity to the otherwise bleak hours of the Kremlin.

BETTER LATE . . .

And second of all: If the Court of Appeals is to be praised with such elated satisfaction ("once again proved their devotion to constitutional liberties and individual rights," says the *Times;* "once again it looks as though democracy is catching up with the little despots," says the *Post*), is it too much to interrupt with the question of how the court came to prove its devotion and catch up with the little despots?

The Court of Appeals did not initiate the action in behalf of liberty and in opposition to despots; nor is it supposed to initiate such action. Neither is the lower court from whose negative decision an appeal was made.

Was it the *Times* that initiated the case against the State Department which followed a policy so reprehensible that the editor now refers to it as seeming "to be harsh, unrealistic and harmful to the basic interests of the United States"? According to available court records, the *Times* did not figure in the case at all at any time.

In fact, it is worth some note that when the action was first initiated for what is now proof of devotion to constitutional liberties and individual rights as embodied in a "historic" decision, no reference could be found to it in any issue of the *Times*, nor to any issue since then—which means for three years—until the day the Court of Appeals decision was announced.

The same holds, word for word, in the case of the *Post*. It found space to denounce the State Department ruling against my application for a passport not when I and others denounced it, but only after it was denounced by the Court of Appeals.

Since the court is somewhat less sectarian and somewhat more respectable than the Independent Socialist League, everything is clear and in the right place.

The fight was launched by the Independent Socialist League and its then youth organization, the Socialist Youth League (now merged into the Young Socialist League). Every one of their members now has an additional reason to be proud of his organization, as I feel proud of being a member and national chairman of the ISL.

REWARD FOR FIGHTERS

Our League started the fight against the denial of the passport not simply or even primarily to assure one of its officers a "foreign junket" (as the *Post* would have it) but above all to resist the outrage which the arbitrariness of the State Department, leaning on the arbitrariness of the attorney general, inflicted upon the democratic rights of everybody.

Those who remained firmly loyal to their principles and to the organization formed to promote them, under the harassment and pressures which were built into the "subversive list" to begin with and which have since then been built on to it, deserve the first credit and the main credit. The indifferent, the cynics, the climbers, the timid, the characterless, the tired and retired and rubber-tired radicals, most often ignored or fled from the fight and from its importance. The comrades and friends of both Leagues who started the fight and stayed in the front ranks of it to this hour merit their full measure of honor for the noble words in praise of the victory for liberty and democracy which the press is now able to write.

Its full measure of credit, and with it the sincere gratitude we feel toward it, should be allotted to the persistent and rewarding work of the Workers Defense League in our cases, the case of the denied passport included. Of all the radical, liberal and labor organizations, the Workers Defense League alone came openly, actively and consistently to our aid, even though its executive committee is composed of men and women who stand at various and considerable distances from us politically.

THREE STALWARTS

Of these men and women, two should be mentioned by name as having helped with all their efforts, unstintingly, and at any hour of the day or night, as it were, that they were needed. They are Rowland Watts, national secretary of the Workers Defense League, who is as tireless in the defense of civil liberties as he is unshakably militant in his belief that they are the inalienable right of all; and Norman Thomas, whose political differences with us are no more pronounced than his determination that among so many others, we, as individuals and as an organization, shall not be deprived of our rights or discriminated against in any way.

They did not wait for victory in the form of respectable legal sanction for

(Continued on page 6)

FULL TEXT OF COURT OF APPEALS DECISION

Appellant sued in the District Court to enjoin the Secretary of State (*Footnote 1) from denying, for the reason assigned by the Secretary, his application for a passport to visit Europe, and for a declaratory judgment. His complaint was dismissed on motion, the court holding that it failed to state a claim upon which relief could be granted and that since the denial was in the proper exercise of the Secretary's discretion the court lacked jurisdiction.

Appellant does not ask that the Secretary be required by the court to issue the passport. He seeks in this court only a ruling to the effect that the denial thus far has been on a ground that is legally insufficient.

This position assumes that the discretion residing in the Secretary, see 44 Stat. 887, 22 U. S. C. Section 212A (1952), is subject in its exercise to some judicial scrutiny. We agree. The courts by reason of the Constitution have a responsibility in the matter although a limited one.

In the statute referred to, Congress has placed the issuance of passports in the hands of the Secretary under rules prescribed by the President. These provide, "The Secretary of State is authorized in his discretion to refuse to issue a passport," 22 CFR section 51.75 (1949).

However, in Perkins v. Elg, 307 U. S. 325, 349-50, the Supreme Court, while stating that the court's action would not interfere with the Secretary's discretion, precluded denial of a passport for the asserted reason that the applicant had lost her American citizenship, when she had not done so. Though that case factually is not like this one, it nevertheless shows that the subject of passports is not entirely beyond judicial assistance.

And this is so notwithstanding the relation of the subject to the Executive's power over the conduct of foreign affairs, for it too, "like every other governmental power, must be exercised in subordination to the applicable provisions of the Constitution." United States v. Curtiss-Wright Corp., 229 U. S. 304, 320; Bauer v. Acheson, 106 F. Supp. 445, 451 D.C. D.C. (Footnote 2).

"NATURAL RIGHT"

Is there a provision of the Constitution applicable to the present stituation? In answering this we bear in mind that the issuance of a passport is not a purely political matter. If it were it would be a non-justiciable one.

In other words, a passport is no longer a document "purporting only to be a request, that the bearer of it may pass safely and freely"; it is no longer "to be considered rather in the character of a political document, by which the bearer is recognized, in foreign countries, as an American citizen * * *," Urtetiqui v. D'Arcy, 34 U. S. (9 Pet.) 692, 698. This description parallels early rulings of Secretaries of State, opinions of Attorneys General, texts and other court decisions, which have recognized a great breadth of Executive authority and discretion. (Footnote 3).

We do not suggest that a passport is no longer a political document, or that its issuance is not allied to, and at times a part of, the conduct of foreign affairs, see Communist Party v. Subversive Activities Control Board,—U. S. App. D. C. — —, — — F. 2d —; but only that it is not merely of this character. For it is now, in addition, a document which is essential to the lawful departure of an American citizen for Europe. Regulations now in effect and authorized by Congress so provide. (*Footnote 4.)

The denial of a passport accordingly causes a deprivation of liberty that a citizen otherwise would have. The right to travel, to go from place to place as the means of transportation permit, is a natural right subject to the rights of others and to reasonable regulation under law. A restraint imposed by the Government of the United States upon this liberty, therefore, must conform with the provision of the Fifth Amendment that "No person shall be * * * deprived of * * * liberty * * * without due process of law."

"ARBITRARY"

It is not procedural due process that is involved in the case as now presented. There is no complaint the Secretary has failed to disclose the reason for his denial of the passport. Furthermore, a hearing of a sort was granted appellant (*Footnote 5). He was at least given an opportunity to state informally to an official of the Department the matters on which he relied in rebuttal of the reason given by the Department for refusing him a passport. Cf. Bauer v. Acheson, supra; Nathan v. Dulles, 129 F. Supp. 951 (D. C. D. C.).

What is involved at the present stage is a question of substantive due process —whether the refusal for the reason given, as alleged in the complaint and undisputed thus far by the Secretary, was arbitrary.

If so, it is not a valid foundation for the denial, for the Government may not arbitrarily restrain the liberty of a citizen to travel to Europe. Discretionary power does not carry with it the right to its arbitrary exercise. Otherwise the existence of the power itself would encounter grave constitional doubts. See Employees v. Westinghouse Corp., 348 U. S. 437, 453.

What is arbitrary, however, in the sense of constituting a denial of due process, depends upon circumstances. Moyer v. Peabody, 212 U. S. 78, 84; Yakus v. United States, 321 U. S. 414. Restraint upon travel abroad might be reasonable during an emergency though in normal times it would be arbitrary. World conditions, and those in particular areas, as to which the Executive has special information and on the basis of which he is especially qualified to make decisions, bear upon the question.

For reasons thus suggested the issuance of passports throughout our history has been left to the judgment of the Secretary of State under Presidential regulation, and is subject only to constitutional safeguards. And even these must be defined with cautious regard for the responsibility of the Executive in the conduct of foreign affairs (Footnote 6).

The appellant's own statement in the complaint of the reason he was refused a passport must be taken as true in the present posture of the case, for the Secretary has not answered the complaint. Anti-Fascist Committee v. McGrath, 341 U. S. 123.

We must take it as true, then, that appellant was first notified of tentative disapproval because of information he was chairman of the Independent Socialist League, which the Secretary understood had been classified by the Attorney General (*Footnote 7) as both subversive and communistic, although it appeared to the Secretary the organization had no direct connection with the Communist International. The Secretary also notified appellant that the department had been advised that the League's publication described the organization as an "organ of revolutionary Marxism."

CHARACTER OF ISL

At the hearing granted appellant by the Department of State, he testified the League was anti-Stalinist, antitotalitarian, opposed to violence as a means of solving political, social and economic problems, and that he and the League believed in and strove for the establishment of a socialist economic system by democratic means. He explained that the description of the organ above referred to meant only that the League and he stood for a thoroughgoing reorganization of the economic and social foundations of society but used the term "revolutionary" with reference to the result rather than the means of achieving it. At the hearing he said the League advocated the formation by the labor movement of a labor party similar to the Labor Party of Great Britain.

The complaint further alleges that the League has never had any international affiliations; that appellant desired a passport solely for the purpose of consulting people in Europe whose knowledge of political conditions he respected, and observing those conditions in order to acquire material for his work of writing and lecturing; that he had no intention of engaging in any political activity abroad, and would not engage there in activities which would violate the laws of, reflect upon or embarrass, the United States.

The complaint then alleges that the passport was subsequently denied in a letter to appellant in which the Department stated that despite the fact that the League had no connection with the Communist International and was hostile thereto, the Department felt that it would be contrary to the best interests of the United States to grant passport facilities to the actual head of an organization which had been classified by the Attorney General as subversive, especially when he desired to travel abroad on behalf of the organization, adding that should there be a change in the classification by the Attorney General the Department would then give further consideration to the question.

The wording of the Department's letter indicates that the listing of the League as communistic was no longer relied upon. The hearing appears to have convinced the Department that the League was hostile to the Communist International.

USE OF LIST

Appellant in the end alleges that the passport was denied "solely because of the inclusion of the Independent Socialist League on the Attorney General's List," that this listing was without notice or hearing or presentation of evidence or opportunity to answer, and that appellant, as National Chairman of the League, for nearly six years on at least fifteen separate occasions, without avail, had attempted to persuade the Attorney General to grant a hearing to the League so that it could prove the injustice of the designation. (*Footnote 8.)

We think the complaint fairly read shows that the listing of the league by the Attorney General as subversive was the reason for the Secretary's refusal to issue the passport, that is to say, that except for such listing the fact that appellant was head of the organization and wished to go to Europe on its business would not have been considered by the Secretary as ground for rejection of his application. Therefore, with no answer by the Department, we must decide whether this listing, followed by nearly six years of effort by appellant to obtain a hearing thereon, is sufficient basis for the Secretary's refusal, when considered with the undenied allegations of the complaint that the listing is erroneous.

We do not here characterize as invalid, for its own purposes, the listing by the Attorney General. He is not a party and, in any event, his listing is not subject to collateral attack in these proceedings. We are called upon only to consider the use made by the Secretary of the listing.

Reliance by the Secretary on action by the Attorney General is not precluded. Warning given by the nation's chief law officer can at least lead to investigation, and in a proper case be an element in decision. But in the present state of the pleadings we must take it as a fact that the league is non-subversive as well as non-communistic, and has sought for nearly six years the opportunity to demonstrate the former to the Attorney General as it appears to have demonstrated the latter to the Secretary.

"DEPRIVATION OF LIBERTY"

While in this court the Government advances additional reasons for the denial of the passport, these are not those alleged or shown by any pleading to have been relied upon by the secretary. Therefore we may not pass upon their sufficiency. Securities Comm'n v. Chenery Corp., 318 U. S. 80, 95. For it is not for us to determine, in this case at least, that a passport should or should not be granted, but only whether the reason given by the secretary for its denial is sufficient.

As to this, we think the law must consider to be arbitrary, regardless of good faith, refusal of appellant's application only because the league was listed by the Attorney General as subversive when appellant in detail denies the correctness of this characterization, alleges lack of opportunity so to demonstrate, and when these allegations are not challenged by the secretary. In these circumstances a sufficient basis for the action of the issuing authority apart from the mere listing must appear. (*Footnote 9.)

For us to hold that the restraint thus imposed upon appellant is not arbitrary would amount to judicial approval of a deprivation of liberty without a reasonable relation to the conduct of foreign affairs. Unless some additional reason is supplied for the denial, a citizen is prevented indefinitely from traveling to Europe while at the same time it is impossible for him to remove the cause, even though we must assume in the present state of the pleadings that he would be able to do so if afforded the opportunity.

If there is something which justifies this, it should be set forth by an answer to the complaint. Otherwise the denial, judged on the basis alone of the appellant's allegations, creates a situation which the law cannot reconcile with due process.

It is worth noting in this connection that when the Attorney General lists an organization for purposes of standards of Federal employment prescribed by the

(Continued bottom of next page)

*Footnote 1: Other appellees than the Secretary, who are officials of the Department of State concerned with the issuance of passports, are omitted in the text of the opinion as a matter of convenience and simplification.

*Footnote 2: The writer of this opinion dissented in Bauer v. Acheson because he thought the case was one for a single District Judge rather than for a specially constituted three-judge District Court. Accordingly he expressed no opinion upon the merits.

*Footnote 3: 13 Ops. Att'y. Gen. 89; 92; Ops. Att'y Gen. 509, 511;3 Hackworth; Digest of International Law (1942) pp. 467-8; 3 Moore, Digest of International Law, section 512 (1906); Miller v. Sinjen, 289 Fed. 388, 394 (8th Cir.); Communist Party v. Subversive Activities Control Board. — U. S. app. D. C. —, — F, 2d —. The general subject is discussed in 41 Georgetown L. J. 63; Stanford L. Rev. 312; 61 Yale L. J. 171; Gillars v. United States, 87 U. S. App. D. C. 16, 36, 182 f. 2d 962, 981.

*Footnote 4: Earlier in our history, except, e.g., during the War between the Sections, this was not the case. It was then a desirable incident to travel, not a necessity, and was granted more or less at the pleasure of the Executive. See Gillars v. United States, 87 U. S. App. D. C. 16, 35, 182 F. 2d 962, 981. Now it is unlawful for a citizen to travel to Europe and impossible to enter European countries without a passport. See n. 4, supra.

66 Stat. 190, 8 U. S. C. section 1185a, b (1952), provides that when the United States is at war or during the existence of a national emergency proclaimed by the President, if the President shall find that the interests of the United States require additional restrictions and prohibitions to those otherwise provided with respect to the departure of persons from and their entry into the United States, and shall so proclaim, it shall be unlawful, except as otherwise provided by the President, and subject to limitations and exceptions authorized by him, for any citizen of the United States to depart from or enter the United States "unless he bears a valid passport." The President has made a Proclamation which brings these provisions into effect. Proclamation No. 3004, 18 Fed. Reg. 489, 67 Stat. c31, issued January 17, 1953; see 22 CFR section, 53.1 (1949). No exception has been created for Europe.

*Footnote 5: We need not here decide, however, whether the hearing complied with all procedural requirements. On June 2, 1955, in No. 12,727, Dulles v. Nathan, this court stayed an order that required the Secretary to issue a passport, but did so on conditions, one of which was that a quasi-judicial hearing be held.

*Footnote 6: This is emphasized by Rev. Stat. section 2001, 22 U. S. C. section 1732 (1952), which imposes the duty upon the President, in event it is made known to him that a citizen has been unjustly deprived of his liberty by or under the authority of any foreign government, to demand the reason therefor. If it appears to be wrongful and in violation of his rights the President is to demand release, and if this is unreasonably delayed or refused, he shall use such means not amounting to acts of war as he may think necessary and proper to obtain or effectuate release.

*Footnote 7: The classification or listing by the Attorney General is made under authority of Executive Order No. 9835, of March 21, 1947, 3 CFR p. 129-33 (Supp. 1947), having to do with the loyalty of Government employees. See Anti-Fascist Committee v. McGrath supra.

*Footnote 8: Attached to the complaint is an appendix enumerating in detail and chronologically the alleged efforts of appellant to obtain a hearing before the Attorney General.

*Footnote 9: No suggestion is made here that the basis for denial may not be disclosed, for reasons of national security or otherwise.

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Attorney General Offers a Hearing — —

(Continued from page 1)

Order 9835 a hearing was precluded. It was just not provided for in the order. When the Eisenhower administration took office, one of the first things the president did was to issue a new Order 10450, to provide for hearings *before* an organization was placed on the list. We thought this was the "New Look." But we didn't think so for long, when we began to deal with Herbert Brownell, Eisenhower's attorney general.

The latter took over the old list from Attorneys General McGrath and Clark, and kept it intact. The ISL protested and demanded a hearing. In accordance with the new order, we received a Statement of Grounds and Interrogatories from the attorney general to which we replied promptly and asked for the hearing promised in the new order.

It never came. As a matter of fact, the only acknowledgment we received of our requests for a considerable period of time was a letter dated October 21, 1953, from Assistant Attorney General Olney, saying that the ISL would receive ample notice "of any hearing which may take place in connection with this program."

Note the equivocal choice of words: "any hearing which may take place." In 1954, mid-year, we again inquired about our hearing. We received the same reply: when and if a hearing would be held, we would receive ample notice in order to prepare for it.

WHY NOW?

Sometime during 1954, Norman Thomas, who has aided us so much in our efforts, also wrote to Assistant Attorney General Tompkins and was advised that the Department of Justice had some difficulty setting up a hearing panel, but that it was almost completed and the ISL would soon get a hearing.

Another half year passed without a word from the attorney general, and by this time the above-mentioned hearing before the Court of Appeals had taken place. We know from what occurred in that hearing that Brownell's assistants who tried the case for the State Department took a legal drubbing from the court and from Rauh.

Given the chronology of our seven years' effort—the repeated refusals to grant a hearing, the delays in answering our requests and communications, and the course of events in more recent months—it is clear that there was nothing "natural" involved in the current offer of a hearing. This was not the "normal functioning" of Brownell's administration.

We conclude, therefore, that the offer of a hearing was made in view of the pending decision by the Court of Appeals which, in the course of the argument, became fully acquainted with our case against the attorney general. This can be ascertained by the several important critical references to the matter of the "subversive list" in the decision.

But if the attorney general waited almost two years to grant a hearing (on top of the five years of refusal by Truman's attorneys general), why does he act now? Brownell's record in court in civil-liberties cases has not been a very enviable one. He has lost a number of cases. It is not because his assistant attorneys are any less talented or capable than those in previous administrations. It is that his "philosophy" in office, if it can be called such, is at even greater variance with the spirit of the Constitution and the Bill of Rights than that of many of his predecessors.

The Department of Justice has become solely a prosecuting body, rather than the defender of the Constitution and the Bill of Rights. In the specific case of the "list of subversive organizations," it is the product of the "police mind." The list is constructed out of information and advices of the FBI and gone over by the attorneys in the Department.

The organizations involved were never advised of the consideration given them by the attorney general. They (those organizations that are on the list) did not receive notice of the intentions of the attorney general. They never had a hearing, nor was there ever any intention of giving them a hearing. New organizations intended to be placed on the list have been found guilty by Brownell in the public press in advance of a hearing.

This may not account for everything about Brownell and his department, but it does indicate some reasons why he has fared so badly in the courts in the Peters case, the Nathan passport case and now, climactically, in the Shachtman passport case.

RAUH PRESSES A-G

In more recent months, the prosecutions of the government have met with serious reverses. The information and testimony of official and unofficial informants have not been able to stand up in court. We always knew what the Alsops have currently made so clear in their syndicated columns, that informers have a habit of inventing information in order to do a "good job," that they continue to produce in order to justify their pay and to earn more. Neurotic busybodies poke their noses into everybody's business and write "reports" to Washington. Apparently all this junk goes in the files and finds its way in cases. McCarthy, for example, made use of much of this kind of material.

In the offer for a hearing made by Tompkins, the matter of a date was left to the ISL and its counsel. The suggested date was provisionally set for mid-July. If the date is not yet settled, it is because there is not yet a clear understanding between the attorney general's office and our counsel on several important matters.

Mr. Rauh has requested of Tompkins a list of the department's witnesses as well as information on whether the department is going to rely on testimony and exhibits subject to cross-examination or unsworn statements of secret informants. The ISL has offered to give the department a list of its witnesses prior to the hearing.

In other words, what we are asking for is a quasi-judicial hearing. Up to now, Tompkins has been reluctant to reply to these specifications. It should be apparent, however, that unless some such procedure is adopted, we will merely be going through the exercise of a hearing.

This is important to us. We had such a "hearing" in January 1951 with Raymond P. Whearty, then assistant attorney general. It wasn't a hearing at all. It was a "meeting" or, more precisely, a monologue, we did almost all the talking. Whearty listened mostly. Rowland Watts, secretary of the WDL, Shachtman and this writer participated in this meeting with Whearty and it went something like this:

WE: *What are the charges against the ISL?*

WHEARTY: *I am not at liberty to inform you. It is not provided for by the president's order.*

WE: *What evidence do you have against the ISL to justify its placement on the list?*

WHEARTY: *I am sorry, I am not at liberty to give you that information.*

WE: *What can we do to get off the list? What procedures are open to us?*

WHEARTY (shrugging): *I don't know.*

And then we went through the motions of stating our case at length against charges that we did not know, evidence that was never shown to us and with full knowledge that we were participating in a farcical proceding.

Yet, after our presentations, Whearty made a commitment to reconsider the case of the ISL, but not the Workers Party and Socialist Youth League, the one its predecessor and the other its former youth section. This commitment, it goes without saying, was never honored.

PLAN CAMPAIGN

That is the reason why Rauh is asking the attorney general's office to advise what the evidence is against the ISL and who the witnesses will be so that the case can be prepared intelligently to meet the charges against the organization.

What is really involved here, as it was in the passport case, is due process under the Constitution. This was clearly indicated by the Supreme Court in remarks directed to the attorney general, in the case of *Joint Anti-Fascist Refugee Committee v. McGrath.* At that time Justice Black stated: "... the due process clause of the Fifth Amendment would bar such condemnation without notice and a fair hearing."

Justice Frankfurter added: "The requirement of 'due process' is not a fair-weather or timid assurance.... The heart of the matter is that democracy implies respect for the elementary rights of men, however suspect or unworthy; a democratic government must therefore practice fairness; and fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights.... The attorney general is certainly not immune from historic requirements of fairness merely because he acts, however conscientiously, in the name of security...."

And from Justice Douglas we have an even stronger statement: "The requirements for fair trials under our system of government need no elaboration. A party is entitled to know the charge against him; he is entitled to notice and opportunity to be heard.... The gravity of the present charges is proof of the need for notice and hearing before the United States official brands these organizations as 'subversive.' No more critical governmental ruling can be made against an organization these days. It condemns without trial. It destroys without the opportunity to be heard...."

The attorney general, despite these enunciated views of the Supreme Court, has conducted himself in an opposite manner, as the politician-prosecutor rather than the seeker of justice.

If the ISL asks for more than a "meeting," and requests a hearing in the nature of a quasi-judicial proceeding, it is not only because it falls within constitutional requirements and legal tradition, but because our experiences with the attorney general's office have not filled us with any great confidence in its objectivity or its adherence to due process.

If we cannot give the precise date of the hearing at this time, we can say that it will be soon. The Workers Defense League, which has done so much for us in the passport case, and which was instrumental in obtaining the services of Rauh as counsel, is planning a campaign in behalf of the case. Rowland Watts has already started the machinery going and the progress of the case will be fully reported in LABOR ACTION.

FULL TEXT OF COURT DECISION — —

(Continued from page 6)

President, which was the occasion for the listing of the league, a separate judgment by the employing agency of the fitness of the individual employe who is a member of the organization is required before removing him from public service. The listing alone is not enough. Kutcher v. Gray, 91 U. S. App. D. C. 266, 270, 199 F. 2d 783, 787, Cf. Jason v. Summerfield,—U. S. App. D. C.—, 214 F. 2D 273, Cert. denied, 348 U. S. 840.

We must not confuse the problem of appellant's application for a passport with the conduct of foreign affairs in the political sense, which is entirely removed from judicial competence. For even though his application might be said to come within the scope of the due process clause, which is concerned with the liberty of the individual free of arbitrary administrative restraint, there must be some reconciliation of these interests where only the right of a particular individual to travel is involved and not a question of foreign affairs on a political level.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION.

Concurring Opinion by Judge Edgerton

I concur in the opinion of the court.

The Supreme Court has said: "Undoubtedly the right of locomotion, the right to remove from one place to another according to inclination, is an attitude of personal liberty, and the right, ordinarily, of free transit from or through the territory of any state is a right secured by the Fourteenth Amendment and by other provisions of the Constitution." (*Footnote 1.) Freedom to leave a country or a hemisphere is as much a part of liberty as freedom to leave a state.

Those who inflict a deprivation of liberty are not the final arbiters of its legality. Due process of law is a judicial question.

Arbitrary action is not due process of law. Taking the facts alleged in the complaint to be true, as we must on this record, denial of a passport to Shachtman because the Independent Socialist League was on the Attorney General's list was arbitrary for several reasons:

1. The league is "an anti-Communist education organization." In this respect the case is similar to Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123. (*Footnote 2.)

1. The Passport Division knew plaintiff had tried and failed to get the Attorney General to give the league a hearing.

3. The premise that a man is not fit to work for the Government does not support the conclusion that he is not fit to go to Europe. The Attorney General's list was prepared for screening Government employes, not passport applicants.

4. Even in connection with screening Government employes, membership in a listed organization was intended to be only an inconclusive item of evidence.

5. In other connections, the list has not even any "competency to prove the subversive character of the listed associations * * *." (Footnote 3.)

The defendants cannot bring their denial of a passport into conformity with due process of law by merely ceasing to base the denial on the Attorney General's list. Due process requires more than that a deprivation of liberty be not based on facts that are insufficient. It requires that a deprivation be based on facts that are sufficient and are found after a hearing.

In Bauer v. Acheson, 106 F. Supp. 445, a three-judge district court interpreted the Passport Act as requiring a hearing when a passport is revoked or its renewal is refused. The District Court for the District of Columbia has recently held that a hearing is necessary before a passport is denied. Nathan v. Dulles, 129 F, Supp. 951 (D. C. D. C.).

DISCRETION AND FREEDOM

The Government urges that a passport involves foreign relations and that the issuance of a passport is therefore in the exclusive control of the State Department. But the State Department's control of activities that involve both foreign relations and domestic liberties is not exclusive. If it were exclusive, the State Department could put an American citizen in jail and keep them there permanently on the mere request of a foreign government.

"[The] very delicate, plenary and exclusive power of the President as the sole organ of the Federal Government in the field of international relations * * * like every other governmental power, must be exercised in subordination to the applicable provisions of the Constitution." United States v. Curtiss-Wright Export Corp. 299 U. S. 304, 320.

"Since denial of an American passport has a very direct bearing on the applicant's personal liberty to travel outside the United States, the Executive Department's discretion, although in a political matter, must be exercised with regard to the Constitutional rights of the citizens. * * *" Bauer v. Acheson, 106 F. Supp. 445, 451.

To speak of "the Secretary's discretion with respect to the issue of a passport," Perkins v. Elg, 307 U. S. 325, 350, is not to say that the Secretary may in his discretion deprive a citizen of liberty without due process of law. Moreover, in 1939, when Perkins v. Elg was decided, Americans could, as now they cannot, leave the country for any destination without a passport. Yet even then, the Supreme Court overruled the Secretary's action in denying a passport.

Neither the passport act nor any Executive order should be interpreted as intended to authorize the Secretary of State to deny a passport arbitrarily or without a hearing.

"We must, of course, defer to the strong presumption * * * that Congress legislated in accordance with the Constitution. Legislation must, if possible, be given a meaning that will enable it to survive." Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp., 348 U. S. 437, 452-453. Rehearing denied, 348 U. S. 925.

*Footnote 1: Williams v. Fears, 179 U. S. 270, 274. The case involved a state tax on "emigrant agents." The court sustained the tax because it did not, unless perhaps "incidentally and remotely," affect "freedom of egress from the state."

*Footnote 2: That case, like this, arose on motion to dismiss.

*Footnote 3: United States v. Remington, 191 F. 2d 246, 252 (2d Cir.; Swan, Chief Judge, and Augustus N. Hand and Learned Hand, Circuit Judges).

The ISL Program in Brief

The Independent Socialist League stands for socialist democracy and against the two systems of exploitation which now divide the world: capitalism and Stalinism.

Capitalism cannot be reformed or liberalized, by any Fair Deal or other deal, so as to give the people freedom, abundance, security or peace. It must be abolished and replaced by a new social system, in which the people own and control the basic sectors of the economy, democratically controlling their own economic and political destinies.

Stalinism, in Russia and wherever it holds power, is a brutal totalitarianism—a new form of exploitation. Its agents in every country, the Communist Parties, are unrelenting enemies of socialism and have nothing in common with socialism—which cannot exist without effective democratic control by the people.

These two camps of capitalism and Stalinism are today at each other's throats in a worldwide imperialist rivalry for domination. This struggle can only lead to the most frightful war in history so long as the people leave the capitalist and Stalinist rulers in power. Independent Socialism stands for building and strengthening the Third Camp of the people against both war blocs.

The ISL, as a Marxist movement, looks to the working class and its ever-present struggle as the basic progressive force in society. The ISL is organized to spread the ideas of socialism in the labor movement and among all other sections of the people.

At the same time, independent Socialists participate actively in every struggle to better the people's lot now—such as the fight for higher living standards, against Jim Crow and anti-Semitism, in defense of civil liberties and the trade-union movement. We seek to join together with all other militants in the labor movement as a left force working for the formation of an independent labor party and other progressive policies.

The fight for democracy and the fight for socialism are inseparable. There can be no lasting and genuine democracy without socialism, and there can be no socialism without democracy. To enroll under this banner, join the Independent Socialist League!

An 'Inspired' Editorial Gives a Revealing Look at

The Other Side's Story

By H. D.

Perhaps some of our readers, particularly those with unfortunate sadistic tendencies, would like to confront the government attorneys who engineered the Shachtman passport case with the Court of Appeals decision, and gloat: "Well, what've you got to say to *that?*"

Truly it would be inhuman to stand by unmoved and watch a person squirm and squiggle on such a spot, even if it is only one of Brownell's legal hatchetmen. But the equivalent can be observed by anyone who takes a look at the editorial page of the Washington *Star* for June 26.

Over the nation, some papers hailed the decision; some papers editorially ignored it, not wishing to dissent publicly. Standing out like a sore thumb was a *Star* editorial which—obviously—was a transcript of what the Department of Justice would like to say if it dared to say anything.

Well, what do Brownell's brain-boys have to say to *that?*

As brought to us by the *Star* (exclusively), they say:

"It is difficult to understand some of the interpretations of the delcision by the Court of Appeals in the Max Shachtman passport case."

Thereupon the *Star* explains that when the court dismisses a suit, "The legal effect of such a motion is to admit the truth of the allegations made in the suit." It goes on to point out that the court therefore had to assume the truth of the allegation that the ISL was not "subversive and communistic." Following this, it quotes the court's words that refusal to grant a passport because of listing by the attorney general is "arbitrary," and that the State Department's reason was "insufficient."

This brief explanation given of one point among many in the court decision, the *Star* astonishingly winds up on the above-mentioned quotation:

"This is far from being a revolutionary or startling doctrine. It is not necessarily a rebuke to the State Department. On the contrary, Judge Fahy's opinion, fairly read, is a careful, well-balanced application of the familiar principle that the courts may not interfere in the exercise of executive discretion in the absence of arbitrariness or abuse. And the court does not finally hold in this case that refusal of the passport was either an abuse of discretion or an arbitrary act."

End.

We need not take this feeble effort apart: there is plenty of material in this issue which does so. The most glaring thing that comes to mind is the editorialist's capacity for ignoring the fact which made front-page headlines: the court's rejection of the government's thesis of "unreviewability."

Be that as it may, there is something else that follows from this lone voice.

IF, as the *Star* and its inspirers now claim, the Court of Appeals decision was not only *not* a rebuke to the State Department but "the contrary"; if it was nothing, absolutely nothing, but a reiteration of a *"familiar principle,"* and a "careful, well-balanced" one at that—THEN it must have been the government which was proposing "a revolutionary or startling doctrine" when it was fighting this case and arguing vehemently and indignantly against the "familiar principles" enunciated in court by attorney Joseph L. Rauh and now upheld by the court.

IF it is a familiar principle that a passport should not be denied a man because he belongs to an organization arbitrarily and wrongfully listed as subversive by an attorney general, THEN it must be the government's Department of Justice and its lawyers who were subverting the old familiar democratic doctrine when they arrayed their legal talent before the Court of Appeals to justify such denial and even to claim that no court could exercise a check on their untrammeled power to deny passports.

And if the State Department wasn't rebuked, where did it get that shiner? Run into an open door, maybe:

What the Press Said

Rebuke to Dep't

The Court of Appeals has been obliged again to remind the Secretary of State that Americans live under a government of laws and that "discretionary power does not carry with it the right to its arbitrary exercise." This rebuke is directed, of course, at the arbitrary past conduct of the Passport Office, which seemingly had come to treat a passport as a favor to be bestowed on citizens whose political views it approved. The discretion necessarily vested in the Secretary of State with regard to the issuance of passports has been exercised highhandedly and capriciously by subordinates having no relationship to the conduct of foreign affairs.

What the court's ruling of Thursday in the Shachtman case comes down to is this—that the State Department may deny a man a passport in the interest of national security, but it must have some intelligible reason for the denial....

A fortnight ago the Court of Appeals told the State Department [in the Nathan case] that it must accord a passport applicant procedural due process—that is, that it must give him a fair hearing, quasi-judicial in character, before denying him a passport. Now it has added that the Department must also accord a passport applicant substantive due process—that is, that denial of a passport must have a reasonable basis. Together these twin judicial rebukes to arbitrariness should help to promote the recapture of civil liberties which Americans have too long allowed to fall into neglect.

—*Washington (D.C.) Post*

No Fences

...In the case before the Court of Appeals this week, the Department had refused a passport to one Max Shachtman because he heads a group that the Attorney General lists as subversive. Mr. Shachtman denies that his group is subversive; he has been trying for six years to get it removed from the list, but he hasn't been given a hearing. The court holds that the Department did not have valid reason to refuse Mr. Shachtman a passport.

In both the Nathan and Shachtman cases, the Department argued that it has full and final say on who gets a passport by virtue of its duty to conduct the nation's foreign affairs....As one judge indicates, if the Department had full and final say in such matters it could, theoretically, throw a citizen in jail and keep him there on its say that this was important to the conduct of foreign affairs.

[The editorial then quotes the decision on the "natural right" to travel.] . . . These come as sweet words to a nation dedicated to the proposition: "Don't fence me in!"

—*Pittsburgh Post-Gazette*

Dangerous Power Curbed

The decision of the Court of Appeals in the Shachtman case does not mean that anyone can get a passport regardless of circumstances, but it was not far short of that. It clearly places on the Department of State the burden of proof when a passport application is denied or delayed unreasonably, and that is as it should be....

It always is dangerous to place too much power in the hands of any administrator, for even the best may be succeeded by one who will abuse it. The power to decide arbitrarily whether anyone's trip abroad would be "in the best interests of the United States" is too broad, even for a Secretary of State.

The so-called "Attorney General's List" of subversive organizations is so broadly drawn that past membership in one of the listed groups is not even, in itself, a bar to a government job. Surely it cannot be used, in justice, as a Bible for the Passport Office.

—*Washingtin (D.C.) Daily News*

More on page 2

YOU'RE INVITED

to speak your mind in the letter column of Labor Action. *Our policy is to publish letters of general political interest, regardless of views. Keep them to* 500 *words.*

Passports and Democracy — —

(Continued from page 3)

our claim in order to champion it. They fought by our side, with all their energy, their precious talents and openly proclaimed convictions, when it was not entirely popular to fight with us but when that was the only road to the victory.

(Reports in some papers indicating that the American Civil Liberties Union participated in fighting the case through the courts or in some other way, are, unfortunately, erroneous. With deep regret, I must report that for reasons never made plain or public in any way, the national office of the ACLU was at no time involved in the case and at no time gave us assistance of any kind, even though its assistance and close cooperation were repeatedly solicited. In face of the exceptionally fine tradition that lies behind the ACLU, its conduct in the several cases affecting the Independent Socialist League is inexplicable. In any case, no explanation for it has been offered.)

Finally, an immeasurable debt is owed in this fight to the attorney engaged by the Workers Defense League to represent me in the suit against Dulles and the State Department, Joseph L. Rauh Jr. of Washington. It is enough to mention the fact that he is national chairman of Americans for Democratic Action to indicate the distance that separates us politically. But in the fight for my rights against the State Department and for our rights against the attorney general's office, Joseph Rauh has been an extraordinary pillar of strength because he is himself animated and sustained by a passionate belief in democratic rights, not only for "big" people and organization but for "tiny" ones as well.

As the case developed and we saw him plan out so wisely every step in the fight, we could only congratulate ourselves on the good luck of having as our champion in court a lawyer whose singular technical gifts have earned him distinction without dulling his lively sense of social responsibility. Joseph Rauh is not a hired legal hand. In the shrewd militancy he has shown in the work so generously undertaken for us (as in more than one other case), he has been a sturdy friend and powerful ally.

CONTINUE THE FIGHT

Our fight has only begun, not only in my passport case which is not yet ended, but above all in the case of our inclusion on the "subversive list" with which the case against the State Department was so inseparably linked. There is some reason to believe that we are at last—after only seven years of waiting!—on the verge of getting a *hearing* from the Department of Justice, at which, in giving and (presumably) hearing evidence, we shall again be represented by Attorney Rauh. To what extent the decision of the Department of (as it is called) Justice was dependent upon my suit against the State Department can only be surmised. We have our own opinion, and it is not entirely complementary to the office of the attorney general.

The decision of the Court of Appeals has already cut some of the claws and even part of the heart out of the outrage known as the "subversive list," particularly with regard to the inclusion of the Independent Socialist League. It is our intention to continue the fight against our being listed with all the appropriate means at our disposal, no matter how long it takes, no matter how much time, energy and funds a powerful and cynical government machinery may impose upon us as the cost we must pay for the fight.

We have already shown that, small as we are, we are capable of a stubborn and sustained fight against what the *Times* editorialist calls, with ever so much delicacy and understatement, the "exaggerated importance which the list has in recent years tended to assume," and against the whole concept that the list has come to represent.

We intend to continue to fight, relying on all those who say they are firmly for democratic rights and against the witch-hunt in all its forms, and who mean what they say. The wonderful victory we have just won is first and foremost a victory for such as those.

Our fight is for our own rights, and we do not want to conceal that. But for all that it is not one whit less a fight for the rights of all who need and want democracy. We have the right to appeal for their aid. They have an obligation to give it. We will use it for one thing and one alone, to teach the reactionaries, above all those in high places, that—to paraphrase the *Times* editorial—"American socialists are not lightly to be deprived of their liberty."

Big Boost from Passport Victory — —

(Continued from page 1)

important than other aspects, from the point of vew of Independent Socialists. Certainly it points to the next stage in the struggle: the fight directly against the "list" system itself, around the issue of removing the ISL's name.

The passport victory has had the result of preparing the ground for a successful push against the list itself, both because of the relatively enormous national publicity that has been achieved and because of the legal ground gained.

The significance of the decision, therefore, has to be summed up under three separate heads:

(1) Its impact on the status of the right to a passport as a democratic right.

(2) Its impact on the nationwide use made of the attorney general's list.

(3) Its impact, more narrowly, on the ISL's fight to get off the list.

There were two opinions rendered: one for the court as a whole written by Judge Fahy; and a second by Chief Judge Edgerton, concurring but even better and stronger in some respects. Following are the chief issues involved in the decision under these three rubrics.

•

1
Passport Democracy

(1) The government—i.e., the Justice Department arguing on behalf of the State Department and its Passport Division—had contended that the mere say-so of the Passport Office's head bureaucrat was enough to decide whether any citizen could travel or no. The decision of this bureaucrat could not be reviewed by any court.

The government was claiming unchecked and uncontrollable power for itself in this field. It was telling the judiciary to keep its nose out of their garden.

If this position had been upheld, it would have been another formal step toward the dominance of administrative-decree law in the U. S.

It was this position that was struck down, in the first place.

To be sure, this claim had been impaired by previous decisions, but in each case the government had possible loopholes left which it was trying to widen. For example, one of the legal issues involved the precedent set by the Elg case under Chief Justice Hughes. Here the court decided that the Passport Office could not deny Miss Elg a passport on the ground that she was not a citizen; factually, the courts decided, she *was* a citizen.

At the Shachtman case hearing the government wanted to get out from underneath this precedent by arguing that the Elg case involved a *factual* mistake which the court was correcting, but that the Shachtman case did not. The new decision plugs this loophole, if one really existed.

In the Bauer case against Acheson and the recent Nathan case, the court decided that the citizen must be given a hearing, thus also limiting the government's claim of exclusive competence.

But in its decision on the Shachtman case, the language of the court swept away the government position completely and basically, specifically discussing its rationale and rejecting it.

BASIS FOR A RIGHT

(2) This rationale was the government claim that passports involved the foreign-affairs function of the Executive, and therefore remained immune from judicial interference, like other foreign affairs functions.

Here the court used the distinction between "a purely political matter" in foreign affairs—which to a layman means simply the government's foreign relations as understood by common sense—and a matter like passports which, to be sure, obviously relates to other governments but which must be considered in a different light because it also involves the "natural right" of citizens.

Edgerton's concurring opinion hit a bull's eye with a devastating point: "But the State Department's control of activities that involve both foreign relations and domestic liberties is not exclusive. If it were exclusive, the State Department could put an American citizen in jail and keep him there permanently on the mere request of a foreign government.

(3) It also drew the distinction between the present role of a passport as a legal necessity for travel to and entry into Europe, and the former role of a passport (before it became a legal requirement for leaving the country) as simply a "desirable incident" which served to identify a traveler or ask a foreign government's protection, etc.

Thus it rejected the government's attempt to confuse two quite different kinds of documents under the same term "passport": a permit to leave the country and a request to foreign states to protect the traveler.

(4) On the basis of all this, it rejected the government contention that a passport was a "privilege, not a right." The heart of this section of the decision is the paragraph:

"The denial of a passport accordingly causes a deprivation of liberty that a citizen otherwise would have. The right to travel, to go from place to place as the means of transportation permit, is a natural right subject to the rights of others and to reasonable regulation under law...."

Edgerton dotted the i's: "Freedom to leave a country or a hemisphere is as much a part of liberty as freedom to leave a state."

DUE PROCESS

(5) This position the court based on the "due process" clause of the Fifth Amendment. If the right to travel is a "natural right," then no citizen can be deprived of it "without due process of law."

But what is "due process" in this field? The Bauer and Nathan cases had already established that *procedural* due process was necessary: the Passport Office had to state a reason for denying a passport and provide a hearing. But, without passing on whether or not Shachtman had had an adequate hearing, the court went further than this question—to "substantive due process," i.e., whether or not the particular reason for denial is "arbitrary."

Here again Edgerton made a sharp point: "Those who inflict a deprivation of liberty are not the final arbiters of its legality. Due process of law is a judicial question."

It was at this point, and through this issue of "substantive due process," that the court entered on its assault against the use of the subversive list.

It was at this point, also, that the court rebutted the government's claim that the Secretary of State had unlimited "discretion" as to passport application. "Discretionary power does not carry with it the right to its arbitrary exercise," said the court.

•

2
Attack on the List

Having broached the question of the subversive list, the court went on to provide a legal basis for attacking the use of the subversive list in a whole series of fields where it has expanded over recent years.

Formally—but only formally—the list is one drawn up by the attorney general, by a presidential decree first promulgated by Fair-Dealer Truman, to regulate government employment. Since then it has come into use, both by government and private employers, and by municipal and state governments as well as the federal government, as a blacklist for all kinds of unrelated purposes: harassing of draftees in the armed forces, tenants in housing projects, factory workers in private industry, licenses for any and all occupations, authors of books recommended in bibliographies printed in school textbooks, etc.

The three-man decision made clear that the validity of the list *per se* was not under discussion: "We are called upon only to consider the USE made by the Secretary [of State] of the listing." (Emphasis added.) But the court's consideration of this question also bears, or can bear, on every other use of the list for purposes wider than government employment itself.

We are passing, said the court, on "only whether the reason given by the Secretary for its denial [of Shachtman's passport] is sufficient." At the same time it asserted that, according to the record, the Secretary had relied on the attorney general's listing as grounds for passport denial.

And this was not sufficient, the court declared: this was "arbitrary," when (a) Shachtman denies correctness of the subversive label, and (b) "alleges lack of opportunity so to demonstrate, and when these allegations are not challenged by the Secretary."

The court then goes on to demand that the Passport Office must show "a sufficient basis" for refusing a passport "apart from the mere listing."

Edgerton spelled this last point out even more: The State Department "defendants cannot bring their denial of a passport into conformity with due process of law by merely ceasing to base the denial on the attorney general's list. Due process requires more than that a deprivation of liberty be not based on facts that are insufficient. It requires that a deprivation be based on facts that are sufficient and are found after a hearing."

Behind this stress is perhaps a warning to the government not to come back with the kind of case which the government attorney tried to make out at the Appeals hearing in February. At that time, in oral arguments before the three-man bench, Harold Greene, representing the Department of Justice, did indeed try to claim that the State Department had *not* merely based its action on the list.

He did this by referring to the "informal hearing" which had been given Shachtman. It was in the course of this part of his discussion that the government attorney reached the depths of fantasy that we described in our issues of March 7 and 14—including the charge that Shachtman was "subversive" because he had used a trip to Europe to "plot" with anti-Stalinist revolutionists against the Kremlin!

Be that as it may, the court had already made the point that all of this argumentation at the hearing and in the government brief was not to be considered, because the record showed that it was all thought up afterward, and that the actual passport denial was not based on this kind of material but solely on the list. However, when the government goes back to the district court, presumably the State Department will have to present some sort of "evidence" of this sort, if it is to continue to deny Shachtman a passport. The court is warning that, whatever evidence is next presented, it will have to be "sufficient" standing on its own feet and apart from the attorney general's listing. And this, of ocurse, is precisely what is impossible for the government.

LIMIT ITS USE

Going further, the court found it "worth noting in this connection" that when the attorney general lists an organization because of the government-employment consideration, there is still required "a separate judgment by the employing agency of the fitness of the individual employee who is a member of the organization" before this individual member can be fired. Here the court referred to the Kutcher case decision.

In other words, membership in a listed organization alone cannot be used for these blacklisting purposes; the government must show that Shachtman (or anyone else) personally should be refused a passport, and not merely try to make a case against the ISL.

Edgerton put the same point pithily: "The premise that a man is not fit to work for the government does not support the conclusion that he is not fit to go to Europe. The attorney general's list was prepared for screening government employees, not passport applicants."

By the same token, it is to be hoped that a future court will rule that "the premise that a man is not fit to work for the government does not support the conclusion that he is not fit to live in a federally financed housing project," etc.

•

3
The ISL's Case

The impact of the court decision on the next ISL case—to compel the attorney general to remove the ISL from the subversive list—is more indirect, but substantial.

The most interesting statement on this point contained in the decisions is that in Edgerton's document: "In other connections [than screening government employees], the list has not even any 'competency to prove the subversive character of the listed associations....'"

Of course, Edgerton, like the rest of the court, is not addressing himself to the validity of the list *per se*, and also not to the validity of the ISL's inclusion on the list, which was not before the court.

But the circumstances and issues of the case were such as to compel the court to lay stress more than once on facts which (objectively considered) gave national publicity to the unfairness of the ISL's listing. Outstanding in this regard is the widespread emphasis on the long years during which the ISL had been trying to get a hearing from the attorney general, unsuccessfully. It is no accident that virtually every editorial on the decision that we have seen made some mention of this fact. It made an impression.

Part of this emphasis in the decision was due to the fact (explained in full in our article in *LA* for March 14) that, legally, the government was in the position of admitting the *facts* in the Shachtman appeal to the higher court while it maintained that, these facts notwithstanding, the court had no power to review the bureaucracy's action. But part of these admitted *facts* was a full record of the fruitless run-around and brutal stalling with which the government had evaded its obligation to grant a hearing.

It was on this basis that the court decision carefully described the ISL (in terms of the "appellant's allegations" which "must be taken as true in the present posture of the case") as an anti-Stalinist, democratic socialist organization; and that this airing of the facts made a notable editorial impression is also clear from a survey of the press.

EXPOSE CONTRADICTION

Another thing: the attorney general's list includes the ISL under two categories, "subversive" and "Communist." As LABOR ACTION readers are aware from our textual publication of the attorney general's "Interrogatory," the attorney general labels the ISL subversive because it is anti-capitalist and anti-war and for no other reason. But how does even this witchhunting bureaucrat figure that the ISL is "Communist"?

Now it happens that in the passport case, both the State Department and Justice Department formally admitted and put down on paper the statement that the ISL has no connection with the world Communist movement as usually understood—i.e., what we call the Stalinist movement. It was in desperation that (as we quoted on March 7) the government attorney justified the appellation "Communist" by referring to a definition in Webster's which did not apply to the ISL but did apply to the apostles. But this was ignorant clowning on his part.

The Appeals Court decision caught the government up on this contradiction: "... The wording of the [State] Department's letter indicates that the listing of the League as communistic was no longer relied upon. The hearing appears to have convinced the Department that the League was hostile to the Communist International."

In this and many other ways, the passport case has done much to expose the inconsistent, hypocritical, bureaucratic and indefensible policy of the government not only with respect to passports but also with respect to the attorney general's list itself.

That's the next target.

New Cases

Sticking to its guns, while still refusing to say whether or not they will appeal the Shachtman ruling, the Passport Division on Wednesday announced that it was denying a passport under its old regulations.

This time the victim was a well-known Stalinist, Joseph Clark of the *Daily Worker*, who sought a passport to cover the coming Geneva conference for his CP organ.

The injustice and stupidity of this State Department policy is not the least affected by the fact that Clark is a Stalinist machine hack while Shachtman is an anti-Stalinist socialist. Moreover, the Clark case involves the issue of freedom of the press too.

Two days before, a federal District Court judge, in a case brought by Dr. Clark H. Foreman, director of the Emergency Civil Liberties Committee, had ordered the Passport Division to grant a quasi-judicial hearing on his passport application. This is the same order which the bureau had gotten in the Nathan case, and which it evaded by granting Nathan his passport without further ado.

young socialist CHALLENGE

July 4, 1955 | Edited and Published by the YOUNG SOCIALIST LEAGUE | FIVE CENTS

Announce YSL Summer Camp

A summer camp that will be remembered and talked about for years is the promise of the Chicago unit of the Young Socialist League, which is preparing for the 2nd Annual YSL Camp, to be held this year in Genoa City, Wisconsin, September 6-11.

The committee's major objective is to plan a camp which will air lively and interesting issues of socialist theory and at the same time promote a well-grounded basic program for the benefit of newer members and contacts of the YSL.

The tentative camp program includes: a class in three sessions by Hal Draper, editor of LABOR ACTION, which will probably be on "Three Critics of Marxism," each session discussing in detail one figure (John Dewey, Schumpeter and one other); a three-session class on general topics of socialist history and prospects for the future, led by Max Shachtman, national chairman of the Independent Socialist League; two or three class sessions by Gerry McDermott, noted socialist historian, on as yet undecided topics. The highlight of the camp educational program will be a seminar on various aspects of the labor movement, featuring a number of trade-unionists, which will take place over the weekend of September 10-11. The program will consist of several general discussions of current trade-union developments in America and abroad, and several smaller seminar discussions of specific problems concerning the role of socialists in the trade unions, and other tactical questions confronting the socialist trade-unionist.

On the recreational side, the camp site offers all the facilities that a well-equipped camp can offer—swimming, baseball, volley ball, etc. And to get back to serious matters again: a charming and well-stocked Rathskeller is centrally located on the camp ground. Plans are to hold classes in the mornings and evenings, in order that the afternoons will be left free.

The total cost per person will be quite reasonable—$5 a day for room and board, with lower rates for those staying the entire week. You can make your reservations now by filling out the application on this page, and receive in turn travel instructions and all information.

YSL — c/o Meier
5426 S. Maryland
Chicago 15, Ill.

I would like to register now for the YSL camp.
☐ $5 deposit enclosed. ☐ Please bill me for $5 deposit.
☐ I *may* attend the camp; please send me brochure.
(Make checks payable to D. Meier or Young Socialist League.)

NAME .....

ADDRESS .....

CITY ..... ZONE..... STATE.....

Registration for one ☐ *for couple* ☐

YSL FUND DRIVE

Full Report: 90% In, More Due

The Young Socialist League reached 90 per cent of its $1600 goal at the close of the 1955 Fund Drive. While disappointed that the full quota was not achieved, the YSL can feel that it did a good job in raising the $1434, in view of the fact that the goal as a whole and the individual quotas of several units were stiff ones. Given the political atmosphere in the country today, raising money for a revolutionary socialist organization is no easy task.

Actually the total that will be raised will surpass the figures listed in this final report, for money is still coming in. Two of the units which did not reach 100 per cent announced that additional sums will be forthcoming. Our friends in Pittsburgh write that they are confident of achieving their full quota even if late. The New York Fund Drive director informs us that there are outstanding pledges which will still be collected.

The highest praise should be accorded the five units which reached 100 per cent of their quotas or better. Cleveland, "At Large & N. O.," Chicago, Berkeley and Los Angeles did an outstanding job in this drive.

We wish to thank the comrades of these units as well as all YSL members and friends whose efforts and generosity enabled us to do as well as we did this year. We wish also to thank at this time all of the *Challenge* readers who contributed to the drive and whose generosity we were not in position to personally acknowledge.

WHAT'S THE SCORE ?

	Quota	*Paid*	*%*
TOTAL	$1600	$1434	89.6
Cleveland Area..	50	54.50	109
At Large & N.O.	150	154	102.7
Chicago	400	404.50	101.1
Berkeley	100	101	101
Los Angeles	100	100	100
New York	700	601	85.9
Pittsburgh	75	19	25.3
Seattle	25	0	0

Passport Case Victory

The Young Socialist League wishes to extend its heartiest congratulations to Comrade Max Shachtman and the Independent Socialist League. Their passport victory in the Court of Appeals goes far beyond any narrow legal interpretation; it marks a great success in the struggle for democracy in the United States. We also wish to restate our solidarity with Comrade Shachtman and the ISL in their fight against the attorney general's list. The passport decision should rally all socialists to the work that lies ahead, and we pledge ourselves to redouble our efforts in cooperation with the ISL on their case. Again, our heartiest congratulations on this momentous victory!

NATIONAL ACTION COMMITTEE
YOUNG SOCIALIST LEAGUE

YSL CLASS • NEW YORK

SUMMER CLASSES

Perspective on History & Revolution

TUESDAYS at 8 p.m.

July 5—MAX SHACHTMAN
The Russian Revolution—I

July 12—MAX SHACHTMAN
The Russian Revolution—II

July 19—HAL DRAPER
The European Revolution and the Comintern, 1918-1920

July 26—ABE STEIN
Germany, 1914-1924

Aug. 3—ABE STEIN
Germany, 1924-1934

Aug. 16—ANNE RUSSELL
The Spanish Revolution and Civil War

Aug. 23—GORDON HASKELL
Revolution in Asia—I

Aug. 30—GORDON HASKEL
Revolution in Asia—II

114 West 14 Street, N. Y. C.

Demand German Unity!

By MICHAEL HARRINGTON

Recent events—the Austrian Treaty, visit of Khrushchev-Bulganin to Tito, Stalinist proposals on disarmament, etc.—have made it clear that a change of considerable significance is taking place in the politics of the Cold War. The exact nature of this change, its causes and probable extent, cannot be accurately analyzed at this time. Information, especially with regard to Russia, is not at hand for such a basic kind of discussion.

But a Four-Power Conference is imminent. The question of German unity is pertinent to immediate political discussion. And it is important that we analyze the significance of this coming event, even though conclusions must be tentative.

At the very outset, one point should be clear: neither the United States nor Russia approaches the conference and the question of German unity out of any great concern for the German people. For both, German freedom is a pawn in their imperialist rivalry. If there is any possibility that the two major powers will allow even a neutralized and unified Germany, it flows from their own political self-interest.

In the case of Russia, we can only deal in fairly vague hypotheses. An internal crisis could force the Stalinists to seek a détente in the Cold War. So could a normalization of the bureaucracy's power, a desire on the part of the Stalinist ruling class to enjoy the fruits of their position after the death of a driving, arbitrary and capricious dictator. Or it could be that the Stalinists simply fear the vision of a strong, industrially powerful Western Germany integrated into NATO.

GERMAN UNITY

On the other hand, this very strength of Germany argues against the Stalinists' granting it neutrality and unity. A neutralized, unified Germany would be the strongest economic power on the Continent. It could well bring to power a Social-Democratic government which would include the East German working class with all of its accumulated anti-Stalinism and the tradition of June 1953. And such a Germany, from a Stalinist point of view, would constitute a considerable threat, economic and political as well.

In the United States, most of the factors of American self-interest go against any concessions on the German question. The goal of State Department policy for over five years has been the inclusion of West Germany into its system of European military alliances. And now that victory is in sight on this score, it will take powerful pressures to convince the American government to frustrate its own long-range program voluntarily.

If that pressure does exist, it comes primarily from nations within the American bloc. In these NATO countries, there is a growing anti-war sentiment, more often than not neutralist in political direction. During the British elections, for example, each party attempted to demonstrate that it was *the* party of negotiations. If America considers this sentiment to be so strong that it imperils NATO even more than a neutralized Germany, then the State Department could be forced to concede.

AN ATTITUDE

Yet, as is obvious from the above, we cannot deal with the forthcoming conference in any precise terms. At the present time it is only clear that both power blocs are sufficiently committed to a détente to negotiate. And that their commitment, however great it may be, is fundamentally dictated by the exigencies of their imperialist self-interest, not by concern for the German people.

What attitude should be taken, then, toward the conference itself?

First of all it must be made clear that socialists can, and should, regard the conference as imperialist—and yet, can and should hail German unity as a progressive step even if it is achieved by such a conference. If the imperialists are forced to an act which is anti-imperialist in its actual effect, we welcome that effect. And a unified Germany, even a neutralized and unified Germany, is a tremendous step forward.

But since socialists reject the imperialist basis of the decision, their attitude must not be one of waiting for crumbs from the Big Power table. Rather, it should be one of organizing mass, popular, democratic pressure from below, especially in Europe, in order to push the Big Powers toward the desired result of German unity. In Germany, for example, there has been in the past year a resurgence of militancy, particularly among the youth, on the question of German rearmament. We would hope that this activity would intensify now, in the form of a mass movement demanding the right of a unified Germany.

At the same time, it is dangerous for socialists to orient exclusively toward a Big Power Conference, even if that orientation is in the form of pressure on the governments involved. Therefore, we feel that any popular campaign on the conference should make clear the imperialist character of its deliberations, e.g., that though the German workers demand their freedom as a right, the Big Powers may grant it only in terms of their own political self-interest.

FOR MASS PRESSURE

In other words, the kind of struggle which we propose is analogous to the one made in the labor movement on economic issues. In 1954 during the recession, for example, we made demands on a Republican government, attempted to strive for mass working-class pressure to bring them about, and yet realized that eventually the fight must turn into independent labor political action. So in the case of German unity, we look toward a mass struggle as a pressure on existing governments for whatever concessions can be obtained and as the occasion for developing a real, alternative socialist program.

In realistic terms, it may well be naive to hope for such a mass, democratic pressure from European socialism today. And it would certainly be ridiculous for us to dictate manifestos to our comrades on the Continent. Nevertheless, we hope that the decrease in polarization which the present conference signals will be seized by European socialists as an opportunity for a renewed assertion of their claim to leadership in the fight for democracy.

For although the present relaxation of tension is certainly imperialistically motivated, it may well offer very real opportunities for anti-imperialist movements. Already we must say that one of the factors at work in the present situation is the growing awareness of people everywhere that World War III — the way of imperialism — is a catastrophe which must be opposed at all costs.

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