

Show Plot to Overthrow U.S.

Red Papers

Public to Get
Red Records

SON OF A GUN AND FURY



THE SEDITION TRIAL OF
COMMUNIST STEVE NELSON

By Robert Gorczyca

Three Local Red Chiefs
Indicted in Sedition

Second Raid on Communist Party
Headquarters in Pittsburgh; Originals
Of Documents Sent to House Group



In the decade following World War II, the rising military and political power of the Communist-led Soviet Union triggered a political backlash in the United States. Its proponents attempted to contain the Soviet Union abroad and eliminate Communism at home. Senator Joseph McCarthy of Wisconsin is the best known of those who pushed ethical and constitutional boundaries to weed out the “Red Menace.”¹ Pittsburgh politicians of McCarthy’s persuasion found a leader in Allegheny County Court of Common Pleas Judge Michael Musmanno, who was also a candidate for lieutenant governor. Using his position of prominence on the court and as an endorsed candidate of the Democratic Party, Musmanno orchestrated an anti-Communist campaign that had as its centerpiece the arrest, trial, and conviction of local Communist Party leader Steve Nelson on charges of sedition. The campaign was waged with such zeal that some historians view Pittsburgh as “the violent epicenter of the anti-Communist eruption in post-WWII America.”² The trial was covered in books by both Nelson and Musmanno, but transcripts quoted here allow us to see the words of all the major players together, and to delineate the course of the defense and the prosecution.³

Nelson and Musmanno traveled different paths to their meeting place in the Allegheny County courtroom of Judge Harry Montgomery in 1950. Both came from humble origins and viewed themselves as champions of the working person, but they were at opposite ends of the political spectrum. Musmanno, whose father worked as a coal miner, trained as a lawyer in his youth and embraced conservative values as he matured—his writings indicate that his anti-Communist sentiment stemmed from his sympathies for Fascist Italy, where he studied law as a young man. He gained respect and political support in the community, particularly from organized labor, veterans’ groups, Catholics, and Italian Americans by engaging in a number of positive social actions. These included service as an infantryman in WWI, on the legal staff defending Sacco and Vanzetti (Italian anarchists accused and later convicted of murder), as a member of the state legislature to eliminate the Coal and Iron Police (private police forces used to break strikes and suppress union activity, particularly in the Pennsylvania coal fields), as a naval officer in WWII, on a panel overseeing the repatriation of Soviet refugees after the war, and as a judge at the Nuremberg Trials.⁴

Nelson was born Stjepan Mesaros in Croatia, where he and his family lived in a semi-feudal society dominated by wealthy landowners and the oppressive bureaucracy of the pre-WWI Austro-Hungarian Empire. After the war, his family emigrated to the United States and settled in Philadelphia, where young Nelson embraced the Communist doctrine while working as a manual laborer. By the time of his Pittsburgh trial, long years of service in the Communist Party had inured him to the treatment that early 20th-century America could inflict upon political radicals. As a foot soldier for the Party, he organized unions in East Pittsburgh,



**Moscow Letter
Undelivered Here**

Judge Musmanno and Matt Cvetec read a letter from Moscow delivered to the Pittsburgh Communist Party headquarters, September 1, 1950. *Pittsburgh Post-Gazette.*

on Pittsburgh's North Side, in the coalfields of southern Illinois, in the anthracite coal districts of Pennsylvania, and in the San Francisco Bay area. On several occasions his organizing efforts were met with harassment, beatings, arrests, and imprisonment. In 1948, when Nelson arrived in Pittsburgh, he stood as a seasoned and respected member of the Party's national board who had studied in the Soviet Union, acted as a courier for Moscow, and fought against Franco's Fascist forces in the Spanish Civil War.⁵ He knew Pittsburgh's reputation as an anti-labor, anti-radical town, and had no delusions about the difficulty of his assigned task, which was to expand the membership and influence of the Party in Western Pennsylvania.

But even such a veteran organizer as Nelson must have been unprepared for Pittsburgh's hostile environment. *The Pittsburgh Press* marked Nelson's arrival in the city with editorial greetings that labeled him "the inspector general for the Soviet underground."⁶ Members of various fraternal organizations disrupted Party meetings, while local and federal law enforcement agencies harassed individual party members, particularly immigrants who received threats of deportation by the

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Judge Musmanno (center) and Matt Cvetcic (right) with seized Communist literature.

NEWS from THE DEMOCRATIC STATE COMMITTEE OF PENNSYLVANIA

MAURICE SPLAIN, JR., Chairman
27 S. THIRD STREET, HARRISBURG, PA.

JOHN SULLIVAN, Publicity Director
HARRISBURG 6-7948

FRANCIS J.
MYERS
for U. S. Senator

RICHARDSON
DILWORTH
for Governor

MICHAEL A.
MUSMANNO
for Lieutenant Governor

FRANK W.
RUTH
for Sec. Internal Affairs

MICHAEL J.
EAGEN
for Supreme Court

ROY I.
CARSON
for Superior Court

FOR RELEASE THURSDAY AUGUST 31, 1950

Milroy, Aug. 30. Judge Michael A. Musmanno, Democratic candidate for Lieutenant Governor, declared here today that the House anti-red bill passed Tuesday was "not good enough."

He urged deportation of all alien Communists and imprisonment of all who were native-born. Judge Musmanno said:

"The Communist Control bill passed by the House is good but not good enough. Requiring Communists to register is like requiring burglars to register.

"The active Communists in the United States are engaged at the present moment in robbing from the United States. They are breaking into the safe of Americans most priceless treasure, seeking to steal away our liberty, free enterprise, and the American way of life.

"Many Communists are seeking to steal the secrets of our most advanced atomic research. If Russia ever drops the atomic bomb into our midst that bomb will have been made from formula stolen by Communists in America. And all we do is politely ask them to tell us who they are.

"We already know who they are. What we should do is to restrain these traitors and not wait until they have actually betrayed our Country into the hands of the ghastly, Godless Communist forces pledged to destroy our form of life.

"I have said before and will continue to repeat that what we should do is to outlaw the Communist Party, ship to Russia all alien members thereof, and imprison those who are American born, but who are engaged in attempts to destroy our institutions of which they are unworthy."

U.S. 11/11/50

Immigration and Naturalization Service.⁷ Around this same time, a newly-formed organization called Americans Battling Communism (ABC) petitioned the State legislature to outlaw the Communist Party and imprison its leaders. (Musmanno and trial judge Montgomery were both associated with this group.) The Party was thrown into disarray when more than 100 of its members, along with some family members and sympathizers, were dismissed from their jobs after Pittsburgh newspapers revealed their names in March 1950. Nelson commented on the devastating impact these tactics had on the local organization:

[They] persuaded many people to pack it in and get out of town.... And as they left and others stopped coming to meetings, we were left to try to keep

Musmanno Says Red Papers Show Plot to Overthrow U.S.



Judge Musmanno, second from right, supervises as literature is removed from the Pittsburgh office of the Communist Party, October 3, 1950. *McKeesport Daily News*.

things together, but it became more and more difficult.⁸

It was an era where the government prosecuted Communist leaders, and where hearings led by Senator McCarthy questioned the patriotism of many prominent artists, musicians, actors, and actresses, blacklisting them because of their affiliation with the Communist party, sometimes without any evidence. In Pittsburgh, a teacher, a symphony musician, and many others lost their jobs because of real or imagined associations with the Party. Some were refused credit in local stores, dismissed from unions, or denied welfare checks. Communist Party members were physically attacked at a North Side meeting by members of ABC.⁹

Judge Musmanno played a key role in this campaign against the Communist Party. Using his high profile as a county judge and candidate for Pennsylvania Attorney General, he helped organize ABC into a coalition of labor, veterans, and religious groups that held counter-demonstrations at Party rallies and

meetings. With the support of ABC he launched a series of direct assaults on Communist Party members as well. The first took place on March 7, 1950, when, in his capacity as a judge on the Court of Common Pleas, he barred Communist Party member Alice Roth from a seat on the Allegheny County Grand Jury.¹⁰ A short time later, Musmanno chastised Communist Party official Andy Onda when he came to court for an order to release his automobile impounded because it carried Communist Party literature.¹¹ In a press release issued prior to his popular weekly radio program, Musmanno bragged about these actions and condemned the Communist presence in the U.S.:

The local jurist declared, even after he was rebuked by the Supreme Court that he would repeat such action if the occasion demanded.... "These men are enemies of the United States," Musmanno said, "and it is unjust that they should be free to spread their poison while our boys in Korea are dying for the ideals that these Communists are attacking."

Musmanno vowed to introduce legislation that would deport alien Communist Party members and imprison those who were citizens.¹² It is likely that the notoriety gained from such actions helped Musmanno win the Democratic Party's endorsement for lieutenant governor and gave him statewide publicity, a critical factor in his victory in the May 1950 Democratic primary.¹³

Impatient with what he saw as the federal government's failure to take action against local Communists, Musmanno took matters into his own hands.¹⁴ Focusing on the Party's leadership, he filed state sedition charges against Steve Nelson and two of his associates, Andy Onda and Jim Dolsen—all of whom were arrested on August 31, 1950. Their indictment listed 12 charges accusing them of providing printed materials to members of the public with the intent of instigating acts of violence against the government of Pennsylvania. It also listed books and pamphlets confiscated at Communist Party headquarters by Judge Musmanno in which, it was alleged, there were specific passages designed to promote violence against the state.¹⁵ Musmanno maintained that his actions against Nelson were taken as a private citizen, not as an officer of the court, but his actions did receive local and national publicity because of his legislative position. In fact, on October 16, 1950, *Newsweek* carried a story about Musmanno's raids on the Communist Party office on Grant Street in Pittsburgh. It quoted the judge as stating that the evidence collected there proved "the Communist Party is an arm of the Soviet government."

Arraignment of the three men took place in October, and all were held for trial on January 8, 1951. John T. McTernan, a left-wing attorney from California, handled their defense. Attorney Loran Lewis represented Allegheny County.¹⁶ In May, with the trial still

Communist Leaders Jailed

in progress, Nelson sustained a severe leg injury in an automobile accident while in Philadelphia. When an investigation by officers of the court determined that Nelson could not return to Pittsburgh, he was dropped from the trial, and provisions were made to begin anew after his recuperation.¹⁷

A number of important developments took place during Nelson's nine-month period of recovery. First, officials indicted him for violation of the Smith Act, a federal law that made it a criminal offense to advocate the desirability or propriety of overthrowing the government of the United States. Second, on August 30, 1951, his fellow defendants in the trial, Onda and Dolsen, were found guilty and sentenced to 20-year prison terms. Third, Judge Musmanno, who lost his bid to become lieutenant governor of Pennsylvania, initiated a campaign to win a seat on the Pennsylvania Supreme Court. As part of this effort, Musmanno made a widely publicized trip to New York and Philadelphia where he visited Communist Party offices, overtly seeking seditious material in much the same way he had done in Pittsburgh. He also garnered public recognition by testifying for 31 days in the Onda-Dolsen trial as a main prosecution witness, and by holding radical attorney Hymen Schlesinger in contempt when he refused to answer questions about his political beliefs. Musmanno did win a seat on the Pennsylvania Supreme Court in November 1951, and early the next year he testified at Nelson's trial as a Supreme Court justice-elect.¹⁸



STEVE NELSON
He's top Red here.



ANDREW ONDA
He eyes the steel industry.



JAMES H. DOLSEN
He writes for Daily Worker

Pittsburgh Post-Gazette, September 1, 1950.

Nelson, on the other hand, was left in the unenviable position of going to trial in a city where the increasing fear of Communism jeopardized his family's safety and undermined the integrity of his trial. A relative of a soldier killed in Korea even made an attempt on Nelson's life just before the trial. The inflammatory nature of the city's anti-Communist campaign can be seen in this excerpt from a Musmanno press release dated August 31, 1950:

Many Communists are seeking to steal the secrets of our most advanced atomic research. If Russia ever drops the atomic bomb into our midst that bomb will have been made from the formula stolen by the Communists in America.... What we should do is restrain these traitors and not wait until they have actually betrayed our Country into the hands of the

ghastly, Godless Communist forces pledged to destroy our form of life.¹⁹

On another occasion an unknown assailant shot a bullet through the Nelsons' Hill District home. His children were harassed at school, and his son was denied membership in the Boy Scouts.²⁰ Later, local newspapers made no attempt to provide objective coverage of the Communist leader's trial: articles

referred to Nelson as the "Commie Boss" or the "Red Boss," conjuring a thuggish image. Headlines, such as one announcing Pittsburgh as the "No. 1 Sabotage Target for Reds," did nothing to allay the public's growing fears.²¹ Objectivity also suffered when Matt Cvetic, an FBI informant and one of the prosecution's main witnesses,²² testified that Nelson had plotted "the ultimate liquidation of one third of the population of the United States."²³ During the trials, Cvetic's story came before the public on the radio, in magazines, and (amazingly) in a Warner Brothers film,

Courts of Oyer and Terminer and Quarter Sessions of Allegheny County, Pennsylvania NOTICE TO A WITNESS

TO M.A. Musmanno
COMMONWEALTH OF PENNSYLVANIA
against
Steve Nelson

You have been subpoenaed as a witness in the above entitled case, and you are required to appear in the **GRAND JURY ROOM, Third Floor of the Court House, Pittsburgh**, on the 17 day of October, 1950, at o'clock A.M., P.M. You must report promptly and make your presence known to the clerk in charge, **AND REMAIN IN THE ROOM** until excused or discharged. Failure to attend will be adjudged Contempt and an order will be issued for your arrest, and you will be subject to fine and imprisonment, at the discretion of the Court.

I Was a Communist for the FBI, which depicted Nelson as a murderer and Cvetic as a courageous patriot who sacrificed his and his family's well being acting as an undercover agent. Pittsburgh Mayor David Lawrence personally greeted Cvetic, and the city honored him with a parade for the film's Pittsburgh premier on August 17, 1951.²⁴

Few attorneys stepped forward to defend Nelson in such a political atmosphere. He requested a delay until proper representation

could be found, but unwilling to postpone the trial, Judge Montgomery supplied Nelson with a list of possible candidates. Of these, Nelson deemed several incompetent, and those who were capable refused to serve when Judge Montgomery denied them adequate preparation time. Thus, Nelson acted as his own attorney throughout the trial, which began jury selection on December 19, 1951.²⁵

To accelerate the process, Montgomery limited Nelson's examination of the jurors to

10 written questions. Of course, Nelson was particularly concerned about identifying and dismissing those who might be troubled by his Communist Party membership or by the Party's opposition to the Korean War, a war which Communists maintained was waged by the United States to stifle the struggle of the Korean and other Asian people for independence from Western imperialism. Yet, unable to question the panel members directly, Nelson saw the jury seated in a few

FORM 21 CLERK OF COURTS

762-3-4 Oct 1950

WITNESSES

Allegheny County, ss.

The Commonwealth of Pennsylvania:

Copy
To Hon Michael Mussmanno

GREETING: We command you, that, laying aside all business and excuses whatsoever, you and each of you be and appear in your proper person before our Judges, at Pittsburgh, at our Court of Oyer and Terminer and Quarter Sessions, there to be held for the county aforesaid forthwith, to testify.

Tuesday Jan. 2, 1951 at 9:00 A.M.
all and singular those things which you shall know in a certain indictment for

Sedition (3)

in our said Court depending, and then and there to be tried between the Commonwealth and

Commonwealth *James Dolan, Andy Ondak & Steve Nelson Alias.*
Defendant, on part of the
And herein fail not, under the penalty of one hundred pounds.

Witness, the Hon.

HENRY X. O'BRIEN

Court, at Pittsburgh, the

21 day of Dec

President of our said

one thousand nine hundred *50*

in the year of our Lord,

Attest:

John J. McLean.
Clerk



This subpoena must be personally served on each witness residing in Allegheny County. It cannot be served by telephone or mail.

The District Attorney will direct the method of service on witnesses residing outside of the County. If personally served by the Officer the trip for making service must be approved by the District Attorney on Subpoena Service Certificate.

Return of this subpoena must be made to District Attorney's clerk in Grand Jury witness room on date set forth for appearance.

If not served in accordance with above instructions no costs will be allowed the officer.

Vol. 47, No. 37 In Two Sections Section One ***** FIVE CENTS THURSDAY, SEPTEMBER 7, 1950

Nelson Bail \$100,000



Steve Nelson after his arrest on sedition charges, September 7, 1950. *Pittsburgh Sun-Telegraph*.

hours. In keeping with the media blitz surrounding the trial, the names of the jurors—four women, eight men, and two alternates, a man and a woman—were published in *The Pittsburgh Press* on December 19, 1951.

Assistant District Attorney William Cercone, Judge Musmanno's nephew, opened the prosecution's case by characterizing Nelson as a resourceful and arrogant leader whose activities threatened the foundation of the American way of life. He assured the jurors that criticism of the government, no matter how caustic and severe, was permissible if expressed in the true American way, but the Pennsylvania Sedition law prohibited criticism that "held up the American government and the American people to hatred and contempt" and advocated "the overthrow of this government by force and violence." Cercone sought to show that Nelson had crossed the line—broken the law—by distributing literature designed to incite violent revolution and by preparing to implement violent revolution with a lifetime of spying and espionage, training and practice. He based his proof on the testimony of five main witnesses. These witnesses were Judge Musmanno, who provided facts about the revolutionary nature of the literature acquired at the Party's office, and four ex-Communists who had served with Nelson over a long span of years.²⁶

Nelson raised many objections during Cercone's opening remarks and created such confusion that Judge Montgomery gave this warning:

Mr. Nelson I told that you may make any objection that you want to make at the conclusion of the remarks. And if you don't obey the order of this court, I will have to take other action concerning it. Now be seated.²⁷

One objection focused on Cercone's claim that he would show that Nelson had passed atomic weapons secrets to Soviet agents. Nelson commented that if there were

any truth to the accusation, the FBI would have arrested him long before the trial. He continued in this manner, implying that the trial was engineered to further the political careers of Musmanno and his nephew, William Cercone:

Your Honor, is this court going to permit these kinds of prejudicial remarks to be made ... I must ask? I don't know what to do your honor.... He [Cercone] has a political stake in this. He wants to be another judge here. [In the Allegheny County Court system.]²⁸

The prosecution's²⁹ first witness, Judge Musmanno, focused his lengthy testimony on the violent features of Marxist doctrine, highlighting its call for a class struggle that culminated in violent revolution—this based on excerpts from hundreds of books, pamphlets, and newspapers that were introduced as evidence. Nelson again voiced objections, insisting that a trial judging what a person read violated the First Amendment. He was overruled.

During cross-examination, Nelson sought to depict Musmanno as having run amok in his zeal to win state political office. He attempted to discredit the judge by pointing out, as he did in the following exchange regarding grand juror Alice Roth, that the Pennsylvania Supreme Court deemed many of his anti-Communist actions unconstitutional:

Nelson: It is true, is it not Mr. Musmanno, that the Supreme Court ruled that you were wrong in the manner in which you denied this lady her constitutional rights?

Musmanno: The Supreme Court reversed my decision, and that happens in other instances....

Nelson: All right, you have answered the question.

Musmanno: I have been reversed in other instances. I don't think there is a judge in the Commonwealth of Pennsylvania....

Nelson: All right. You have answered the question.

Musmanno: I don't think there is a judge in the Commonwealth of Pennsylvania that at some time has not been reversed by the Supreme Court, begging the pardon of the presiding judge in this case.

Nelson: May I appeal to the court that this witness not have any more right than I?

The Court: You have asked the question, and he is justified in stating his explanation.³⁰

Nelson also tried to discredit the proceedings by questioning Musmanno about his role in appointing Judge Montgomery to hear the case. Nelson maintained that, as administrative judge for the Court of Common Pleas, Musmanno had handpicked a fellow ABC member who would ensure conviction. Musmanno flatly denied the charge.

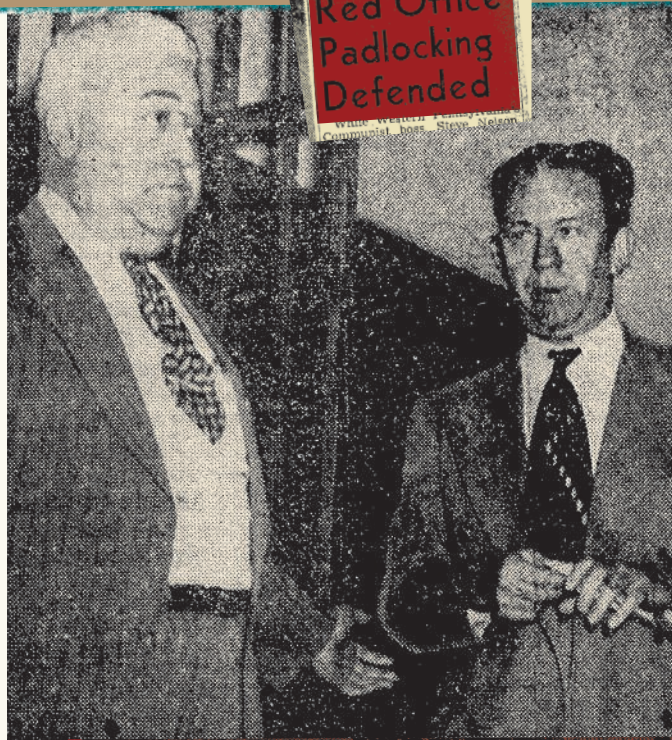
The four remaining prosecution witnesses gave testimony that associated Nelson with secretly planning acts of sabotage. Matt Cvetic described Nelson's efforts to infiltrate the steel industry. He commented on Nelson's use of the term "enemy" when referring to the United States, and the Communist leader's joy upon hearing that the Soviet Union had exploded its first atomic bomb.³¹

Ex-communist Paul Crouch added that, while teaching in Oakland, California, Nelson prepared students to bring about the military defeat of the United States. He also stated that Nelson attended a series of meetings during which plans for promoting labor strikes throughout the United States were discussed.³² The two remaining prosecution witnesses, Charles White and Leonard



Titled "The Judicial Bull," this political cartoon by Hungerford ran in the *Pittsburgh Post-Gazette* on June 6, 1950.

Red Office Padlocking Defended



'SPRUNG' . . . Steve Nelson, Western Pennsylvania's top Communist, leaves a jail cell escorted by Deputy Sheriff Edward Boyle (left). State Supreme Court ordered Nelson's bail cut from \$50,000 to \$10,000. Ben Careathers, party treasurer, put up the bail.

Pittsburgh Sun-Telegraph, September 29, 1950.

Patterson, told of attending the Lenin School in Moscow with Nelson. White testified that they received training in the use of weapons and the techniques of sabotage, and that Pittsburgh was a prime target for Soviet espionage. Patterson added that after he left Moscow, Nelson remained behind for special espionage training.³³

During cross-examination, Nelson elicited testimony from the ex-Communists, who were paid for their testimony, designed to mark them as mercenaries who would say anything for a price. He used such terms as "Mr. Stool Pigeon," and "strike-breaker" to characterize Crouch, and pointed out that since he had been dismissed from the Party for excessive drinking, Crouch's testimony might be tainted by an effort to get revenge.³⁴ Nelson, however, focused much of his effort on Cvetic. When Cvetic admitted that he had made public the names of a number of Pittsburgh Communists who lost their jobs, Nelson—

keeping with the inflated tone of the trial—asked if he was "paid by the head" for his work. He also referred to Cvetic's income from media appearances as "blood money."³⁵ In addition, Nelson maintained that much of Crouch, Patterson, and White's testimony dealt with events that took place 20 years prior to the trial and should be ignored because the events were

outside the scope of the s e d i t i o n indictment.

violence to achieve its ends. He also indicated that he would show that he had dedicated his life to improving the lot of America's working class in a non-violent manner.

Nelson called only three witnesses, the first Herbert Aptheker, a Columbia University Ph.D., who was an author for and editor of *Masses and Mainstream*, a radical cultural magazine. Under Nelson's direction, Aptheker attempted to reshape the jury's understanding of Musmanno's testimony by demonstrating the difference between the radical bravado of Party literature and its practical efforts to achieve objectives by peaceful means.³⁷ The next witness, Herman Sayer, an employee of Carnegie Library, supported Aptheker's conclusions by reporting that all of the works cited by Judge Musmanno were screened by a special library committee, deemed harmless, and placed on the shelves of the library for the use of any citizen.³⁸ Nelson's next witness was Ben Careathers, a veteran Communist from the Pittsburgh area. Using various Communist pamphlets, he outlined Party efforts to improve the lot of working men and women by using established political and organizational methods. He testified that Nelson had never advocated overthrowing the government. Careathers, an African American, sought to establish the progressive, humanitarian credentials of the Party by relating its efforts to win social and political justice for Blacks in Pittsburgh.³⁹

Nelson's rambling summation runs more than 200 pages. It includes discourses on elements of history, economics, politics, and Marxist theory that had bearing on the case. The summary also reviewed what he labeled as the prosecution's biased and conspiratorial methods, its prejudicial statements, and its failure to isolate the jury from the corrupted atmosphere surrounding the trial—all issues that Nelson pointed to as grounds for an appeal. Nelson returned to his thought-control theme, telling the jurors that

Nelson opened his defense with the contention that the freedom to think and to read what one wished was at stake in his trial. He told the jurors that no country in the world except Nazi Germany, Imperialist Japan, and Fascist countries like Italy and Spain had banned the books that were being used as evidence against him. He added that his trial was the first time in the history of the country that jurors were asked to decide what "you learnt or what you believed in as a result of reading those books." He continued stating:

So, ladies and gentlemen, I am going to show that this is a "thought control" trial ... that the people in the future will be ashamed to look down if this stigma or this type of thing continues.³⁶

Nelson promised the jury that he would demonstrate that the prosecution's witnesses had exaggerated both the violent aspects of Communist theory and the Party's desire to use

a guilty verdict would lead to witch hunting and the burning of books. He warned:

Next thing they are going to do is follow a system of card filing. "Let me know when that book comes out so we can send somebody to follow him, see where he lives." That's a hysteria, a witch-hunt that this country should not allow.⁴⁰

Nelson tried to convince the jurors that he was a working person, one of them, and that Socialism would create a better world by insuring that the profits monopolized by a few would one day be shared by all. Nelson explained that to advocate such change had always been permitted in the United States, but, he continued:

Now they want to shut that off; they want to shut the idea off that change is inevitable, that we can establish the brotherhood of man on earth—they want to stop that. That's the horrible thing that they bring to you and they say is socialism. I say that is different. It's the thing that is coming and no force on earth can stop it—no force on earth can stop it.⁴¹

He went on to stress the non-violent nature of the Communist Party program, telling the jury, "The Communist Party is a working class party that won 'by force of logic, not by infiltration or being spies or saboteurs.'"⁴² He explained that many Party members kept their memberships secret in fear of reprisals from their employers. Nelson reminded the jurors that most of the prosecution's case was based on events that "if they happened at all" were no longer viable under provisions of the statute of limitations. Nelson made a plea for fairness, asking the jurors not to be intimidated by the presence of a 13th juror. This juror, he said, was "bigotry, bias, prejudice—the boss for whom you work who may breathe down your neck."⁴³

He closed by reminding the jurors that his life and the life of his family lay in their hands and that, "the bigger issue even than my life itself is the Bill of Rights and American Democracy, the right to think, the right to read what you want, the right to speak."⁴⁴

Cercione's lengthy summation reviewed in great detail the testimony of each witness. He stressed that freedom of speech was not absolute, relating the commonly used example that "A person can't yell fire with impunity in a crowded theater." He continued explaining that the government has a right to protect itself and asked the jury, "Shouldn't we guarantee the safety of the government?" In response to Nelson's claim that Communist literature was harmless because it could be found in any library, Cercione stated:

A man on trial for using a pistol can't say [as a defense] you can buy one in any hardware store.⁴⁵

Cercione pointed out that the law made no prohibition on reading books, but it was the purpose for which the books were used that made them dangerous. Although not stated, the implication was clear: the books in question were just as much a weapon and just as much a threat to public safety and the integrity of the government as a gun or a bomb.⁴⁶

Judge Montgomery's charge to the jury gave Nelson little hope for acquittal. The judge echoed Cercione's admonition that the government had the right to protect itself against violent revolution. Reform by peaceful means, Montgomery told the jurors, was an inalienable right, but he maintained, such reform "must be done in a peaceful way." He advised the jury that it was their task to determine if Nelson meant to "work outside the existing constitutional machinery" and use criminal acts to bring about change. Changing the government by violent means, he said, was not reform—it was capturing or overthrowing the government. Montgomery also advised the jurors that an oversight had allowed a convicted felon, Ben Careathers, to testify. Since it was too late to strike his testimony from the record, the judge advised the jurors to weigh the testimony of this "convicted perjurer" very carefully.⁴⁷

The jury deliberated for two days, giving Nelson hope that he might be acquitted. His

optimism was misplaced, however, for the jury pronounced him guilty on all counts January 31, 1952. Nelson remained free while an appeal for a new trial went before the Pennsylvania Superior Court, based upon the motions raised before and during his trial. He found no solace in the court's decision, handed down on June 26. It denied all of Nelson's motions for a new trial, concluding that the Smith Act (a federal sedition law) did not place him in double jeopardy; that prohibiting the distribution of printed materials advocating acts of violence against the government did not deny free speech; that Judge Montgomery's membership in ABC did not prejudice his treatment of the defendant; that the Court's denial of a change of venue was reasonable; and that prejudicial statements made against the defendant were provoked by the defendant and, therefore, not grounds for a new trial.⁴⁸

Since this decision temporarily cleared all questions related to Nelson's guilt, he was taken to the Allegheny County Workhouse to serve his sentence, much of it in solitary and special confinement. However, provisions were made for an appeal before the Pennsylvania Supreme Court, which overturned Nelson's conviction, finding that federal authority superseded that of the state's in matters of sedition.⁴⁹ The Pennsylvania Court's decision was appealed to the United States Supreme Court. While the appeal was under consideration, Nelson was released from prison in the spring of 1953 to stand trial in federal court for violation of the Smith Act. He was found guilty and given a five-year sentence, but he was released on bail while the decision was appealed. At this point Nelson commented that, "we entered a sustained period of legal limbo while the higher courts took up the Sedition and the Smith Act cases."⁵⁰

As Nelson's legal entanglements dragged on, the culture around him was changing. The United States was heading into a new liberally

active period that would address civil rights, women's rights, love-ins, and peace. Senator McCarthy was censored in 1954 for his inaccurate and heightened accusations against suspected Communists. In April 1956, the United States Supreme Court, gaining power under progressive Chief Justice Earl Warren, threw out Nelson's conviction under the Smith Act when the government admitted that the key witness in the case, Joseph Mazzei, a Pittsburgher, was not a reliable witness, having perjured himself in several different trials. The Court had earlier in the year overruled Nelson's conviction for violation of Pennsylvania's sedition law on the grounds that the federal government had jurisdiction in such matters. Thus, the use of perjured testimony by the federal government and Musmanno's plan to imprison Nelson for a sustained period of time had failed.

In his biography, *Steve Nelson, American Radical*, Nelson called his ordeal a six-year roller coaster ride that constituted the toughest years of his and his family's life. Nelson moved with his family to New York City in 1957. After a long political struggle for reform, he resigned from the Party, disillusioned by Stalin's atrocities and the failure of the Party to liberalize its program by detaching itself from Soviet influence and entering the mainstream of American political activity. Nelson believed that the relative prosperity and freedom of American workers made radical political action irrelevant and unnecessary here. He maintained that conditions in the United States required the Party to use more conventional political tactics, and he confessed that the Party had failed to take into account "our lack of roots in American soil" and the "importance of American Democracy."⁵¹ Nelson worked in New York City as a stage carpenter for a number of years and lived in retirement on Cape Cod until his death in 1993. Despite resigning from the Party, he never gave up hope that

Communism's promise of economic and social justice, and "the brotherhood of man" would some day be fulfilled.

It is true that Nelson prevailed, but his victory was personal and narrow, based on legal technicalities instead of principles associated with free speech or free political association. But in a 1957 case, *Yates v. United States*, the Supreme Court ruled unconstitutional the Smith Act convictions of numerous party leaders, drawing a distinction between advocacy of an idea for incitement as opposed to the teaching of an idea as a concept, a distinction that Nelson attempted to make during his Pittsburgh sedition trial. Despite these victories, the attack on American Communists had achieved its objective: the Party lay discredited and silenced, its members social and political outcasts. Few had the courage to challenge the phalanx of repressive agencies and measures that had stifled dissent. One who did—James B. Drew, Chief Justice of the Pennsylvania Supreme Court—characterized much that was done in the fight against Communism when he wrote these words in a ruling that overturned Judge Musmanno's contempt citation against Hymen Schlesinger, a Pittsburgh attorney who advised Nelson during his trial and defended a number of Communists:

What the judge has done in his zeal against Communism is to employ the detestable method employed by the Communists themselves in arbitrary and unjudicial proceedings contrary to all our cherished traditions of law and legal procedure.⁵²

There were varied consequences for those who led Pittsburgh's anti-Communist movement and sought Steve Nelson's conviction. Prosecution witnesses Paul Crouch and Matt Cvetic fell out of favor with the FBI and the INS after providing conflicting and unreliable testimony in a number of cases. Cvetic's final days were troubled by alcoholism and psychological

problems.⁵³ All the other major players in the Nelson drama prospered. Musmanno, Montgomery, Cercone, Lewis, and a number of others on the periphery of the proceedings easily won seats on Allegheny County or Pennsylvania State courts. Their decisions influenced the life of the community for many years after the sound and fury they created around Steve Nelson's sedition trial were forgotten.⁵⁴



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¹ Fear of the rising power of the Soviet Union and Communism was generated by three major shocks to the American sense of well-being in the years following WWII. The first was the defeat of Chinese Nationalist forces by Communist armies led by Mao Tse-tung, the so-called Loss of China in late 1949. The second, also coming in late 1949, was the Soviet Union's development of an atomic bomb, this breaking the nuclear monopoly held by the U.S. since 1945. The third came in June 1950 with the invasion of South Korea by Communist forces from the North led by Kim Il-sung. The Korean invasion was seen as a thinly veiled move by the Soviet Union to expand its influence in Asia. The fear was heightened when a number of U.S. citizens were charged with passing atomic secrets to the Soviet Union. Many politicians, particularly Republicans, capitalized on and exacerbated this fear, charging their opponents with being "soft on communism."

² David Caute, *The Great Fear: The Anti-Communist Purge under Truman and Eisenhower* (New York: Simon & Schuster, 1978), 216.

³ Steve Nelson, James R. Barrett, Rob Ruck, *Steve Nelson, American Radical*, (Pittsburgh: University of Pittsburgh Press, 1981), and Musmanno, Michael A., *Across the Street from the Courthouse* (Philadelphia: Dorrance, 1954).

⁴ Charles Moritz, ed., *Current Biography Yearbook*, 1967 (New York: H.W. Wilson Company, 1967), 309-312. Sources cited are the *New York Herald Tribune*, *The New York Times*, *American Catholic Who's Who*, *Directory of Judges*, Musmanno's book, *VERDICT*, and *Who's Who in America*.

⁵ General info from Nelson, Barrett, Ruck.

⁶ Quoted in Nelson, Barrett, Ruck, 319.

⁷ *Pittsburgh Sun-Telegraph*, April 3, 1949. The organizations were identified as the American Legion, the Disabled Veterans, the Am Vets, the Catholic War Veterans, and members of the United Electrical Workers Local 601. Also see Nelson, Barrett, Ruck, 326.

⁸ *Ibid.*, 315.

⁹ Cauter, *The Great Fear*, 217. To paraphrase, after the *Post-Gazette* listed the names of Pittsburgh communists in March 1950, more than a hundred workers including lawyers, teachers, social workers, and musicians lost their jobs because of their political beliefs.

¹⁰ *Pittsburgh Post Gazette*, March 22, 1950.

¹¹ March 15, Musmanno file, Duquesne University Archives. Hereafter referred to as Musmanno File. Newspaper not identified.

¹² *Ibid.*, Press release dated July 1950.

¹³ *Pittsburgh Sun-Telegraph*, March 4, 1950. Pittsburgh's top Democrats were not happy with Musmanno's candidacy for Lieutenant Governor but were fearful of alienating organized labor if they did not support him.

¹⁴ Federal authorities delayed action while the Smith Act's constitutionality was being argued before the U.S. Supreme Court.

¹⁵ Indictment in the case of *Commonwealth of Pennsylvania v. Steve Nelson*, Musmanno File.

¹⁶ Loran Lewis acted as the prosecuting attorney for this trial.

¹⁷ Nelson, Barrett, Ruck, 322-323.

¹⁸ An examination of the Musmanno clipping file reveals wide media coverage of these matters.

¹⁹ Press release from the Democratic State Committee, August 31, 1950. Musmanno file.

²⁰ Nelson, Barrett, Ruck, 326-328.

²¹ *The Pittsburgh Press*, Jan. 6-8, 30-31, 1952.

²² Cvetic referred to himself as an "undercover agent" as did the local newspapers. This title angered J. Edgar Hoover, who referred to Cvetic as a "confidential informant." Daniel J. Laeb, "Anti-Communism. The FBI, and Matt Cvetic: 'The Ups and Downs of a Professional Informer,'" *The Pennsylvania Magazine of History and Biography*, Vol. CXV, No. 4 (October, 1991), 539.

²³ *The Pittsburgh Press*, January 9, 1952.

²⁴ Jeffery Zaslow, "When the Red Scare Hit Pittsburgh," *Pittsburgh Magazine*, March 1980, 66.

²⁵ Nelson did get help from several attorneys. Musmanno and others argued the Nelson wanted to act as his own attorney in order to use his inexperience as a means to slow and confuse the trial and to use it as a platform for Party propaganda.

²⁶ *Commonwealth of Pennsylvania v. Nelson*, Musmanno File, S-6.

²⁷ *Ibid.*, 455.

²⁸ *Ibid.*, 467.

²⁹ Cercione deferred to Loran Lewis for the questioning of Judge Musmanno. Lewis was the prosecutor who convicted Onda and Dolsen in the first sedition trial. Subsequently, he won a seat on the Allegheny County Court of Common Pleas and questioned Musmanno as judge elect of that court. This was done to avoid any appearance of collusion between Musmanno and his nephew, Cercione.

³⁰ *Ibid.*, 912-913.

³¹ Nelson, Barrett, Ruck, 333-334.

³² Nelson, Barrett, Ruck, 332; *The Pittsburgh Press*, January 7-8, 1952.

³³ *The Pittsburgh Press*, January 8, 1952.

³⁴ Nelson, Barrett, Ruck, 332, 333.

³⁵ *The Pittsburgh Press*, January 9, 1952.

³⁶ Transcript, 1789-1790.

³⁷ Nelson, Barrett, Ruck, 335-336.

³⁸ *The Pittsburgh Press*, January 22, 1952.

³⁹ Nelson, Barrett, Ruck, 336-337.

⁴⁰ *Commonwealth of Pennsylvania v. Nelson*, 2442, Musmanno File.

⁴¹ *Ibid.*, 2439.

⁴² *The Pittsburgh Press*, January 18, 1952.

⁴³ *Ibid.*, January 28, 1952.

⁴⁴ Steve Nelson, *The 13th Juror: The Inside Story of My Trial* (New York: Masses and Mainstream Publications, 1955), 249.

⁴⁵ *The Pittsburgh Press*, January 29, 1952.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*, January 30, 1952.

⁴⁸ *Commonwealth v. Nelson*, Cite as 92 A.2d 431.

⁴⁹ Musmanno was a member of the Pennsylvania Supreme Court at this time. He recused himself from deliberations.

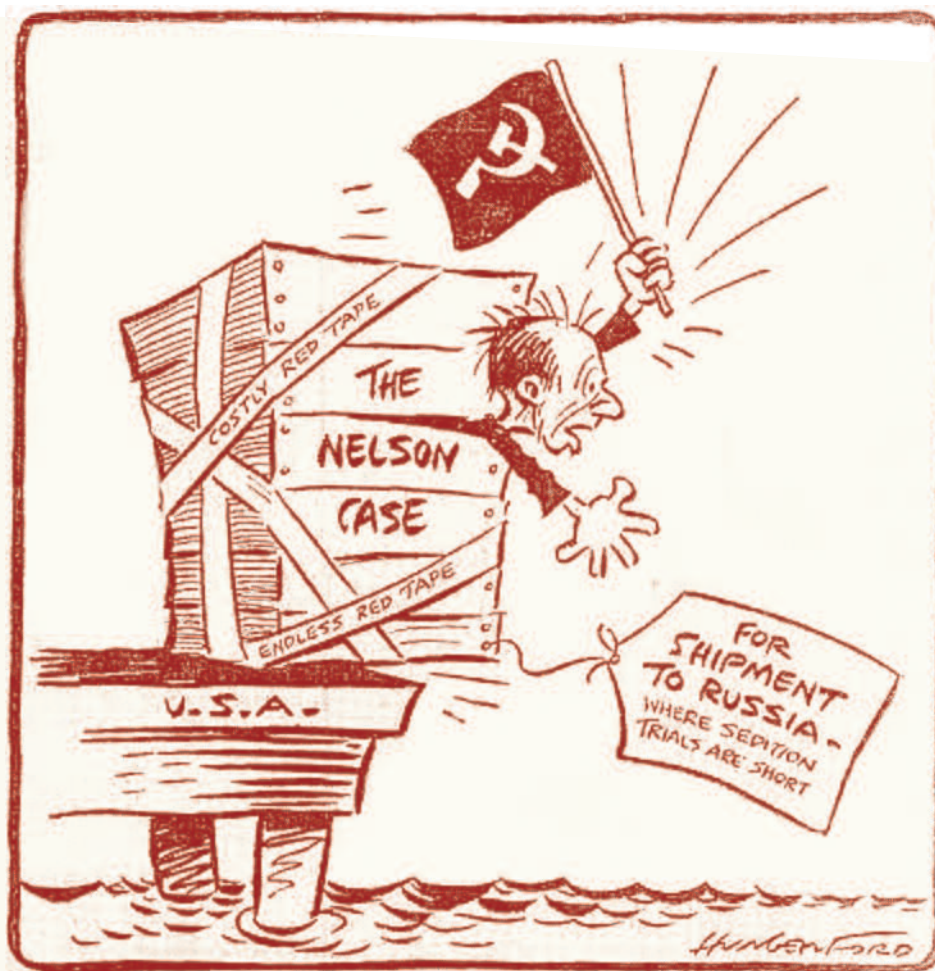
⁵⁰ Nelson, Barrett, Ruck, 373-376.

⁵¹ *Ibid.*, 318.

⁵² Musmanno File, Date and name of newspaper unknown.

⁵³ Daniel J. Laeb "Anti-Communism, The FBI, Matt Cvetic: The Ups and Downs of a Professional Informer," *The Pennsylvania Magazine of History and Biography*, CXV, No 4, (October 1991), 580, and Willard Shelton's "Paul Crouch Informer," *New Republic*, (July 19, 1954), 18.

⁵⁴ Joel Fishman, *Judges of Allegheny County, Fifth Judicial District, Pennsylvania, 1788-1988* (Pittsburgh: Allegheny County Court of Common Pleas Bicentennial Celebration, 1989), passim. Blair Gunther, an organizer of Americans Battling Communism who had been appointed to the Pennsylvania Superior Court in April 1950, was elected to the court in November 1950. Loren Lewis who had acted as the prosecutor in the Onda, Dolsen Nelson trial was elected to the Allegheny County Court of Common Pleas in November of 1950. William Rahauer, the District Attorney at the time of the Nelson trials, was elected Judge of the Orphans Court in November 1951. Michael A. Musmanno was elected to the Pennsylvania Supreme Court the same year, and his nephew William Cercione was appointed to the Allegheny County Court of Common Pleas by Governor Leader in 1956. Cercione won election to that position in 1957, and he went on to win a spot on the Pennsylvania Superior Court in 1969. Judge Harry Montgomery, the Judge in Nelson's second trial, ran for but lost the race for a seat on the Pennsylvania Supreme Court in 1951. He won a position on the Pennsylvania Superior Court in 1959.



"Where the Case Ought to End," by Hungerford.

Pittsburgh Post-Gazette, February 1, 1952.