

# DEPORTATION OF ALIENS

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## HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON IMMIGRATION

UNITED STATES <sup>Congress</sup> SENATE

SEVENTY-SIXTH CONGRESS

SECOND AND THIRD SESSIONS

ON

## H. R. 4860

AN ACT TO AMEND EXISTING LAW SO AS TO PROVIDE  
FOR THE EXCLUSION AND DEPORTATION OF ALIENS  
WHO ADVOCATE THE MAKING OF ANY CHANGES  
IN THE AMERICAN FORM OF GOVERNMENT

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JULY 28, 1939; FEBRUARY 21 AND APRIL 25, 1940

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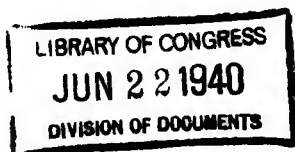
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# DEPORTATION OF ALIENS

UNITED STATES SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON IMMIGRATION,  
Washington, D. C., Friday, July 28, 1939.

The subcommittee met, pursuant to notice, in the committee room, 412 Senate Office Building, at 10 a. m., Senator James H. Hughes (chairman) presiding.

Present: Senators Hughes (chairman) and Andrews.

Present also: Hon. J. J. Dempsey, a Representative in Congress from the State of New Mexico.

Present also: James L. Houghteling, Esq., Commissioner, and Edward J. Shaughnessy, Esq., Deputy Commissioner of Immigration and Naturalization.

The subcommittee had under consideration H. R. 4860, an act to amend existing law so as to provide for the exclusion and deportation of aliens who advocate the making of any changes in the American form of government.

Said H. R. 4860 is here printed in full, as follows:

[H. R. 4860, 76th Cong., 1st sess.]

AN ACT, To amend existing law so as to provide for the exclusion and deportation of aliens who advocate the making of any changes in the American form of government

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (c) of section 1 of the Act entitled "An Act to exclude and expel from the United States aliens who are members of the anarchistic and similar classes", approved October 16, 1918, as amended (U. S. C., 1934 edition, title 8, sec. 137 (c)), is amended by striking out "or (4) sabotage" and inserting in lieu thereof "(4) sabotage, or (5) the making of any changes in the American form of government".*

SEC. 2. Paragraph (d) of such section 1, as amended (U. S. C., 1934 edition, title 8, sec. 137 (d)), is amended by striking out "or (4) sabotage" and inserting in lieu thereof "(4) sabotage, or (5) the making of any changes in the American form of government".

SEC. 3. The Commissioner of Immigration and Naturalization, with the approval of the Secretary of Labor, shall prescribe such rules and regulations as may be necessary for the enforcement of this Act.

Passed the House of Representatives March 23, 1939.

Attest:

SOUTH TRIMBLE, *Clerk.*

Senator HUGHES. This meeting is held for the purpose of considering H. R. 4860. Representative Dempsey, the author of the bill, is present. We will be glad to hear from him.

## STATEMENT OF HON. JOHN J. DEMPSEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Representative DEMPSEY. Mr. Chairman, I introduced H. R. 4860, that your committee is now considering, largely as the result of knowledge I obtained while a member of the Dies committee investigating

subversive activities. The bill provides just one thing. It amends the existing immigration law to provide that any alien who advocates any change in the American form of Government is subject to deportation. The present law provides that an alien is deportable if he advocates the overthrow of our Government by force of arms. The recent Supreme Court decision changes the situation so that any person who so advocates and whom we thought was deportable, is in fact not deportable, if the minute before his arrest he changes his mind and says that he no longer feels that way about it. Irrespective of what damage he may have done, of what strife he may have stirred up, if he is arrested and charged with such an offense, if he changes his mind, or says he has changed his mind, nothing can be done about it. As a result of that decision, I believe this legislation is absolutely necessary.

Some of the opposition to this legislation, particularly the American Civil Liberties Union, takes the position that if this measure becomes a law, or had it then been the law when the discussion was had as to the increase in the number of members of the Supreme Court, the people advocating the increase would have been deportable, notwithstanding the fact that this very organization did advocate the change and said it was not a change in the American form of Government.

Changing the American form of Government means, in reality, changing the Constitution, or that which is provided by the Constitution. There is nothing in this bill that abridges the right of free speech, unless you are talking against the American form of Government. There is nothing in this bill that will prohibit anyone from Russia, Germany, Italy, or Japan lecturing throughout the country and telling the people of their form of government and pointing out its superiority over our form. There is nothing in this bill to make that deportable. But if they say: "You ought to abolish Congress, ought to abolish the President, and what you need is a dictator," that man is at once deportable, and should be.

So far as I am concerned, I think Americanism is something we must maintain, and that we must maintain democracy as we understand it. This cannot be done by having these foreign agents running around this country, organizing these front organizations in behalf of the Communist Party, aided by some unthinking Americans or, certainly, not deep-thinking Americans, who join with them in such a cause.

We have in the Dies committee the names of these communistic front organizations in this country, which I will be glad to furnish to this committee.

In connection with these foreign activities, there are more alien organizations and organizers, paid organizers, in this country today than ever before. It has been necessary for the Department of Justice to increase its force handling these matters. The Secretary of the Navy has pointed out the difficulty he has had, especially with Communists. They are injecting themselves into practically every part of the system of our Government. It is all sponsored from Moscow. These people here will say, "Well, yes, we are Communists, but it is a political party here." That is only partly true. It may be a political party here, but it is directed, every method that they use is given and directed from Moscow and the Third International.

Now they come here and organize these organizations with patriotic names, such as the League for Peace and Democracy. It is thoroughly controlled by the Communists. There are many others of similar nature. But having these patriotic names, they obtain the names of people, and secure small contributions, as low as \$2, and those names are used to help increase the membership. It is controlled underneath by those people who do not appreciate our form of government, people who would destroy our Government; and I contend that we have been patient long enough.

So far as I am concerned, Mr. Chairman, these visitors we have permitted to enter our country and made welcome, and to whom we have extended this liberty and privilege, when they fail to appreciate that they are guests and indulge in these subversive activities, should be asked to leave. I do not care whether a man is a Communist or a Nazi or a Fascist, if he is not satisfied with our form of government and wants to substitute the form of government of his own country, he should return to his own country and not bother us.

The immigration authorities have recommended adversely on this legislation, and have taken a very strange point of view, one that certainly no attorney would uphold. They say that under this bill, if a man believes in a change in our form of government, he would be subject to deportation. There is nothing in the language of the bill that provides that. No alien is subject to deportation unless he advocates that we change our form of government. He can have any belief he wants to have; he may go out and lecture, pointing out the great benefits of some other form. As long as he lets our form of government alone, he is perfectly safe here. I say the immigration authorities, in making such a report as that, are ridiculous and would be so found by any attorney.

Again I want to say at this time that we have no law that safeguards our democracy, so far as the deportation of aliens is concerned, irrespective of what they may have advocated if, under this recent Supreme Court decision, they say they have undergone a change of mind.

So far as I am concerned, I trust that the subcommittee will thoroughly consider this matter, and I am sure that when you do you will be of the same opinion as the author of this bill, who happens to be myself.

I think, Mr. Chairman, that is all I have to say, unless there are some questions, and if there are, I will be very happy to answer them.

Senator HUGHES. It has been suggested to me that the bill is too broad. It says: "the making of any changes in the American form of government." That would not be confined to our own form of government, but would apply to any form of government on this continent.

Representative DEMPSEY. The Constitution refers to our form of government as the "American form of government." I followed the language of the Constitution. When I originally introduced the bill I used the words "any fundamental changes." At the hearings before the House Committee on Immigration representatives of many patriotic organizations, the American Legion, the American Federation of Labor, represented by Mr. Frey, appeared in support of this bill. No man appeared in person who said he was opposed to the bill. A Mr. Ralph Emerson, an attorney, I believe, representing the American

Maritime Union, said the word "fundamental" might be open to various interpretations, and he would like to have that clarified, and that was the only objection he had. It finally developed that he was really more opposed to the bill than to the language indicated. So to clarify that the Immigration Committee of the House struck out the word "fundamental" and used the word "any." It was unanimously reported out by the committee and passed the House by unanimous consent.

Referring again to Mr. Emerson, when what was known as the Smith bill was considered by the Judiciary Committee of the House, I appeared in favor of the bill. Mr. Emerson was in the room at the time. After I spoke he then made some remarks, and he referred to a statement that I had made that I had less sympathy for these mealy-mouthed Americans who were citizens than for the aliens. After I left the room Mr. Emerson testified, and claimed that the bill would abridge the right of free speech. He said if I had made the remarks on the water front that I made before the committee, I might have gotten my jaw broken. They want free speech for themselves, and that is all they want. He was taken to task by the committee for making that statement. I am willing that he should have any kind of free speech, but I say that it should be confined to American citizens.

I have no sympathy with the opinion expressed in a letter from the immigration authorities, because I am convinced they are entirely wrong about it. I think it is time the immigration authorities brought in some legislation of their own to protect our country against these people, because they know about them.

I think, Mr. Chairman, that is all I care to say.

#### STATEMENT OF HON. TOM CONNALLY, A SENATOR IN CONGRESS FROM THE STATE OF TEXAS

Senator HUGHES. Senator Connally, did you wish to be heard?

Senator CONNALLY. Just a word or two at this time.

Senator HUGHES. You may proceed.

Senator CONNALLY. I have introduced a bill on this subject which I think is identical with this bill. Congressman Dempsey's bill has passed the House.

Senator HUGHES. Your bill is S. 1941?

Senator CONNALLY. Yes.

I think the right thing to do would be to take up Representative Dempsey's bill instead of mine, even though mine is a Senate bill. It is entirely agreeable to proceed on the Dempsey bill rather than mine.

Senator HUGHES. While you are here, Senator, do you care to make any further statement about this bill?

Senator CONNALLY. Nothing except that I am in favor of it. That is about all I care to say at this time. Later on I may ask the privilege of making a further statement.

Senator HUGHES. I think that would have to be the early part of next week.



**STATEMENT OF JOHN THOMAS TAYLOR, REPRESENTING THE  
AMERICAN LEGION**

Senator HUGHES. Mr. Taylor, if you care to make a statement, you may proceed.

Mr. TAYLOR. Mr. Chairman and gentlemen of the committee, as is generally known, one of the major activities of the American Legion, since the inception of our organization, has been its fight against un-American forces within our borders that seek to overthrow this Government by force and violence. At each of our national conventions for the past 20 years the American Legion has gone on record specifically concerning this subject.

At our last national convention held at Los Angeles, Calif., in September 1938, a resolution was adopted, which reads as follows:

*Be it resolved by the American Legion in this its national convention in Los Angeles, Calif. (1938), That we reaffirm our bitter opposition to communism, fascism, nazi-ism, and any other or all like forces and organizations that seek to destroy our form of government; and be it*

*Resolved, That we condemn all organizations and demand the expulsion from our country of all aliens who promote loyalty to some other government; and be it further*

*Resolved, That we urge national legislation that will punish American citizens who advocate the overthrow of our Government by force, fraud, or violence, or seek to promote race or religious prejudice, and deport all aliens who do likewise.*

The Dempsey and Connally bills specifically refer to aliens. We are heartily in favor of them. The Dempsey bill has already passed the House, and we believe it should pass the Senate.

For that reason we favor and we urge the enactment into law of H. R. 4860, introduced by Representative John Dempsey, New Mexico, a measure which has already passed the House of Representatives. It proposes to amend existing law so as to provide for the exclusion and deportation of aliens who advocate the making of changes in the American form of government. Its sole purpose is to strengthen existing law relative to the deportation of aliens who advocate the overthrow or change in our form of government.

On several occasions our Americanism commission has presented to various congressional committees a mass of documentary evidence on the activities of the various un-American forces within our midst, the most recent presentation being to the Dies committee. I do not intend to burden the record of this hearing with that great mass of documentary evidence, because it is readily available, particularly in the hearings before the Dies committee, but that evidence contains innumerable instances of the activities of Communists, Fascists, and Nazis who are working assiduously and continually to bring about a change in our form of government repugnant to the great mass of American people—a form of government where the individual becomes a slave to the state or some minority political party.

We of the American Legion are unable to comprehend why American citizens or organizations composed of American citizens are screaming to the high heavens in opposition to this measure and shedding tears for the "poor alien." Until the alien becomes a naturalized citizen he occupies only the status of a guest within our country. The alien has no right, and the founders of this Republic intended he should have no right, to come within our midst and within a few

months or a few years commence to tell us what form of government we should have.

This bill does not apply to the American citizen who advocates a change in our form of Government; it applies only to the alien. We of the American Legion believe it is necessary legislation; that it is fair legislation; and that it ought speedily be placed in our statute books.

Senator ANDREWS. Do you believe that guests of the United States should not have any right to advocate the overthrow of our form of Government?

Mr. TAYLOR. That is right. Thank you very much.

**STATEMENT OF EDWIN S. BETTELHEIM, JR., ADJUTANT GENERAL, MILITARY ORDER OF THE WORLD WAR, AND ALSO REPRESENTING THE AMERICAN COALITION OF PATRIOTIC SOCIETIES**

Representative DEMPSEY. Major Bettelheim, representing the Military Order of the World War, is here and would like to make a statement.

Senator HUGHES. The committee will be very glad to hear him.

Mr. BETTELHEIM. Mr. Chairman, I am adjutant general of the Military Order of the World War, and also speak in behalf of the American Coalition of Patriotic Societies, some 116 in number. I should like to read into the record the names of these societies, so you may know what they are.

Senator HUGHES. Very well.

Mr. BETTELHEIM. Societies cooperating with the American Coalition:

Abigail Adams Colony, National Society of New England Women.  
 Aeronautical Association of America, Inc.  
 Allied Patriotic Societies, Inc.  
 American Defense Society, Inc.  
 American Vigilant Intelligence Federation.  
 American Vigilants of Washington.  
 American War Mothers.  
 American Women's League.  
 American Women's Legion of the World War.  
 Anglo-Saxon Federation of America.  
 Auxiliary, Sons of Union Veterans of Civil War.  
 Antec Club of 1847.  
 Bergen County (N. J.) Women's Republican Club.  
 Betsy Ross Corps.  
 Better American Federation of California.  
 Colonial Order of the Acorn, New York Chapter.  
 Committee on American Education.  
 Congress of State Societies.  
 Dames of the Loyal Legion of the United States.  
 Daughters of America, National Council.  
 Daughters of America, District of Columbia Council.  
 Daughters of the Defenders of the Republic.  
 Daughters of Union Veterans of the Civil War, 1861-65.  
 Defenders of the Constitution of United States.  
 Descendants of the Signers of the Declaration of Independence.  
 Disabled American Veterans of the World War.  
 District of Columbia Society, Order of the Founders and Patriots of America.  
 Englewood (N. J.) Women's Republican Club.  
 Farmers Independent Council of America.  
 First Motor Corps Unit No. 12, Massachusetts State Guard Veterans.  
 General Court, Order of the Founders and Patriots of America.  
 General Pershing Chapter, American War Mothers.

General Society of Mayflower Descendants.  
 General Society of the War of 1812.  
 Government Club, Inc.  
 Immigration Restriction Association.  
 Immigration Study Commission.  
 Industrial Defense Association, Inc.  
 Junior American Vigilant Intelligence Federation.  
 Junior Order United American Mechanics, New Jersey.  
 Ladies Auxiliary, Order of Independent Americans.  
 Ladies of the Grand Army of the Republic.  
 Larchmont Colony, National Society of New England Women.  
 Massachusetts Society, Order of the Founders and Patriots of America.  
 Massachusetts Women's Constitutional League.  
 Military Order of Foreign Wars of the United States, National Commandery.  
 Military Order of the Loyal Legion of the United States, Commandery-in-Chief.  
 Military Order of the Loyal Legion of the United States, Commandery of the  
 District of Columbia.  
 Military Order of the Legion of the U. S., Commandery of the State of New York.  
 Military Order of the Loyal Legion of the United States, Commandery of the  
 State of Pennsylvania.  
 Military Order of the World War.  
 Minute Men of America, Inc.  
 National Auxiliary, United States Spanish War Veterans.  
 National Camp, Patriotic Order of Americans.  
 National Camp, Patriotic Order of Sons of America.  
 National Commandery, Naval and Military Order of the Spanish American War.  
 National Constitution Day Committee.  
 National Council, Sons and Daughters of Liberty.  
 National Education Society for True Americanism.  
 National Patriotic Association.  
 National Patriotic League.  
 National Security League, Inc.  
 National Society, Daughters of the Revolution.  
 National Society, Daughters of the Union, 1861-65.  
 National Society of New England Women.  
 National Society 1917 World War Registrars, Inc.  
 National Society, Patriotic Builders of America, Inc.  
 National Society, Patriotic Women of America.  
 National Society, Service Star Legion.  
 National Society, Sons and Daughters of the Pilgrims.  
 National Society, Sons of the American Revolution.  
 National Society, United States Daughters of 1812.  
 National Society, Women Descendants of the Ancient and Honorable Artillery  
 Company.  
 National Sojourners.  
 National Sojourners, Du Pont Chapter No. 78.  
 National Sojourners, Manhattan Chapter, No. 86.  
 National Sojourners, New York Chapter, No. 13.  
 National Women's Relief Corps.  
 New England Protestant Action League.  
 New Jersey State Society, Daughters of the Revolution.  
 New York City Colony, National Society of New England Women.  
 Old Glory Association.  
 Old Glory Club of Faltbush, Inc., Beacon No. 1.  
 Order of Colonial Lords of Manors in America.  
 Order of Independent Americans, Inc., State Council of Pennsylvania.  
 Pennsylvania Society, Order of the Founders and Patriots of America.  
 Philadelphia Protestant Federation.  
 Protestant Women's National Civic Federation.  
 Reserve Officers Association of United States, Rochester district.  
 Reserve Officers Training Corps Association of the United States.  
 Rhode Island Association of Patriots.  
 Rhode Island Daughters of the American Colonists.  
 Ridgewood Unit of Republican Women, Inc.  
 San Diego Chapter, Better American Federation  
 Society for Constitutional Security.  
 Society of Colonial Wars in the District of Columbia.  
 Society of Colonial Wars in the State of New York.  
 Society of New York State Women.

Society of the Daughters of the United States Army.  
 Society of the Sons of the Revolution in the Commonwealth of Massachusetts.  
 Sons of Union Veterans of the Civil War.  
 Southern Vigilant Intelligence Association, Inc.  
 State Council, Sons and Daughters of Liberty.  
 The Paul Reveres.  
 The Wheel of Progress.  
 Union of Republican Women, Sangamon County, Ill.  
 United Daughters of the Confederacy, New York Chapter.  
 United States Air Force Associations, Inc.  
 United States Aviation Cadets, Inc.  
 United States Naval Reserve Officers Associations.  
 Veterans of Foreign Wars of United States, Department of Delaware.  
 Veterans of Foreign Wars of United States, Morley S. Pates Auxiliary No. 701.  
 Westchester Security League.  
 Women Patriot Corporation.  
 Womans Pioneer Aircraft Association of Chicago, Inc.  
 Women's National Defense Committee of Philadelphia.  
 Women of Army and Navy Legion of Valor, United States of America.  
 Yankee Division Veterans Association.

Senator HUGHES. You may proceed with such statement as you desire to make.

Mr. BETTELHEIM. Mr. Chairman, these organizations wish to go on record in favor of this bill. Like Colonel Taylor, we deplore the expressions made by citizens, but a citizen has certain rights which we do not believe an alien has. This proposed legislation differentiates and emphasizes the fact that aliens trying to overthrow our form of government, aliens who come over here with the avowed purpose of so doing, should be deportable. All I have to do is to draw attention to the current articles running in Liberty by Comrade X, and you will readily see what is behind this group of people. There is nothing they want to do more than to stir up agitation and tear down our form of government, with the hope of doing away with a President, with a Congress, or any other representative form of government.

May I read into the record a resolution adopted by the Military Order of the World War at its annual convention held in New Orleans last October?

Senator HUGHES. You may do so.

Mr. BETTELHEIM (reading:)

#### UNAMERICAN ACTIVITIES

That noting the apparent unity of direction and action in subversive un-American groups, and the consequent danger to the welfare of the American public, we adopt the following as a declaration of policy.

1. We condemn any and all activities designed to overthrow our present constitutional form of government.

2. We particularly oppose the communistic and other un-American camps; the activities of the un-American "youth movement" in schools and colleges; the spread of alien doctrines and the dissemination of subversive teachings in some churches and misinformed groups.

3. We appeal to all civic, fraternal, labor, religious, veteran, and patriotic organizations and societies to make known to the public by suitable pronouncements or resolutions their attitude and relation toward un-American activities.

4. We wish to impress upon each individual American the urgency of a full realization of the personal responsibility for preservation of our American form of government.

I believe there is no need of going further into this matter. One of the things we have got to do is to clean up this situation. We believe that Mr. Dempsey's bill, that was acted upon so favorably in the

House, will do that. I think it was reported on the 21st, and 7 days later it was unanimously passed. We trust that we will have the same action in the Senate. Thank you very much.

Senator HUGHES. Objection has been made that the bill goes too far. It does not say "overthrow," but it says "changing our form of government."

Mr. BETTELHEIM. If that pertained to an American citizen, it might abridge his rights; but the alien has no rights, except that of an invited guest. I would go further than that. I would even say "fundamental change." This bill strikes at the alien who comes here with the avowed purpose of overthrowing our form of government, of tearing down our form of government. The bill, in my opinion, is strong enough to cover that situation and put an end to that sort of thing.

Senator ANDREWS. Your position is that they become too free?

Mr. BETTELHEIM. You are right. No other government would permit such goings on as we permit.

Senator ANDREWS. What would happen to you if you were to go into France or Germany and advocate the overthrow of their government?

Mr. BETTELHEIM. It would take you several months to get in contact with me. I think I would be in a concentration camp.

Senator HUGHES. And lucky at that.

Mr. BETTELHEIM. And lucky at that. We are very liberal and very free. We have got to do something to check our liberalism, and I think Mr. Dempsey's bill will check it in the right way. Thank you very much.

**STATEMENT OF JAMES H. PATTEN, WASHINGTON, D. C., REPRESENTING THE COMMANDERY GENERAL, SONS OF AMERICA; THE IMMIGRATION RESTRICTION LEAGUE, INC.; THE NEW YORK STATE COUNCIL OF THE JUNIOR ORDER OF UNITED AMERICAN MECHANICS; THE PATRIOTIC CIVIC AMERICAN ALLIANCE; THE AMERICAN CITIZENSHIP FOUNDATION; AND THE GENERAL BOARD OF PATRIOTIC SOCIETIES**

Senator HUGHES. You may state your name and whom you represent.

Mr. PATTEN. My name is James H. Patten, Washington, D. C., representing the commandery general, Sons of America; the Immigration Restriction League, Inc.; the New York State Council of the Junior Order of United American Mechanics, Inc.; and I also represent the Fraternal Patriotic Americans, Inc.; the Patriotic Civil American Alliance, Inc.; the American Citizenship Foundation, Inc.; and the general executive board of Patriotic Societies.

Senator HUGHES. You may proceed with your statement.

Mr. PATTEN. Mr. Chairman and gentlemen of the committee, the organizations I represent have been eager to get some legislation of this kind for a good many years. The membership of these various organized groups that I represent here are all native-born Americans. They feel that too many immigrants construe liberty to be license. They are not in sympathy with organizations like the American Civil Liberties Union, which is not American, nor is it for civil liberties.

They testify before committees of Congress that they believe that an alien, unlawfully and illegally in the United States, has a right to advocate the assassination of our public officials. They have so testified.

I appeared at the hearings before the Judiciary Committee of the House at the time Mr. Emerson, who represented the Bridges organization, was present and testified. I heard Mr. Emerson say that if Congressman Dempsey, who had left the room, had made any such remarks on the waterfront as he made to the committee he would have had his jaw broken and it would not have been very good for him. That was his attitude after arguing that the provisions of this bill would abridge the freedom of speech.

That is quite characteristic of these subversive organizations. We would like the best kind to have a list of them. We know one of them. Take, for instance, the American Civil Liberties Union, that is opposed to this bill. It has written letters to this committee in opposition to it. Its director testified before the Fish committee, and when asked by the chairman: "Does your organization uphold the right of a citizen to advocate murder?" Mr. Baldwin said: "Yes."

The CHAIRMAN. And assassination?

Mr. BALDWIN. Yes.

The CHAIRMAN. Force and violence for the overthrow of the Government?

Mr. BALDWIN. Certainly.

The CHAIRMAN. Does it uphold the right of an alien in this country to urge the overthrow and advocate the overthrow of the Government by force and violence?

Mr. BALDWIN. Precisely, on the same ground as any citizen.

In April 1935 according to the Harvard College Class Book, it published his own statement, over his own signature, where Mr. Baldwin said:

I have continued during the past year directing the unpopular fight for the rights of agitation, as director of the American Civil Liberties Union. I have been to Europe—

meaning Russia—

several times the past year, mostly in connection with international radical activities. I am for socialism, disarmament, and ultimately for abolishing the State itself. I seek social ownership of property, the abolition of the propertied class, and the sole control by those who produce wealth. Communism is the goal.

Representative DEMPSEY. Are you reading from a public document?

Mr. PATTEN. I am reading from the hearings before the House Judiciary Committee on April 12 and 13, 1939.

Representative DEMPSEY. I thought it was important to put that in the record.

Mr. PATTEN. Thank you.

Mr. BALDWIN. On another occasion, explained why he was for free speech, freedom of the press, and freedom of assemblage in this country. In a letter published in the New York Times he wrote:

Civil liberties, like democracy, are useful only as tools for change.

Then he went on to say that the change he sought was communism. Of course, if we had that, we would not have a single solitary civil liberty. He is opposed to this bill on the ground that it abridges the right of free speech and freedom of assemblage, and yet he is one who wants to destroy our form of Government and establish sovietism in this country.

A bill seeking the same objective was introduced in the Senate by Senator Reynolds, and hearings were held on it with other bills some time ago. Objection has been made to this bill on the ground that it is too vague and indefinite. That objection was fully answered before this committee. I want to suggest, at least for the record—and I hope that the subcommittee and the full committee may see their way clear to report this bill out as it passed the House—a draft of a bill that I suggested at the hearings on the Reynolds bills. This was also before the House committee, where the Secretary of the Navy appeared before the House Judiciary Committee, with other representatives of the Army and Navy. I feel confident that they would be here today if they knew of this hearing. They advocated legislation to enable them to help curb subversive activities in the Army and Navy, which were alarming. Their statements are in the hearings before the House Judiciary Committee on that same bill.

Senator HUGHES. That is in the House hearings?

Mr. PATTEN. Yes. May I read this short statement? It is not very long.

Senator HUGHES. Yes.

Mr. PATTEN (reading):

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any alien whose presence in the United States may be found by the Secretary of Labor, the Secretary of War, the Secretary of the Navy, the Attorney General, or the Secretary of State, to be inimical, unfriendly, hostile, opposed or antagonistic to the public interest because of subversive activities directed against the form of government prevailing in the United States or any subdivision thereof, or because of a record of habitual criminality or association, or engaging in espionage or any other activity detrimental to the public welfare shall, upon a warrant of the Secretary of Labor, be taken into custody and deported forthwith.*

Mr. Chairman and gentlemen of the committee, the position of the membership of the organization I represent, like the fraternal Americans, Loyal Sons of America, Junior Order of United American Mechanics, and others, is that aliens are merely guests in this house of ours, and if they do not have the good taste as guests to respect us, they should be required to leave our house.

I thank you.

#### STATEMENT OF WILLIAM B. GRIFFITH, CHAIRMAN, EXECUTIVE COMMITTEE, IMMIGRATION RESTRICTION LEAGUE OF NEW YORK

Senator HUGHES. Please state your name and whom you represent.

Mr. GRIFFITH. My name is William D. Griffith. I am chairman of the executive committee of the Immigration Restriction League of New York. I appear here as such, and in favor of the Dempsey bill, H. R. 4860, which would deport any alien advocating a change in the American form of government. What business has an alien to try to do such a thing? In order to do it, the alien should become an American citizen and assume the duties and responsibilities of a citizen. The organization I represent has 15,000 members, and they are very active throughout the whole country. They have been interested for a long time in looking after the interests and safeguarding America for Americans.

That is all I have to say.

Senator HUGHES. Thank you very much.

Representative DEMPSEY. I think that is all the witnesses I have here this morning. Mr. John Frey, representing the American Federation of Labor, appeared before the Immigration Committee of the House, and asked me to let him know about these hearings. I attempted to get in touch with him yesterday evening, and find that he is out of town and may be back by Monday. If so, he will appear at any time the committee may meet.

Senator HUGHES. His evidence is in the House record?

Representative DEMPSEY. Yes. I can get it for you.

Senator HUGHES. You understand the situation, so far as getting action is concerned. We are all looking toward adjournment. The Senate and the House are very busy. If we prolong these hearings very much we will not be able to do much with the bill at this session.

Representative DEMPSEY. I am anxious to have the hearing concluded at the earliest possible time. I will get his testimony before the House committee.

Senator HUGHES. We will be glad to hear him, but if we cannot do so, we can put that evidence in.

Representative DEMPSEY. I can get it and I will do it.

Senator ANDREWS. Get it and put it in this record.

Senator HUGHES. Yes.

We will be glad to hear anybody else who wishes to speak.

#### STATEMENT OF PAUL SCHARRENBURG, LEGISLATIVE REPRESENTATIVE, AMERICAN FEDERATION OF LABOR

Mr. SCHARRENBURG. Mr. Chairman, my name is Paul Scharrenberg. I represent the American Federation of Labor, and I am authorized and directed to come here this morning and oppose the pending bill, for various reasons. We do not question the sincerity nor the high motives of Representative Dempsey or Senator Connally. We think they are both patriotic Americans and gentlemen, but we think they are seriously mistaken in advocating the measure now before your committee.

The language upon which we would have to confine our remarks is the matter of "any change in the American form of government." We appeal to your fair-mindedness to reject the incorporation of this language in a bill which provides for the deportation of aliens. We must recognize that there are a good many aliens in our country. We are aware of misbehavior on the part of certain aliens, but we feel the language of the bill is too broad. We fear the incorporation of this bill into the statutes of the United States will bring about a system known in France as the "agent provocateur," whereby men are sent out to entice other men to say something that can be used against them. In certain sections of this country numerous aliens are employed and strikes sometimes take place. It would be a very simple matter for an employer to send out a staff of men who by various methods might induce strikers to get into an argument, during the heat of which someone might say that the Government ought to be changed.

That is something strikers are likely to do, and I have done it myself on numerous occasions. They would be arrested, tried, and



deported. There are numerous other circumstances where that language may be used against perfectly innocent and law-abiding aliens, and we are seriously apprehensive about making this a law of our country.

Senator ANDREWS. When we speak of our form of government, do we not have reference to our Constitution?

Mr. SCHARRENBERG. I am not sure of that. I have known it to be questioned.

Senator ANDREWS. It would not mean a change in the statute, but a change in the constitutional form of government.

Mr. SCHARRENBERG. I am aware that certain aliens are highly undesirable, but we do not believe the time is ripe for the enactment of such legislation because of the misbehavior of a few men like Bridges. I do not know what is meant by "American form of government." I think the Supreme Court will tell us. We fear that it is not confined to the Constitution. If it is, the bill should definitely say that it is confined to the Constitution.

Representative DEMPSEY. Both Senator Connally and myself construe it as referring to no form of government except the constitutional form of government. As Senator Andrews said, it could not be anything else.

Mr. SCHARRENBERG. I have had only a limited experience in appearing before congressional committees, but I appeared before committees in the California Legislature for a quarter of a century, and I know that judges differ as to the meaning of language, and finally the courts will tell us what it means.

Representative DEMPSEY. Would you still oppose this bill, if you were convinced it has nothing to do with anything except changing our Constitution?

Mr. SCHARRENBERG. I would have to see the proposed language.

Representative DEMPSEY. If you were convinced the language contemplated nothing except the deportation of one who advocated a change in the form of government provided in the Constitution, would you still oppose the enactment of this legislation?

Mr. SCHARRENBERG. I would have to see the language. You are making a statement as to what might be in the bill.

Representative DEMPSEY. If the language, to your satisfaction, could not mean anything other than changing the Constitution of the United States, would you still oppose it?

Mr. SCHARRENBERG. I am only a feeble representative of the American Federation of Labor, trying to represent millions of men. My immediate superiors are in Washington, and whenever such a bill is submitted I will take it up with them.

Representative DEMPSEY. For whom are you speaking this morning? You do not represent the American Federation of Labor, do you?

Mr. SCHARRENBERG. I am the legislative representative of the American Federation of Labor, and I appear here by the authority and consent and instruction of President Green, for the entire American Federation of Labor.

Representative DEMPSEY. Whom does Mr. Frey represent?

Mr. SCHARRENBERG. Mr. Frey is president of the metal trades department of the American Federation of Labor, and generally we all work in harmony. On this one occasion there is some difference

of opinion. I think Mr. Frey testified with reference to a different wording of the bill.

Representative DEMPSEY. Mr. Frey testified on this identical bill and approved it. He wants to appear before this committee.

Mr. SCHARRENBERG. We have no argument among ourselves. We have free speech in the American Federation of Labor.

Representative DEMPSEY. Yes. I got the impression from your statement that you have no objection—which apparently you do have now—if this were confined exclusively to changes in the Constitution.

Mr. SCHARRENBERG. Mr. Dempsey, I have already stated that I am here to oppose the bill before the committee. If you have any other language to submit, I will consult my superiors and tell you truthfully what their position is.

Representative DEMPSEY. The language is precisely the language I want. In my opinion, and in the opinion of every able attorney, including the Judiciary Committee of the House of Representatives, this refers to nothing else except changes in the Constitution of the United States.

Mr. SCHARRENBERG. Mr. Chairman, I still wish to express the grave apprehension of the American Federation of Labor as to the particular wording of this bill, and I sincerely trust that you will not be misled by some testimony given here which has nothing to do with the bill. My friend Jim Patten, in order to strengthen his remarks, has quoted from Mr. Baldwin. What has Mr. Baldwin got to do with this? He is a native-born American citizen. If he makes foolish remarks, what does that have to do with this bill?

Mr. Dempsey referred to Mr. Emerson. Mr. Emerson is a representative of the C. I. O. He never has spoken for the American Federation of Labor anywhere. He is not a lawyer. He was a steward and he was investigated and suspended, and asked to appear for trial in New York, and did not do so. He is no longer representing anybody.

Representative DEMPSEY. When he appeared before the House committee he represented the American Maritime Union.

Mr. SCHARRENBERG. Of the C. I. O.

Representative DEMPSEY. I am sure of that.

Senator ANDREWS. Do you find a greater sentiment in the C. I. O. against our form of government than in the American Federation of Labor?

Mr. SCHARRENBERG. I would say the extremely radical element is in the C. I. O., and the more conservative element is in the American Federation of Labor.

Senator ANDREWS. Of course, you have some aliens in the American Federation of Labor.

Mr. SCHARRENBERG. Indeed, we have.

Senator ANDREWS. Nearly all of them are law-abiding men.

Mr. SCHARRENBERG. I know some aliens have been elected to our conventions. In California they came to our State convention. The adoption of this bill would make it impossible for them to participate in our deliberations, although elected for that purpose.

Senator HUGHES. Do you think they ought to, under any circumstances?

Mr. SCHARRENBERG. Ought to what?

Senator HUGHES. To appear in some of these meetings representing American organizations prior to becoming naturalized?

Mr. SCHARRENBERG. Senator, if you will pardon me, our unions are necessarily compelled to take in all workers who are employed. If they do not, there would not be sufficient unions to carry on the business. If an employer sees fit to employ a great many aliens, we have to take them in. Where aliens predominate we have to take them in.

Senator ANDREWS. Has the American Federation of Labor ever considered the propriety of requiring them to become American citizens?

Mr. SCHARRENBERG. I think that has been considered, and I doubt very much if any aliens have attended our national convention. I was speaking of the State conventions. In New Mexico and Arizona, in the copper mining districts, there are a great many aliens, principally Mexicans, employed. In fact, aliens predominate in some of our unions.

Representative DEMPSEY. We have three distinctive groups of citizens in New Mexico. There is the one group of direct Spanish derivation whose ancestors on what is now American soil, date back more than 3 centuries. They are native-born American citizens. Then there is the group of Anglo-Saxon derivation, which has come into New Mexico recently. The third group is made up of Spanish-speaking persons of Mexican derivation. Most of them have emigrated from Old Mexico, over a period of many years. Few of them still are aliens and it is surprising how quickly they become American citizens after their arrival. They never cause any trouble—in fact, the only trouble we ever had in New Mexico, in which some of this group had any part, was when an attempt was made to form the National Miners Union at Gallup. At that time John L. Lewis was associated with the American Federation of Labor, representing the United Mine Workers of America, a very fine organization. Communist agitators attempted to organize the National Miners Union in opposition to the U. M. W. and considerable trouble resulted. The upshot of this was a riot in which the sheriff of McKinley County was killed. Very few of those involved were aliens from Old Mexico, and they have since been deported. For the most part our citizens of Mexican derivation are among the most law-abiding people we have.

Mr. SCHARRENBERG. I think that is quite generally true, and it is also true in California, where I have observed them for many years.

Senator ANDREWS. It appears that some of the radicalism in the American Federation of Labor is caused by certain irresponsible elements.

Mr. SCHARRENBERG. I think that is true. There are men walking around the capital all the time, and because they happen to be members of a union affiliated with the American Federation of Labor, they say they represent the American Federation of Labor.

That is all I have to say, Mr. Chairman.

Mr. PATTEN. Might I say, in regard to my reference to the American Civil Liberties Union, that I referred to it because they are leading the opposition to this measure. They did before the House committee. There is no one with whom I dislike to disagree more than my good friend, Paul Scharrenberg. The investigating committee of which Fish was chairman found that 90 percent of the activities of the American Civil Liberties Union was in defense of Communists

who were in conflict with the law. It is an alien organization, although headed by a native-born American.

Senator ANDREWS. I wish to thank these gentlemen for their attendance.

Senator HUGHES. We will fix another day as soon as we can, and you will be notified.

Representative DEMPSEY. Thank you very much. I appreciate your kindness and courtesy.

Senator HUGHES. I understand that there are others who want to come before the committee the early part of next week.

(Whereupon, at 11:10 a. m., the subcommittee adjourned, subject to the call of the chairman.)

## DEPORTATION OF ALIENS

WEDNESDAY, FEBRUARY 21, 1940

UNITED STATES SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON IMMIGRATION,  
*Washington, D. C.*

The committee met, pursuant to call, in the committee room, Capitol, at 10:55 a. m., Senator James H. Hughes (chairman) presiding.

Present: Senators Hughes (chairman) and Andrews.

Present also: Hon. Robert R. Reynolds, a Senator in Congress from the State of North Carolina; and Hon. J. J. Dempsey, a Representative in Congress from the State of New Mexico.

Senator HUGHES. The committee will be in order. Is there any one here who wishes to speak in favor of the bill? Apparently not.

Representative DEMPSEY. Mr. Chairman, I would like to ask permission, before you close these hearings, to put in the record some sworn testimony taken before the Dies committee, which will point out some of the evils this bill wishes to cure. It goes into the question of these aliens who come to our country from foreign lands, and under our existing laws we have no way of getting them out of this country.

Senator HUGHES. That was taken before the Dies committee?

Representative DEMPSEY. Yes.

Senator HUGHES. Without the witnesses being present?

Representative DEMPSEY. No; they were on the stand and testified about these very matters.

Senator HUGHES. I understand you want to put in evidence before this committee the testimony taken before that committee.

Representative DEMPSEY. If you prefer, we can produce the witnesses later.

Senator HUGHES. Perhaps the opposition would want to ask them some questions.

Representative DEMPSEY. Then at this time I will not press that. If you care to hear the opposition this morning we would like to put in some evidence afterward.

Senator HUGHES. Senator Schwellenbach asked for about 10 days to produce witnesses against the bill, and I told him we would go on this morning with what we had and let him introduce his testimony later.

Representative DEMPSEY. I have heard from many organizations, such as the D. A. R., who favor the bill and want to be heard. I made an effort to get them here this morning, but was unable to do so. The House will meet at 11 o'clock instead of 12.

Senator HUGHES. We have not had so very many asking to be heard.

Representative DEMPSEY. I think Senator Hatch wants to be heard in favor of it, and several Members of the House. I do not know whether the people who are here this morning are for or against the bill.

Senator HUGHES. I think we might as well go on as far as we can with what we have here today.

**STATEMENT OF REUBEN OPPENHEIMER, BALTIMORE, MD., REPRESENTING THE AMERICAN CIVIL LIBERTIES UNION**

Senator HUGHES. You may state your name.

Mr. OPPENHEIMER. Reuben Oppenheimer. I appear in opposition to the proposed legislation. I am here representing the American Civil Liberties Union.

Senator ANDREWS. Where are you from?

Mr. OPPENHEIMER. Baltimore, Md., where I practice law.

Senator HUGHES. You may proceed.

Mr. OPPENHEIMER. There is natural and proper resentment against aliens who violate the hospitality which the United States have offered them, by endeavoring to overthrow our form of government and the principles for which it stands. There is natural and proper resentment at the attempt on the part of some aliens to introduce into this country communism and nazi-ism and things of that character. I should like, however, to analyze the proposed bill, which was offered, of course, in the best of faith, as a proposed remedy for some conditions existing in this country. It is unnecessary to review before this committee the extent of our present legislation, so far as the alien who advocates the overthrow of the Government by force and violence is concerned.

The laws of the United States, at the present time, provide for the exclusion and deportation of aliens who believe in, advise, advocate or are members of or affiliated with any groups or organizations that believe in, advise, advocate or teach—

1. The overthrow by force or violence of the Government of the United States or of all forms of law,
2. The duty or necessity of political assassination,
3. The unlawful damage or destruction of property.
4. Sabotage.

(U. S. C., title 8, sec. 137 (a), (b), (c), (d), (e), (f) and (g).)

Representative DEMPSEY. You say anyone coming under those classifications is deportable?

Mr. OPPENHEIMER. Yes, sir.

Representative DEMPSEY. Did not the Supreme Court say, if you change your mind afterward, you cannot be deported?

Mr. OPPENHEIMER. Yes.

Representative DEMPSEY. You may attack the Government with force and violence, and by the time you are brought to trial you change your mind, and that prevents your exclusion under the present law.

Mr. OPPENHEIMER. Under that decision, that is the law, which, of course, if Congress wishes, can be amended. Even if amended, the present law applies only to those who believe in and advocate the overthrow of the Government by force of arms. Any aliens coming within those classes is deportable at any time, irrespective of the time of their entry.

There are additional provisions for the deportation of aliens, at any time, for advocating or teaching the unlawful destruction of property, or the overthrow by force or violence of the Government of the United States or of all forms of law, or the assassination of public officials (U. S. C., title 8, sec. 155).

The existing legislation is entirely adequate to meet any existing threat of force or violence.

What does this proposed bill mean? It does not make exclusion or deportation dependent upon any act of the alien or any incitement of conspiracy of the alien. It is directed to belief and opinions alone. The act proposes to add another section to the fourth section now set forth in section 137 of article 8 of the code. The beliefs and opinions aimed at are not even limited to those which it may be believed are dangerous to American principles, but include any belief or opinion as to any change in the American form of government. Moreover, the belief or opinion need not be that of the alien himself; the alien is to be excluded or deported if he is a member of or assists in any way any organization which has such a belief or opinion, or advocates any such change in the American form of Government. That is the language of the act, which is obviously directed only to beliefs and opinions.

Representative DEMPSEY. Do you so construe H. R. 4860?

Mr. OPPENHEIMER. Yes.

Representative DEMPSEY. Have you read the bill?

Mr. OPPENHEIMER. Yes.

Representative DEMPSEY. Does it say that?

Mr. OPPENHEIMER. I will get to an analysis of it in just a moment. It is covered by paragraph C of section 1 of the act, and proposes to amend the bill by striking out the word "sabotage", and substituting "any" for "fundamental", so as to read "any change in the American form of government."

Representative DEMPSEY: That is not a part of the bill.

Mr. OPPENHEIMER. That is not a part of the bill, but that has to be read as part of the general act you were going to amend.

Representative DEMPSEY. Under that, would it not be possible for any person to make an address and praise our form of government?

Mr. OPPENHEIMER. That is not what I said.

Representative DEMPSEY. If you advocate any change in our form of government you are deportable? Is that what you mean?

Mr. OPPENHEIMER. Not only that, but if you believe in a change in our form of government, whether you advocate it or not.

It seems clear to me under the bill that any alien who believes in any change in the American form of government, whether he advocates it or not, or who belongs to any organization which believes in or advocates a change in the American form of government, is subject to deportation. I say, therefore, again, that this bill is directed to belief and opinion. Under this bill any man who has an opinion with respect to the American form of government, is subject to deportation.

The terms of the statute are so vague and general that they afford no adequate standards for its enforcement. The Constitution contains no definition of the American form of government, nor have counsel been able to find any decisions of the Supreme Court which define that term.

In discussing the meaning of the fourth section of the fourth article of the Constitution of the United States, which provides that the United States shall guarantee to every State in the Union a republican form of government. In the case of *Duncan v. McCall*, 139 U. S. 449, Chief Justice Fuller of the United States Supreme Court said:

By the Constitution, a republican form of government is guaranteed to every State in the Union, and the distinguishing feature of that form is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies whose legislative acts may be said to be those of the people themselves; but while the people are thus the source of political power, their governments, national and State, have been limited by written constitutions, and they have themselves thereby set bounds to their own power, as against the sudden impulses of mere majorities.

So that the Constitution is a part of the American form of government, and any change in the Constitution would presumably be a change in the American form of government. An amendment to our Constitution, in view of changing conditions, would be a change in the American form of government.

It will be noted that the Supreme Court, in its discussion of what is a republican form of government for the States, points out that the distinguishing feature is the right of the people to choose their own officers and pass their own laws, but that such government is limited by written constitutions.

The Supreme Court has refused, under this section of the Constitution, to decide whether or not a State has ceased to be republican in form within the meaning of the guaranty. That question, the Court has held, is a political one solely for Congress to determine (*Luther v. Borden*, 7 How. 581; *Pacific States Telephone & Telegraph Company v. Oregon*, 233 U. S. 118).

One of the distinguishing features of our American form of government is the Bill of Rights, which guarantees to every individual, citizen and alien alike, certain fundamental liberties, including the right of free speech and the advocacy, by peaceful means, of changes in our political system. The proposed bill, by forbidding not only such right of free speech but also opinions on such matters, in itself, would effect a disastrous change in our form of government.

Every amendment to the United States Constitution has represented a change in our organic law. The first 10 amendments, constituting the Bill of Rights, can properly be considered as passed in conjunction with the original instrument, but there have been 11 other amendments, some of which enacted drastic changes in our system of government.

If the proposed bill had been upon the statute books in the past, an alien would presumably have been excluded or deported if he had believed in or been affiliated with an organization in favor of the thirteenth amendment prohibiting slavery; or the fourteenth amendment prohibiting the States from abridging or infringing the immunities of citizens; or the fifteenth amendment providing that the rights of citizens of the United States to vote shall not be denied by the United States or by any State on account of race, color, or previous condition of servitude; or the nineteenth amendment similarly protecting the rights of women citizens; or the seventeenth amendment providing for the popular election of Senators.



If the law had been in effect when the eighteenth or prohibition amendment was under discussion, an alien would have been deported if he had been affiliated with an American prohibition organization. But after the eighteenth amendment was passed, another alien would have been excluded or deported if he had belonged to a society which passed a resolution in favor of the repeal of the eighteenth amendment before that repeal was subsequently effected by the twenty-first amendment.

Every amendment to the United States Constitution has effected a change in our organic law because our laws are limited by our written Constitution.

Senator ANDREWS. Those changes to which you were referring were made by the orderly processes of law under the Constitution.

Mr. OPPENHEIMER. Yes; but some of them were drastic changes, such as both the eighteenth and nineteenth amendments and their adoption effected drastic changes.

Senator HUGHES. Not in the form of government.

Mr. OPPENHEIMER. They gave Congress a power it never had before. It was a drastic and fundamental change in the laws of the United States. After the adoption of the eighteenth amendment, any alien who either had or expressed an opinion before that amendment was repealed, was subject to deportation. When the Federal Government extended the taxing power so as to tax incomes, that was something which unquestionably effected a change in our American form of government.

Senator ANDREWS. That did not effect a change in the form of government. It simply conferred certain powers upon certain branches of the Government.

Mr. OPPENHEIMER. They took it away from the Congress and put it up to the people, which I think would be held to be a change, a fundamental change in our form of Government.

Today other amendments to the Constitution, which involve changes in the American form of government, are being seriously discussed pro and con by persons and societies whose allegiance to our country is undivided and unquestioned. These proposed amendments include a single term for the President, the right of the Federal Government to tax income derived from state and municipal securities, and a limitation upon the power of Congress to declare war without a referendum by the people.

Under the proposed bill, an alien, otherwise admissible in every respect, who happened to believe in one of those proposed changes, could not be admitted. If he had no opinion on the matter then but formed an opinion after his admission to the country, he would be deportable, and this would follow at any time before he became a citizen, even though he married an American woman and had American-born children.

Under the proposed bill, an alien would be deportable if he had no opinion himself on any of these matters, but joined a social group or labor union which happened to pass a resolution advocating, for example, the passage of the Ludlow amendment.

When a matter of public interest is before the people, it seems to me that any citizen, whether native-born or alien, who has an opinion on that subject should be privileged to express such opinion. It is only

by such discussion, as I understand American history, that the truth can be arrived at. It seems to me that the people are being deprived of their just rights when you start nibbling away at these great constitutional guaranties.

Senator ANDREWS. Do you think those guaranties were intended to affect those who do not subscribe to our form of government, or those who conform to our form of government?

Mr. OPPENHEIMER. The guaranties of the Bill of Rights and of the Supreme Court have established the status of the citizen. A man cannot become a citizen unless he takes the oath of allegiance. This bill takes away those constitutional rights. This bill would deprive every foreign-born citizen, every naturalized citizen, of the right guaranteed to him by the Constitution to discuss an important question before the people for the betterment of America; or if he has not already become a citizen, he could be prevented from doing so. I have in mind particularly in this connection what is known as the Ludlow amendment. Under this bill, even though an alien had no opinion upon any proposed change in the form of our United States Government at the time of his admission, yet, under this bill, after his admission, if he formed an opinion upon that subject, he would be subject to deportation, even though he formed his opinion when he was an American citizen. If he belonged to any organization or society which passed a resolution for or against the Ludlow amendment, even though he knew nothing of it, he would be subject to deportation under this bill. If an alien had an American wife and children, and happened to join a labor organization or society or club of any kind that passed a resolution endorsing or opposing the Ludlow amendment, he would be subject to deportation, under the provisions of this bill.

Senator ANDREWS. They would not have to investigate all of them, would they?

Representative DEMPSEY. They would not have to investigate any of them.

Mr. OPPENHEIMER. There is no discretion given to the Department of Labor or the Secretary of Labor in that respect. It is the affirmative duty of the Department of Labor to bring about the deportation of every alien who has violated the law.

Is that correct, Mr. Shaughnessy?

Mr. SHAUGHNESSY. That is correct to the same extent that there are perhaps 50 or 75 causes for deportation.

Representative DEMPSEY. Why are they not doing it now? You are reading something into the bill that is not there. It is not a part of it.

Mr. OPPENHEIMER. These people would be advocating or believing in a change in the American form of Government.

Representative DEMPSEY. There is nothing in this bill relating to that at all.

Mr. OPPENHEIMER. I beg to differ with you. Section 137 of the United States Code covers that subject of exclusion of aliens. It excludes from admission into the United States various groups of aliens, including aliens who believe in the change in our form of government, or who are members of or are affiliated with any organization, association, society or groups entertaining such belief. The Department of Labor has the duty of enforcing that law and excluding those aliens.

Representative DEMPSEY. Do you say that it is mandatory upon the Department of Labor to do all these things?

Mr. OPPENHEIMER. Yes.

Representative DEMPSEY. Do you find them making such investigations as you speak of?

Mr. OPPENHEIMER. I think they do the best job they can. They have that duty under the act.

Representative DEMPSEY. They are not required to make investigation into specific instances, are they?

Mr. OPPENHEIMER. They have the duty under the law.

Representative DEMPSEY. You say this law would exclude them if they believe in a change in the American form of Government; if they advocate such a change?

Mr. OPPENHEIMER. If they advocate it or believe in it.

Representative DEMPSEY. It does not say that. You are injecting that, because of the language of the present act.

Mr. OPPENHEIMER. I will leave that to the Senators.

Representative DEMPSEY. You do not think that any change should be made in the immigration laws?

Mr. OPPENHEIMER. I would not say that. I would not say the law is necessarily perfect. I am not in favor of raising the quotas if that is what you mean.

May I continue on this subject?

Senator HUGHES. Yes.

Mr. OPPENHEIMER. Both the exclusion and deportation phases of the immigration process are enforced by the executive branch of the Government. Neither phase is a matter for the courts. The great majority of aliens who apply for admission or against whom deportation warrants are issued are not represented by counsel, and only an infinitesimal percentage of immigration cases comes before courts on habeas corpus proceedings. (Annual Reports of the Secretary of Labor; National Commission on Law Observance and Enforcement, "The Enforcement of the Deportation laws of the United States.")

Every alien who applies for admission to the United States is examined by the Immigration Department of the Department of Labor. During the fiscal year ending June 30, 1939, 82,989 aliens were admitted for permanent residence. In addition, there were over 28,000,000 alien entries from Canada and Mexico. (Annual Report of the Secretary of Labor for the fiscal year ended June 30, 1939, p. 89.)

Apart from the aliens applying for admission to this country, it is estimated that the alien population legally in the United States, as of July 1, 1939, was in excess of 3,600,000. (Annual Report of the Secretary of Labor for the fiscal year ended June 30, 1939, p. 109.)

Under the proposed bill, it would be the duty of the Immigration Department to ascertain if any of these 3,600,000 aliens believed, after the passage of the act, in the making of any changes in the American form of government or was affiliated with any organization which so believed or so advocated.

The personnel of the Immigration and Naturalization Service includes a total of 3,771 persons (Annual Report of the Secretary of Labor for the fiscal year ended June 30, 1939, p. 110). These 3,771 persons would be given the power and duty of making an inquisitorial examination as to the individual beliefs of all the aliens in this country as well as those applying for admission. This examination would include the ascertainment of the political convictions of the aliens in

this country as well as those applying for admission. This examination would include the ascertainment of the political convictions of the aliens and the judging of whether any of those convictions included a belief in any proposed change, however peacefully effected, in our form of government.

Under the proposed bill, we would be giving the employees of an executive department of the Government greater power than we have ever given to our courts.

It is submitted that the Immigration Department has already as much as it can do in enforcing present immigration laws, and that those laws effectively protect us. The proposed bill would give to this executive department duties impossible of performance and powers inimical to our whole system of government.

I submit that the bill strikes at the fundamentals of our principles of government. It has no precedent in American history.

The short-lived and detested Alien and Sedition Acts did not go nearly as far as would the present proposed bill. The Enemy Alien Act (1 U. S. Stat. at L., p. 577) authorized the President to arrest, imprison or banish alien citizens. The Alien Act (1 U. S. Stat. at L., p. 570) gave the President power to expel from the country any alien whom he regarded as dangerous to public peace and safety, or whom he believed to be plotting against the Government. The Sedition Act (1 U. S. Stat. at L., p. 596) made unlawful seditious conspiracies and publications of writings to stir up hatred against our Government or its officers.

These acts were opposed by Jefferson, Madison, and Marshall. Jefferson called them "a monster that must forever disgrace its parents." Marshall thought them "useless—calculated to create unnecessary discontents and jealousies." He pledged that he would "indisputably oppose their revival." He voted to repeal the sedition bill in Congress, voting against his own party.

No aliens were deported under these acts; 10 persons were convicted of seditious libel, but in 1840 and 1850, Congress repaid the fines of the most conspicuous citizens. (1 Encyclopaedia of Social Sciences, p. 635; Albert J. Beveridge, *The Life of John Marshall*, vol. 2, pp. 382, 389, and 451.)

These acts, unpopular, and condemned as they were, did not seek to exclude or expel aliens who advocated any change in our form of government. Indeed, the closest precedent for the proposed legislation was in England at the time of George III, when the King's judges transported men who wanted to abolish rotten boroughs and the limited franchise, because it was felt that if the people of Great Britain possessed the same privileges as the French they might destroy the constitution (Chafec, *Freedom of Speech*, p. 217).

I submit that the proposed act would be unconstitutional. The Federal Government has the constitutional right to exclude from admission any aliens for any reason that it may deem proper. But aliens in the United States are entitled to the protection of the first, fifth, and sixth amendments (*Yick Wo v. Hopkins*, 118 U. S. 356; *Truax v. Reich*, 239 U. S. 33; *Wong Wing v. U. S.*, 163 U. S. 228; *Hague v. C. I. O.*, 307 U. S. 496, 519).

In *Hague v. C. I. O.*, supra, Mr. Justice Stone, in a separate opinion, said:

It has been explicitly and repeatedly affirmed by this Court, without a dissenting voice, that freedom of speech and of assembly for any lawful purpose are rights of personal liberty secured to all persons, without regard to citizenship, by the due-process clause of the fourteenth amendment.

That the proposed bill, at least as to aliens in this country, would violate the freedom of speech guaranteed to aliens as well as citizens by the Constitution is, it is submitted, clear.

In *Stromberg v. California* (283 U. S. 359), a conviction of a defendant under a State statute making it a criminal offense to display a red flag as a sign of opposition to organized government was held invalid as violating the guaranty of liberty contained in the fourteenth amendment. Mr. Chief Justice Hughes delivered the opinion of the majority of the Court, and stated:

The question is thus narrowed to that of the validity of the first clause, that is with respect to the display of the flag as "a sign, symbol, or emblem of opposition to organized government," and the construction which the State court has placed upon this clause removes every element of doubt. The State court recognized the indefiniteness and ambiguity of the clause. The court considered that it might be construed as embracing conduct which the State could not constitutionally prohibit. Thus it was said that the clause "might be construed to include the peaceful and orderly opposition to a government as organized and controlled by one political party equally high-minded and patriotic, which did not agree with the one in power. It might also be construed to include peaceful and orderly opposition to government by legal means and within constitutional limitations." The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system. A statute which upon its face, and as authoritatively construed, is so vague and indefinite as to permit the punishment of the fair use of this opportunity is repugnant to the guaranty of liberty contained in the fourteenth amendment. The first clause of the statute being invalid upon its face, the conviction of the appellant, which so far as the record discloses may have rested upon that clause exclusively, must be set aside.

In *De Jonge v. Oregon* (299 U. S. 353), the Supreme Court unanimously held invalid a conviction under an Oregon statute, under which the defendant was convicted for assisting in the conduct of a meeting called under the auspices of the Communist Party, when the meeting itself was held for a lawful purpose and was confined to that purpose. The Court said:

While the States are entitled to protect themselves from the abuse of the privileges of our institutions through an attempted substitution of force and violence in the place of peaceful political action in order to effect revolutionary changes in government, none of our decisions go to the length of sustaining such a curtailment of the right of free speech and assembly as the Oregon statute demands in its present application. \* \* \*

\* \* \* The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press, and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government.

If I may say a personal word, I do not think Mr. Dempsey feels any more strongly in opposition to the principles of communism or of nazi-ism than I do. I resent them with every fiber of my being. I heartily believe in the American form of government. I am not arguing for any of those foreign principles, and do not believe in them.

Senator ANDREWS. Do you represent any society or organization?

Mr. OPPENHEIMER. The American Civil Liberties Union.

Senator ANDREWS. Do you have a copy of their charter or articles of faith?

Mr. OPPENHEIMER. No. I am sorry, but I have not. I am representing them in this one matter.

The proposed statute could only be enforced by inquisitorial examinations of suspects by members of the Immigration Department. It goes far beyond infringing freedom of speech, for it makes deportable any alien who has an unexpressed belief. The beliefs which under the statute would lead to deportation go far beyond advocacy of any different form of government, for, under the proposed act, an alien who advocated any change in the form of our Government would be subject to deportation.

The act is proposed in good faith as a means of combating Nazi and Communist influence in our country. Its adoption, however, would be a victory for one of the very principles we are fighting. It is in the European dictatorships that dissent from their present form of government is unlawful. It is in the European dictatorships that opinion in itself can mean exile. In America, we believe in the power of truth, in the free discussion of ideas, at least so long as those ideas are not accompanied by steps for the violent and unlawful overthrow of government.

It is of the very essence of our theory of government that, however much we believe in it, we do not necessarily believe it is perfect. American history has taught that the power of the people to make changes peacefully is the best protection a democracy can have. The process demands the free discussion of ideas, even ideas to which most of us may violently object.

In the words of one of the greatest jurists and greatest Americans, Justice Holmes:

\* \* \* But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market; and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution. It is an experiment, as all life is, an experiment. Every year, if not every day, we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country (*Abrams v. U. S.*, 250 U. S. 616, 630).

Representative DEMPSEY. The contention has been and is being made daily that the Communist Party is a political party. As a matter of fact, it is not. The sworn testimony before the Dies committee, of which I am a member, was that their object is to spread communism and do all these things that are contrary to our form and principles of Government. That is also the practice of Moscow and the Comintern. They are in full control of the Communist Party in Russia. Even American citizens are members of this organization, with the full understanding that in the event of trouble between Russia and the United States they would be with Russia. That is the class I am referring to.

Mr. OPPENHEIMER. Mr. Chairman, I have a little memorandum here, from which I have read, that I would like to put in record.

Senator HUGHES. That may be done.  
(The matter referred to is as follows:)

FEBRUARY 21, 1940.

MEMORANDUM ON BEHALF OF AMERICAN CIVIL LIBERTIES UNION, IN OPPOSITION TO H. R. 4860, INTRODUCED BY MR. DEMPSEY, ENTITLED "A BILL TO AMEND EXISTING LAW SO AS TO PROVIDE FOR THE EXCLUSION AND DEPORTATION OF ALIENS WHO ADVOCATE THE MAKING OF ANY CHANGES IN THE AMERICAN FORM OF GOVERNMENT"

There is national and proper resentment against aliens who violate the hospitality which the United States has offered them by endeavoring to overthrow our Government and the principles for which it stands. The proposed bill, however, it is respectfully submitted, is unnecessary, unconstitutional, and violative of the very principles of our American democracy which we are seeking to maintain.

#### PRESENT LEGISLATION

The laws of the United States, at the present time, provide for the exclusion and deportation of aliens who believe in, advise, advocate, or are members of or affiliated with any group or organization that believes in, advises, advocates, or teaches (1) the overthrow by force or violence of the Government of the United States or of all forms of law; (2) the duty or necessity of political assassination; (3) the unlawful damage or destruction of property; and (4) sabotage (U. S. C., title 8, sec. 137 (a), (b), (c), (d), (e), (f), and (g)).

Any aliens within these classes are deportable at any time irrespective of the time of their entry.

There are additional provisions for the deportation of aliens, at any time, for advocating or teaching the unlawful destruction of property, or the overthrow by force or violence of the Government of the United States or of all forms of law, or the assassination of public officials (U. S. C., title 8, sec. 155).

The existing legislation is entirely adequate to meet any existing threat of force or violence.

#### WHAT DOES THE DEMPSEY BILL MEAN?

The proposed bill does not make exclusion or deportation dependent upon any act of the alien or any incitement or conspiracy of the alien. It is directed to beliefs and opinions alone. The beliefs and opinions aimed at are not even limited to those which it may be believed are dangerous to American principles, but include any belief or opinion as to any change in the American form of government. Moreover, the belief or opinion need not be that of the alien himself; the alien is to be excluded or deported if he is a member of or assists in any way any organization which has such a belief or opinion, or advocates any such change.

The terms of the statute are so vague and general that they afford no adequate standards for its enforcement. The Constitution contains no definition of the American form of government, nor have counsel been able to find any decisions of the Supreme Court which define that term.

In discussing the meaning of the fourth section of the fourth article of the Constitution of the United States, which provides that the United States shall guarantee to every State in the Union a republican form of government, Chief Justice Fuller said:

"By the Constitution, a republican form of government is guaranteed to every State in the Union, and the distinguishing feature of that form is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies whose legislative acts may be said to be those of the people themselves; but while the people are thus the source of political power, their governments, National and State, have been limited by written constitutions, and they have themselves thereby set bounds to their own power, as against the sudden impulses of mere majorities" (*Duncan v. McCall*, 139 U. S. 449, 461).

It will be noted that the Supreme Court, in its discussion of what is a republican form of government for the States, points out that the distinguishing feature is the right of the people to choose their own officers and pass their own laws, but that such government is limited by written constitutions.

The Supreme Court has refused, under this section of the Constitution, to decide whether or not a State has ceased to be republican in form within the meaning of the guaranty. That question, the Court has held, is a political one solely for Congress to determine.

*Luther v. Borden* (7 How. 581).

*Pacific States Telephone & Telegraph Company v. Oregon* (233 U. S. 118).

One of the distinguishing features of our American form of government is the Bill of Rights, which guarantees to every individual, citizen and alien alike, certain fundamental liberties, including the right of free speech and the advocacy, by peaceful means, of changes in our political system. The proposed bill, by forbidding not only such right of free speech but also opinions on such matters, in itself, would effect a disastrous change in our form of government.

Every amendment to the United States Constitution has represented a change in our organic law. The first 10 amendments, constituting the Bill of Rights, can properly be considered as passed in conjunction with the original instrument, but there have been 11 other amendments, some of which enacted drastic changes in our system of government.

If the proposed bill had been upon the statute books in the past, an alien would presumably have been excluded or deported if he had believed in or been affiliated with an organization in favor of the thirteenth amendment prohibiting slavery; or the fourteenth amendment prohibiting the States from abridging or infringing the immunities of citizens; or the fifteenth amendment providing that the rights of citizens of the United States to vote shall not be denied by the United States or by any State on account of race, color, or previous condition of servitude; or the nineteenth amendment similarly protecting the rights of women citizens; or the seventeenth amendment providing for the popular election of Senators. If the law had been in effect when the eighteenth or prohibition amendment was under discussion, an alien would have been deported if he had been affiliated with an American prohibition organization. But after the eighteenth amendment was passed, another alien would have been excluded or deported if he had belonged to a society which passed a resolution in favor of the repeal of the eighteenth amendment before that repeal was subsequently effected by the twenty-first amendment.

Today other amendments to the Constitution, which involve changes in the American form of government, are being seriously discussed pro and con by persons and societies whose allegiance to our country is undivided and unquestioned. These proposed amendments include a single term for the President, the right of the Federal Government to tax income derived from State and municipal securities, and a limitation upon the power of Congress to declare war without a referendum by the people.

Under the proposed bill, an alien, otherwise admissible in every respect, who happened to believe in one of those proposed changes, could not be admitted. If he had no opinion on the matter then but formed an opinion after his admission to the country, he would be deportable, and this would follow at any time before he became a citizen, even though he married an American woman and had American-born children.

Under the proposed bill, an alien would be deportable if he had no opinion himself on any of these matters, but joined a social group or labor union which happened to pass a resolution advocating, for example, the passage of the Ludlow amendment.

#### THE ENFORCEMENT OF THE PROPOSED ACT

Both the exclusion and deportation phases of the immigration process are enforced by the executive branch of the Government. Neither phase is a matter for the courts. The great majority of aliens who apply for admission or against whom deportation warrants are issued are not represented by counsel, and only an infinitesimal percentage of immigration-cases comes before courts on habeas corpus proceedings.

Annual Reports of the Secretary of Labor.

National Commission on Law Observance and Enforcement, the Enforcement of the Deportation Laws of the United States.

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Annual Report of the Secretary of Labor for the fiscal year ended June 30, 1939, page 89.

Apart from the aliens applying for admission to this country, it is estimated that the alien population legally in the United States, as of July 1, 1939, was in excess of 3,600,000.

Annual Report of the Secretary of Labor for the fiscal year ended June 30, 1939, page 109.



Under the proposed bill, it would be the duty of the Immigration Department to ascertain if any of these 3,600,000 aliens believed, after the passage of the act, in the making of any changes in the American form of government or was affiliated with any organization which so believed or so advocated.

The personnel of the Immigration and Naturalization Service includes a total of 3,771 persons (Annual Report of the Secretary of Labor for the fiscal year ended June 30, 1939, p. 110). These 3,771 persons would be given the power and duty of making an inquisitorial examination as to the individual beliefs of all the aliens in this country as well as those applying for admission. This examination would include the ascertainment of the political convictions of the aliens and the judging of whether any of those convictions included a belief in any proposed change, however peacefully effected, in our form of government.

Under the proposed bill, we would be giving the employees of an executive department of the Government greater power than we have ever given to our courts.

It is submitted that the Immigration Department has already as much as it can do in enforcing present immigration laws, and that those laws effectively protect us. The proposed bill would give to this executive department duties impossible of performance and powers inimical to our whole system of government.

#### THE PROPOSED ACT HAS NO PRECEDENT IN AMERICAN HISTORY

The short-lived and detested alien and sedition acts did not go nearly as far as would the present proposed bill. The Enemy Alien Act (1 U. S. Stat. L., p. 577) authorized the President to arrest, imprison, or banish alien citizens. The Alien Act (1 U. S. Stat. L., p. 570) gave the President power to expel from the country any alien whom he regarded as dangerous to public peace and safety, or whom he believed to be plotting against the Government. The Sedition Act (1 U. S. Stat. L., p. 596) made unlawful seditious conspiracies and publications of writings to stir up hatred against our Government or its officers.

These acts were opposed by Jefferson, Madison, and Marshall. Jefferson called them "a monster that must forever disgrace its parents." Marshall thought them "useless—calculated to create unnecessary discontents and jealousies." He pledged that he would "indisputably oppose their revival." He voted to repeal the sedition bill in Congress, voting against his own party.

No aliens were deported under these acts; 10 persons were convicted of seditious libel, but in 1840 and 1850 Congress repaid the fines of the most conspicuous citizens.

1 Encyclopedia of Social Sciences, page 635; Albert J. Beveridge, *The Life of John Marshall*, volume 2, pages 382, 389, and 451.

These acts, unpopular and condemned as they were, did not seek to exclude or expel aliens who advocated any change in our form of government. Indeed, the closest precedent for the proposed legislation was in England at the time of George III, when the King's judges transported men who wanted to abolish rotten boroughs and the limited franchise, because it was felt that if the people of Great Britain possessed the same privileges as the French they might destroy the Constitution (Chafee, *Freedom of Speech*, p. 217).

#### I SUBMIT THAT THE PROPOSED ACT WOULD BE UNCONSTITUTIONAL

The Federal Government has the constitutional right to exclude from admission any aliens for any reason that it may deem proper. But aliens in the United States are entitled to the protection of the first, fifth, and sixth amendments.

*Yick Wo v. Hopkins* (118 U. S. 356).

*Truax v. Raich* (239 U. S. 33).

*Wong Wing v. U. S.* (163 U. S. 228).

*Hague v. C. I. O.* (307 U. S. 496, 519).

In *Hague v. C. I. O.*, supra, Mr. Justice Stone, in a separate opinion, said:

"It has been explicitly and repeatedly affirmed by this Court, without a dissenting voice, that freedom of speech and of assembly for any lawful purpose are rights of personal liberty secured to all persons, without regard to citizenship, by the due-process clause of the fourteenth amendment."

That the proposed bill, at least as to aliens in this country, would violate the freedom of speech guaranteed to aliens as well as citizens by the Constitution is, it is submitted, clear.

In *Stromberg v. California* (283 U. S. 359), a conviction of a defendant under a State statute making it a criminal offense to display a red flag as a sign of opposition to organized government was held invalid as violating the guaranty of liberty contained in the fourteenth amendment. Mr. Chief Justice Hughes delivered the opinion of the majority of the Court, and stated:

"The question is thus narrowed to that of the validity of the first clause, that is, with respect to the display of the flag 'as a sign, symbol, or emblem of opposition to organized government,' and the construction which the State court has placed upon this clause removes every element of doubt. The State court recognized the indefiniteness and ambiguity of the clause. The court considered that it might be construed as embracing conduct which the State could not constitutionally prohibit. Thus it was said that the clause 'might be construed to include the peaceful and orderly opposition to a government as organized and controlled by one political party by those of another political party equally high minded and patriotic, which did not agree with the one in power. It might also be construed to include peaceful and orderly opposition to government by legal means and within constitutional limitations.' The maintenance of the opportunity for free political discussion to the end that Government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system. A statute which upon its face, and as authoritatively construed, is so vague and indefinite as to permit the punishment of the fair use of this opportunity is repugnant to the guaranty of liberty contained in the fourteenth amendment. The first clause of the statute being invalid upon its face, the conviction of the appellant, which so far as the record discloses may have rested upon that clause exclusively, must be set aside."

In *De Jonge v. Oregon* (299 U. S. 353) the Supreme Court unanimously held invalid a conviction under an Oregon statute, under which the defendant was convicted for assisting in the conduct of a meeting called under the auspices of the Communist Party, when the meeting itself was held for a lawful purpose and was confined to that purpose. The Court said:

"While the States are entitled to protect themselves from the abuse of the privileges of our institutions through an attempted substitution of force and violence in the place of peaceful political action in order to effect revolutionary changes in government, none of our decisions go to the length of sustaining such a curtailment of the right of free speech and assembly as the Oregon statute demands in its present application. \* \* \*

"\* \* \* The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press, and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government."

The proposed statute could only be enforced by inquisitorial examinations of suspects by members of the Immigration Department. It goes far beyond infringing freedom of speech, for it makes deportable any alien who has an unexpressed belief. The beliefs which under the statute would lead to deportation go far beyond advocacy of any different form of government, for, under the proposed act, an alien who advocated any change in the form of our government would be subject to deportation.

#### THE PROPOSED ACT WOULD ITSELF CONSTITUTE A DANGER TO OUR LIBERTIES

The act is proposed in good faith as a means of combating Nazi and Communist influence in our country. Its adoption, however, would be a victory for one of the very principles we are fighting. It is in the European dictatorships that dissent from their present form of government is unlawful. It is in the European dictatorships that opinion in itself can mean exile. In America, we believe in the power of truth, in the free discussion of ideas, at least so long as those ideas are not accompanied by steps for the violent and unlawful overthrow of government.

It is of the very essence of our theory of government that, however much we believe in it, we do not necessarily believe it is perfect. American history has taught that the power of the people to make changes peacefully is the best protection a democracy can have. That process demands the free discussion of ideas, even ideas to which most of us may violently object.

In the words of one of the greatest jurists and greatest Americans, Justice Holmes—

"\* \* \* But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market; and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year, if not every day, we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system, I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country." *Abrams v. U. S.*, 250 U. S. 616, 630.

Respectfully submitted.

REUBEN OPPENHEIMER,  
*Attorney for American Civil Liberties Union.*

ARTHUR GARFIELD HAYS,  
*of Counsel.*

Senator HUGHES. Whatever is put in the record will be for the purpose of informing the committee only.

Senator ANDREWS. That applies particularly to these exhibits that have been put in.

Mr. OPPENHEIMER. I do not want to burden the committee.

Senator HUGHES. Are there any other witnesses who want to be heard?

**STATEMENT OF CLOYD LAPORTE, REPRESENTING THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, COMMITTEE ON FEDERAL LEGISLATION**

Senator HUGHES. You may state your name and whom you represent.

Mr. LAPORTE. My name is Cloyd Laporte, of New York City. I am appearing for the committee on Federal legislation of the Association of the Bar of the City of New York.

Senator HUGHES. You may proceed.

Mr. LAPORTE. This bill—which was passed by the House of Representatives and is now in the Senate Committee on Immigration—would amend the United States Code, 1934 edition, title 8, sections 137 (c) and (d), and thus provide for the compulsory exclusion or deportation of any alien who "believes in, advises, advocates, or teaches" "the making of any changes in the American form of government," or who is a member of or affiliated with any organization, association, society, or group that "believes in, advises, advocates, or teaches" "the making of any changes in the American form of government."

The instant bill goes far beyond the present law which now requires the exclusion or deportation of any alien who believes in, advises, advocates, or teaches the overthrow by force or violence of the Government of the United States or of all forms of law, or the duty, necessity, or propriety of unlawful destruction or damage of property or sabotage. The instant bill, if literally construed, would visit upon aliens the drastic sanctions of exclusion or deportation for believing in, or being affiliated with, any organization or group that believes in any change

in the American form of government regardless of the nature of such change, its desirability, its approval by a preponderant majority of law-abiding and right-thinking American citizens, or the legality of the means by which it is to be effected.

Under the language of this bill the mere existence of a bona fide belief on the part of an alien or on the part of a social, political, religious, or economic group with which he was affiliated before his entry into this country, or with which he has become affiliated after entry, that our form of government might be improved by perfectly legal and peaceful means may call for the imposition of the drastic sanctions of exclusion or deportation.

The history of this bill indicates the scope of the limitations which are intended to be placed by it upon every alien's freedom of thought and freedom of expression. As originally introduced in the House, the bill would have required exclusion or deportation of aliens when they believed in or advocated "the making of fundamental changes." In the House committee "fundamental" was changed to "any," and this change was accepted by the House.

This committee disapproves of the bill under consideration for the following reasons:

1. The bill is so vague and uncertain in its standards that persons of ordinary intelligence must guess at its meaning and differ as to its application. In view of such ambiguity and uncertainty they cannot govern their conduct so that they will be reasonably certain not to infringe the law and incur its drastic penalties.

What is "belief" in or "advocacy" of "any change in the American form of government"? Conceivably, a belief in any constitutional amendment designed to change our organic law and to be lawfully proposed and adopted, would fall within the condemnation of this bill. Conceivably, a belief in the desirability of a unicameral legislature, compulsory retirement of Federal judges at a given age, a single 7-year term for the President, the readjustment of the respective powers of State and Federal Governments, the expansion or curtailment of the powers of administrative agencies, popular referenda before declarations of war, and so forth, might be regarded as such changes in the American form of government as would require exclusion or deportation under this bill.

Less drastic changes have been characterized in the past as un-American or changes in the American form of government. The 1893 income-tax law, which was calculated to raise about \$30,000,000 a year, was denounced by Senator Hill as a "communistic tax" and by Senator Sherman as "socialism, communism, and devilism." The Federal Reserve System, when proposed, was denounced by leading bank presidents as "socialistic" and as "un-American." A tax law adopted by initiative in Oregon was opposed all the way to the Supreme Court of the United States on the ground that the Oregon initiative law changed the form of government of that State from republican to democratic and was, therefore, unconstitutional.

What measures would be ultimately held to be changes in the American form of government within the purview of this bill no one can now foretell with any certainty. That being so, we believe that no one—be he citizen or alien—should have his liberty placed in jeopardy or his rights or privileges as a person made dependent upon standards so vague and uncertain as those found in this bill.

At this time particularly, because of the political situation in certain foreign countries, exclusion or deportation of an alien may mean his living death. No person, alien or citizen, should be required to risk such a penalty without being clearly and definitely informed of the standards to which he must conform to avoid that risk.

Senator ANDREWS. Would you oppose the bill if the word "any" were removed from it?

Mr. LAPORTE. I would still oppose it, because the words "change in the form of government" are still very vague.

Senator ANDREWS. Is it not a fact that the expression "form of government" is a very general term, as we understand it from past history? The forms of government of various countries have been of various kinds, some being monarchical, and others communistic or similar forms of government.

Mr. LAPORTE. I think those are all very vague terms. What is a republican form of government guaranteed by our Constitution? That has led to a good deal of difference of opinion. Much has been said about a republican and democratic form of government. There have arisen great differences of opinion as to what is a republican or democratic form of government.

The situation in this country in respect to communism today is quite different from what it was 50 years ago. A lawyer who lived at that time would be surprised today to find that he was dealing with entirely different laws and rules and regulations than he dealt with 50 years ago. He might well say, "I believe this form of government should be changed," for which he could be deported, if he were an alien.

One of the great changes in our form of government has been the income-tax amendment, and the setting up of the Interstate Commerce Commission and the Securities and Exchange Commission, and various other commissions of that kind which have been set up by statute. I do not believe anybody can say definitely just what is a change in the form of government. When the income tax was first established back in the 90's, as I have already stated, it was severely criticized by members of the Senate. Would the adoption of this bill into law mean a change in our form of government? I confess that I do not know, but it is quite possible that it would.

Senator ANDREWS. Do you not think that term has been somewhat loosely used in argument?

Mr. LAPORTE. Some of the statements made would seem to indicate that.

Senator ANDREWS. I think so.

Mr. LAPORTE. But you have here a very vague statute which could be used in an oppressive manner. I am told there is a law in Japan that makes it criminal to think dangerous thoughts. This bill would go further than that. The thoughts that would be criminal might not be dangerous, but might be innocuous. They might be thoughts which would improve our thought of government.

The prohibition question is rather interesting in connection with this subject. Assume that this bill had been law during that era. It is difficult to conceive of any person in this country having no opinion on that question, as to whether it should be repealed or retained. If the opinion was that it should be retained, that is all right. That would involve no change. If an alien citizen thought it

should be repealed, then he would be liable to deportation under this act.

Shall I proceed?

Senator HUGHES. Yes.

Mr. LAPORTE. We do not believe that it is wise legislative policy to penalize freedom of political belief or political expression as this bill proposes to do.

As has been stated, this bill is not limited to those who believe in, or advocate, the overthrow of the Government by force or violence, or the necessity, propriety, or duty of assaulting, assassinating, or killing public officers, or the unlawful destruction or damage of property or sabotage. The belief in or advocacy of such views by aliens is now illegal, and if the bill were aimed to condemn and prohibit such beliefs or practices, there would be no need of the bill.

The freedom of political belief and expression which neither advocates force or violence, nor transgresses those bounds which in this country have long been regarded as legal and proper, should not now be proscribed by law. Free and full discussion of the Government, and freedom to believe in and hope for an improvement in the structure and processes of the Government and in the solution of its problems, are essential to the proper functioning of democracy and to the public welfare. It is by freedom of belief and freedom of expression that the Government is kept vital and effective and that progress is made. Irrational fear of change, resulting in the curtailment of political belief and expression which is neither violent nor unlawful, is, in fact, so contrary to our traditional policy that it may fairly be termed "un-American."

3. This bill is likewise subject to criticism for the reason that it requires the exclusion or deportation of aliens who, at the time of their entry into this country, belonged to or were affiliated with any organization or group which believed in or advocated any change in the American form of government or who, after entry, became affiliated with any such organization or group.

If exclusion or deportation of an alien is to depend upon belief in changing the American form of government, it should be his belief and not that of some group with which he may now be or formerly have been affiliated. He may or may not agree with the beliefs of the majority of the group at any given point of time. The belief of the majority of the group or his own belief may have changed, and his belief or that of the group may change again. He may even have resigned long ago from the group to which he belonged at the time of his entry into this country and have had nothing to do with that group since his entry. He may be one of a minority group, striving to induce the group to support the present form of American government. His membership in the group and the payment of dues thereto may be required if he is to earn a livelihood for himself and his family, and such membership does not necessarily evidence a belief on his part that our form of government should be changed. He may approve of certain policies of a group, or may belong to it for insurance benefits, collective bargaining, and so forth, and at the same time differ from the group's views as to specific political measures.

To subject an alien to exclusion or deportation on this vicarious basis, may, in many cases, disregard the alien's own belief. Those who sincerely believe in our form of government, as it is, may be treated under this bill as though they believed otherwise.

4. This bill, if enacted, would make the assimilation of aliens more difficult and would tend to defeat the efforts to Americanize aliens. An organization with aliens in its membership which wished to keep its alien membership, would have to withhold all expression of opinion on many important issues of the day; and if it wishes to preserve its freedom of expression, it would have to ask the aliens to resign. The risk of deportation would be so great that aliens who wished to stay in this country would have to sever all connections with any organization which might speak on any important political or economic questions. Aliens would tend to remain an unassimilated group, fearing to enter into any organized contact with citizens, and fearing to express any political or economic opinions of their own; for both the affiliation with any organization believing in any change in the American form of government, on their own belief in any change in the American form of government, would be ground for deportation.

I think Mr. Oppenheimer has covered the subject quite fully, and I will not take any more of the time of the committee. I have read some brief extracts from this statement, and I should like to file the whole statement with the committee.

Senator HUGHES. That may be done.

(The statement referred to is as follows:)

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK—COMMITTEE ON FEDERAL LEGISLATION—REPORT ON H. R. 4860 (76TH CONG.) A BILL TO AMEND EXISTING LAW SO AS TO PROVIDE FOR THE EXCLUSION AND DEPORTATION OF ALIENS WHO ADVOCATE THE MAKING OF FUNDAMENTAL CHANGES IN THE AMERICAN FORM OF GOVERNMENT

This bill (which was passed by the House of Representatives and is now in the Senate Committee on Immigration) would amend the United States Code, 1934 edition, title 8, sections 137 (c) and (d), and thus provide for the compulsory exclusion or deportation of any alien who "believes in, advises, advocates, or teaches the making of any changes in the American form of government," or who is a member of or affiliated with any organization, association, society, or group that "believes in, advises, advocates, or teaches the making of any changes in the American form of government."

The instant bill goes far beyond the present law which now requires the exclusion or deportation of any alien who believes in, advises, advocates, or teaches the overthrow by force or violence of the Government of the United States or of all forms of law, or the duty, necessity, or propriety of unlawfully assaulting, killing, or assassinating public officers, or the unlawful destruction or damage of property or sabotage. The instant bill, if literally construed, would visit upon aliens the drastic sanctions of exclusion or deportation for believing in, or being affiliated with any organization or group that believes in, any change in the American form of government regardless of the nature of such change, its desirability, its approval by a preponderant majority of law-abiding and right-thinking American citizens, or the legality of the means by which it is to be effected.

Under the language of this bill the mere existence of a bona fide belief on the part of an alien or on the part of a social, political, religious, or economic group with which he was affiliated before his entry into this country, or with which he has become affiliated after entry, that our form of government might be improved by perfectly legal and peaceful means may call for the imposition of the drastic sanctions of exclusion or deportation.

The history of this bill indicates the scope of the limitations which are intended to be placed by it upon every alien's freedom of thought and freedom of expression. As originally introduced in the House, the bill would have required exclusion or deportation of aliens when they believed in or advocated "the making of fundamental changes." In the House committee "fundamental" was changed to "any," and this change was accepted by the House.

This committee disapproves of the bill under consideration for the following reasons:

(1) The bill is so vague and uncertain in its standards that persons of ordinary intelligence must guess at its meaning and differ as to its application. In view of such ambiguity and uncertainty they cannot govern their conduct so that they will be reasonably certain not to infringe the law and incur its drastic penalties.

What is "belief in" or "advocacy" of "any change in the American form of government"? Conceivably, a belief in any constitutional amendment designed to change our organic law and to be lawfully proposed and adopted, would fall within the condemnation of this bill. Conceivably, a belief in the desirability of a unicameral legislature, compulsory retirement of Federal judges at a given age, a single 7-year- term for the President, the readjustment of the respective powers of State and Federal Governments, the expansion or curtailment of the powers of administrative agencies, popular referenda before declaration of war, etc., might be regarded as such changes in the American form of government as would require exclusion or deportation under this bill.

Less drastic changes have been characterized in the past as un-American or changes in the American form of government. The 1893 income-tax law, which was calculated to raise about \$30,000,000 a year, was denounced by Senator Hill as a "communistic tax" and by Senator Sherman as "socialism, communism, and devilism." The Federal Reserve System, when proposed, was denounced by leading bank presidents as "socialistic" and as "un-American." A tax law adopted by initiative in Oregon was opposed all the way to the Supreme Court of the United States on the ground that the Oregon initiative law changed the form of government of that State from republican to democratic and was, therefore, unconstitutional.

What measures would be ultimately held to be changes in the American form of government within the purview of this bill, no one can now foretell with any certainty. That being so, we believe that no one (be he citizen or alien) should have his liberty placed in jeopardy or his rights or privileges as a person made dependent upon standards so vague and uncertain as those found in this bill.

At this time particularly, because of the political situation in certain foreign countries, exclusion or deportation of an alien may mean his living death. No person, alien or citizen, should be required to risk such a penalty without being clearly and definitely informed of the standards to which he must conform to avoid that risk:

(2) We do not believe that it is wise legislative policy to penalize freedom of political belief or political expression as this bill proposes to do.

As has been stated, this bill is not limited to those who believe in, or advocate the overthrow of the Government by force or violence, or the necessity, propriety, or duty of assaulting, assassinating, or killing public officers, or the unlawful destruction or damage of property or sabotage. The belief in or advocacy of such views by aliens is now illegal, and if the aim of this bill were to condemn and prohibit such beliefs or practices, there would be no need of the bill.

The freedom of political belief and expression which neither advocates force or violence, nor transgresses those bounds which in this country have long been regarded as legal and proper, should not now be prescribed by law. Free and full discussion of the Government, and freedom to believe in and hope for an improvement in the structure and process of the Government and in the solution of its problems, are essential to the proper functioning of democracy and to the public welfare. It is by freedom of belief and freedom of expression that the Government is kept vital and effective and that progress is made. Irrational fear of change, resulting in the curtailment of political belief and expression which is neither violent nor unlawful, is, in fact, so contrary to our traditional policy that it may fairly be termed "un-American."

(3) The bill is likewise subject to criticism for the reason that it requires the exclusion or deportation of aliens who, at the time of their entry into this country, belonged to or were affiliated with any organization or group which believed in or advocated any change in the American form of government or who, after entry, became affiliated with any such organization or group.

If exclusion or deportation of an alien is to depend upon belief in changing the American form of government, it should be his belief and not that of some group with which he may now be or formerly have been affiliated. He may or may not agree with the beliefs of the majority of the group at any given point of time. The belief of the majority of the group or his own belief may have changed, and his belief or that of the group may change again. He may even have resigned long ago from the group to which he belonged at the time of his entry into this country and have had nothing to do with that group since his



entry. He may be one of a minority in the group, striving to induce the group to support the present form of American Government. His membership in the group and the payment of dues thereto may be required if he is to earn a livelihood for himself and his family, and such membership does not necessarily evidence a belief on his part that our form of government should be changed. He may approve of certain policies of a group, or may belong to it for insurance benefits, collective bargaining, etc., and at the same time differ from the group's views as to specific political measures.

To subject an alien to exclusion or deportation on this vicarious basis, may, in many cases, disregard the alien's own belief. Those who sincerely believe in our form of government, as it is, may be treated under this bill as though they believed otherwise.

(4) This bill, if enacted, would make the assimilation of aliens more difficult and would tend to defeat the efforts to Americanize aliens. An organization with aliens in its membership which wished to keep its alien membership, would have to withhold all expression of opinion on many important issues of the day; and if it wished to preserve its freedom of expression, it would have to ask the aliens to resign. The risk of deportation would be so great that aliens who wished to stay in this country would have to sever all connections with any organization which might speak on any important political or economic questions. Aliens would tend to remain an unassimilated group, fearing to enter into any organized contact with citizens, and fearing to express any political or economic opinions of their own; for both the affiliation with any organization believing in any change in the American form of government, or their own belief in any change in the American form of government, would be grounds for deportation.

The bill is disapproved.

Respectfully submitted.

COMMITTEE ON FEDERAL LEGISLATION OF THE ASSOCIATION,  
OF THE BAR OF THE CITY OF NEW YORK.

February 7, 1940

*Members of the committee.*—Cloyd Laporte, Chairman, Eduardo Andrade, Melbourne Bergerman, Porter R. Chandler, Arthur H. Dean, Noel T. Dowling, George V. Holton, Orrin G. Judd, Eugene J. Keogh, John B. Marsh, Robert G. Page, Simon H. Rifkind, Samuel Rudner, Charles H. Willard, John E. F. Wood, Secretary.

*Auxiliary members.*—John Howley, Melvyn G. Lowenstein, Samuel J. Silverman, Lauson H. Stone.

FEBRUARY 21, 1940.

#### LIST OF EXHIBITS

1. Pamphlet of American Civil Liberties Union, entitled "Shall Aliens Advocating Any Change in Our Form of Government Be Deported," December 1939.
2. Editorial in Baltimore Sun, April 10, 1939.
3. Editorial in New York Herald Tribune, March 25, 1939.
4. Column entitled "Freedom of Speech," by Hugh S. Johnson, New York World Telegram, December 29, 1939.
5. Letter dated January 19, 1940, from Prof. Frank Boas, of Columbia University.
6. Letter dated January 19, 1940, from Minister John Haynes Holmes, of Community Church, New York.
7. Letter dated January 23, 1940, from Prof. Harry Woodburn Chase, chancellor of New York University.
8. Letter dated January 25, 1940, from Mr. A. F. Whitney, president of Grand Lodge of Brotherhood of Railroad Trainmen.

#### SHALL ALIENS ADVOCATING ANY CHANGES IN OUR GOVERNMENT BE DEPORTED

A bill (H. R. 4860) to this effect, introduced by Rep. Dempsey, of New Mexico, a member of the Dies Committee, passed the House "by unanimous consent" on March 23, 1939, without roll call or debate. It is now pending before the Senate Immigration Committee.

READ THE FACTS AND TAKE THE ACTION INDICATED ON THE LAST PAGE

AMERICAN CIVIL LIBERTIES UNION  
31 Union Square West, New York City

DECEMBER 1939.

SHALL ALIENS ADVOCATING ANY CHANGES IN OUR FORM OF GOVERNMENT BE DEPORTED?

Representative John J. Dempsey of New Mexico introduced on March 8, 1939 a bill, H. R. 4860, to exclude and deport aliens who advocate "the making of fundamental changes in the American form of government." The Committee on Immigration and Naturalization, to whom the bill was referred, reported it favorably after a brief hearing, striking out the word "fundamental" in the original bill and substituting "any."

Mr. Poage of Texas, reporting for the Committee on Immigration and Naturalization, said:

"Representatives of different labor organizations appeared in support of the bill, also representatives of veterans' associations who pointed out the necessity for legislation that will prevent the malicious attacks on our laws and form of government.

"These representatives of the several organizations supplied a great deal of information relative to the activities of aliens and alien organizations. They also produced documents which tended to sustain the allegations made as to the existing menace and growth of alien propaganda.

"It appears that foreign groups and governments in some instances are financing emissaries, who establish headquarters to assist in the distribution of propaganda; that such agencies stir up strife both in political and industrial circles; that their aim is to create dissatisfaction and discord with our form of government and all democratic governments. It appears that these groups have become arrogant and have become a menace to good government and the peace and prosperity of our country.

"Opposition to the bill was also made by an organization whose principal objection was that if it was enacted into law it would suppress expressions of opinion on essential political issues by aliens; also that the bill if it became a law would be difficult of enforcement.

"The committee, after hearing the different persons who appeared and after thoroughly discussing the bill, were of the opinion that such legislation was necessary and unanimously report the same and urge early and favorable consideration."

DANGERS OF THE BILL

The bill in effect adds to the present categories of aliens who may be excluded or deported for their opinions a new class far more vaguely defined than those who advocate the overthrow of government by force or violence, sabotage or the unlawful destruction of property, or opposition to all organized government.

Under the terms of such a law, aliens would be virtually prohibited from holding any opinion at all about the United States government. Any foreign visitor with recorded views critical of the American form of government could be barred, however distinguished. Even the advocacy of a constitutional amendment would make an alien deportable. The bill would open up vast opportunities for malicious reports of aliens' views, leading to deportation proceedings.

Present laws against prohibited opinions by aliens are notoriously difficult of fair enforcement. To add the vague language of this bill would greatly increase the unfairness of the exclusion and deportation laws aimed at opinions.

The leading newspapers of the country were quick to see the dangers inherent in the bill and condemned it editorially in vigorous terms. Here are typical press comments:

[N. Y. Herald Tribune March 25, 1939]

"LAZY LAWMAKERS

"If the pay of our Representatives in Congress is not exactly munificent, at least it is handsome enough to warrant some slight study on their part of the measures brought up for their consideration. Yet we find the House passing 'unanimously and without debate' the Dempsey bill to deport any alien who advocates 'any change' in the American form of government \* \* \*"

"How are the courts to construe a provision which visits condign punishment on an alien for advocating 'any change' in our form of government? Suppose in private or public he sides with President Roosevelt's reorganization plan. Must we hand him his hat?

"Very possibly the situation demands legislation to rid the country of Communist and Fascist agents from abroad. The problem of its proper and effective enactment cannot be solved in any such slipshod fashion."

[Baltimore Sun, April 10, 1939]

"LAW AGAINST THOUGHT

"The protest of the American Civil Liberties Union against the Dempsey bill for the deportation of aliens who believe in the making of any changes in the American form of government is not a plea in behalf of aliens, but in behalf of common sense. \* \* \*

"The only new provision, and the poisonous provision, is that the Dempsey bill makes anyone who believes in not only violence and destruction but the making of any changes in the American form of government a law violator and deportable. Under this provision an alien could not advocate repeal of the income-tax amendment, or 'believe in' a Cabinet responsible to Congress without danger, for these involve changes in the American form of government. Every amendment to the Constitution is such a change: but does any rational man consider it criminal to advocate amendments to the Constitution? The Dempsey bill, in so far as it is not merely a reenactment of laws already on the statute books, is in effect forbidding aliens to think seriously about the United States Government. To suppose that the American people really want such a law is no compliment to their intelligence."

[St. Louis *Post-Dispatch*, March 27, 1939]

"A DRASTIC AND UNNECESSARY BILL

"Without a word of debate, by unanimous vote, the House has passed a bill, recommended by the Dies committee, that could easily be used as an instrument of oppression in a time of national hysteria. \* \* \*

"Efforts are being made to educate foreign-born residents in civics; this law would suppress statements of opinion by them on essential issues. Certainly the present law is a sufficient safeguard against alien agitators without passing a measure that violates the tradition of free speech. The Senate should consider the potentialities of this bill, and not follow the House example of thoughtless approval."

[Richmond (Va.) *Times Dispatch*, March 27, 1939]

"Unanimously and without a word of debate, the House has just passed a bill which, if it becomes law, would exclude from this country any alien advocating any change in the American form of government. \* \* \*

"If this bill is a typical child of the Dies investigation, the offspring appears to be somewhat spavined. If we must have such bills, they should be better prepared; this one in particular should be discarded."

[Dallas (Texas) *News*, April 13, 1939]

"DANGEROUS BILL

"If this bill were enacted, it would be possible to deport any alien who merely advocated a bill pending in Congress or who suggested a simple departmental reorganization plan. Certainly he would be shipped off if he favored a constitutional amendment of any kind. The expression, 'American form of government' is subject to all kinds of interpretation in the courts.

"We already have strong laws for the deportation of aliens who advocate overthrow of the government by force or violence. No further move in this direction is needed to protect the government. The Dempsey bill would prevent visiting lecturers from commenting on our government and would exclude distinguished statesmen who had expressed any opinion about our affairs. It would convert the deportation laws into instruments of oppression and open the way for a reign of terror among our dwindling alien groups \* \* \*"

## RECENT PUBLICATIONS ON CIVIL LIBERTIES

- Religious Liberty in the U. S. Today. June 1939 (48 pages), 10 cents.  
 Proceedings of the National Conference on Civil Liberties in the Present Emergency. Highlights of the addresses by Attorney General Murphy, Senator Thomas, J. Warren Madden; and discussions at the panel sessions, 50 cents.  
 Six Pamphlets on the "Alien and Sedition" Bills Pending in Congress:  
 "Shall Aliens Be Registered?" (8 pages).  
 "Shall Aliens Who Cannot Be Deported Be Indefinitely Imprisoned?" (16 pages).  
 "Shall We Have a Federal Sedition Act?" (8 pages).  
 "Beat the Military Disaffection Bill!" (12 pages).  
 "Shall Aliens Advocating Any Changes in Our Form of Government Be Deported?" (8 pages).  
 "Beat the Omnibus Bill!" (16 pages).  
 Price: 25 cents for six, 5 cents each.

- The Bill of Rights: 150 Years After. The Story of Civil Liberty 1938-39. Annual Report of the A. C. L. U. (80 pages). 10 cents.  
 Summary of Arguments Against Criminal Syndicalism and Anarchy Laws. April, 1939 (10 pages). 10 cents.  
 One Hundred and Fifty Years of the Bill of Rights, by Osmond K. Fraenkel. Reprint from Minnesota Law Review, May, 1939 (62 pages). 15 cents.  
 The Censor Marches On, by Morris L. Ernst and Alexander Lindey. A complete history of censorship in the United States. (To be published January 12, 1940 by Doubleday-Doran. A paper-covered edition will be available to Union members only.)

## OPPOSE THE DEMPSEY BILL!

Protests against the Dempsey bill (H. R. 4860) should be addressed to the chairman of the Senate Immigration Committee, Hon. Richard B. Russell of Georgia, or to any members of the committee: William H. King, of Utah; Francis T. Maloney, of Connecticut; Lewis B. Schwollenbach, of Washington; Rush D. Holt, of West Virginia; Charles O. Andrews, of Florida; James H. Hughes, of Delaware; William H. Smathers, of New Jersey; Clyde L. Herring of Iowa; Tom Stewart, of Tennessee; Hiram W. Johnson, of California; Warren R. Austin, of Vermont; Arthur Capper, of Kansas; Rufus C. Holman, of Oregon.

Urgent requests for hearings should be made.

Get resolutions from organizations in opposition to the bill.

Call the attention of local editors to it.

Copies of protests should be sent to the American Civil Liberties Union, 31 Union Square West, New York City.

[Additional copies of this pamphlet free]

[From the Baltimore Sun, April 10, 1939]

## LAW AGAINST THOUGHT

The protest of the American Civil Liberties Union against the Dempsey bill for the deportation of aliens who believe in the making of any changes in the American form of government is not a plea in behalf of aliens, but in behalf of common sense.

The bill—it has passed the House—gained support by laying pains and penalties on a number of things that everyone opposes; but all these things are already penalized under existing law. Of its five provisions, four are adequately covered now. Anyone who advocates the overthrow of government by force and violence is inciting to riot, which is already unlawful. Anyone who advocates clubbing a policeman because he is a policeman is committing a crime, now, and this is true if he chooses any other officer of government, right up to the President. Anyone who advocates the destruction of property without sanction of the law is already a criminal, and has been, time out of mind. Sabotage is by definition destruction of property, or property rights, and comes under the same ban.

The only new provision, and the poisonous provision, is that the Dempsey bill makes anyone who believes in not only violence and destruction but the making of any changes in the American form of government a law violator and deportable. Under this provision an alien could not advocate repeal of the income-tax amendment, or "believe in" a Cabinet responsible to Congress without danger, for these involve changes in the American form of government. Every amendment to

the Constitution is such a change; but does any rational man consider it criminal to advocate amendments to the Constitution? The Dempsey bill, insofar as it is not merely a reenactment of laws already on the statute books, is in effect a law forbidding aliens to think seriously about the United States Government. To suppose that the American people really want such a law is no compliment to their intelligence.

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[From the New York Herald Tribune, March 25, 1939]

#### LAZY LAWMAKERS

If the pay of our Representatives in Congress is not exactly munificent, at least it is handsome enough to warrant some slight study on their part of the measures brought up for their consideration. Yet we find the House passing "unanimously and without debate" the Dempsey bill to deport any alien who advocates "any change" in the American form of government. Originally the bill stipulated "any fundamental change," but the word "fundamental" was eliminated. Our lawmakers in their haste objected even to this vague approach to specification.

We confess to a profound sympathy with the purpose of the bill. All foreigners in this country are its guests and should observe the amenities of their status, one of which is to refrain from agitating revolution. On the other hand, it is essential that we discriminate between the arrogant violator of this canon and the friendly critic. We can well afford the latter's counsel; in fact, the belief that we can is one of the pillars of our national faith. What can one say, then, of a stampede to send him packing together with the real offenders against our hospitality? Is this panic or simply the stupidity of lazy lawmakers?

The latter explanation is the more plausible, especially in light of the similar demonstration in the Senate over the bill "to take the profits out of war." Like the 50 Senators who sponsored this absurd measure of confiscation, most of them without reading it, the House voted for the Dempsey bill because it sounded popular, not bothering to consider either its implications or its unenforceability. How are the courts to construe a provision which visits condign punishment on an alien for advocating "any change" in our form of government? Suppose in private or public he sides with President Roosevelt's reorganization plan. Must we hand him his hat?

Very possibly the situation demands legislation to rid the country of Communist and Fascist agents from abroad. The problem of its proper and effective enactment cannot be solved in any such slipshod fashion.

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[From the World-Telegram, December 29]

#### FREEDOM OF SPEECH

(By Hugh S. Johnson)

Four bills affecting freedom of speech have passed the House. Two of them have been favorably reported to the Senate and could be bum's-rushed through to become laws in a few days. They need an airing.

Freedom of speech is not an absolute right. To take an extreme case, an Army officer who gave the command "fire!" on an innocent crowd in the street couldn't defend himself from a murder charge on the ground of freedom of speech. To get a little closer to reality, a soldier in war and in the presence of the enemy, couldn't get out of a charge of conspiracy to commit treason if he tried to persuade his comrades to fire on their troops and desert to the enemy.

Yet, what about a man preaching from a soapbox that we ought to elect Earl Browder, amend the Constitution to communism and get in bed with Josef Stalin. If he is jailed for a felony then Patrick Henry and Benjamin Franklin were criminals long before there was any American revolution.

Obviously, the extent to which freedom of speech can be permitted or curtailed is a question of degree. Degree of what? It seems quite clear that it is a degree of danger which can be averted if mouths are shut and brought on if they spout freely.

Exactly that was the doctrine for which Justice Holmes stood when, under our espionage acts, during the World War, we went hysterical and sent men to the penitentiary for privately questioning our justification for entering the war, criticizing the Young Men's Christian Association and presenting a moving

picture, which among many other Colonial scenes showed a party of British troops marauding in the Wyoming Valley.

At first, the Supreme Court agreed that "the question in every case is whether the words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress had a right to prevent. It is a question of proximity and degree."

That was the doctrine until legislatures began to make it criminal to use certain kinds of words criticizing or advocating changes in forms of government—no matter where or how spoken—in peace or war—and regardless of whether they are dangerous or merely unpopular.

Then Justices Holmes and Brandeis insisted on sticking to the rule of "clear and present danger", but a majority of the Court held that if they merely have a bad seditious tendency and the law prohibits or punishes them, they must not be spoken whether there is any danger in them or not.

These bills write into the statutes the latter rule. There is too much technical detail to discuss them fully here. They are the product of the country's righteous indignation over subversive activity in this country by alien Communists. They may ride to passage on the tide of that resentment.

Such violations of the spirit of the Bill of Rights ought not to be written on the occasion of such hateful classes of cases because in the heat and hysteria of war, if they are on the books, they will be used in a much wider field. One of them permits an alien to be deported in certain circumstances, and once held to be deportable he can be continued in confinement here for life—without a trial, counsel, cross-examination of witnesses against him and on the mere administrative determination of a bureaucrat—who may solemnly conclude that you and I are aliens and put us away from now on. Such arbitrary determinations of citizenship have been made here over and over again.

There are two very vital matters before Congress closely affecting constitutional private rights. One is the Logan bill providing prompt and cheap court review of such bureaucratic tyranny as the National Labor Relations Board. That ought to pass. The other is this cluster of bills which contain possible dangerous encroachments on the rights of freedom of the press, speech, and assembly—the Smith, McCornick, Dempsey and Bobbs bills. They ought never to pass in their present form.

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COLUMBIA UNIVERSITY,  
New York, January 19, 1940.

Setting aside the question in how far it is necessary to devise new bills for the protection against propaganda by alien governments or individuals, the Dempsey bill is so loosely worded that it would be quite possible that under its provisions it would be possible to deport any alien who expresses any opinion, whatever it may be, different from the laws as they exist at any given moment. It would open the door for the most arbitrary treatment of individuals who for one reason or another might be disliked.

FRANZ BOAS.

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THE COMMUNITY CHURCH OF NEW YORK,  
New York, January 19, 1940.

MR. ARTHUR GARFIELD HAYS,  
*American Civil Liberties Union, New York City.*

DEAR ARTHUR: In reply to your letter of the 17th, referring to Representative Dempsey's bill providing for the deportation of aliens advocating any changes in our form of government, I want to say that I am absolutely opposed to such un-American legislation. This bill is an arrant betrayal of those basic democratic rights and privileges which make our country to be unique among the nations of the earth. How can we encourage aliens to become citizens of this country if they are to be discouraged from exercising their intellectual faculties in constructive study of our Government and its possible improvement? The whole thing is as ridiculous as it is outrageous. That the bill should have passed the House of Representatives is an indictment of that body. It must of course be defeated in the Senate.

Very sincerely yours,

JOHN HAYNES HOLMES.

NEW YORK UNIVERSITY,  
New York, January 23, 1940.

MR. ARTHUR GARFIELD HAYS,  
*American Civil Liberties Union, New York, N. Y.*

MY DEAR MR. HAYS: I do not ordinarily like to sign petitions and make protests. But the bill introduced by Representative Dempsey, of New Mexico, H. R. 4860, as modified by the Committee on Immigration and Naturalization, seems to me to be such a shocking violation of the fundamental principles of freedom of speech in a republic that I am moved to say so in positive terms.

Sincerely yours,

HARRY WOODBURN CHASE, *Chancellor.*

GRAND LODGE, BROTHERHOOD OF RAILROAD TRAINMEN,  
*Cleveland, Ohio, January 23, 1940.*

MR. ARTHUR GARFIELD HAYS,  
*General Counsel, American Civil Liberties Union, New York, N. Y.*

DEAR MR. HAYS: I wish to express my appreciation for your letter of January 17, wherein you focus my attention on the bill (H. R. 4860) introduced by Representative Dempsey, of New Mexico, providing for the deportation of aliens advocating any changes in our form of government.

Certainly, I am opposed to such an undemocratic proposal. Passage of this measure might well open the floodgates to similar reactionary legislation, this time directed against American citizens urging social reforms. American democracy is strong enough to listen to comments on our form of government from whatever source.

It is interesting to note that no one thinks of gagging, or deporting, any industrialist who urges us to endorse a law similar to the British Trades Disputes Act in place of the National Labor Relations Act. In my opinion, this attempt to emasculate the National Labor Relations Act is an attempt to limit our democratic right, in other words, to change our form of government. But I would be the last to say that we should deport aliens who advocate such measures.

If government is to serve the people in these troublesome times, then it is imperative that we keep wide open all channels of public thought and expression. Aliens have made important contributions to this country, and there is no point now in losing our heads and throttling their voices. If they have something to contribute to American life, they should not be muzzled.

Let America remain "the land of the free."

With best wishes, I am,

Sincerely yours,

A. F. WHITNEY, *President.*

#### STATEMENT OF HENRY T. HUNT, WASHINGTON, D. C., REPRESENT- INT THE WASHINGTON CHAPTER OF THE DESCENDANTS OF THE AMERICAN REVOLUTION

Senator HUGHES. Please state your name and whom you represent.

Mr. HUNT. My name is Henry T. Hunt. I represent the Washington chapter of the Descendants of the American Revolution, who have asked me to appear. I prepared a statement which I will submit for the record. Much of the matter contained therein has been covered by Mr. Oppenheimer and the representative of the New York City Bar Association. I will pass over the points that have been covered, and call your attention to an amendment which I think would accomplish what Mr. Dempsey desires to do.

In the first place, the phrase "American form of government" seems to me extremely vague. The United States is not the only government on the American continent. South America, Central America, and portions of North America have forms of government quite different from ours.

But assuming that the meaning is the form of government of the United States of America, vast ambiguity remains. How can that

form be defined with sufficient precision to guide immigration officers? The definition must be consistent with long-established constitutional principles and with the democratic usage of our people. Changes in the Constitution are invited by article V and that instrument and action to that end is protected by the amendments referred to. A number of proposals for constitutional amendment are now pending in Congress. A definition of the American form of government which would exclude aliens supporting a pending amendment would be, it seems, indefensible. Suppose, for example, that an alien seeking admission supports and advocates the child-labor amendment. Is a definition proper which would exclude such an alien? It may be argued that that amendment, if adopted, will not change our form of government. If not, the definition should describe precisely what changes will have that effect. Here serious difficulties will confront the framers of the definition.

Such doubts and difficulties may be obviated by amending the resolution, as by striking out line 10 and substituting the words "form of government of the United States, as expressed in the Constitution thereof; otherwise than as the Constitution provides." Such an amendment, it is submitted, would be consistent with the Constitution itself and would make the class deemed inadmissible and deportable precise.

The effect of the resolution would then be to render inadmissible and deportable aliens seeking to undermine our form of government, so expressed, by extraconstitutional means not already covered by the immigration statutes. But what these means may be, I am unable to say. The duty of stating definitely what they are falls upon the proponents of this legislation.

If the committee declines to make definite what is meant by "changes in the American form of government," it must be assumed that it is sought to deprive aliens including those who are in process of naturalization of the right to participate in political action to amend the Constitution pursuant to article V and by speaking, writing or printing arguments to that end and of participating in petitions for redress of grievances, rights protected by the Bill of Rights. The scope of the protection of the Bill of Rights includes aliens within our boundaries.

But if H. R. 4860 is enacted the alien who so participates is subject to deportation only if he advocated such action at the time of entry. (Subsec. 19 of sec. 137, provides:)

Any alien who, at any time after entering the United States, is found to have been at the time of entry a member of any one of the classes enumerated in this section, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported in the manner provided in this subchapter. The provisions of this section shall be applicable to the classes of aliens mentioned therein, irrespective of the time of their entry into the United States.

Thus an alien who at the time of entry believed in the child-labor amendment may be deportable at any time, however exemplary his conduct and valuable his contribution to American life. It may well be that Thomas Mann and Albert Einstein fall within the class subject to deportation.

It follows also that an alien who did not believe in the child-labor amendment at the time of entry but subsequently advocates it, is not deportable on that ground.



The differentiation is an absurdity. If the act of the one class is seditious or undesirable, so is that of the others.

If the motive of advocates of this legislation is resentment against criticism by aliens, here in some sense as guests of the political institutions of the United States, it is understandable. To criticize is to advocate change. And good taste would impel a guest to refrain from adverse comment on his host's arrangements. But are the amenities appropriate matter for legislation. It seems not and that the enforcement on aliens of what may be called political courtesy is not the purpose of this resolution.

After a search through the field of possible purposes of the proponents of this legislation, it seems necessary to conclude that their purpose is to restrict the further democratization of our form of government. The political history of the United States is an account of the process whereby a government originally aristocratic has become more and more democratic by amendments of the Constitution and by fundamental changes brought about by popular pressure and without amendment. Direct election of Senators, the income tax, and women's suffrage is an example of the first. The changes in the method of election of the President by an electoral college to direct election through political parties, is an example of the second. Further democratization is possible. Both major parties are now controlled by the relatively prosperous. If the roster of national party conventions is examined few representatives of the industrial workers, of farm laborers, farm tenants, or any of the elements of the population having an income of less than \$2,500 per annum will be found. Yet these elements aggregate a great majority of the population. The representation is that of what Professor Lasswell calls the elite, that is, those who have found means to control the residue of the population and who exercise that control for the elite's welfare. Democratization would be promoted by a constitutional amendment prohibiting the denial to any citizen of the right to vote in a party primary or at an election on account of failure to pay any poll tax or other tax. Or the amendment might allot representation in party conventions on an income basis. The number of delegates to the Democratic or Republican National Convention is approximately 1,000. As some 75 percent of American families have an income less than \$2,500, it might reasonably be provided that 75 percent of the delegates should have no greater income. The effect would be to reduce the control of the elite over the parties and thus over the Nation.

The elite, of course, would resist any such legislation. Immigrants are seldom sympathetic with the elite. Immigrants, and we are all, except the Indians, immigrants or descendants of immigrants, have generally sought to dethrone the elite by making our political process more democratic. And they have succeeded in doing so. A desire to arrest this process seems to be the rationale of this legislation.

It appears, then, that its proponents are opposed to more democracy; in other words, they are not democrats. The essence of the Democratic Party is a belief in more democracy; a belief not only in political but in economic democracy. If I am asked what is meant by economic democracy, I would say economic opportunity, that is, a situation in which every child is enabled to develop his particular skills through free educational opportunities. We are a long way now from such a

situation. Economic opportunity is largely a matter of what parents can provide. Generally speaking, the children of destitute parents will lack educational opportunity and will remain destitute, or near it. The perpetuation of an unskilled majority of the population is not democracy. And it seems strange that any Democrat should favor it. Yet such is the effect of this legislation urged upon a Democratic Congress.

For these reasons, the Descendants of the American Revolution urge the committee to amend the resolution as suggested, or in the alternative to report it adversely or not report it.

I will present this statement for your consideration.

Senator HUGHES. It will be received and incorporated in the record. (The statement referred to is as follows:)

STATEMENT OF HENRY T. HUNT ON BEHALF OF THE WASHINGTON CHAPTER OF THE DESCENDANTS OF THE AMERICAN REVOLUTION HEARING ON H. R. 4860

This organization is composed of men and women descended from those who aided in establishing this Nation in the years 1774-82; a nation, as Lincoln said at Gettysburg, "conceived in liberty and dedicated to the proposition that all men are created equal." The organization is devoted by its constitution to the support of liberty and of that proposition. The Washington chapter is, *ex officio*, the legislative representative of the organization before Congress on bills affecting liberty or equality. This Chapter believes that this resolution, if enacted, will impair both, and has delegated me to present its reasons for that belief.

Liberty and equality are, of course, vague expressions. The liberty and equality which the Descendants endeavor to protect is that provided for in the Constitution, particularly by article 5 and the first, fifth, and section 1 of the fourteenth amendments. Article 5 provides how the Constitution may be amended. The amendments referred to protect, among other things, political action looking toward amendment of the Constitution. Amendments to the Constitution constitute, or at least may constitute, changes in our form of government. This House resolution prohibits admission to and authorizes the deportation of aliens advocating "changes in the American form of government." Such legislation seems to the Descendants inconsistent with the constitutional provisions referred to. It seems destructive of liberty and an impairment of the proposition that all men are created equal.

The resolution proposes to add a further restriction on admission and a further basis for deportation of alien immigrants. Those who believe in, advise, advocate or teach the making of any changes in the American form of government or who have in their possession any literature advocating or teaching the making of any changes in the American form of government, or are members of organizations who do so, are not admissible and if inadvertently admitted, are deportable if they were at the time of admission within the class described.

The statute amended already prohibits the admission of (a) anarchists, (b) aliens opposed to organized forms of government, (c) aliens believing in or advocating the overthrow of the Government of the United States by force or violence or the killing of officers of that or any other government, or who possess literature teaching opposition to organized government, the violent overthrow of our Government, the propriety of killing officers of any government, unlawful destruction of property or sabotage.

Before pointing out definitely the departures from the principles of the Constitution which the enactment of this legislation will occasion, it is in order to raise the preliminary objection of vagueness and to offer an amendment which will cure that defect.

The new class to be excluded and deported consists of those favoring changes in the "American form of government." The vagueness of this description is obvious. If not corrected it will cause great difficulty and embarrassment to the officers of the United States who have the duty of enforcement. The expression is such as to require restriction by definition, and the duty of definition will fall upon the enforcing officers. We have no monopoly on the word American. North, Central, and South Americans and their governments, whose forms are various, are as American as ourselves.

But assuming that the meaning is the form of government of the United States of America, vast ambiguity remains. How can that form be defined with sufficient precision to guide immigration officers? The definition must be consistent with long-established constitutional principles and with the democratic usage of our people. Changes in the Constitution are invited by article 5 and that instrument and action to that end is protected by the amendments referred to. A number of proposals for constitutional amendment are now pending in Congress. A definition of the American form of government which would exclude aliens supporting a pending amendment would be, it seems, indefensible. Suppose, for example, that an alien seeking admission supports and advocates the child-labor amendment. Is a definition proper which would exclude such an alien? It may be argued that that amendment, if adopted, will not change our form of government. If not, the definition should describe precisely what changes will have that effect. Here serious difficulties will confront the framers of the definition.

Such doubts and difficulties may be obviated by amending the resolution, as by striking out line 10 and substituting the words "form of government of the United States, as expressed in the Constitution thereof; otherwise than as the Constitution provides". Such an amendment, it is submitted, would be consistent with the Constitution itself and would make the class deemed inadmissible and deportable precise.

The effect of the resolution would then be to render inadmissible and deportable aliens seeking to undermine our form of government, so expressed, by extra-constitutional means not already covered by the immigration statutes. But what these means may be, I am unable to say. The duty of stating definitely what they are falls upon the proponents of this legislation.

If the committee declines to make definite what is meant by "changes in the American form of government," it must be assumed that it is sought to deprive aliens including those who are in process of naturalization of the right to participate in political action to amend the Constitution pursuant to article V and by speaking, writing, or printing arguments to that end and of participating in petitions for redress of grievances, rights protected by the Bill of Rights. The scope of the protection of the Bill of Rights includes aliens within our boundaries.

But if H. R. 4860 is enacted the alien who so participates is subject to deportation only if he advocated such action at the time of entry. Subsection 19 of section 137 provides:

"Any alien who, at any time after entering the United States, is found to have been at the time of entry a member of any one of the classes enumerated in this section, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported in the manner provided in this subchapter. The provisions of this section shall be applicable to the classes of aliens mentioned therein, irrespective of the time of their entry into the United States."

Thus an alien who at the time of entry believed in the child-labor amendment may be deportable at any time, however exemplary his conduct and valuable his contribution to American life. It may well be that Thomas Mann and Albert Einstein fall within the class subject to deportation.

It follows also that an alien who did not believe in the child-labor amendment at the time of entry but subsequently advocates it, is not deportable on that ground.

The differentiation is an absurdity. If the act of the one class is seditious or undesirable, so is that of the others.

If the motive of advocates of this legislation is resentment against criticism by aliens, here in some sense as guests, of the political institutions of the United States, it is understandable. To criticize is to advocate change. And good taste would impel a guest to refrain from adverse comment on his host's arrangements. But are the amenities appropriate matter for legislation? It seems not, and that the enforcement on aliens of what may be called political courtesy is not the purpose of this resolution.

After a search through the field of possible purposes of the proponents of this legislation, it seems necessary to conclude that their purpose is to restrict the further democratization of our form of government. The political history of the United States is an account of the process whereby a government originally aristocratic has become more and more democratic by amendments of the Constitution and by fundamental changes brought about by popular pressure and without amendment. Direct election of Senators, the income tax, and women's suffrage is an example of the first. The change in the method of election of the President by an electoral college to direct election through political parties, is an example of the second. Further democratization is possible. Both major

parties are now controlled by the relatively prosperous. If the roster of national party conventions is examined few representatives of the industrial workers, of farm laborers, farm tenants, or of any of the elements of the population having an income of less than \$2,500 per annum will be found.

Yet these elements aggregate a great majority of the population. The representation is that of what Professor Lasswell calls the elite, i. e., those who have found means to control the residue of the population and who exercise that control for the elite's welfare. Democratization would be promoted by a constitutional amendment prohibiting the denial to any citizen of the right to vote in a party primary or at an election on account of failure to pay any poll tax or other tax. Or the amendment might allot representation in party conventions on an income basis. The number of delegates to the Democratic and Republican National Conventions is approximately 1,000. As some 75 percent of American families have an income less than \$2,500, it might be reasonably be provided that 75 percent of the delegates should have no greater income. The effect would be to reduce the control of the elite over the parties and thus over the Nation.

The elite, of course, would resist any such legislation. Immigrants are seldom sympathetic with the elite. Immigrants, and we are all, except the Indians, immigrants or descendants of immigrants, have generally sought to dethrone the elite by making our political process more democratic. And they have succeeded in doing so. A desire to arrest this process seems to be the rationale of this legislation.

It appears, then, that its proponents are opposed to more democracy, in other words, they are not Democrats. The essence of the Democratic Party is a belief in more democracy, a belief not only in political but in economic democracy. If I am asked what is meant by economic democracy, I would say economic opportunity; i. e., a situation in which every child is enabled to develop his particular skills through free educational opportunities. We are a long way now from such a situation. Economic opportunity is largely a matter of what parents can provide. Generally speaking, the children of destitute parents will lack educational opportunity and will remain destitute, or near it. The perpetuation of an unskilled majority of the population is not democracy. And it seems strange that any Democrat should favor it. Yet such is the effect of this legislation urged upon a Democratic Congress.

For these reasons the Descendents of the American Revolution urge the committee to amend the resolution as suggested, or in the alternative to report it adversely or not report it.

Senator HUGHES. You are opposing the bill?

Mr. HUNT. Yes, sir.

Senator HUGHES. With the amendment, you would not oppose it?

Mr. HUNT. I think not. Our organization is devoted to the maintenance of the Bill of Rights. I believe it is the opinion of its members that the Bill of Rights is not inconsistent with our present form of government.

Senator ANDREWS. Is that a large organization?

Mr. HUNT. No, sir; it has about 90 members.

Senator ANDREWS. Have they adopted a resolution of any kind authorizing you to appear?

Mr. HUNT. It has been discussed, and I have been authorized to present the views of the organization.

#### STATEMENT OF ISIDORE HERSHFIELD, REPRESENTING THE HEBREW AID SOCIETY, WASHINGTON, D. C.

Senator HUGHES. You may state your name.

Mr. HERSHFIELD. Isidore Hershfield.

Senator HUGHES. Are you appearing as an individual or as representing some organization?

Mr. HERSHFIELD. Both; I represent the Hebrew Aid Society, a national welfare charitable organization, in existence about 50 years. The purpose of this organization is to give aid and assistance to

immigrants, and aid them in their naturalization. We have a great deal of that in New York City. We have in Washington our legal bureau for the purpose of handling matters that require the attention of the Departments of Labor and State.

As a naturalized American citizen, I am opposed to this bill. As originally introduced it referred to "fundamental" changes in our form of Government. There was objection raised to that word "fundamental" in the House of Representatives, and it was there changed. As it is before you now, it refers to "any" change in our form of Government.

We believe that one of our principal duties is to see that the alien who is eligible for naturalization should become an American citizen. We have Americanization schools for the benefit of these aliens. A great deal of that work is done by the Y. M. C. A., Y. W. C. A., and Y. M. H. A., as well as the community centers.

In asking the alien to become an American citizen, we think the best preparatory course is for him to discuss and talk with others about the American Government. When he comes up for naturalization he is questioned by the examiner and by the court about the American form of Government. He will not be naturalized unless he shows a rather deep and intimate acquaintance with the American form of Government. I have sometimes thought that many native-born Americans might not pass that test which every alien seeking naturalization is obliged to pass.

In this preparatory course during those 5 years that must elapse between the time of his admission to this country and his naturalization, he attends classes of various kinds, becomes a member of clubs and societies and labor unions. He listens to the talks and discussions of other members.

In these various discussions he may have with other citizens, both native-born and naturalized, they may discuss the question of whether the President of the United States should be elected for a term of 6 or 7 years, whether the President and Vice President should be elected by a direct vote and not by the electoral college. It so happens that a great many of our native-born citizens are not familiar with the method of voting in the electoral college.

Senator ANDREWS. Would a change in that respect be a change in our form of government?

Mr. HERSHFIELD. I think it would. The present form of government provides for an electoral college, the members of which cast their votes for President and Vice President. If you change and let those officers be elected by a direct vote of the people, I think you are changing our form of government.

Senator ANDREWS. That does not change the form of the government.

Mr. HERSHFIELD. I think it does. I think it changes and amends the functions of the government. If an alien is a member of a church group, or a social group, which holds discussions in regard to changes, such as the prohibition amendment, and things of that kind, he would come under this law and could be deported. If they discuss the question of whether Federal judges should be elected instead of appointed, or if appointed, whether they should be appointed for a fixed term of years instead of for life, that is a change in our American form of government. Even if the alien did not discuss it at all, if he was a

member of one of these groups that did discuss it, he could be deported. There might be discussion in the group of which he was a member as to whether we should, instead of having two Houses of Congress, have only one, as they now have in the State of Nebraska. If he discussed that question, or even if he did not discuss it, if it were discussed by a group of which he was a member, he would be subject to deportation.

Senator ANDREWS. Those matters to which you have referred do not change our form of government. They do not change the republican form of government.

Mr. HERSHFIELD. There is nothing in this bill about the republican form of government. It refers only to a change in the American form of government. I think that would be a change in the American form of government.

From the beginning of our Government we have had the present system of two Houses of Congress, and a change of that system to provide for one House would, I believe, be a change in the American form of government.

Much has been said here about prohibition. I think that was a change in our form of government. A discussion about whether that law should have been changed, as it has been changed, about whether we should repeal that law, would be a change in the American form of government.

Senator ANDREWS. Would you object to an amendment, clarifying that portion of the bill, suggested by Mr. Hunt a few minutes ago?

Mr. HERSHFIELD. I did not hear that very distinctly.

Senator ANDREWS. He suggested that instead of the expression "American form of government," it should read "form of government of the United States, as expressed in the Constitution thereof."

Mr. HERSHFIELD. I don't know what that last phrase means.

Senator HUGHES. That means the method provided in the Constitution as to how it can be amended.

Mr. HERSHFIELD. I don't think that would improve it. I don't think it is right to say that any alien or anybody else who may have an opinion about something should be punished merely for having that opinion. It seems to me that these things should be discussed in the open. Because an alien believes that something about our American form of Government is not in the best interests of the people, does not mean that he is not fit to be a citizen. He may have an honest opinion about it, which he may have gained from native-born citizens.

Some mention was made here about the administration of this law. In New York I believe that question would come up. An alien citizen who is a member of some organization might attend a meeting at which something of this kind would be discussed, and the meeting might decide in favor of a change in our form of Government, which would immediately make him deportable. In fact, if he did not attend the meeting at all, but was a member of the organization, he would still be subject to deportation, even though he did not participate in the discussion or even did not attend the meeting. If he was not yet naturalized, he might come up at the end of 5 years for final naturalization. He would be asked various questions to determine his fitness to become a citizen of this country. He would be asked:

Do you believe in any change in the American form of government? He might say "yes, I think you have a good government, but I would like to see the President elected for one term only, and I would like to see Federal judges elected instead of appointed."

Senator ANDREWS. That would not be a change in our form of government.

Mr. HERSHFIELD. I think it would, Senator.

Senator ANDREWS. All right. We will not quarrel about it.

Mr. HERSHFIELD. At any rate, there might be some question raised about it that would cause him a great deal of difficulty and trouble. He might have to defend himself in court. The court would have to enforce the statute according to its terms. He would have no redress whatever in court. The courts have uniformly held that they cannot go into the facts; that if the records of the Department of Labor show the facts alleged, the court must sustain those findings, even though the court may believe the whole thing is very unwise.

I understand the present law provides for the deportation and exclusion of aliens who believe in sabotage, overthrow of the Government by force and violence, and assassination of public officials, who believe in all those things. That is already covered in the present law.

As this bill was first drawn, it referred to a "fundamental" change in the American form of government. The committee of the House apparently could not satisfactorily define "fundamental," so they changed that to read "any."

Representative DEMPSEY. A Mr. Emerson who represented the Maritime C. I. O. contended the word "fundamental" was vague. He could not find any word that would meet with approval. Finally it was decided that the word "fundamental" should be stricken out and "any" substituted.

Mr. HERSHFIELD. Do you think that "fundamental" was vague?

Representative DEMPSEY. I do not think so.

Mr. HERSHFIELD. The committee evidently did. I have always tried to keep very carefully within my own rights. I think I have been pretty lucky in never having been arrested.

Senator ANDREWS. As I understand it, your organization is devoted to helping the aliens become American citizens, making Americans out of them.

Mr. HERSHFIELD. Yes, sir.

Senator ANDREWS. There are various organizations engaged in the work of at least dealing with aliens in some respects.

Mr. HERSHFIELD. Yes, sir.

Senator ANDREWS. Do you think an organization of that nature, referring to the last one, would be very effective in teaching aliens to believe in the overthrow of our form of government?

Mr. HERSHFIELD. Well, I don't know. I haven't any acquaintance with any of those subversive organizations. None of my friends are connected with them, so far as I know. I would not be able to say about that.

Senator ANDREWS. I think we appreciate your position.

**STATEMENT OF BENJAMIN C. MARSH, WASHINGTON, D. C.**

Senator HUGHES. We will hear you now, Mr. Marsh. State your name.

Mr. MARSH. Benjamin C. Marsh. I appear in behalf of the Committee for Cultural Freedom. I misunderstood the time the hearing was to begin, and that is why I was not here earlier.

The Committee for Cultural Freedom has headquarters in New York. Mr. John Dewey is honorary chairman, Ferdinand Lundberg is joint chairman. I am a member of the committee. I have been in Washington for 22 years, and I am here today to express my opposition to this measure.

I want to say that this Dempsey bill, in my judgment, is a throw-back to barbarism and a modern version of Salem witchcraft. I make that statement on my own responsibility. The sponsors, though not necessarily the introducers, are apparently among the scared beneficiaries of our system of special privileges, instead of the starving victims. It is needless to say that alien advocates of violent overthrow of the Government should, of course, be deported, and citizens who advocate this should be punished. By the same token, those who oppose legal changes in our form of government should be sent to a psychopathic ward of observation, or be obliged to make public a list of their property holdings, and how they got them.

The proponents of this bill fail to appreciate that change is essential, and ending conditions which incite to rancor, as the Dies committee most appropriately recommended. Aliens, as well as Americans, have the right to urge property qualifications for suffrage, responsible party government, and limiting the Presidential tenure to one term, such changes to be effected by legal methods.

I notice that Mr. Dies, of the famous Dies committee, had a statement in the press recently in regard to aliens. A good deal has been said about the right to advocate a change in the form of government. Even an alien should be allowed to suggest that if a President does not make good, his wife should be put on the job right away. That would be constitutional, as such changes can be effected by legal methods. But if I were an alien and made such a suggestion, I would be hauled before the courts and would be liable to deportation for advocating a change in our form of government under this bill.

I have been observing Congress for a good many years, and have heard many changes advocated in our form of government. This bill would prevent any alien from advocating by legal methods something to improve the condition of the American people. I have always refused to have anything to do with Communists. At one of their meetings held here some time ago, I was invited to attend. I refused to go in. I am not a Communist or a Nazi. My folks came from New England. I don't know where they came from originally.

I am much more interested in something to improve the condition of the American people than in any legislation of this kind, which never could improve the condition of anybody.

Let me suggest to this committee that this bill passed the House in a rather haphazard way.

Representative DEMPSEY. Now, being a member of the House of Representatives, I must say that I think that is improper. I think the Congress deserves the respect of the people.



Mr. MARSH. Why did they act that way?

Representative DEMPSEY. That may be your opinion.

Mr. MARSH. I know my legal rights as well as you do.

Representative DEMPSEY. I am not speaking of your legal rights, but what the committee will accept.

Mr. MARSH. They can strike out what they want to. Did they have a roll-call vote on this bill?

Representative DEMPSEY. No.

Mr. MARSH. Don't you think, in a matter of life and death to many people, there ought to be a record vote on a matter of this kind? You were not afraid of a record vote?

Representative DEMPSEY. No.

Mr. MARSH. Did you demand it?

Representative DEMPSEY. Of course not. This bill passed by unanimous consent. There was no opposition to it.

Mr. MARSH. Maybe there would have been on a roll-call vote.

Representative DEMPSEY. You could not very well get a roll call vote under those conditions.

Mr. MARSH. Is it correct that usually such matters do not come up until there is a reasonably fair attendance? What time did it pass?

Representative DEMPSEY. I think that it passed around 12:30.

Mr. MARSH. Usually they don't come in until about 1.

Representative DEMPSEY. A good many do not.

Senator HUGHES. Would you call such changes as you have referred to changes in the American form of government?

Mr. MARSH. I think that some of them would be. Perhaps some might not. Let me suggest that people who draft a bill, when nobody knows what it means, are entitled to and should have the benefit of counsel. The enactment of a bill like this would make the people furious. They will ask why the Congress of the United States does not devote its time to solving the unemployment problem.

I thank you.

#### STATEMENT OF ABRAM J. ISSERMAN, NEW YORK CITY, REPRESENTING THE NATIONAL EMERGENCY CONGRESS

Senator HUGHES. You may state your name and whom you represent.

Mr. ISSERMAN. My name is Abram J. Isserman, of New York and New Jersey. I represent the National Emergency Conference. I can be very brief.

Senator HUGHES. What is the National Emergency Conference?

Mr. ISSERMAN. The National Emergency Conference is a nationwide, nonsectarian, nonpolitical committee, composed of prominent Americans cooperating with other Americans and naturalized aliens. One of our purposes is to prevent national racial and religious prejudices in the United States.

The conference was formed as the result of the efforts of Professor Boyle and others who felt concerned over the increasing number of bills in Congress, of which the Dempsey bill is one, dealing with the subject of the alien in what the sponsors of this organization thought was an un-American way. The initial conference of this organization took place in Washington last May. There were in attendance about 213 delegates, representing 106 organizations. At that conference

the Dempsey bill was up for discussion. A number of other bills were up for discussion, but the Dempsey bill was unanimously condemned as an un-American measure. Among the numerous vague provisions in the language of this bill, are many very general statements. It is very well known that general language in a criminal statute will be condemned by the courts. In the case of a statute affecting aliens, it should be the more condemned, because of the lack of full judicial review. There are many unconstitutional aspects connected with this bill, but I will not go into those.

I would like to refer to one situation that occupied my attention in New Jersey. Some time ago what they call the New Jersey sedition bill was passed, which penalized the advocacy of violence or hostility or opposition to the Government. In the State of Texas a court had held a similar bill penalizing one who advocated the overthrow of government by violence and force as contrary to the Bill of Rights. The higher court sustained the court below.

It seems to me what we should do in this country is not endeavor to punish aliens for everything they may believe but endeavor to educate them and make good American citizens out of them; see that their constitutional rights are protected and defended and that they are properly educated as to the American form of government and the American way of living. It seems to me if we do that, we are doing good not only to the alien but to ourselves and our country. Some of us have deplored the fact that some labor unions have restrictions against aliens because we feel they should be members of trade-union organizations. We think it is to their benefit as well as to the benefit of the labor unions.

We think this bill is entirely too broad in its terms. Any of us may at any time discuss our form of government and say wherein we think changes should be made; but if an alien, whether naturalized or not, participates in such a discussion or belongs to an organization in which such a discussion may be had even though he was not present and did not participate in it, he is subject to deportation. That seems to us very unjust. We think it is a violation of the Bill of Rights. I am not alone in that opinion. In our conference in Washington Senator Murray spoke in opposition to these measures.

This is a matter dealing with the rights of citizens, and we say this kind of legislation seriously affects the rights of millions of citizens who are trying to assimilate themselves into the national fabric. The many evils that grow out of this kind of legislation have been already pointed out to this committee.

I heard the Congressman say something about foreign agents. We already have statutes governing them, for the violation of which they may suffer criminal penalties. This proposed legislation certainly violates the Bill of Rights itself. It violates the rights of many organizations which have a great deal to do with framing our public opinion. All these rights are challenged by this kind of legislation.

We hope the Senate will give serious consideration to the objectionable features of this bill to which attention has been called.

I thank you.

Senator HUGHES. The subcommittee will adjourn, subject to the call of the chairman.

(Whereupon, at 12:50 p. m., the subcommittee adjourned, to meet again upon call of the chairman.)

## DEPORTATION OF ALIENS

THURSDAY, APRIL 25, 1940

UNITED STATES SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON IMMIGRATION,  
*Washington, D. C.*

The committee met, pursuant to call, in the committee room, Senate Office Building, at 10:30 a. m., Senator James H. Hughes (chairman) presiding.

Present: Senators Hughes (chairman) and Austin.

Present also: Hon. James E. Murray, a Senator in Congress from the State of Montana; and Hon. Fred Bradley, a Representative in Congress from the State of Michigan.

Senator HUGHES. The committee will come to order.

This is a continuation of the hearing we started some time ago, and we have a record of it.

Senator Austin, you were not here at that time, were you?

Senator AUSTIN. I could not get here.

Senator HUGHES. We have copies of the previous hearing.

Senator AUSTIN. Yes.

Senator HUGHES. And they are available for your use.

Senator AUSTIN. Yes.

Senator HUGHES. There are several witnesses who want to be heard this morning, and I have a list of them here, and I think the first on the list is James H. Patten. Is he present?

The CLERK. I do not believe he is here.

Senator HUGHES. We will take the next one, who is Alfred K. Stern, chairman of the National Emergency Conference for Democratic Rights. Is he here?

The CLERK. He does not seem to be here.

Senator HUGHES. Read Lewis, Foreign Language Information Service. Is Mr. Lewis here? All right, sir, we will hear you.

### STATEMENT OF MR. READ LEWIS, FOREIGN LANGUAGE INFORMATION SERVICE, NEW YORK, N. Y.

Mr. LEWIS. Mr. Chairman and gentleman of the committee, the purpose of this bill and of its sponsors, as I understand it, is to protect the United States against aliens who seek to subvert our institutions. With that purpose all of us, I am sure, would heartily agree. The real question, it seems to me, is whether the actual provisions of the bill will effect that purpose.

The bill is not designed to reach the alien who seeks or advocates the overthrow of our Government by force or violence. That, of course, is already covered by provisions in the act of 1918, as amended in 1920.

And it might be interesting to note in passing how comparatively few aliens have been deported under the law, which the bill in question would amend.

During the last 15 years, for example, only 291 aliens have been deported under the act which is before us this morning for amendment.

I have the figures here. They will be a matter of interest and were taken from the time the act was enacted in 1918.

Senator HUGHES. Is that the number that have been deported?

Mr. LEWIS. Yes; that have been deported. Last year, for example, there was only one.

Senator HUGHES. That can go in the record.

(The figures referred to are as follows:)

*Aliens reported after entering the United States under act of Oct. 16, 1918, as amended June 5, 1920*

| Year:     | Number | Year:     | Number |
|-----------|--------|-----------|--------|
| 1918..... | 2      | 1929..... | 1      |
| 1919..... | 37     | 1930..... | 1      |
| 1920..... | 314    | 1931..... | 18     |
| 1921..... | 446    | 1932..... | 51     |
| 1922..... | 64     | 1933..... | 74     |
| 1923..... | 13     | 1934..... | 20     |
| 1924..... | 81     | 1935..... | 17     |
| 1925..... | 22     | 1936..... | 47     |
| 1926..... | 4      | 1937..... | 17     |
| 1927..... | 9      | 1938..... | 8      |
| 1928..... | 1      | 1939..... | 1      |

Mr. LEWIS. I think it is interesting to get those statistics before the committee.

The fact is that during the last year there was one, there were eight the year before, and it was somewhat larger in previous years. But under the Hoover and Collidge administrations there were years also where there was one person deported, which give indications of the problem and what the size of it may be.

Senator AUSTIN. What is the source of those figures?

Mr. LEWIS. Those figures are the official figures of the Labor Department and the analysis they list each year for grounds of deportation.

The bill is not designed to reach the alien who advocates the overthrow of the Government by force and violence, since that is already covered by law.

It would reach aliens who advocate changes in the American form of government by constitutional means. I think it is not likely that it would reach aliens who come to this country as agents of foreign governments. It is not likely that any such persons, and, of course, we have them in mind at the moment, would openly advocate force in our form of government. The work which they come here to carry on, so far as that may be, would certainly be accomplished by much more subtle and quiet methods than anything of that sort.

The bill as it stands would reach a large number of aliens admitted probably for a period of residence, who more or less sincerely and genuinely advocate changes in the American form of government.

The question is, What does that mean, changes in the American form of government? The testimony already before the committee, and those who have discussed that phrase apparently reached no conclusion as to what it means. Lawyers and others have said it

would go so far as to reach those who advocate the child-labor amendment, or the President's recent plan to reorganize the Supreme Court. Certainly there were many people, when that was before the Court, that contended it would represent a change in our form of government, and a serious one.

Would the bill strike at aliens who took a position on questions of that kind? Would a change in our form of government be considered such a departure from general precedent as to what has happened in Nebraska, where we have a unicameral legislature? So, one might go on with these questions, which no one can answer, until our courts and the Supreme Court give an authoritative definition.

I think one of the great dangers of the bill is that very vagueness, a vagueness which is so great that it perhaps raises questions as to whether the thing is enforceable. Certainly, the vagueness is such that it might be a weapon in the hands of different administrations, varying at different times to work injustice and hardship on people who were never supposed to come within the province of the bill by its sponsors.

Take a case where it seems to be plainly within the language of the bill: Suppose an Englishman in this country, an alien, believed that the parliamentary system was preferable to the Presidential system, and who advocated a cabinet responsible to Congress. Now that would primarily, it seems to me, be a change in the American form of government. It would not necessarily be a change in the democratic form of government, but certainly in the American form of government, and yet I cannot conceive that belief or advocacy of any such change is something that was contemplated by the sponsors of this bill.

Senator AUSTIN. Will you permit a question?

Mr. LEWIS. Certainly.

Senator AUSTIN. If I am following your reasoning, then such a case as this would be an offense under the bill, would it not, namely, that an alien asserted that when there was a conflict between the Supreme Court of the United States and the public by a vote at the polls regarding the interpretation of the constitutionality of any act of Congress—in such circumstances the alien, if he said that the vote should be followed rather than the judgment of the Court, would be subject to deportation, would he not?

Mr. LEWIS. It might readily seem so. Certainly that would be an interpretation which I think the administration or an administration might very well give to the bill should it become a law.

The point I want to make is the fact that the law would apply to many cases which certainly are not justified so far as deportation is concerned by such a contemplated ban.

The very vagueness of the thing makes them think it is extremely dangerous. Furthermore, the bill goes far beyond advocacy. If you will remember, it applies to an alien who believes in any such change.

Senator HUGHES. Yes.

Mr. LEWIS. And it is a matter of simple belief. Of course, I think that is more or less unenforceable unless you get simply private letters or private expressions, and while it does not appear, of course, from the bill itself it amounts to an amendment of the act, which provides that an alien who believes in, advocates, or damages, or so forth, and I think any such drastic punishment for the mere belief without an overt act of any kind is unwarranted and unwise.

And I think, as a practical matter, which is often more serious, that even though an alien did not believe in a change which might come within the actual language of this bill, if he belonged to an organization which advocated such a change he would be liable to deportation.

A large number of aliens join, of course, labor organizations, unions, and connect with the A. F. of L. or the C. I. O., and most of them are members of a church. Many national church organizations and labor organizations take definite stands on certain legislative questions, questions which frequently could be interpreted as coming within the advocacy of changes in the American form of government, or could be interpreted in that way.

If this bill becomes a law, either all of such organizations have got to refrain from taking stands on such questions, perfectly legitimate stands, or they have got to exclude aliens from membership, or the aliens will run the risk of deportation.

The whole effect of the thing is going to be to reverse our general policy in this country of trying to encourage the alien, who is admitted for permanent residence, and who looks forward to becoming a citizen. The whole effect is to discourage that alien from taking an interest in the American Government. We have always felt that that was wise. But here if this bill goes through we will be putting up in a way a warning to take no interest in these questions, and if you do you run the risk of being deported.

Now, it seems to me that that will work the very reverse of the thing that we want to bring about, which is the education and assimilation of the alien.

This thing, instead of protecting our American institutions, it seems to me, strikes at some of the most basic of them, because we believe that freedom of thought and expression is a thing that is a vital part of our heritage in this country, something that applies both to citizens and prospective citizens. And yet this bill would in effect in these various ways prevent freedom of thought and freedom of expression and freedom of criticism, legitimate criticism, and belief on the part of the alien about the questions in this country.

It seems to me in that way that it is a bill which is particularly unwise and even dangerous at this time when democracy is in a sense on the offensive, when we are apt to be jittery because of many of the developments in the world at large, and where we need for that very reason to be most careful about upholding these traditions and principles of our Bill of Rights and the real basic principles of the American form of government.

So I hope the committee will not favorably report this bill.

I think that is all, Mr. Chairman, unless there are questions.

Senator AUSTIN. Would you not in this subject include among those that you say would be victims of such an act, those aliens who favor and probably advocate the passage of bills pending in the Congress of the United States that are expressly in contravention of some provision of the Constitution?

Take, for example: Suppose a legislator should introduce a bill which virtually repealed the tenth amendment, and granted powers to Congress to control production, manufacturing, mining, and intrastate commerce; it seems to me that is an illustration of the type of bill that can be introduced.

Mr. LEWIS. Yes.

Senator AUSTIN. We have seen it introduced here.

Now, if H. R. 4860 should be the law when such a bill was pending, and an alien favored the passage of that bill, in your opinion, would he be subject to deportation?

Mr. LEWIS. He could very well be. I think it would be unfortunate if the bill were on the statute books and could be interpreted in that way. There are many such questions.

There are groups in the United States who advocate, for example, public ownership of railroads. That has been an issue in the past at various times. Are we going to deport an alien who perhaps believes in or advocates a constitutional amendment which would make that possible? It seems to me that that would be very unwise. And criticism or changes of that sort should be freely discussed so long as it is by constitutional means.

Personally, I think as a matter of common sense and good taste that the alien ought not to engage in political activity in any organized way. It seems to me that that is something that should await until he becomes a citizen. But I think the privilege, of that, I mean where it is done in good faith and without any attempt to subvert our institutions by force and violence, should not be prohibited by such a drastic provision at deportation.

I think we need to remember that within comparatively recent years some of our States have even permitted aliens, who declared their intention to become citizens, to vote.

And certainly the alien who has declared his intention to become a citizen usually is interested, and frequently very much interested, in political questions. And he might very well at times engage in certain discussions which would come under the ban, although it was in no sense subversive, and I think that would be a very unfortunate thing, and bring evils far more serious than anything that this bill could correct.

I think under our statutes this act itself is already broad enough to enable the Government to deal with serious questions, and the fact that these fields here are so small indicates that the problem that might be raised through legislation is not a large one.

Senator HUGHES. Mr. Lewis, in the first part of your statement, if I followed you, you spoke of vagueness of the language and the difficulty of understanding just what such a provision would mean, and that nobody would know, until the courts passed on it. Do you think that Congress ought to pass legislation, the wording of which is so vague that the average person cannot understand it, and maybe Congress could not quite understand it, leaving it up to the courts to define it later on?

Mr. LEWIS. I think, Senator Hughes, that is one of the dangers of this bill, its utter vagueness, and it seems so entirely vague that one wonders—I am not a constitutional lawyer—whether it could be held constitutional for that very ground.

Senator HUGHES. All right. Thank you, Mr. Lewis.

Senator HUGHES. Senator, do you want to make a statement?

**STATEMENT OF HON. JAMES E. MURRAY, UNITED STATES  
SENATOR FROM MONTANA**

Senator MURRAY. Mr. Chairman, I had a request from the National Emergency Conference for Democratic Rights to appear before the committee in opposition to the bill.

I have not had any opportunity to study it prior to this morning.

Of course, I am generally familiar with this antialien legislation that has been filed in the House during the past year, and I want to say that personally I am very much opposed to this bill.

In the first place, I do not think it is necessary. I think that the law, as it now stands, is sufficient to protect this country in every way necessary from any subversive activities of aliens.

I think that the amendment which this proposed bill presents here is, as the witness who has just left the stand stated, utterly vague and indefinite in its meaning, and if this law is enacted an attempt would probably be made to make it apply to many honest efforts to bring about reasonable and proper changes in the laws of this country.

I have here with me a brief, which was prepared by the Association of the Bar of the City of New York, analyzing this bill, and I would like to have it incorporated in the record as a part of my statement, if there is no objection.

Senator HUGHES. I have a copy of it. Put yours in, Senator. There is no objection.

Senator AUSTIN. It is perfectly all right.

Senator HUGHES. It will be admitted as a part of the record.

(The brief referred to is as follows:)

**THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, COMMITTEE ON  
FEDERAL LEGISLATION REPORT ON H. R. 4860 (76TH CONG.), A BILL TO  
AMEND EXISTING LAW SO AS TO PROVIDE FOR THE EXCLUSION AND DEPORTA-  
TION OF ALIENS WHO ADVOCATE THE MAKING OF FUNDAMENTAL CHANGES IN  
THE AMERICAN FORM OF GOVERNMENT**

This bill (which was passed by the House of Representatives and is now in the Senate Committee on Immigration) would amend the United States Code, 1934 edition, title 8, section 137 (c) and (d), and thus provide for the compulsory exclusion or deportation of any alien who "believes in, advises, advocates, or teaches" "the making of any changes in the American form of government," or who is a member of or affiliated with any organization, association, society, or group that "believes in, advises, advocates or teaches" "the making of any changes in the American form of government."

The instant bill goes far beyond the present law which now requires the exclusion or deportation of any alien who believes in, advises, advocates, or teaches the overthrow by force or violence of the Government of the United States or of all forms of law, or the duty, necessity, or propriety of unlawfully assaulting, killing, or assassinating public officers, or the unlawful destruction or damage of property or sabotage. The instant bill, if literally construed, would visit upon aliens the drastic sanctions of exclusion or deportation for believing in, or being affiliated with any organization or group that believes in, any change in the American form of government regardless of the nature of such change, its desirability, its approval by a preponderant majority of law-abiding and right-thinking American citizens, or the legality of the means by which it is to be effected.

Under the language of this bill there mere existence of a bona fide belief on the part of an alien or on the part of a social, political, religious, or economic group with which he was affiliated before his entry into this country, or with which he has become affiliated after entry, that our form of government might be improved by perfectly legal and peaceful means may call for the imposition of the drastic sanctions of exclusion or deportation.

The history of this bill indicates the scope of the limitations which are intended to be placed by it upon every alien's freedom of thought and freedom of expression.



As originally introduced in the House, the bill would have required exclusion or deportation of aliens when they believed in or advocated "the making of fundamental changes." In the House committee "fundamental" was changed to "any," and this change was accepted by the House.

This committee disapproves of the bill under consideration for the following reasons:

(1) The bill is so vague and uncertain in its standards that persons of ordinary intelligence must guess at its meaning and differ as to its application. In view of such ambiguity and uncertainty they cannot govern their conduct so that they will be reasonably certain not to infringe the law and incur its drastic penalties.

What is "belief in" or "advocacy" of "any change in the American form of government?" Conceivably, a belief in any constitutional amendment designed to change our organic law and to be lawfully proposed and adopted, would fall within the condemnation of this bill. Conceivably, a belief in the desirability of a unicameral legislature, compulsory retirement of Federal judges at a given age, a single 7-year term for the President, the readjustment of the respective powers of State and Federal Governments, the expansion or curtailment of the powers of administrative agencies, popular referenda before declarations of war, etc., might be regarded as such changes in the American form of government as would require exclusion or deportation under this bill.

Less drastic changes have been characterized in the past as un-American or changes in the American form of government. The 1893 income-tax law, which was calculated to raise about \$30,000,000 a year, was denounced by Senator Hill as a "communistic tax" and by Senator Sherman as "socialism, communism, and devilism." The Federal Reserve System, when proposed, was denounced by leading bank presidents as "socialistic" and as "un-American." A tax law adopted by initiative in Oregon was opposed all the way to the Supreme Court of the United States on the ground that the Oregon initiative law changed the form of government of that State from republican to democratic and was, therefore, unconstitutional.

What measures would be ultimately held to be changes in the American form of government within the purview of this bill no one can now foretell with any certainty. That being so, we believe that no one (be he citizen or alien) should have his liberty placed in jeopardy or his rights or privileges as a person made dependent upon standards so vague and uncertain as those found in this bill.

At this time particularly, because of the political situation in certain foreign countries, exclusion, or deportation of an alien may mean his living death. No person, alien, or citizen, should be required to risk such a penalty without being clearly and definitely informed of the standards to which he must conform to avoid that risk.

(2) We do not believe that it is wise legislative policy to penalize freedom of political belief or political expression as this bill proposes to do.

As has been stated, this bill is not limited to those who believe in, or advocate the overthrow of the Government by force or violence, or the necessity, propriety, or duty of assaulting, assassinating, or killing public officers, or the unlawful destruction or damage of property or sabotage. The belief in or advocacy of such views by aliens is now illegal, and if the aim of this bill were to condemn and prohibit such beliefs or practices, there would be no need of the bill.

The freedom of political belief and expression which neither advocates force or violence, nor transgresses those bounds which in this country have long been regarded as legal and proper, should not now be prescribed by law. Free and full discussion of the Government and freedom to believe in and hope for an improvement in the structure and processes of the Government and in the solution of its problems, are essential to the proper functioning of democracy and to the public welfare. It is by freedom of belief and freedom of expression that the Government is kept vital and effective and that progress is made. Irrational fear of change, resulting in the curtailment of political belief and expression which is neither violent nor unlawful, is, in fact, so contrary to our traditional policy that it may fairly be termed "un-American."

(3) The bill is likewise subject to criticism for the reason that it requires the exclusion or deportation of aliens who, at the time of their entry into this country, belonged to or were affiliated with any organization of group which believed in or advocated any change in the American form of government or who, after entry, became affiliated with any such organization or group.

If exclusion or deportation of an alien is to depend upon belief in changing the American form of government, it should be his belief and not that of some group with which he may now be or formerly have been affiliated. He may or

may not agree with the beliefs of the majority of the group at any given point of time.

The belief of the majority of the group or his own belief may have changed, and his belief or that of the group may change again. He may even have resigned long ago from the group to which he belonged at the time of his entry into this country and have had nothing to do with that group since his entry. He may be one of a minority in the group, striving to induce the group to support the present form of American Government. His membership in the group and the payment of dues thereto may be required if he is to earn a livelihood for himself and his family, and such membership does not necessarily evidence a belief on his part that our form of government should be changed. He may approve of certain policies of a group, or may belong to it for insurance benefits, collective bargaining, etc., and at the same time differ from the group's views as to specific political measures.

To subject an alien to exclusion or deportation on this vicarious basis, may, in many cases, disregard the alien's own belief. Those who sincerely believe in our form of government, as it is, may be treated under this bill as though they believed otherwise.

(4) This bill, if enacted, would make the assimilation of aliens more difficult and would tend to defeat the efforts to Americanize aliens. An organization with aliens in its membership which wished to keep its alien membership, would have to withhold all expression of opinion on many important issues of the day; and if it wished to preserve its freedom of expression, it would have to ask the aliens to resign. The risk of deportation would be so great that aliens who wished to stay in this country would have to sever all connections with any organization which might speak on any important political or economic questions. Aliens would tend to remain an unassimilated group, fearing to enter into any organized contact with citizens, and fearing to express any political or economic opinions of their own; for both the affiliation with any organization believing in any change in the American form of government, or their own belief in any change in the American form of government, would be grounds for deportation.

The bill is disapproved.

Respectfully submitted.

COMMITTEE ON FEDERAL LEGISLATION OF THE ASSOCIATION  
OF THE BAR OF THE CITY OF NEW YORK.

FEBRUARY 7, 1940.

*Members of the Committee.*—Cloyd Laporte, chairman; Eduardo Andrade, Melbourne Bergerman, Porter R. Chandler, Arthur H. Dean, Noel T. Dowling, George V. Holton, Orrin G. Judd, Eugene J. Keogh, John B. Marsh, Robert G. Page, Simon H. Rifkind, Samuel Rudner, Charles H. Willard; John E. F. Wood, Secretary.

*Auxiliary members.*—John Howley, Melvyn G. Lowenstein, Samuel J. Silverman, Lauson H. Stone.

Senator MURRAY. I wish to point out particularly a paragraph in this brief, which goes on to show the dangers of this amendment. It refers to the fact that even a belief in any change would provide an element to prosecute under this act and deportation. I call attention to the paragraph on page 3 of this brief, where it says:

What is "belief in" or "advocacy" of "any change in the American form of government"? Conceivably, a belief in any constitutional amendment designed to change our organic law and to be lawfully proposed and adopted, would fall within the condemnation of this bill. Conceivably, a belief in the desirability of a unicameral legislature, compulsory retirement of Federal judges at a given age, a single 7-year term for the President, the readjustment of the respective powers of State and Federal Governments, the expansion or curtailment of the powers of administrative agencies, popular referenda before declarations of war, etc., might be regarded as such changes in the American form of government as would require exclusion or deportation under this bill.

It was also pointed out that many of the laws that were proposed in this country in the past times were regarded at the time they were presented as being utterly un-American, communistic, and designed to subvert our form of Government, and yet many of these laws have been enacted and the Constitution has been amended and changed

in various respects, which when first proposed was regarded as dangerous to our country, and it really meant the undermining of our form of government, and yet today they are the law of the land.

I have here also an open letter addressed to the United States Senate, which deals with this bill, signed by a number of prominent American citizens, pointing out the dangers that this bill presents, and I ask that it be incorporated in the record also.

Senator HUGHES. Let that be done.

(The letters referred to are as follows:)

THE NATIONAL EMERGENCY CONFERENCE FOR DEMOCRATIC RIGHTS,  
New York, April 24, 1940.

HON. JAMES E. MURRAY,  
Senate Office Building, Washington, D. C.

DEAR MR. MURRAY: In July 1939 the National Emergency Conference for Democratic Rights circulated the attached open letter in opposition to the Dempsey bill and the McCormack rider to the Walter espionage bill. We beg to draw this to your attention at the present time that you may know the opinion of the prominent Americans who gladly lent their signatures to this statement.

It will also concern you to know that the attached open letter received a Nationwide distribution among church, fraternal, civic, and labor organizations and was endorsed by hundreds of organizations representing at least 6,000,000 Americans.

We hope that in your consideration of the Dempsey bill you will take cognizance of the sentiment expressed by the signers and the great number of voters who concurred with them.

I may add that the same individuals and organizations who condemned the Dempsey bill last July have recently indicated even firmer conviction that the measure is a dangerous one and have been joined in this, to our knowledge, by hundreds of other organizations and thoughtful citizens.

Respectfully yours,

ALFRED K. STERN,  
Chairman for the Executive Committee,  
National Emergency Conference for Democratic Rights.

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#### OPEN LETTER TO THE UNITED STATES SENATE

We, the undersigned, hereby express our alarm that the House of Representatives has recently passed a number of bills, the substance of which we believe to be in contradiction to the principles laid down in the Declaration of Independence, the Bill of Rights, and reaffirmed by Thomas Jefferson, Abraham Lincoln, and Franklin D. Roosevelt. These measures of which we speak encourage repression at a time when the need to preserve our democratic traditions is greater than ever.

We refer specifically to the Dempsey deportation bill and to the McCormack rider which was attached to the Walter espionage bill and passed by the House.

The Dempsey bill, in effect, restricts the serious exercise of political opinion or action by religious, fraternal, and labor organizations which, by their very nature cannot and may not distinguish between citizen and noncitizen. The Dempsey bill would make mandatory the deportation of noncitizen members of any organization which supports any legislative proposal that might be construed as advocating "any change in the American form of government."

The passage of the Dempsey bill paved the way for the McCormack rider, which is an undisguised attack upon the rights and liberties of all Americans, native and foreign born, citizens and aliens, alike.

The McCormack rider enacts into Federal law provisions similar to existing State criminal syndicalism statutes whose history proves that they have been used almost exclusively to prevent organization of labor. By making a felony of "advocacy of overthrow of government by force and violence," the McCormack rider can be applied to the organization, direction, or even advocacy of a strike. That this is its veiled purpose is evident, since there are sufficient existing laws on the statute books to protect the people from criminal syndicalism acts.

As dangerous to democracy as the bills themselves is the manner in which they were proposed in the House. Thoughtful deliberation was prevented by deliberate haste by calling the Dempsey bill "noncontroversial"; by quietly, without fore-

warning, tacking the McCormack rider on to a bill of a distinctly different content. Numerous Congressmen who voted for the McCormack rider have since stated that if the true implications of this measure had been presented to them in debate, they would have voted "nay."

We, the undersigned, therefore call upon you to ward off the dangerous un-democratic ideas contained in this and similar legislation now before the United States Senate. We urge that you give the most careful scrutiny to these measures before you act upon them. We are convinced that such scrutiny will disclose that they are in essence and fact, un-American proposals unfit for a democracy.

Very respectfully yours,

Franz Boas, Luigi Antonini, Brooks Atkinson, Walter B. Cannon, Jerome Davis, Jonathan Eddy, Henry Pratt Fairchild, Dashiell Hammett, J. B. S. Hardman, Elizabeth Hawes, Lillian Hellman, Rabbi Herbert S. Goldstein, Sidney Hillman, Msgr. John A. Ryan, Vincent Sheean, Vilhjalmur Stefansson, Harry F. Ward, Caroline O'Day, Donald Ogden Stewart, Rev. John Haynes Holmes, Stanley M. Isaacs, Paul de Kruif, Henry Smith Leiper, Carey McWilliams, Vito Marcantonio, Bertel J. McCarty, Lewis Merrill, Morris Muster, Stanley Nowack, A. Philip Randolph, Reid Robinson, Rose Schneiderman, Unton Sinclair, Oswald Garrison Villard, Max Zaritsky, Mary E. Woolley.

Initiated and distributed by the National Emergency Conference for Democratic Rights, 305 Broadway, New York City.

Senator MURRAY. It seems to me, as I said in my opening remarks, that there is no necessity for this amendment. Very few aliens, as the witness stated a moment ago, have been deported who engaged in advocating or for participating in matters regarded as sabotage or a violation of the laws that already exist.

It seems to me that if any acts are committed by aliens in this country jeopardizing our Government they can easily be reached by laws that are already in existence. For these reasons I oppose this legislation personally. Also, representing the National Emergency Conference for Democratic Rights, I wish to submit for your consideration their objections to it.

Senator HUGHES. Senator, I might call your attention to the statement by the sponsor of the bill, the introducer of the bill, Congressman Dempsey, at the first hearing, as to what his amendment means, his view of it. He says, "Changing the American form of government means regardless of the change in the Constitution or that which is provided by the Constitution," and it would seem to me that that is a very broad statement.

Senator MURRAY. Yes; it certainly is. We have problems in this country right now that may eventually necessitate some very serious changes. For instance, we have ten or eleven million unemployed in this country, and no plan as yet has been presented which will definitely dispose of that very serious problem, which strikes at the foundation of democracy. If that problem is not met and solved, it seems to me that the future of this country is in a very dangerous condition, and something should be done in the way of legislative action to try to solve problems of that kind. And yet in solving them we may find it necessary to enact some very drastic legislation, which could be regarded, if this bill was in force, as aiming at changing our form of government.

Senator HUGHES. Of course, the theory, as I gather it from some of the witnesses we had before us, is that the alien has no business here. He is either a visitor in limited time, or he is here improperly, and therefore having no interest in this country, he should keep quiet, and not because there is any trouble by expressing his views or advo-

ating theories of government different from his own. That is what they seem to have in mind. In other words, they view him as being here for a limited time, or improperly if he is here as a guest, and he ought to respect all of our institutions, and if he is not here as that why incidentally he ought to forbear from saying anything or doing anything that might cause trouble, and so on and so on.

Senator MURRAY. I agree that it would not be desirable for a foreigner or an alien in this country to advocate changes in our form of government.

I think they should wait, as a previous witness has stated, until they become full-fledged citizens before they undertake to recommend any changes in our Government.

But they may innocently find themselves in a situation where they may be subject to an attack under the indefinite terms of this proposed law by reason of their membership in organizations that are otherwise legal, and that comprise American citizenship, as well as aliens, such as membership in labor organizations, or in churches, and so forth.

I think it is true that there are very, very few actual aliens in this country that are advocating any change by use of force in our Government. I think the vital problems that are before this country are problems that are being considered and the solutions for them being presented by Americans, and not by aliens.

I do not know of any aliens in this country myself who are suggesting any vital changes in our form of government. There may be some but I do not think it is a very serious question at all and the situation can be met by the laws we now have.

Thank you.

Senator HUGHES. Thank you, Senator.

Of course, you want those statements to go in the record?

Senator MURRAY. Yes.

Senator HUGHES. Miss Alice Hanson, Philadelphia Civil Liberties Committee. Is Miss Hanson or Mrs. Howard here?

#### STATEMENT OF MRS. EARNEST WILLIAMS HOWARD, FEDERATION OF WOMEN'S CLUBS, WASHINGTON, D. C.

Mrs. HOWARD. Mr. Chairman and members of the committee, I am Mrs. Earnest Howard, department chairman of legislation of the District of Columbia Federation of Women's Clubs.

The Federation of Women's Clubs at their regular meeting on February 26, 1940, endorsed this bill, H. R. 4860.

This was the form of the resolution that was proposed to the executive board, which constitutes 6,100 members of the District of Columbia Federated Clubs of Women:

Since it is found that foreign groups and governments, in some instances, are financing emissaries, who establish headquarters to assist in the distribution of propaganda, and that such agencies create strife in both political and industrial circles; and that their aim is to cause dissatisfaction with our own form of Government, and as these groups have become a menace to our great American Government, and to the peace and prosperity of our country, the committee on legislation therefore recommends the endorsement of H. R. 4860, to provide for the deportation of all aliens, who advocate the making of any changes in our American form of government.

And this was unanimously passed in regular meeting on February 26, 1940.

Mr. Chairman, as to our brief here, we have reached our conclusions through this statement:

The unity of our Government constitutes us as one people—it is the foundation upon which rests our independence and liberty.

There are those who would weaken in our minds the conviction of this truth. Yet millions of American citizens in this country go serenely on, wholly unconscious of the fact that there is, within this land of ours deadly termites, whose presence we cannot believe exists, and whom most of us would not recognize, because they will invariably be dressed in a glowing coat of reforms and welfare, and carrying a large copy of the Bill of Rights in their pocket.

It is hard to believe that there is any necessity to warn Americans that when they seek to model themselves on the lines of other civilizations they deserve the ridicule of all right thinking men and women. As a matter of fact, those who do believe in American inferiority are always individuals who, however cultivated, have some organic weaknesses in their moral or mental make-up, and true Americans, whether natural or naturalized, are justified in regarding these feeble renegades with distrust and scorn.

No other land offers such opportunities and glorious possibilities to the immigrant who desires to become one of us—the hand of brotherly love is extended to those who sincerely declare to become a member of this great American Lodge—but it remains a fact that no one of our people can do any work really worth doing unless he does it primarily as an American.

The interference of paid organized propaganda against our Government, of course, when the time is ripe, is going steadily on, as has been proven by recent investigations.

If we believe in an orderly society and Government we ought to use all the power within us to defend and advance it.

We believe our greatest need in our immigration service and for the welfare of our country is a more effective, even drastic, deportation administration.

We urge passage of this bill and that it be put into effect immediately.

Now, Mr. Chairman, I see here that a great many feel that the bill is vague. I think that statement sort of goes along with the same idea that you can prove anything by the Bible according to your own interpretation.

I think everybody realizes definitely what it means as to a change in the form of our Government. That does not enter into it at all.

I think it may be that some of you gentlemen have not the time to go out into the highways and hedges and really see and hear some of the things that are going on. We do know, and you know that from some of our foreign governments, that right within our own city here that there is propaganda going out, and that it is being paid for by other governments. I can cite to you a case before the end of the Spanish War where a tea was held at the Spanish Embassy; two high school girls went, and they were given this literature, and they were told by this hostess, who was there to greet them, that war was inevitable. Of course, that was before the spared and the outcome of the war.

I, myself, personally know that the auditorium of the Archives Building was used one night by a group of people here, a great group of people, and the group of people of course did not realize it, and I could sense by their absence of applause and feeling that they were disappointed by the speeches. Of course, we all know of J. Allen, the great Communist. He was there, and he spoke, and he degraded religion in every way, shape, and form. He ridiculed the priests. And when we know these things are going on, I do not think we have to say that they are very good. We know what it means to say whether the railroads should be owned publicly or whether there should be a change in our form of government.

I think most people believe that when an immigrant comes over here that they come over here for their protection and enjoyment of this Government.

I know another great saying is that we are all descendants. That is all very true. We are. But we came over here, and we must remember that our descendants came over here, to get rid of a bad influence, and certainly we do not want that influence to catch up with us.

I believe that any foreign group, a man or a woman, that comes over here to enjoy all we have to offer, if they declare themselves to be over here permanently and intend to abide by the laws and regulations of this Government, that they should be given every opportunity, but we do believe when they come over and they do want to make changes, that they should not want to substitute their own ideas as to our Government, and that they want to be cloaked in the Bill of Rights, and do not want to scream at the top of their voices "Democracy", which is a word that is being terribly overused, and because this is a republican form of government and not a democracy I believe we should have some sort of drastic deportation bill to take care of those people.

Then, finally, if such a bill is enacted, we should see that it is carried out and not leave it to a department that will probably decide one way or the other, and usually in favor of the alien, one of those to be deported.

That is all, Mr. Chairman.

Senator HUGHES. Thank you, Mrs. Howard.

Mrs. Carol King.

#### STATEMENT OF MRS. CAROL KING, NATIONAL LAWYERS' GUILD NEW YORK CITY

Mrs. KING. My name is Carol King, of 100 Fifth Avenue, New York City, N. Y.

I represent the National Lawyers' Guild, a group of approximately 4,000 attorneys, who have gone on record in opposition to the Dempsey bill, H. R. 4860.

The National Lawyers' Guild has already filed a brief in this case as to this bill dealing with the major aspects of it, but I should like to say just a few words about the bill in addition thereto.

In the first place, as Mr. Lewis suggested, and as Senator Murray also suggested, the bill fundamentally affects American citizens. I think that the emphasis that has been put on it is a mistake. I think the real important problem and the reason it is so bad is because of its effect on American citizens and not on aliens. Few aliens have anything to do with advocating changes in the American form of government.

However, a great many organizations of American citizens in this country which have a few alien members do advocate changes and have a perfect right to advocate such changes.

The effect of this bill, as previous witnesses have testified, will be to either limit such criticism, or limit the right of association of those organizations, and I believe that that is fundamentally the important reason why the bill should be disapproved by this subcommittee.

It is not that I believe that it is a bill that is harmless as far as the alien is concerned, but I think it is most harmful and I think its

greatest injury is to the American citizen, and I think that has not been sufficiently stressed.

Senator AUSTIN. May I ask you a question?

Mrs. KING. Yes.

Senator AUSTIN. I do not quite follow you. How does it impinge on the citizen who cannot be deported?

Mrs. KING. It is because in his church organization or his union organization that he will not be allowed to advocate changes in the American form of government, or he will not be allowed to associate himself with the unions and other organizations which do so. In other words, the trade-union will have to make a selection of not advocating, for instance, the President's court plan at the time, which some of them did, or have to decide that they could not have alien members, because all of those alien members would be subject to deportation as the result of that organization's position with reference to the amendment to the American form of government.

Senator AUSTIN. Let us take a case. Let us assume an American citizen is a member of one of those organizations, and he does advocate the making of changes in the American form of government, how would this bill, if it became a law, reach him?

Mrs. KING. It would reach the organization. It would not reach him as an individual, but this bill, if it became a law, would make it impossible for that organization to go on record as in favor of the change, if it had alien members, or even if they received assistance from aliens.

Senator AUSTIN. I now understand you. That is to say, his right to belong to this organization would be affected? That is what you mean?

Mrs. KING. Yes.

Senator AUSTIN. That is, this organization by doing these acts, and suffering the penalty of deportation of aliens in it, might destroy the organization?

Mrs. KING. That is correct.

Senator AUSTIN. That is the idea?

Mrs. KING. Yes.

And not only that, but it might do one or two things, either it might limit the members of the organization, which for instance in the membership of trade-unions is a matter which is very serious. Let us take the unions on the Mexican border, which have a very large alien membership, or even in New York City organizations, which have large alien memberships and they cannot go on record as advocating changes unless they risk the severance of the aliens from their organizations.

That seems to me to be the most serious aspect of the bill, because I do not believe the alien will be affected as much as these American organizations will be affected by such bill.

Senator HUGHES. I do not know that I follow that. We will say you have an organization that has 500 members, and there are 25 aliens in it, or so many more as they see fit to take in. How would it affect the other 475 American members, or whatever number it may be, by the fact that you happen to have this alien representation in that organization? I do not see how that would affect them.

If the organization advocated the overthrowing of this Government or a change of government, and this bill should be passed and the aliens



took part in that, why would they be violating the law? I do not think the Americans would be. I do not see how it would affect them, except, as you say, the aliens might have to refrain and might have to get out of the organization.

The question arises as to what right they have in those organizations now until they become American citizens, what right do they have to be members of organizations that are discussing and advocating extreme measures as to a change of government?

Mrs. KING. May I answer that?

Senator HUGHES. I am broad-minded about the thing, but I am not so broad-minded that I am sympathetic with the views of a good many aliens that they have all the right, and more right than American citizens, to go around making disturbances and creating trouble. I think they had better become American citizens if they want to speak freely and take part in those things. We do not guarantee to them the right to participate until they are American citizens. We are not responsible for them.

You can go on and say what you want to.

Mrs. KING. I should like to say in answer to that in the case of the trade-union effectiveness of the organization is dependent on its having a large membership.

Senator HUGHES. Not necessarily aliens, though.

Mrs. KING. No. But there are aliens in the country, and the organizations cannot afford not to take into their ranks the alien group, and it seems to me that you do menace to the organization when you tell them that any alien is subject to deportation if that organization advocates a change of government.

And I might say in this connection that one of the things which has not been brought out this morning in the original form of this bill when it was introduced is that it said, "any fundamental change in the American form of government." When it was reported out of the committee in Report No. 259 the bill was amended to strike out the word "fundamental," thereby indicating that it was the intention in the House to have even small changes in the American form of government, changes which were fundamental regarded as sufficient if they were believed in by aliens, or if the alien was a member of an organization that advocated it, so that it would be sufficient to warrant deportation of that alien.

It seems to me you assumed in the first place that these changes are really drastic changes in the American form of government, whereas I think the bill in its legislative history will have to be interpreted in the light of its legislative history, which makes plain the changes can be trivial changes.

I do not have the bill as amended. I have it as introduced on March 8, 1939, and it says, "fundamental changes." That was later stricken out.

Senator HUGHES. I do not know as to that. When it came to the Senate it had no such provision in it as "fundamental."

Mrs. KING. And consequently these changes you may be dealing with as serious may be very trivial changes in the American form of government, from the very fact that the word was stricken out.

I believe these alien residents in this country have a right to be in those organizations and that the activities of the organizations should not be curtailed for that reason.

Senator HUGHES. But it occurs to me in thinking about it at this time that if I were in Germany, or England, or any other foreign country, either there improperly, or if I were there properly, we will say, and I wanted to remain for a time, I should not feel at liberty to advocate anything in relation to their government. I should feel that I owed to them the duty of being quiet and not disturbing them and not joining organizations, and I do not consider that I should join any organization there.

I think as to our aliens they are taking too much for granted, coming here without acknowledging responsibilities of citizenship and taking much more liberty than our citizens have themselves.

Mrs. KING. I am not suggesting that the aliens should advocate these changes, but I say that the organizations should be permitted to advocate them without being required to exclude aliens from their ranks.

Senator HUGHES. I doubt if this law would cover that. I think you are carrying that some distance, too. An organization could go on even though they were aliens and violate the law, except that they might lose so many members that they may have gotten in trouble by it.

Mrs. KING. I think that is one thing, and another thing is that would certainly affect their financial backing.

You see, this bill was introduced as an amendment to the act of October 16, 1918, and the last section of the bill as it now stands, or rather, the last paragraph, says:

For the purpose of this section: (1) The giving, loaning, or promising of money or anything of value to be used for the advising, advocacy, or teaching of any doctrine above enumerated shall constitute the advising, advocacy, or teaching of such doctrine; and (2) the giving, loaning, or promising of money or anything of value to any organization, association, society, or group of the character above described shall constitute affiliation therewith; that nothing in this paragraph shall be taken as an exclusive definition of advising, advocacy, teaching, or affiliation.

Senator AUSTIN. Where do you find that in the bill?

Senator HUGHES. That is in the law.

Mrs. KING. That is in the law which it has been suggested to amend.

Senator HUGHES. That is in the law now.

Mrs. KING. That is correct. But as the result of that supposing the National Association of Manufacturers, which is the truth, has favored the child-labor amendment, and supposing that some alien gives \$1,000 to the National Association of Manufacturers. Then that alien would be deportable for having given money for the purpose of the change in the American form of government.

Senator HUGHES. I am afraid you are traveling pretty far on that.

Mrs. KING. That is what that law says.

Senator HUGHES. I do not think anybody would object, but I do not think that would come within that law or any other law.

Mrs. KING. The wording of the law covers it completely. It may be the National Association of Manufacturers has a more favored position than a trade-union.

Senator HUGHES. No; I think any individual could do it.

Senator AUSTIN. I would like to ask if this language were changed so that clause 5, beginning in line 9, should read—I mean line 9—“or (5) the making of any changes in the Government of the United

States excepting in the manner provided for in the Constitution." Would it then meet with your approval?

Mrs. KING. I do not know whether it would meet with my approval. I am sure it would be much less objectionable. I have not given the thing sufficient consideration to voice an opinion on it.

It is the actual vague meaning of this amendment which makes the bill objectionable, and it seems to me anybody with any reasonable experience in the field could not support it.

The change it suggests there would be, it seems to me, one that would improve the bill, but as has already been suggested, the present bill seems to meet the situation which it is intended to meet, and for that reason there has been so much controversy about the additional classes of deportable aliens, and I mean it always means a reanalyzing under the law every time it comes into court, and so on, and it seems to me why not stick to what you have, rather than increase the functions, because it does not seem to me that the fact that an alien belongs to an organization which advocates changing would remain under your wording.

Senator AUSTIN. That is right. But say by constitutional methods.

Mrs. KING. Yes; it should not in any way endanger him, or, as I said before, the organization. I think that despite the fact that the chairman feels that I have gone pretty far afield in my analysis of what the bill could do to the American citizen, it seems to me that the wording of the bill plainly supports that construction, and that, after all, the alien, who is subject to deportation, does not have a court proceeding in order to determine his rights, and he has a proceeding in the Department of Labor, and that administrative ruling is 999 times out of 1,000 against him, and if the alien has sufficient funds to go into court a writ of habeas corpus is sued out for him, and at that point the court has an extremely limited point of review. And the courts do not usually interfere, and they usually have very little to interfere with.

Senator HUGHES. Do you not think that probably over a cross-section of people that you talk with that about 900 out of 1,000 would be in the minority, holding the other view, and feel that the alien certainly gets all that he is entitled to as the law is administered now?

Mrs. KING. I am not saying that.

Senator HUGHES. And that the Department does not put them out when they want to put them out?

Mrs. KING. I am not saying that the Department puts them out when they want to put them out, or that it does not put them out when it should put them out, but I am saying that the law with reference to aliens must be drawn I think even more carefully for the reason that it is reviewed by the courts so limited, and the possibility of uniformity of authority is so incomplete.

As Mr. Seward, of the Department of Labor, said not so long ago at a conference in Washington, the alien was pretty well dependent on the consideration of the Labor Department, and if the Labor Department did not want to consider him there was nothing to make them.

Senator HUGHES. Yes; that is right.

Mrs. KING. And it seems to me when that situation is in the law that it is particularly important to have the law carefully drawn.

And with reference to what you have said before as to aliens that they should not participate in political questions before becoming naturalized, I believe it was Judge Landis who said that, "Many of our soldier boys have been aliens."

Senator HUGHES. That is right.

Mrs. KING. And I think a great many aliens have done enormous good to this country, and I think that the attack that is now being made on the alien is something which has no basis in fact.

Senator HUGHES. We return that favor by a great many of the Americans from here who are soldiers abroad in the present war. I happen to know a few of them who are at the present time in Norway. So they are probably grateful to them, but they do not expect to turn over their government to them.

Mrs. KING. And I do not believe anybody expects to turn over the American Government to the alien, or has made such a suggestion.

That is a very different thing from making an alien exempt from deportation because he belongs to an American organization which may advocate a constitutional change.

Senator HUGHES. All right. Do not take it for granted that in discussing these matters that I am expressing a view as a member of the committee. I am open-minded on it.

Senator HUGHES. Monsignor Ryan. We will be very glad to hear you. I know you are a very busy man.

#### STATEMENT OF MONSIGNOR JOHN A. RYAN, D. D.

Monsignor RYAN. Mr. Chairman and members of the Senate Immigration Committee, with your kind permission, I shall preface my remarks before your honorable body with the statement that I do not appear this morning as representing any organization; I am speaking in my own name only.

The bill which is the subject of this hearing does not propose an entirely new law. It provides for an amendment to the act of October 16, 1918, as amended in 1934. The provisions of that act I can accept wholeheartedly. No person has a moral right to advocate any action which he has no moral right to perform. I do not believe that any greater sacredness inheres in the exercise of the vocal organs or of the muscles involved in writing or printing than in the actions of any other human faculty. Therefore, I see no objection to the prohibition of advocacy of any of the overt acts described in the 1918 statute. Aliens who are anarchists and aliens who believe in overthrowing the Government of the United States by force or violence or who advocate any of the other acts specified in section 1 of that statute, may reasonably be deported and ought to be deported whenever that is a prudent and practicable course. In other words, it is conceivable that failure to deport aliens guilty of advocating these things may be for practical administrative reasons the lesser evil. When they are deported for this offense they do not suffer any violation of their moral rights.

But I am opposed to the amendment provided in H. R. 4860. As introduced by Congressman Dempsey, the bill prohibited the advocacy of aliens "of the making of fundamental changes in the American form of government,"—and these words are quoted from the original form of the bill—and the House Committee on Immigration and Naturalization substituted for the word "fundamental" the word

“any.” In its present form, therefore, the bill would require the deportation of any alien advocating any change whatever in the American form of government. Whether this substitution was made in the interest of clearness, since the word “fundamental” is somewhat elastic, I do not know. At any rate, the phraseology is still vitiated by ambiguity. What would constitute “a change in the American form of government”? Obviously, a monarchy, a dictatorship, the abolition of the United States Senate would exemplify such changes. Advocacy of these and other structural changes in our Government would seem clearly to be prohibited in the terms of the bill. Would the advocacy of a change in the Federal Constitution render the advocate similarly liable to deportation? At varying intervals during the past 16 years I have advocated the ratification of the child labor amendment which would bring the Federal Government into a sphere which has heretofore been reserved to the States, at least so far as concerns intrastate employments. If this bill is enacted and I should continue to advocate the child labor amendment I could not be deported, of course, because I am a citizen, but some alien friend who might stand beside me on the same platform advocating the same change in the Constitution, would be liable to deportation.

About a year ago I listened to a lecture in Constitution Hall, delivered by a widely known and very able authority on political science who a few years ago was a lecturer at Harvard University. But he is an alien, an Englishman, who teaches at the London University. His name is Harold J. Laski. In his lecture in Constitution Hall he recommended and advocated changes in our Federal system which I should think would amount to changes in the American form of government. If this bill had at that time been on the Federal statute books, Professor Laski could have been compelled to take the next boat back to London.

Here is a similar instance, even more timely: A few weeks ago the archbishops and bishops constituting the administrative board of the National Catholic Welfare Conference issued a statement on The Church and Social Order. In it they recommend the economic system set forth by Pope Pius XI almost 9 years ago in his encyclical on the Reconstruction of the Social Order. One of the paragraphs on this topic in the bishops' statement reads as follows:

When we speak of the establishment of a right social order, we understand thereby a reform in the concept and organization of the state respecting its responsibility for public welfare; secondly, a reform in other fundamental social institutions; and thirdly, and quite emphatically, a reform or correction of morals.

Now it happens that the ablest and most satisfactory books explaining and defending what is involved in this proposal for a modern guild system, have been produced in Europe, mainly in France. If one of these authoritative and scholarly writers should come over here and defend this modern guild system, he would be subject to deportation under the operation of H. R. 4860.

Even if all the provisions of the bill were as clear as the noonday sun, it should not be enacted, for the simple reason that it is unnecessary. The revolutionary change which it proposes in the status of American freedom of speech should not be seriously considered without certain and grave necessity. The arguments for the bill made in the report thereon by the House Committee on Immigration and Naturalization are far from convincing. We find in the report mention

of malicious attacks upon our laws and form of government, references to the menace and growth of alien propaganda, and reference to foreign agencies which stir up strife in political and industrial circles, and which have become arrogant and a menace to good government and the peace and prosperity of our country. All this is hopelessly vague. Insofar as these activities involve advocacy of the violent overthrow of Government or the destruction of property, they are prohibited and penalized by the act of 1918 to which this bill is an amendment. Insofar as they consist merely of talk or printed productions without any advocacy of violence, they may be irritating to some of our citizens, but they do not constitute a real danger to any American institution. They may amount to a public nuisance on a small scale and in restricted areas, but they should not cause straight-thinking Americans to lose their mental balance or their sense of humor. I have sufficient faith in the stability of American institutions and in the sanity of American citizens to hold that all such talk and such printed productions can safely be tolerated as a smaller evil than this proposal of revolutionary change in our attitude toward freedom of speech.

This bill is aimed at and would affect only aliens, except indirectly, as has been explained by the previous witness. Strange to say, however, the only persons arrested in recent years on the charge of seeking to change our form of government by force are not aliens at all. The 17 misguided men who have been indicted in New York on this charge are all citizens and the great majority of them were born in the United States.

In 1923, the late Louis F. Post, who had been Assistant Secretary of Labor during the two Wilson administrations, published a book entitled "The Deportations Delirium of 1920." That was the epithet which Mr. Post applied to the so-called Palmer raids carried out in November 1919 and January 1920. Several thousand aliens were taken into custody in more than a score of cities on the charge that they were conspiring against the Government. Not more than 2 percent, if it is that proportion, of those arrested were actually deported. During the present session of Congress some 70 antialien bills have been introduced, and which incidentally have been vetoed by the President, one of which has passed both Houses and several others have got through one of the two branches of Congress. It seems that we now have a repetition but on a smaller scale and in a milder form of the hysteria which culminated in the red raids conducted by Attorney General Palmer 20 years ago.

One of the greatest afflictions that has fallen upon the solemn world is what is called nationalism. The usual definition of this phenomenon is exaggerated and perverted patriotism. Moreover, it includes a feeling of superiority over all other peoples, with a more or less conscious attitude of disparagement and even of contempt. Nationalism has been carried to its greatest extreme in Nazi Germany, but several of its elements manifest themselves in other countries. Even the United States is not free from them. A certain amount of this nationalistic feeling is behind the introduction of more than one of the 70 antialien bills that have found their way into Congress within the last year.

Hitler was able to persuade his countrymen that a great part of their troubles were due to the Jews. Once the latter were made scapegoats, they could easily be misrepresented and persecuted. It

has been asserted in one of the Houses of Congress that there are 7,000,000 aliens in this country holding jobs that might and should be occupied by citizens. Of course, these are gross exaggerations. The number of aliens here is not much more than half of 7,000,000, less than 4,000,000, according to the Department of Labor, and less than half of them possess jobs. But propaganda of this sort creates enmity against the alien and helps to spread the libel that he is largely responsible for our social and economic maladjustments. As a by-product, we have this flood of discriminatory legislative proposals.

The late Pope Pius XI reasserted the Christian principle that all the peoples of the world belong to one great family of the living. Unhappily, this truth is rejected not merely in Nazi Germany and other countries which are afflicted with the cruel doctrine of racialism, but to some extent even in our own beloved America which was founded upon the equality of all men and the universality of human brotherhood. Whether their authors realize it or not, the bill that we are considering this morning and many of the other antialien bills reflect some degree of denial of these great Christian and American doctrines.

Senator HUGHES. Thank you, Monsignor Ryan. Do you want to ask him any questions, Senator Austin?

Senator AUSTIN. No, sir.

Senator HUGHES. Thank you for coming.

Mr. Alpher?

Mr. ALPHER. I am here, but I had not indicated a desire to speak. I just wanted to indicate an interest in the bill.

Senator HUGHES. Is Mr. Hershfield here?

(No response.)

Mr. SHAUGHNESSY. He talked the last time.

Senator HUGHES. Yes. Is Mr. Wilmeth here?

(No response.)

Senator HUGHES. Is Mr. Boas here?

(No response.)

Senator HUGHES. Is Mrs. Susan B. Anthony here?

(No response.)

Senator HUGHES. Mr. Collins?

(No response.)

Senator HUGHES. Mr. Lerner?

(No response.)

Senator HUGHES. And another Mr. Henry H. Collins?

(No response.)

Senator HUGHES. Mr. Taylor?

(No response.)

Senator HUGHES. Mr. Bettelheim?

(No response.)

Senator HUGHES. Congressman Bradley?

#### STATEMENT OF HON. FRED BRADLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. BRADLEY. Mr. Chairman and gentlemen of the committee, I appear in behalf of this bill and in behalf of these bills generally, and it is my sincere conviction that the people in America, although after all we were all aliens at one time or another, or our ancestors, are after all entitled to make their own laws, and to govern their own country.

As I have just stated, we are all aliens originally in this country, and we have built up, in my opinion, the greatest country on the face of the earth.

We have always been in the habit of welcoming to our shores aliens and oppressed people from all over the world, but I think we have the just right when they come to this country to expect that they shall abide by our laws and live under our form of government and under our ideals of government. I do not say that in an intolerant manner. But as far as I know we have never in this country set up recruiting stations to solicit people to come to this country, and they must realize that when they come here they should live as we want them to live in this country, just exactly the same as I can welcome a guest in my house and expect him to abide by my way of living while he is in my house, and if he does not want to do that he is entitled to leave, and if he does not want to live the way that I want him to live while he is there, I certainly reserve the right to ask him to leave my house. And in effect we are just a big house in which we all live, and have a right to live as we see fit.

Now, then, I want to say to you gentlemen that I yield to no one in any respect as to the freedom of the press, the freedom of speech, or the Bill of Rights, but I likewise have no sympathy for those who come over to this country of ours, believing perhaps in the overthrow of our Government, coming over here for the express purpose of indulging in subversive activities, and then turn around and wrap themselves in the protecting folds of the Constitution as to the overthrow of this Government, but who are constantly crying for their rights under the Bill of Rights or the freedom of speech and the freedom of the press.

I think it is time in this country and it is time for this Congress to give careful consideration to such bills as we now have before us. I do not say this bill is perfect, but such bills as we now have before us give us the legal right to deal with those aliens who are now in this country.

Before I close I just want to tell you a little story based upon an illustration of what I have been talking about. When I went down to Panama on one of our Government boats, just prior to this session, I was not on that boat 5 minutes before a head seaman came into my cabin and in a raucous voice demanded, "We want you to talk to this crew." I said, "Give me time to get unpacked," and he said, "You are on the Merchant Marine Committee, and we want you to talk to this crew." I said, "All right."

I did talk to the crew about 2 days before we landed in New York.

I was given a very nice introduction by that gentleman. He started out in some sort of a manner such as this, "Congressman, we are glad to have you here, because you are a member of the Merchant Marine Committee, and we also understand you are an owner, or a former owner, of ships on the Great Lakes, and we want you to know how the steamship help have been downtrodden by you, brow-beaten," and so forth, and he gave me a very nice send-off.

They were very pleased to hear me after that send-off.

I talked to these gentlemen along the line of straight Americanism. I said, "I do not believe all that I see in the press, nor all that which is supposed to have emanated from the Dies committee, but I do want to make this statement to you, any of you boys who believe in any other forms of government, and if you prefer fascism to our form



of government, I would suggest that you get a boat and go on there and help Mussolini, who perhaps may need a little help, and if because of your belief you feel that you believe in nazi-ism, the Hitler form of government, then he could use you over there, and any of you that believe in communism, then go to Russia. I am of the belief that America is getting too small to use you other people who have beliefs in other countries, and so we can very well get along without you, and you should go to the other country if you believe in some other form of government."

The reaction was great. In the first place, I went on the upper deck and I met two people. The first one was an expert fur buyer, an Englishman, or—I beg your pardon—he was an Australian, and his wife was an Englishwoman, and he spoke nine different languages, and she spoke seven. He asked me the subject of my talk, what it had been, and I told him that it had been "Americanism." He said, "I do not understand exactly what you mean by 'Americanism'." I told him the gist of my talk.

He said, "Congressman, it is inconceivable to me that there should be anybody in America advocating any change in your form of government, when I have been one who has spent the last 4 years trying to get out of the oppressed country in which I lived and become a citizen of your country, and it is inconceivable to me that anybody in America should be advocating a change in your form of government."

It may also be interesting that there came to me the next day a knot of seamen, who called me aside, and they said, "Congressman, we do congratulate you on that speech. We know there are in our union, Communists, and they control the union, and we know that there are Communists on this boat, and who are expecting to sabotage this boat in case America gets in war. We cannot say anything about it. Their 'goon' squad would beat us up if we said anything about it. We are all at sea. We cannot vote the proper control of our union. We are glad to know some Members of Congress are aware of the fact, and we are looking to you for help. We want to follow the trade of seamen and the livelihood of seamen," and that was told to me on a vessel owned by the United States Government and operated by the Government.

That is about all I have to say, gentlemen.

Senator AUSTIN. Will you permit a question?

Mr. BRADLEY. Yes, sir; I certainly will, Senator.

Senator AUSTIN. Is it your interpretation of the present law that if an alien advocates a change in our form of government by any other means than that provided for in the Constitution he may be deported for it?

Mr. BRADLEY. Senator, I am not an attorney, so I could not give you a legal opinion; but I do say this: I believe that an alien, of course prior to the time that he may want to become a citizen of this country, has a perfect right to his own opinions, but I believe until he is a citizen of the United States he has no right to tell us how our Government should be run.

I consider this, Senator: I heard the statement made a few minutes ago, which is made constantly, about the rights of aliens, but I believe that aliens should live in this country as we deem that they should live, and if they are not satisfied with that, they are entitled to return to the land of their choice.

Senator AUSTIN. I would like to ask you one more question. Let us assume that the present law gives the power and authority to deport any alien who advocates a change in our form of government in any other way than that prescribed in the Constitution itself. In that event then H. R. 4860 would catch any alien who advocated any other method of change, would it not?

Mr. BRADLEY. I would think so; yes, sir.

Senator AUSTIN. That is all.

Senator HUGHES. Thank you, Congressman.

Mr. BRADLEY. Thank you very much, Senator.

Senator HUGHES. I am very glad to have had you here.

We will next hear from Henry H. Collins, Jr., national legislative chairman, Descendants of the American Revolution.

#### STATEMENT OF HENRY H. COLLINS, JR., NATIONAL LEGISLATIVE CHAIRMAN, DESCENDANTS OF THE AMERICAN REVOLUTION

Mr. COLLINS. Mr. Chairman and members of the subcommittee, I should like briefly on behalf of our other chapters and the national organization to supplement the testimony previously given before your committee by the president of our local chapter, Mr. Hunt. The Descendants of the American Revolution is an organization devoted to carrying out in practice today those principles for which our forefathers fought 165 years ago. For this reason we are wholeheartedly opposed to this present bill, H. R. 4860.

Among those principles were hospitality to immigrants, who joined with citizens in settling the country, and freedom of speech for immigrant and citizen alike. Remember the language of the first amendment:

Congress shall make no law abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

The term is "people" not "citizens."

The Dempsey bill violates both of these principles. It divides the residents of this country into two classes: (1) Aliens and (2) citizens, and it denies to the first of these classes the right of free speech. Since the Constitution guarantees free speech to citizens and aliens alike, it is clear, either that the bill is unconstitutional, or else that a fundamental right that today would be taken from the alien might tomorrow be withdrawn from the citizen.

Objection is often made to allowing strangers within our gates to advocate changes in the structure of the house that shelters them; but the visitor of yesterday is the resident of today, and the citizen of tomorrow; and from the beginning of our country's history, citizen and alien alike have joined to advocate those changes in our Government which have made it the more perfect instrument it is today.

Others have cited the gagged mouths and minds that must result from invoking a cloture on civic thought and making belief an improvement in our form of government a basis for deportation. The reorganization bill, woman suffrage, the child labor amendment in our day; the Bill of Rights, the Declaration of Independence, the very Constitution itself in the days of our forefathers—belief in, or advocacy of, any one of these would have been punishable by deportation had the Dempsey bill been then in effect. How many of our grandfathers

and grandmothers would have been sent back under its provisions to the lands of terror and tyranny from which they had fled to our shores? Two of mine would, or I would not now be eligible for membership in this organization which I represent.

It is sometimes said that those who advocate overthrow of the Government by force and violence should be punished. But Justice Brandeis, I believe, set it forth that unless this advocacy constituted a "clear and present" danger to organized society it was neither treasonable nor contrary to the Bill of Rights. Indeed common sense informs us that it is far better to have dissident groups working in the open where their views, if erroneous, may be combatted and corrected in the full light of publicity and criticism than to have them thrust underground into illegality. Once forced into hiding and secrecy, the most fantastic theories will luxuriate and gain converts in the dark atmosphere of conspiracy—theories that, exposed to the open view and study of mankind, might soon wither and lose all public support.

Surely no one in this room thinks that, in spite of recent military adventures, the Government of the German Reich is more stable than our own. Yet in Germany no criticism of the form of government is tolerated—and outward uniformity of opinion prevails under the swish of the rubber hose and the shadow of the executioner's axe. But every one knows that the core of the Fascist state is rotten, and that dissension and intrigue have already nourished a hydra of underground opposition.

In our country on the other hand one would think that nothing but criticism of the Government was allowed. On any newsstand three journals attack the Government where one supports it and all forms of minority opinion are allowed to wield such influence as their ideas can command. Yet who would say that contrasted with that of Germany our Government is not infinitely more stable, rooted as it is in the masses of the American people, and with its various branches flourishing or withering under the alternate sunshine or storms of the public will.

Finally let us remember that we make a mistake in ever singling out one group of our people as culprits. Aliens found, founded, and built up this country. Von Steuben, Pulaski, and Lafayette fought for its independence. We, descendants of the Revolution, in which they strove, cannot go back on the memory of their comrades in arms. Let us therefore defeat this bill so that we may still say, as does the bronze invitation on the Statue of Liberty:

Give me your tired, your poor, your huddled masses, yearning to breathe free, the wretched refuse of your teeming shores. Send these the homeless, tempest-tossed to me. I lift my lamp beside the golden door.

Senator HUGHES. There has been handed to me a letter addressed to Senator Schwollenbach, by the chairman of the National Emergency Conference for Democratic Rights, including an open letter to the United States Senate signed by a number of people, some of whom have testified here, and the Senator asked that that become part of the record.

Senator AUSTIN. You might have that a part of the record, and say that it was requested on behalf of Senator Schwollenbach, and it was noted that it had already been endorsed by some one else.

Senator HUGHES. Do you have anything from the American Mechanics?

Senator AUSTIN. Yes.

Senator HUGHES. There is a letter here addressed to the Secretary of the committee, from the Junior Order United American Mechanics, advocating the bill, which is as follows:

PHILADELPHIA, PA.,  
April 24, 1940.

DEAR MR. WATSON: I am handing you a short letter, containing the views of the National Council, Junior Order United American Mechanics on the Dempsey bill, H. R. 4860.

As I stated to you yesterday, on the occasion of my call, we will appreciate it if you will have this letter read, for the information of the subcommittee, when it meets Thursday, at 10:30 a. m., also to have the same incorporated in the printed hearings of the subcommittee.

Assuring you it was a pleasure to get acquainted with you, and thanking you for every courtesy, I am

Sincerely yours,

JAMES L. WILMETH,  
National Secretary.

PHILADELPHIA, PA.,  
April 24, 1940.

SENATE COMMITTEE ON IMMIGRATION,  
*Senate Office Building, Washington, D. C.*  
(Attention Mr. Watson.)

GENTLEMEN: Representing the National Council, Junior Order United American Mechanics, a patriotic, fraternal organization, which was organized May 18, 1853, which has lodges and branches in practically all the States of the Union, I wish to speak a word in support of H. R. 4860, which I understand is known as the Dempsey bill. This is an act, proposing to amend the existing law to provide for the exclusion and deportation of aliens who advocate the making of any changes in the American form of government. We take it that this means any subversive change in our form of government.

The National Council, Junior Order United American Mechanics, in its 32 State councils, and lodges generally throughout the United States, are heartily in favor of this proposed bill, H. R. 4860. We feel, at this time, that a curb should be placed on ambitious aliens and foreigners who come here, and who advocate destructive changes in the American form of government, which we have inherited from our ancestors. We also feel that the proper place for such radicals as would have the temerity to attempt these changes is the countries whence they came, and that the quicker such alien residents be deported, the better. We are also heartily in favor of the exclusion of those who propose to come to our country, whose records show that they are extreme radicals or that they are in the employ of those governments who are seeking to extend totalitarian and other subversive forms of government throughout the world.

Please record the Junior Order United American Mechanics as fully endorsing H. R. 4860.

Respectfully yours,

JAMES L. WILMETH,  
National Secretary.

Senator AUSTIN. Yes; I have a copy of that.

Senator HUGHES. That is all that I think that I have. Have you something more?

Senator AUSTIN. No.

Senator HUGHES. Everybody has been notified of this hearing. I presume that the hearing is closed, or do you think that we should follow up this hearing?

Senator AUSTIN. I would leave the record open so that Senator Schwellenbach's statement can be inserted and taken into the record.

Senator HUGHES. Yes. Senator Andrews is not here. He had quite an interest in the bill. I now wonder if we had better wait until he comes in order to close the hearing.

Senator AUSTIN. That is all right.

Senator HUGHES. Then we will recess to reconvene at the call of the chairman; and if there come any further requests for further statements or further hearings, we will receive them or if it be official we will have another hearing, in which anyone can give evidence.

Senator Andrews is away from the committee and is unavoidably in Florida, and he made the requests that the committee not act on this matter until his return, which will be in a few days. So we do not want to shut anybody off. We want your statements if you see fit to make them.

(Whereupon, at 12:10 p. m., the hearings were concluded and the subcommittee adjourned.)