On the Charge That the Department of Justice Has in its Service Provocateur Agents.

[Statement by a Top-Level DoJ Official to Congress Answering Specific Charges Leveled against the Department of Justice, circa May 24, 1920.]†

Document in DoJ/BoI Investigative Files, NARA collection 1085, reel 944, file 209115.

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Mr. Ralston, attorney for Mr. Post, stated that the agents of the Department of Justice were stirring up the unrest in this country, and were creating Communist branches.

It can be emphatically stated that the statement of Mr. Ralston is a deliberate and unwarranted falsehood. It is to be noted that his statement is not sustained by any citation of facts but is characterized by generality, in which he has been please to indulge during the entire course of the hearings before the Rules Committee.

Considerable publicity has been given to statements attributed to Judge Anderson of the Federal Court in Boston, Mass., which was to the effect that the Department of Justice owned and operated a part of the Communist Party, and similar publicity has been given to a statement of Swinburne Hale, who before the Secretary of Labor [William B. Wilson] charged the Department of Justice with the employment of provocateur agents and with the employment of one LOUIS C. FRAINA, [International] Secretary of the Communist Party of America. In regard to this statement by Mr. Hale, it is sufficient to note that his statement was made on April 24th and Mr. Hoover, representing the Department of Justice at the hearing, challenged him to substantiate the statement and Mr. Hale stated that he would be glad to do so within 10 days. To date, one month has elapsed and nothing has been heard from Mr. Hale.

The statements of Judge Anderson are apparently based upon a letter of instructions issued by the Bureau of Investigation under date of December 27, 1919, being the instructions preliminary to the arrests of January 2, 1920, when a large number of Communists were arrested simultaneously in 33 cities in the United States. These instructions, among other things, contained the following statement:

> If possible, you should arrange with your undercover informants to have meetings of the Communist Party and the Communist Labor Party held on the night set.

This letter was introduced at the hearing before Judge Anderson in Boston and apparently the presiding judge jumped at the conclusion that such a statement was indicative of operation of the Communist Party and that the agents of the Department of Justice were engaged in the creating of the unrest prevalent in the United States at that time for ulterior motives ~~beneficial to the Attorney General~~. There is not a single employee of the Department of Justice at this time or at any time under my administration who has in any way actively participated in the councils of the Communist Party, the Communist Labor Party, or any other revolutionary organization under investigation.‡ To be sure, there are employed in the Bureau of Investigation confidential employees whose duty it is to obtain information upon the activities of the radicals in this country and in pursuit of that duty they have joined organizations of an illegal character for the purpose of

†- While further research remains to be done to make a positive identification, the list of possible authors is a short and important one: 1. J. Edgar Hoover, Special Assistant to the Attorney General; 2. Warren W. Grimes, Special Assistant to the Attorney General; 3. William J. Burns, Chief of the Bureau of Investigation. From context, the statement does not seem to have been written by former Attorney General Mitchell Palmer. Sections crossed out of the typescript in the BoI files are reproduced as struck through text here.
‡- The operative words here are "employee of the Department of Justice" — as opposed to "confidential informants," paid or unpaid.

obtaining such information. There is certainly justification for agents becoming connected with aliens for the purpose of finding out what they are doing, but I challenge anyone to show that a single employee of the Department of Justice has ever organized a branch of the Communist Party or the Communist Labor Party or been instrumental in the carrying out of its principles and program.

In connection with the letter of December 27th [1919] and the misinterpretation placed thereon by the court in Boston, a communication was forwarded to the Division Superintendent of the Bureau of Investigation on April 21, 1920, by the Chief of the Bureau of Investigation [William J. Burns] in which an explanation is given of the meaning of the sentence referred to in the letter of December 27th. The court at Boston, however, while keen and overanxious to see the confidential letter of instructions of December 27, 1919, flatly refused to permit the letter of instructions of April 21, 1920 to be introduced, which was an explanation of the sentence considered so obnoxious by the court. There is attached hereto a copy of a letter of April 21st which I would be pleased to have made a part of the record.

This letter explains in detail the purpose and the only sensible construction that could be drawn from the letter of December 27th. It is sufficient to state that the meeting night fore the Communists was set for January 2, 1920, which was the regular meeting night in all parts of the country. In a few instances, the Communists had postponed or planned to postpone their meetings from the 2nd to some other night in the week for various reasons and it was in these cases that the confidential employees of the bureau† were instructed to endeavor to have the meeting held on the regular meeting night. It was not a case of having a special meeting called for the purpose of making arrests, it was not a case of taking aggressive action against the government, but it was merely a case of insisting that the meeting should be held upon the regular night [Friday]. There was to be a meeting on some night during the week and I could see no objection why the effort should not be made to have the meeting held on the scheduled night. I might state for the information of the committee that to my knowledge there were only 2 instances where such postponement had occurred, so the impression which has gone broadcast to the effect that hundreds of meetings were scheduled for that night through the instrumentality of the agents of the Department of Justice is wholly erroneous and no one, unless maliciously inclined, can truthfully claim that a single agent of the Department of Justice has ever actively engaged in revolutionary activities in any of the organizations of which they may be members.

An effort has also been made by certain individuals who seem to be so intently inclined to belittle the efforts of the Department of Justice to compare the investigating agency of the Department with Justice with private detective organizations. No one with a deliberate and calm mind and desiring to be fair and just in his conclusions could come to such an erroneous and wholly unfounded and illogical conclusion. A private detective agency renders its services for compensation and it may be claimed that where a condition is improving that the agency may lose financially thereby and for that reason might be desirous of continuing the agitation. There have been one or two isolated cases of unethical action upon the part of detective agencies, but it is by no means general. However, the Department of Justice renders its services for the protection of the laws, the Constitution, and institutions of the United States and to stir up unrest would be to defeat the very purpose for which it is operated and the insinuations and innuendo which has been cast against the Attorney General that he has made political capital out of red agitation is a deliberate and base falsehood and in no instance can facts sustain such charges. These charges generally emanate from the pale-pink parlor bolsheviks and from the mouths of the friends of the radicals. Only the uninformed, illiterate, or the real friend of the radical, could ever conceive such an idea.

A request has been made of the committee for the Department of Justice to submit the instructions and reports of HERMAN BERNHARD, whom counsel for Mr. Post states was an undercover agent of the Department of Justice in becoming recording secretary of the Communist Party local at Buffalo, NY, and in securing adherents to the Communist Party in Buf-

†- A Fruedian slip here: "confidential employees" for "confidential informants."

falo.

I desire to advise the committee that Mr. Herman Bernhard was appointed as a special agent and not as a confidential informant of the Department of Justice on January 20, 1920, 20 days after the raids on January 2nd. His employment by the Department of Justice in January 1920 was his first employment in the service of our department. Prior to that time he had been employed by the Lusk Committee and what his work was with that organization is entirely unknown to this department. It is sufficient to state that Mr. Bernhard is not a confidential employee and has at no time while employed in the service of the Department of Justice been an officer in or agitator for the Communist Party.

The attorney for Mr. Post in the letter to the committee of May 13, 1920 desires that the Department of Justice furnish the instructions and reports of one CAMERON, representing the Department in attending the meetings of the Communist Labor party at Chicago, August 30 to September 5, 1919. ~~It can be stated~~ There is no employee, special agent, or confidential informant employed by the name of CAMERON in the service of the Department of Justice.

THE CHARGE THAT LOUIS C. FRAINA WAS AN AGENT OF THE DEPARTMENT OF JUSTICE, has been circulated quite frequently through the instrumentality of MR. MARTENS and his associates in this country and as I above stated was openly charged by Swinburne Hale. I had ignored the charge that had previously been made which emanated probably from the Soviet Bureau in this country, due to the fact that I considered the source from whence it came, but when an attorney appearing in argument before another cabinet officer directly charged that Fraina was an agent of the Department of Justice, I deem it only proper that a denial should be made of it. I also deem it proper that this committee know the facts in connection with the Louis C. Fraina case, which may prove illuminating to them and to the general public.

LOUIS C. FRAINA is an alien who was actively identified with the Left Wing movement in the Socialist Party prior to its crystallization in the Communist Party. Fraina was in a large measure responsible for the contents of the Manifesto of the Communist Party [Left Wing Section] which has been ruled by the Secretary of Labor to be a document which advocates the overthrow of the government of the United States by force and violence. Fraina actively engaged in the organization work of the Communist Party and was the [International] Secretary and editor of that organization.

There was in the employ of the Department of Justice during the months of September, October, and November, 1919, a confidential employee by the name of FERDINAND PETERSEN. Petersen had come to the attention of the Department of Justice as being one well acquainted with Russian activities and had applied for a position with the Department in New York, claiming that he was intimate with SANTERI NUORTEVA and LUDWIG C.A.K. MARTENS and other persons actively identified with the Soviet movement. Desirous of ascertaining whether or not PETERSEN could be of any value to the Department he was employed probationarily for the time above stated and rendered reports containing information upon the movements of NUORTEVA and MARTENS, the latter against whom a deportation case is now pending before the Secretary of Labor. Petersen's work, however, was not entirely satisfactory, in that he was obtaining no information of great value and he withdrew from the service in November 1919. Subsequent thereto, it was ascertained that at the same time he was in the employ of the Department of Justice, he had also been in close communication with SANTERI NUORTEVA and had told NUORTEVA in order to be in his confidence that FRAINA was an agent of the Department of Justice.

The reason for this statement can best be learned when one understands the intricacies of the communist movement in the United States. The COMMUNIST PARTY and the COMMUNIST LABOR PARTY are identical in principle and action, not according to my statement, but according to the statements of their own leaders, and the reason fro the formation of two organization was due to the differences of individuals in regard to leadership. The group composing the COMMUNIST PARTY had insisted that MARTENS should take his orders direct from the COMMUNIST PARTY in this country, rather than from Moscow, and it was of this groups that Fraina was the leader and therefore openly antagonistic to

Martens.† The COMMUNIST LABOR PARTY, however, supported Martens' contention to the effect that he should take his orders from Moscow. It was desired on the part of Martens' Bureau to discredit Fraina in the Communist movement, as he was the principle opponent in regard to party discipline in the country.† Nuorteva welcomed the statement that Fraina was an agent of the Department of Justice to such an extent that he saw fit to offer Petersen $1,000 to get certain papers from the Department of Justice, proving Fraina's connection therewith. He actually paid Petersen $160, for which he expected to be reimbursed later by Martens. This man, SANTERI NUORTEVA is the secretary of Martens, the so-called Bolshevik Ambassador. When Petersen reported the fact to Nuorteva that Fraina was an agent of the Department of Justice, Martens thought the matter grave enough to be investigated, according to his own statement and threatened to send the charges to Moscow unless Fraina was able to disprove them. Reports rendered by Petersen to the Department of Justice were later found out to have been reviewed by Nuorteva and Petersen revealed to Nuorteva the names of certain representatives of the Department of Justice for his information.

So serious were the charges considered by Nuorteva and Martens that in the city of Brooklyn a secret trial was held in 1919‡ at which the following persons were present to pass judgment upon the fact whether or not Fraina was an agent of the Department of Justice:

GREGORY WEINSTEIN,
HARRY NOSOVITSKY §
J. LOVESTONE
LUDWIG C.A.K. MARTENS
SANTERI NUORTEVA
DR. ISAAC HOURWICH
— HOUDIN
[JACOB] HARTMAN
[ALEXANDER] BITTELMAN

At this trial Petersen and Fraina were subjected to examinations and Fraina apparently satisfactorily explained away the charges made by Petersen. The Soviet Bureau headed by Martens has so persistently maintained that they were taking no interest or activity whatsoever in communistic affairs in this country, that I am unable to understand this statement, when I read the report of the meeting in Brooklyn, and find they were trying a member of the Communist Party of America as being a traitor to the communist cause. A portion of the same group who sat at this trial are now in the Lafayette Hotel of this city, awaiting the action of the Department of Labor upon the case of Martens. ~~It might be of interest to the committee to know that a certain high government officer, I am told, has stated that he has considered it an outrage the way Martens has been hounded by the Department of Justice and that some of these days the government of the United States will be sorry for the way it has treated him when it is compelled to recognize Soviet Russia.~~

†- Louis Fraina was never *the* leader of the Communist Party of America, he was *a* leader — the International Secretary, the first representative of the CPA to the Comintern. There is no documentary evidence that Fraina took any particular stance on the control of the Martens Bureau in 1919; he was certainly not a hard-liner on this question. Hostility to Martens and desire to place the Russian Soviet Government Bureau under CPA control was centered in the various "Russian Federations" (Russian, Latvian, Lithuanian, Polish, etc.) and apparently predated the formation of the Communist Party of America in September 1919. The "Russian Federations" saw fit to send Latvian radical John Anderson (née Kristap Beika) as its own delegate to Moscow in the summer of 1919 — *before* the formation of the CPA. The matter of the Martens Bureau seems to have loomed large on Anderson's agenda. It is not certain what in particular was at issue, but the matter of Soviet funding is a reasonable guess. The CPA also probably had grave misgivings about the ideology of some of those in the RSGB inner circle, including Martens' top assistant, Santeri Nuorteva, who had for a decade swam in "establishment" circles of the Socialist Party of America, and his friend the head of the Legal Department, Morris Hillquit, whom the Communists loathed for his suave self-assuredness and uncanny Kautskyian triangulations on perceived matters of principle.

†- This seems a serious misreading of the Russian Soviet Government Bureau's motivation. Rather than an elaborate plot to take down "the leader" of the Communist Party of America (which Fraina never was) with an orchestrated campaign of lies, it seems apparent that Nuorteva and Martens *truly believed* the statement made to them that Fraina was in the employ of the Department of Justice. Nuorteva continued to battle against Fraina all the way into 1921, long after the RSGB was terminated.

‡- The Party Trial of Louis Fraina was actually held in 1920.

§- Nosovitsky was the same person as the Bureau of Investigation's agent "Petersen." The investigative files of its agents demonstrate a chronic inability to properly identify pseudonyms — here we apparently have a case of an official of the very highest stature in the Department of Justice unable to make an identification of the pseudonym of its own agent!

~~This same government official carried around in his pocket, according to his statement, the warrant for the arrest of Martens, in order to, as he put it, prevent the Department of Justice from creating a scene at the capitol and arresting Martens.~~ I might state that it was the intention of the Department of Justice to take Martens into custody when he completed his testimony before the Senate Committee as we would any other violator of the laws of the United States. I could not see why he should be handled differently from any other case but the Assistant Secretary saw fit to have him brought to his office and turned over to the custody of his attorney, without any knowledge upon the part of anyone, saving him the humiliation of a public arrest ~~though I can hardly see how Martens could object to the same, since he purports to be the representative of the proletariat, which has no class distinctions and can suffer no humiliation~~.

LOUIS C. FRAINA today is somewhere in Europe. He, through some means, escaped from this country, with the connivance of some forces unknown to the Department of Justice; he attended the meeting of the Propaganda Bureau of the 3rd International at Amsterdam, February 1920, and represented the communist groups in America at that conference. It might be interesting for the committee to know a little more in detail concerning the propaganda meeting of the Bureau in Amsterdam. I have the stenographic report taken of this meeting, together with their official bulletin, and it appears from their own statements that they are determined upon the establishment of a communist commonwealth in the United States, centering its bureau in the western hemisphere in ~~the country of~~ Mexico. I have also a copy of an article written by Fraina in the *Tribune,* published in the Netherlands, entitled "The American Revolution" and published under date of March 4, 1920, which is particularly illuminating as to the conditions in the United States and as to the purpose of the Communist Parties in this country. The following statement appears in this amazing document:

> These great strikes were used by the Communist Party as a means for intensive revolutionary agitation. Leaflets were issued concerning the mine workers' and steel workers' strike and 2 million of these were distributed. Our agitation openly encouraged the establishment of Soviets. Our agitation was particularly strong at Gary, the steel town that was governed by Major General Wood under martial law. Besides agitation in the workshops the Communist Party conducted a great propaganda in the factories, for the control of the workers in industry and a national campaign was begun for the raising of the blockade of Soviet Russia. Persecuted and slandered, kicked and beaten, the Communist Party will pursue its agitation. Publicly if it can, secretly if it must.

This is a very brief statement upon the case of LOUIS C. FRAINA. Fraina is desired by the state authorities of Illinois for prosecution under the State Syndicalism Law and I assume that he would be desired by the Department of Labor, if he ever returned to this country, for deportation, most certainly so if they followed my recommendation. I have asked that the authorities of a foreign government in whose custody he now is to return him to the United States. I challenge anyone to present a scintilla of evidence to show that this individual was at any time in the employ of the Department of Justice or furnished it any information whatsoever. ~~It might be possible for LINCOLN COLCORD, MR. DURANT, and other sympathizers with the Soviet cause to unearth some mysterious connection between Fraina and the Department of Justice, since these gentlemen so strenuously endeavored to induce Mr. Petersen to appear before the Senate Committee investigating the Martens case to testify falsely upon the Fraina case.~~ I might state in this connection that Mr. Petersen became so agitated over the result of his falsehood that he was planning to leave this section of the country at the time of the hearing before the Senate Committee inquiring into Bolshevik propaganda and I requested Senator Moses, chairman of the committee, to subpoena him to remain in this country, and said subpoena was issued. I assume that Senator Moses did not give the prolific press statements of the Soviet Bureau located at the Lafayette Hotel sufficient credence to warrant the calling of Petersen, as a witness.

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Edited with footnotes by Tim Davenport.
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