Supreme Court decision

High Court Refuses to 'Trespass' in Rail Union Case

By BANNING E. WHITTINGTON

The Supreme Court ruled yesterday that Congress intended the jurisdictional disputes of railroad unions to be settled without recourse to the Federal courts as a final arbiter.

Concurrently, it upheld the convictions of 18 Minnesota members of the Socialist Workers' Party who were found guilty of plotting the overthrow of the Government.

Dissents in Two Cases

The court in effect held in two railroad cases that the National Railway Labor Act fails to provide for court jurisdiction in intra-union controversies. Justices Owen J. Roberts and Stanley Reed dissented from both decisions. Justice Robert H. Jackson dissented in one case.

The first opinion involved a union appeal from action by the national mediation board ordering an election to determine union representation between rival organizations in one craft.

Justice William O. Douglas wrote the majority opinion in which the court denied, 4 to 3, its authority to review board decisions. He said court review is not necessary to protect rights created by statute law.

Courts "Should Not Rush In"

In the second case, involving two railroads and two unions, the court decided it lacked power to rule on labor contracts agreed on by those parties. Douglas said the mediation act did not embrace judicial remedies.

"The command of the act should be explicit and the purpose to afford a judicial remedy plain before an obligation enforcible in the courts should be implied," he said.

He added that the courts should not "rush in where Congress has not chosen to tread."

In the Socialist case, the court denied the 18 members' joint appeal based on the contention that they had been deprived of free speech. They were convicted in Minnesota District Court both for advocating overthrow of the Government and violating the Alien Registration Law.

In other decisions or orders, the court:

1. Ruled seven to one that the sale of oil and gas leases for investment purposes constitutes sale of a "security" and hence is within the Federal Securities Law.

2. Reversed the action of the New York Court of Appeals enjoining a union from picketing two cafeterias where no labor dispute allegedly existed.

To Hear Liquor Case

3. Agreed to hear oral argument in a case involving legality of liquor shipments to a military reservation in Oklahoma—a dry State.

Ruled six to three in the case of Frank Roberts, Huntsville, Ala., that Federal courts lack legal right to impose a new sentence on a person convicted of a Federal offense if probation privileges are violated.

5. Ruled that Joseph Dotterweich, general manager of a Buffalo pharmaceutical firm, was responsible for misbranding of drug products by the company in violation of the Federal Food and Drug Act.

Mr. [illegible]
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Mr. [illegible]
Mr. Rosen
Mr. Tracy
Mr. Acers
Mr. Carson
Mr. [illegible]
Mr. [illegible]
Mr. [illegible]
Mr. [illegible]
Mr. Nease

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Mr. Quinn Tamm
Mr. Nease
Miss Gandy

High Court Rule Wrangle Looms In 2 Big Cases

By BANNING E. WHITTINGTON

A fight paralleling in intensity President Roosevelt's historic Supreme Court reorganization campaign in 1937 may develop about the tribunal soon, but this time the Chief Executive will be an onlooker, although he ultimately may take an active hand.

At issue are three moves to change the court's legal quorum without changing the numerical size of the bench. This is proposed so that two cases of great import, now hanging fire, could be reopened.

Five Constitute Quorum

They are the Government's anti-trust suit against the Aluminum Company of America, known as Alcoa, and the Securities and Exchange Commission's directive to the North American Company, giant utility holding syndicate, to divest itself of $190,000,000 of assets.

Six justices have constituted a quorum since the days when the tribunal numbered 11. In the Alcoa case, four of the present nine justices—Chief Justice Harlan F. Stone and Justices Stanley Reed, Frank Murphy and Robert H. Jackson—have disqualified themselves because of prior connection with the Department of Justice.

A quartet of justices whose names have never been made public, also have held themselves ineligible in the North American case. With both actions thus tied up the court has transferred them to a special docket—pending developments.

Prospective Ways Out

At present there are two prospective ways out. Congress can pass a law changing the quorum rule, or the cases can lie in abeyance until the court's membership is reshuffled.

Three remedies thus far proposed have come in for violent criticism for fear that if the legal quorum were reduced the court would be "unbalanced" and consequently become unrepresentative of the true court majority.

One is a bill by Representative Hatton W. Sumners (D.), of Texas, chairman of the House Judiciary Committee, under which five justices would constitute a bench—or quorum—permitting decisions on a three-to-two divided basis.

The American Bar Association's reaction was instant. It called the bill "ad hoc in character." This means that the cases tied up might be cleared but that there would be established a dangerous policy whereby a three-judge majority could adjudicate questions of sweeping, national importance.

Other Measures Proposed

A second plan—by Representative Zebulon Weaver (D.), of North Carolina, would automatically remand the cases to the Circuit Courts of Appeals where they originated.

The third alternative—suggested by Representative Estes Kefauver (D.), of Tennessee—would authorize retired justices to fill a quorum.

Should any of the plans be pushed, a long, bitter fight is certain.

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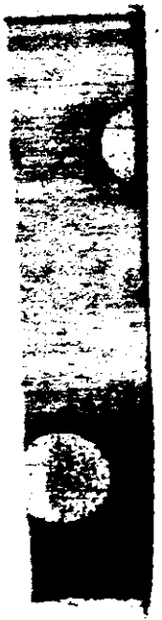

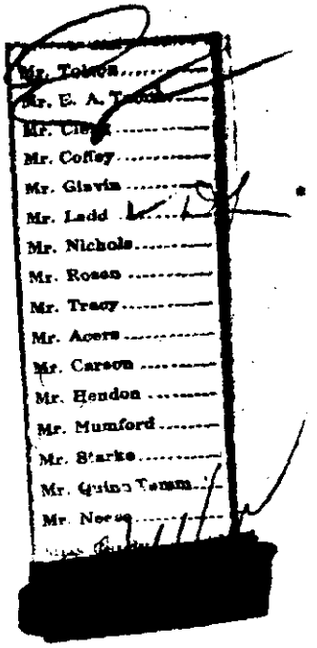

HIGH COURT BACKS SECT DRAFT CHARGE

Upholds Conviction of Minister of Jehovah's Witnesses Who Evaded Induction

WASHINGTON, Jan. 3 (AP)—The Supreme Court ruled today that a draft registrant who objects to the classification given him by a draft board must report for duty before he can test in the courts the validity of the board's action.

The 8-to-1 opinion by Justice Hugo L. Black, with Justice Frank Murphy dissenting, said it was "well understood" that "dire consequences might flow from apathy and delay" and that the Selective Service Act was passed "to mobilize national manpower with the speed which that necessity and understanding required."

Justice Black explained that an order to report for induction was not "the equivalent of acceptance for service" because "the selectee may still be rejected at the induction center and the conscientious objector who is opposed to noncombatant duty may be rejected at the civilian public service camp."

"Thus," Justice Black asserted, "a board order to report is no more than a necessary indeterminate step in a united and continuous process designed to raise an army speedily and efficiently."

The decision specifically involved Nick Falbo of West Newton, Pa., a member of Jehovah's Witnesses. Mr. Falbo contended that he should have been classified as a minister completely exempt from military training and service.

Instead he was classified as a conscientious objector and was ordered to report for work under civilian direction at Big Flats, N. Y. He failed to report and was sentenced to five years' imprisonment by the Federal court at Pittsburgh.

The Government argued before the court that Mr. Falbo's objections to his classification could be tested by applying for a writ of habeas corpus after reporting for duty. But Mr. Falbo contended that he had a right to test the validity of the board's action in the criminal proceedings brought against him for failure to report.

Justice Black's majority opinion, which confirms the district court ruling, said that "Congress was not required to provide for judicial intervention before final acceptance of an individual for national service."

In his dissent, Justice Murphy said that there was no "express or implied barrier" in the Selective Service Act to the granting of "a full judicial review of induction orders in criminal proceedings."

The Supreme Court refused to review the conviction of Sidney Zernit of New York on a charge of failing to report for induction into the Army after his claim for classification as a conscientious objector had been denied.

Mr. Zernit, sentenced to three years' imprisonment by the Federal court at New York, contended that he could not submit to induction without violating his conscience.

The Justice Department asserted that the proper procedure was to appear for induction and then seek a writ of habeas corpus to test the legality of the board's 1A classification.

Seconded by Frankfurter

Roberts Says Court Flipflops Confusing to Lower Tribunals

By Mary Spargo

Vigirous criticism of the present "tendency" of the Supreme Court to disregard precedent to such an extent as "to shake confidence in the consistency of decision and leave the courts below on an uncharted sea of doubt and difficulty" was disclosed yesterday in an opinion written by Justice Owen J. Roberts.

Justice Felix Frankfurter joined in Roberts' opinion, which cited the court's flipflops on various decisions concerning the Jehovah Witness sect.

The dissenting opinion referred to a "modern instance" of members of the court making a public announcement of a change of views, with a citation referring to an opinion in which Justices Black, Murphy and Douglas revealed that they had changed their minds on the Jehovah Witness flag salute case.

Early last month Justice Black wrote a concurring opinion solely devoted to taking issue with the reasons given by Frankfurter for dissenting from a majority opinion. Black was joined by Murphy. The split attracted more than usual attention becaused all three Justices —Black, Murphy and Frankfuter— were appointed to the bench by President Roosevelt and were regarded as a 'liberal team" which would work together.

The strongly worded dissent by Justice Roberts criticizing the lack of consistency in the court was handed down Monday in an admiralty case (Mahnich v. The Southern Steamship Co.). Justice Roberts charged that the court's majority opinion nullified an earlier decision of the Supreme Court "which has stood unquestioned for 16 years."

JUSTICE ROBERTS

"The evil resulting from overruling earlier considered decisions must be evident," Justice Roberts opinion said.

"In the present case, the court below naturally felt bound to follow and apply the law as clearly announced by this court. If litigants and lower Federal courts are not to do so, the law becomes not a chart to govern conduct but a game of chance; instead of settling rights and liabilities it unsettles them. Counsel and parties will bring and prosecute actions in the teeth of the decisions that such actions are not maintainable on the not improbable chance that the asserted rule will be thrown overboard. Defendants will not know whether to litigate or to settle, for they will have no assurance that a declared rule will be followed. But the more deplorable consequence will inevitably be that the administration of justice will fall into disrepute. Respect for tribunals must fall when the bar and the public come to understand that nothing has been said in prior adjudication has force in a current controversy.

Growth Allowed For

"Of course, the law may grow to meet changing conditions. I do not advocate slavish adherence to authority where new conditions require new rules of conduct. But this is not such a case. The tendency to disregard precedents in the decision of cases like the present has become so strong in this court of late as, in my view, to shake confidence in the consistency of decision and leave the courts below on an uncharted sea of doubt and difficulty without any confidence that what was said yesterday will be good tomorrow, unless indeed a modern instance grows into a custom of members of this court to make public announcement of a change of views and to indicate that they will change their votes on the same question when another case comes before the court. This might, to some extent, obviate the predicament in which the lower courts, the bar and the public find themselves."

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Roberts' reference to "changing conditions; was interpreted as a possible reference to his own change of decision in regard to minimum wage laws for women. In 1936 Roberts voted with the majority to hold unconstitutional a New York law fixing minimum wages for women. Less than a year later the court sustained a similar Washington State law by another 5-to-4 decision, with Roberts switching his vote to make the majority. This decision came in the midst of the bitter Senate controversy over President Roosevelt's unsuccessful plan to reorganize the Supreme Court by adding six justices, a proposal attacked as a "court packing" plan. During the Supreme Court fight, Roberts was frequently referred to as the court's "swing man."

Cites June 1940 Decision

The citations given by Roberts in connection with the modern right-about face tendency of members of the court go back to June, 1940, when the majority, in a decision written by Frankfurter on a Jehovah Witness case, held that a public school requirement of a salute to the flag was constitutional. Chief Justice Harlan F. Stone was then the lone dissenter.

In June, 1942 the court split, 5 to 4, in upholding the right of three cities to impose license fees on members of the Jehovah's Witness sect distributing religious literature. This time Justices Murphy, Black and Douglas joined with Stone in dissenting, and the first three named added:

"Since we joined in the opinion in the Cebitis (flag salute) case, we think this is an appropriate occasion to state that we now believe it was wrongly decided."

In October, 1942, the Fourth Circuit Court of Appeals cited the fact that four members of the U. S. Supreme Court believed the flag-salute decision incorrect in upholding the Jehovah Witness fight against the flag salute in West Virginia schools.

May 4, 1943, the Supreme Court reversed its previous stand on the constitutionality of municipal license taxes on the sale of religious literature. This time the court upheld the Jehovah Witness sect in a fight against such municipal ordinancees in a 5-to-4 decision, with the scales tipped by the addition of Justice Rutledge, who replaced former Justice Byrnes, now War Mobilization director. This time Roberts, Frankfurter, Jackson and Reed were in the minority.

June 15, 1943, the Supreme Court overruled its 1940 decision on the flag salute, with Frankfurter and Roberts consistently dissenting and joined in their opinion by Justice Reed.

Freedom Of Worship

The curious and confusing convolutions of Supreme Court in interpreting the First Amendment are doubtless due to the complexity of the problem raised by the sectaries called Jehovah's Witnesses who for several years past have been providing the court with a series of troublesome test cases. The creed of the Witnesses is apocalyptic; they believe that Armageddon is close at hand when the righteous (meaning themselves) shall triumph and their enemies be laid low. Their faith and their methods are fanatical; they regard other religions not merely as heresies, but as satanical inspirations; and consequently have little regard for the religious sensibilities of others. They consider the Government itself godless and rejoice in the thought of its imminent destruction, yet rarely hesitate to invoke its protection. They appear to invite rather than to avoid repression or persecution, and there is some reason to believe that they welcome the publicity which their frequent conflicts with local and State authorities have brought them.

The dilemma of the court lies in this: in upholding local ordinances or State laws under which the Witnesses have been prosecuted, precedents may be established which will ultimately react against other religions. The principle, for example, that school children belonging to the sect may be compelled, even against conscience, to offer homage to the flag, could easily be extended to compelling oaths from persons who have religious scruples against swearing. The principle of regulating religious activity by license or taxation could, if it became expedient, be directed against almost every religious body. The principle that a secular court may prescribe which actions do or do not constitute worship, is one that scarcely any religious body could accept. Such principles, in fact, if once established in law, would modify the constitutional principle of freedom to one of mere toleration.

It may be granted, of course, that there is a theoretic limit even to freedom of worship. The limit would seem to be precisely at the point where the freedom of one religion collides violently and injuriously with established moralities. No one would say seriously, for example, that ritual cannibalism as practiced by the Aztecs or infant immolation as practiced by the ancient votaries of Moloch, or polygamy as practiced in certain patriarchical societies are entitled to protection under the law. But in the absence of overt injuries to persons or to traditional moralities—and, as far as we know no one has alleged either against Jehovah's Witnesses—we should like to see these cases decided on the side of freedom. For if this one vital freedom is narrowly restricted, all other constitutional rights will be in jeopardy.

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Supreme Court Controversy Flares Again

By the Associated Press

Justice Felix Frankfurter added fresh fuel yesterday to the controversy among Supreme Court justices over the interpretation of constitutional law, by asserting that his colleagues were resorting "gratuitously" to a "wholly novel doctrine of constitutional law."

These were virtually the same words Justices Black and Murphy used a month ago in criticizing Frankfurter's views on utility rate making.

The latest tiff developed over the court's decision that a Federal bankruptcy court, rather than State courts, has exclusive power to fix fees for attorneys who represented in the State courts a corporation undergoing reorganization under the Federal Bankruptcy Act.

Frankfurter agreed with all the other justices that in this particular case the bankruptcy court should determine the fees but vehemently expressed opposition, in a concurring opinion, to the grounds which the Supreme Court cited for its finding.

The case involved the reorganization of the Reynolds Investing Co., Inc., in the Federal District Court of New Jersey. Three attorneys acting for the debtor, and later for trustees for the company, filed suit in the New York courts to collect certain claims. Before judgments were returned, the attorneys' services were discontinued. Thereupon, under New York State judiciary law and in conformity with an arrangement in the reorganization proceeding, the three sued in the State courts to obtain fees for their services, and were awarded $[illegible],000.

Justice Douglas' opinion declared that under chapter 10 of the Bankruptcy Act, Congress had conferred "paramount and exclusive" jurisdiction on the bankruptcy court.

He Takes Exception

"Where the reorganization supersedes a prior proceeding in either the Federal or State court, the bankruptcy court is the one which is authorized to allow the 'reasonable costs and expenses' incurred in the prior proceeding," the opinion said.

But Frankfurter asserted that from the beginning Congress had allowed Federally created rights to be enforced in State courts "not only by the general implications of our legal system but also by explicit authorization."

He declared that the Constitution does not give the Bankruptcy Act supremacy over the right of States to determine what shall be litigated in their courts, and under what conditions.

"And certainly," he added, "such a wholly novel doctrine of constitutional law should not be resorted to gratuitously when the case before us can be disposed of on the conclusive ground that the litigation conducted in the New York courts was conducted under an arrangement consonant with New York law . . ."

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[redacted]

Court Discord Bared Again In Split on Jehovah Case

Discord on the Supreme Court bench was again revealed yesterday with a minority of three, headed by Justice Frankfurter, charging that a majority opinion had "startling implications," leading to the establishment of the press "in a class apart, untouchable by taxation."

This interpretation was ridiculed by Justice Murphy of the majority who warned, in his turn, that the taxing power "in the hands of unscrupulous or bigoted men could be used to suppress freedoms and destroy religion."

Divided Six to Three

The court was divided, six to three, in reversing the conviction of Lester Follett, of McCormick, S. C., a Jehovah's Witness, for selling religious literature without a book agent's license.

The court has previously ruled in similar cases that peddlers of religious tracts could not be taxed for a license. The only difference in Follett's case was that he was a resident of the town where the sale stook place, and the principals in other cases had been itinerant salesmen. The majority held the residence of the salesman made no difference—the tax was unconstitutional.

Although the question involved thus was a narrow one, six of the nine justices saw fit to air their views separately on the meaning of the First Amendment to the Constitution, which specifies:

"Congress shall make no law . . . prohibiting the free exercise (of religion); or abridging the freedom of speech, or of the press."

Wanted Conviction Upheld

Justice Frankfurter, with Justices Roberts and Jackson concurring, asserted the conviction of Follett should have been upheld.

"Here, a citizen of the community, earning his living by a religious activity, claims immunity from contributing to the cost of Government under which he lives," said their opinion. "Unless the phrase 'free exercist,' embodied in the First Amendment, means that government must render service free to those who earn their living in a religious calling, no reason is apparent why he should not contribute his share of the community's common burden of expense.

"In effect, the decision . . . requires that the exercise of religion be subsidized . . . Trinity Church, owning great property in New York city, devotes the income to religious ends. Must it, therefore, be exempt from paying its share of the cost of government's protection of its property?

"The decision now rendered must mean that the guarantee of freedom of the press creates an immunity equal to that here upheld as to teaching or preaching religious doctrine . . . It is unthinkable that those who publish and distribute for profit newspapers and periodicals should suggest that they are in a class apart, untouchable by taxation . . . The implications of the present decision are startling."

Justice Murphy, in a separate opinion concurring with the majority, ridiculed this reasoning.

"It is claimed that the effect of our decision is to subsidize religion," he wrote. "But this is merely a harsh way of saying that to prohibit the taxation of religious activities is to give substance to the constitutional right of religious freedom."

Income Not Taxed

Concerning the references to Trinity Church and use of the decision in reference to freedom of speech and press, Murphy declared:

"It is wise to remember that the taxing and licensing power is a dangerous and potent weapon which, in the hands of unscrupulous or bigoted men, could be used to suppress freedoms and destroy religion unless it is kept within appropriate bounds."

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Professor Is Right:

You're Not in Army Till You Take Oath, High Court Rules

The Supreme Court yesterday ruled that a man actually does not become a member of the armed forces until he takes the induction oath.

The tribunal acted unanimously in rejecting the Army's viewpoint"—as presented by the Government—that a man becomes a soldier when he passes his final physical examination.

This case involved a plea by Arthur Goodwyn Billings, former University of Texas economics professor, for a writ of habeas corpus to release him from Army detention.

Billings, who had stated publicly he never would serve in the Army, passed a final physical examination but refused to stand when the induction oath was read to him at Fort Leavenworth, Kans., and refused to subscribe to it.

For thus refusing to obey an order of a "superior" officer, he was placed in a post guardhouse. He contended he was not subject to Army discipline because he had not taken a valid oath and thus actually was not in the Army. The Supreme Court upheld his contention, thus paving the way for his release from the guardhouse.

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File

High Court Upholds Portal Pay For Iron Ore Miners of Alabama

By LOUIS STARK
By Cable to THE NEW YORK TIMES.

WASHINGTON, March 27—Underground travel for iron ore miners constitutes working time and must be paid for under the Fair Labor Standards Act, the Supreme Court ruled today.

Justice Frank Murphy, writing the majority opinion in the case of three Alabama iron mining companies, upheld rulings by two lower courts favoring pay on a portal-to-portal basis. A sharp dissent was voiced by Chief Justice Harlan F. Stone and Justice Owen J. Roberts, the latter writing the opinion. Justices Felix Frankfurter and Robert H. Jackson, who were part of the seven-man majority, wrote concurring opinions.

The decision may be construed as a precedent applying to the coal-mining industry, which has two suits affecting "portal-to-portal" pay. A contract providing "portal-to-portal" pay for coal mines is before the National War Labor Board for approval.

Philip Murray, president of the CIO, which joined with the miners in initiating the iron ore case in 1940, hailed today's decision as reflecting "a great and epochal victory for underground miners who have fought for many years to establish the principle of payment for underground work, including travel time."

Crampton Harris of Birmingham, Ala., who represented the iron miners in the case and who is also counsel for the United Mine

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Workers made the following comment over the telephone:

"There can be no differentiation between work in an iron ore mine and work in a coal mine. The same law, the same principles, apply equally as regards travel time constituting work time and the work week, and in my opinion, the decision in the iron ore case will apply as the law of the land governing the work week in coal mines."

Today's case came before the court on a petition by the Sloss-Sheffield Steel and Iron Company, the Tennessee Coal, Iron and Railroad Company and the Republic Steel Corporation, which sought declaratory judgments against three iron ore locals of the Mine, Mill and Melter Workers, CIO, to determine whether time spent by miners in traveling underground in mines to and from "the working face" constituted work or employment for which compensation must be paid under the Fair Labor Standards Act. The companies own twelve underground iron ore mines in Jefferson County, Ala.

Not Dealing With "Chattels"

In determining wehther underground travel constitutes compensable work within the meaning of the act, Justice Murphy said, the court was "not guided by any precise statutory definition of work or employment."

"We are not here dealing," he went on, "with mere chattels or articles of trade, but with the rights of those who toil, of those who sacrifice a full measure of their freedom and talents to the use and profit of others."

He said that the miners ride to their places in "ore skips" or "regular man trips" and were forced to jump several feet into the skip from a loading platform, with not infrequently, injuries to ankles, feet and hands.

The heads of most of the men, he added, were a foot or more above the tops of the skips and, since the skips usually clear the low mine ceilings by only a few inches, the miners are compelled to bend over.

"Thus they ride in 'spoon-fashion,' with bodies contorted and heads drawn below the level of the skip top," he continued. "Broken ribs, injured arms and legs and bloody heads often result; even fatalities are not unknown."

"Dark, Maledorous Shafts"

The long rides taken by the men "in the dark, maledorous shafts," he declared, and "the exacting and dangerous conditions in the mine shafts stand as a mute, unanswerable proof that the journey from and to the portal involves continuous physical and mental exertion as well as hazards to life and limb."

"This compulsory travel," he proceeded, "occurs entirely on petitioners' property and is at all times under their strict control and supervision."

The Wages and Hours Act, according to Justice Murphy, must not be interpreted as applied "in a narrow, grudging manner." Thus as indicative of Congressional intent to 'guarantee' regular or overtime compensation for all actual work or employment."

Saying that the company's objections had relied on alleged "immemorial custom and agreements arrived at by the practice of collective bargaining" to uphold payment by the "face to face" method, Justice Murphy asserted that the District Court had been unable to find any such "immemorial" custom or collective bargaining agreements.

Custom Held "Immaterial"

However, he held that it was "immaterial" that "there may have been a proper custom" not to pay employes for some parts of their work, for the Fair Labor Standards Act "was not designed to codify or perpetuate those customs and contracts which allow an employer to claim all of an employe's time while compensating him for only a part of it."

Justice Roberts opened his dissent by saying:

"The question for decision in this case should be approached not on the basis of any broad humanitarian preopossessions we may all entertain, not with a desire to construe legislation so as to accomplish what we deem worthy objects, but in the traditional and, if we are to have a Government of laws, the essential attitude of ascertaining what Congress has enacted rather than what we wish it had enacted."

Taking issue with Justice Murphy's remarks on the alleged inability of the Federal District Court to find "immemorial" customer "collective bargaining agreements" for pay on a "face-to-face" basis, Justice Roberts cited a public arbitration proceeding in Birmingham in 1903, a board of arbitration ruling in 1917, approved by the United States Fuel Administrator, language quoted by the Bituminous Coal Commission in 1920 and the 1923 Code of Fair Competition for the Bituminous Coal Industry.

Cites Roosevelt Approval

He added that the Appalachian agreement of 1933, approved by President Roosevelt, said that eight hours shall constitute a day's work and "this means work in the mines at the usual working places for all classes of labor."

He asserted that the fair labor standards act "was not intended by Congress to turn into work that which was not work, or not so understood to be, at the time of its passage," nor was it intended to have the courts "designate as work some activity of an employe which neither employer nor employe had ever regarded as work merely because the court thought that such activity imposed such hardship on him or involved conditions so deleterious to his health or welfare that he ought to be compensated."

It was common knowledge, he said, that the issue of "portal-to-portal" pay in connection with the mining industry was first raised nationally after the nation was at war and in connection with "dis-

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FILE

8-1 Supreme Court Decision Upholds Texas Negro Vote Right

By John Meldon

Delivering one of the severest blows ever suffered by the political-feudal overlords of the entire South, the U. S. Supreme Court, in an 8 to 1 decision yesterday upheld the constitutional right of Texas Negroes to vote in the Democratic primaries.

Justice Stanley Reed, who delivered the decision, declared that the ban against Negroes participating in the primaries was a violation of the 15th Amendment. Lone and bitter dissenter in the 8 to 1 ruling was Justice Owen J. Roberts.

JUSTICE STANLEY REED
Writes Decision

JUSTICE OWEN D. ROBERTS
Dissents

The case attracted universal attention throughout Southern states, for in the high court decision in the Texas case—known as the "white primary case" the political future of a whole gang of Texas anti-Roosevelt, anti-Teheran Congressmen hangs fire. Among these notorious notables are Congressmen Martin Dies, Richard Kleberg (greatest landowner in America), Hatton W. Sumners and others of similar stripe.

NEGRO BRINGS SUIT

Yesterday's court decision was brought before the high court by Lonnie E. Smith, Houston Negro, who charged that the Democratic Party of Texas had been flaunting the federal constitution and denying Negroes their right to vote in the primaries "solely because of race and color."

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NOT RECORDED
87 APR 5 1944

This is a clipping from page 1 of the DAILY WORKER
Date Apr 4 1944
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19 APR 7 1944

Smith, backed by several national organizations and labor in the South, sued two Texas Harris County election judges, charging they refused to accept his ballot as a qualified voter in the 1940 Democratic primaries for nomination of federal, state and local candidates. He asked for damages and a declatory judgment affirming the right of Negroes to vote in the primaries.

Smith's suit had been previously rejected by a Texas Federal District Court, which claimed that the Texas primaries were "political party affairs" and not subject to federal control. Meanwhile, a Federal Appeals Court at New Orleans upheld the Texas local officials, thus setting precedent in Louisiana barring Negroes from participating in primaries in that state also. Yesterday's Supreme Court decision upset the Louisiana decision and legally bans discrimination against Negroes in primaries in all other southern states where this feudal practice is still in effect.

REVERSES '35 STAND

The Texas "white primary case" had been argued twice before the U. S. Supreme Court. Earlier, in 1935, the Supreme Court had ruled that a denial of the right of Negroes to vote in the Texas primaries was "a mere refusal" by the Democratic Party to admit Negroes into Democratic Party membership, and, as a "private organization," had the right to make rules as to who could vote in its primaries.

However, in another ruling in 1941, Justice Reed pointed out in yesterday's decision, the high court had ruled that primaries involving candidates for federal office are part of federal elections.

"It may now be taken as a postulate," Justice Reed's decision read, "that the right to vote in such a primary for the nomination of candidates without discrimination by the state, like the right to vote in a general election, is a right secured by the Constitution.

"By the terms of the 15th Amendment, that right may not be abridged by any state. . . Under our Constitution the great privilege of choosing his rulers may not be denied a man by the state because of his color."

Lone dissenter in the 8 to 1 decision, which is historic in proportions, was Justice Roberts, a Hoover appointee, who bitterly assailed the ruling. Justice Roberts' anger at the ruling was not at the legality of the ruling itself, but because, to use his words the eight justices had shown "intolerance" against previous court judges who had ruled in favor of the discriminatory practice.

Preceding the Supreme Court ruling, which must have struck terror into the hearts of the Dies-Kleberg-Sumners gang who have maintained their Congressional seats by only a fraction of the potential vote in the Texas counties, Negro organizations in Texas had been preparing for a favorable decision by conducting a broad campaign among Negroes to pay their poll-tax in order to be eligible to vote. Thousands of Negroes voters scraped up the necessary tax and have paid, it was reported. A survey conducted last month showed that out of the 3,600,000 persons in Texas of voting age, about 1,700,000 had thus become eligible. Last January, Negro churches, clubs, chambers of commerce and insurance companies mapped out a campaign to turn out a big Negro vote in 1944.

Meanwhile, Texas has been the scene of a huge influx of war labor, and a shift of voting populations from the rural sections, where the Dies type of Congressmen held sway, to the urban manufacturing centers. This increasing politically conscious labor vote, plus the right of the Negroes to participate in the primaries may result in putting the skids under one of the worst political gangs in the entire south.

Another important by-product of the Supreme Court decision may be in this fact: whoever wins in the Texas Democratic primaries is as good as elected.

(Continued on Page 2)

Won't Like It

Mr. Tolson
Mr. E. A. Tamm
Mr. Clegg
Mr. Coffey
Mr. Glavin
Mr. Ladd
Mr. Nich
Mr. Rosen
Mr. Tracy
Mr. Mohr
Mr. Carson
Mr. Harbo
Mr. Hendon
Mr. Mumford
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Mr. Nease
Miss Gandy

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Biddle Urges Cut in Quorum Of High Court to End Impasse

Tribunal Unable to Hear Two Key Cases Because of Disqualifications, He Says

By WILLIAM MOORE

Attorney General Biddle recommended last night that the quorum of the Supreme Court be reduced from six to five justices—to end an impasse which members of Congress say has resulted from President Roosevelt's appointment of New Dealers from his official family to the Supreme Court bench.

Biddle urged Congress to reduce the statutory quorum in his annual Department of Justice report to the two houses.

Disqualified From Case

The Supreme Court has been unable to hear two major cases recently because of the number of justices who have disqualified themselves. Previous connection with the litigation concerned is the usual reason for disqualification, the justices having had a hand in the cases as an officer of the Department of Justice or an office holder in a Government agency before appointment to the Supreme Court.

The two major cases now stalemated are an anti-trust action by the Government against the Aluminum Company of America, and a suit brought by the North American Company, large utility corporation, against the Securities and Exchange Commission to test the constitutionality of legislation governing utility holding companies.

Biddle reported to Congress that a smaller quorum probably would solve the problem.

Representative Reed attempted to remedy the situation last October with a bill requiring the Chief Justice to call upon retired justices to assist when a quorum could not be obtained.

Biddle, however, asked Congress to pass a bill introduced by Senator O'Mahoney (D.), of Wyoming, to establish a majority of the court, or five of the nine justices, as a quorum.

Biddle's recommendation came as the feud in the Supreme Court was at its height. Members of the court have recently been sniping verbally at each other in their opinions. One faction is led by Justice Frankfurter, No. 1 adviser to President Roosevelt, and the other by Justices Black and Murphy.

Faulty War Material

Biddle also recommended legislation making the intentional manufacture or delivery of defective war material punishable as sabotage. The present sabotage law does not cover all such cases, so that the only prosecution possible in some instances has been for simple fraud.

The Attorney General asked that Congress make provision for the voluntary expatriation, or withdrawal from American citizenship, of citizens in this country whose true allegiance is to a foreign nation. A number of American-born Japanese who are American citizens, he said, wish to abandon American citizenship and be interned as enemy aliens until they can be sent back to Japan. But present law does not permit them to expatriate themselves within the United States.

Biddle also asked Congress to make a uniform definition of the duty of Federal officers to take an arrested person before a committing officer, providing for arraignment within a reasonable time.

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27 APR 10 1944

53 APR 11 1944

APR 5

WASHINGTON TIMES-HERALD

FILE

High Court Hits Florida Peonage

WASHINGTON, April 10 (UP).—The Supreme Court, in a 7 to 2 split, today voided as a violation of the 13th amendment and the Federal anti-Peonage Act a Florida statute which makes it a crime to obtain a wage advance "with intent to defraud an employer."

The tribunal reversed the Florida Supreme Court which had reversed a ruling of a (Brevard, Fla.), County Circuit Court. The County Court had set aside the conviction of Emanuel Pollock, described as an "illiterate Negro."

The High Court ruled, in a majority opinion written by Justice Robert H. Jackson, that the law deprived individuals of their liberty without due process and that it unconstitutionally furnished employers win an involuntary servitude weapon.

Jackson said that the court did not impute to the Florida Legislature any "intention to oppress, but we are compelled to hold that the Florida Acts of 1919 as brought forward to 1941 are, by virtue of the 13th Amendment and the Anti-Peonage Act, of the United States, null and void."

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87 APR 12 1944

This is a clipping from page 1 of the DAILY WORKER
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54 APR 20 1944

FILE

Union Busters Slapped

THE Wagner Labor Relations Act was substantially reinforced in two more Supreme Court rulings Monday. Both of them are timely since they hit directly against a number of methods employers have used recently in their efforts to circumscribe the law of the land.

First, the court slapped the employer who schemes to stall and delay certification of a union as a collective bargaining agent while he pulls strings to whittle down its majority among the workers through favoritism, discharge or other such familiar methods. No matter what happens while the case is pending, the court ruled, the union retains its right to bargain for the workers.

Only last week the War Labor Board noted that employers are increasingly challenging the rights of unions to bargain for workers, fishing out all sorts of excuses, obviously for no other purpose than to disturb labor relations stability to a point of provoking strikes.

The other ruling of the court slapped down an employer who, after recognizing a union, continued to enter into "individual contracts" with workers, in effect bribing them with temporary favoritism, if they would break with the union. This action was a logical follow-up of the recent ruling reaffirming a ban on "yellow dog" contracts.

Such decisions are especially timely today in view of an inclination among some reactionary employers to shake themselves away from union contracts in preparation for their post-war plans. The earlier the law of the land is put before such employers in specific terms, as the court has done in a number of recent cases, the more healthy it will be for labor-employer relations generally.

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This is a clipping from page 6 of the DAILY WORKER

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Mr. Tolson
Mr. E. A. Tamm
Mr. Clegg
Mr. Coffey
Mr. Gi[illegible]in
Mr. [illegible]
Mr. Nichols
Mr. Rosen
Mr. Trucy
Mr. Mohr
Mr. [illegible]arson
Mr. [illegible]adden
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Tamm

Supreme Court Affirms Stand Giving Negroes Vote in Texas

By the Associated Press

The Supreme Court yesterday refused to budge from its stand that Negroes have a right to vote in Texas Democratic primary elections.

Without comment, the Court declined to reconsider its 8-to-1 decision of April 3 that a man cannot be barred from participating in the selection of "his rulers" because of his color.

Attorney General Grover Sellers of Texas and two Houston election judges who were involved in the original case requested a rehearing on the ruling which upset previous court decisions on the issue.

The Court based its April 3 finding on the ground that the Democratic Party in Texas is required to follow procedure laid down by State law in selecting nominees and, therefore, is an agent of the State.

Sellers argued party officials conduct the elections at party expense and that the State does not have the right to say anything about voter qualifications.

Jap Citizens' Case

The Court also cleared the way for broad consideration of the problem of Japanese-American citizens who were removed from the West Coast area and sent to detention camps under military orders shortly after the outbreak of the war. It agreed to hear the appeal of Mitsuye Endo of Sacramento, Calif., for release from a War Relocation Authority camp in Modoc County, Calif.

Arguments on her appeal will be heard next fall, along with another case challenging the constitutionality of the evacuation orders under which the Japanese-Americans were removed from the coast. The latter case was filed by Fred Toyosaburo Morematsu, taken from San Leandro, Calif., to a WRA center at Topaz, Utah.

In other actions yesterday the court:

Held, 7 to 2, that States may require out-of-State corporations to obtain certificates of authority to do business in the State without infringing upon the Interstate Commerce Act or other Federal laws.

The decision upheld a ruling of the Minnesota Supreme Court that the Union Brokerage Co. of Portal, N. Dak., did not have the right to maintain a suit in Minnesota courts, because it had not obtained such a certificate in compliance with the Minnesota foreign corporations act.

Upheld unanimously a special master's rejection of claims by Kansas to 2500 acres in the Forbes Bend section of the Missouri River between Doniphan County, Kans., and Holt County, Mo.

Tentatively decided to adjourn May 29 for the summer.

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This is a clipping from page 3 of the Washington Post of
MAY 9 1944
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35 MAY 19

Supreme Court

By Merlo Pusey

Legislation From The Bench

III

MOST OF THE controversies that have swirled around the Supreme Court have concerned its exercise of legislative powers.

PUSEY

The most infamous decision the court ever made—that in the Dred Scott case preceding the Civil War—was an adventure in legislation from the bench. There have been many instances since. It was the charge of court-room legislating that won support for President Roosevelt's attack on the court in 1937. Now again the sharpest barbs flying in the direction of the Supreme Bench are pointed by the same accusation.

The court has always resented this charge. Regardless of how far they go in stretching the law to accomplish their purposes, the judges insist that they are merely interpreting the law and the Constitution as they stand. And the best legislators on the bench do not hesiate to denounce the conclusions of their colleagues as judicial lawmaking when they are in disagreement. Only a month ago, for example, Justices Douglas and Black, who are the court's leading law-makers at present accused the majority in the Saylor case of writing "into the law what Congress struck out 50 years ago."

But if that was a case of stretching the law, it was a comparatively minor one. What is of infinitely greater concern is the disposition of the court to add to or detract from the law in important matters of public policy. Until recently this tendency was manifested chiefly in stripping down statutes to something less than Congress had enacted. The most notable example was the emasculation of the Antiracketeering Act in order to protect unionized truck drivers who had established a monopoly by the slugging method.

DURING ITS LAST term the court went further than it had previously gone in bridging over gaps in the law and extending old statutes to cover situations [illegible] previously supposed [illegible] have been included. In the pre-depression days Congress had been negligent in regulating the relationship between holding companies and national banks. It had put the stockholders of "every national banking association" under double liability. But nothing could be found in the statutes applying the same obligation to the stockholders of State-created holding companies owning bank stock. Congress had simply not legislated on the subject, and when it did take the matter up later it chose a very different means of dealing with bank-holding companies.

Yet a bare majority of five justices held the stockholders of a Delaware holding company subject to double liability in spite of Congress' inaction. Apparently they acted on what the layman would call general principles—that is to say they voted to sock the holding company, law or no law.

The tendency to legislate from the bench came to full flower in the case of the Southeastern Underwriters Association. So far as I can see, the real issue was not any shenanigans of the fire-insurance companies or whether or not the business of insurance affects interstate commerce sufficient to justify regulation by Congress. Apparently real abuses have crept into some of the agreements insurance companies have made across State lines. The court was unanimously of the view that Congress may reach these interstate aspects of the insurance business if it chooses to do so: It split 4-to-3 chiefly on the question of whether Congress had attempted to do so in passing the antitrust acts.

CONGRESS PASSED the Sherman Act long after the Supreme Court had said that insurance is not interstate commerce. The House committee in charge gave assurance that the bill was not intended "to occupy doubtful grounds" and expressed the view that "Congress has no authority to deal, generally, with the subject (restraint of trade) within the States." Later Congress turned down many requests to legislate on interstate transactions in insurance" because its judiciary committees believed that subject to be beyond reach of Federal power. In 1914, Congress amended the Sherman Act by the Clayton Act and again defined the meaning of "commerce" without including insurance. The sponsor of the bill Representative Webb, told the House specifically that "insurance companies are not reached, as the Supreme Court has held that their contracts or policies are not interstate commerce."

These facts cited by the dissenting justices seem to me to be pretty conclusive evidence that Congress had no thought of subjecting insurance companies to the Antitrust Acts. But the law makers on the Supreme Bench were apparently not willing to wait for a slow-motion Congress to speak for itself. They crudely tried to meet a legislative problem by injecting new mea ing into a 50-year-old statute.

Now this policy is just as re rehensible as was the old cour habit of choking off legislati enactments which it did not li "To force the hand of Congres said Justice Jackson, dissenti "is no more the proper functi of the judiciary than to tie t hands of Congress." The judi pendulum has swung from o extreme to the other. A major of the court is still legislati but with a different set of pre lections. And it will doubtl continue to do so as long as t President insists on giving it majority of crusaders instead judicial-minded men who willing to interpret the law jectively and let the chips f where they may.

Mr. Tolson
Mr. E. A. Tamm
Mr. Clegg
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Mr. Nichols
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Mr. Tracy
Mr. Mohr
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Mr. Mumford
Mr. Jones

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Wash Post
2-4-44
(Bulldog)

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87 JUL 6 1944

Plight of West Coast Japs Weighed by Supreme Court

By the Associated Press

The Supreme Court took to its conference room yesterday for decision one of the most complicated legal problems faced by the Government since Pearl Harbor—the constitutionality of evacuating and confining American citizens of Japanese ancestry.

The Justices listened through five hours of argument and fired pointed questions frequently at attorneys as they developed unique legal points involved in appeals of a young man born in Oakland, Calif., and a young woman born in Sacramento.

The man, Fred T. Korematsu, asked the high tribunal to rule on validity of evacuation orders which resulted in his being placed in a war relocation authority center at Topaz, Utah. The woman, Miss Mitsue Endo, demands freedom from the same center and a court declaration that she has the right to go wherever she pleases.

Loyalty Not An Issue

The court was told that there is no question of the loyalty of either to the United States, and that there was no evidence involving any Japanese-American citizen in espionage or sabotage on the West Coast.

The cases arose from a proclamation by Lieut. Gen. J. L. Dewitt excluding persons of Japanese ancestry from certain West Coast areas. Attorneys for Korematsu argued that neither Congress nor the President intended such action and said that only in Nazi Germany could a similar "imprisonment program" be found.

Counsel for Miss Endo contended that the only legal ground for her detention was "implied authority" said to be conferred by Congress and the President. He said she had been told she may leave the camp if she does not return to California or several other West Coast States. But she refuses to leave unless she can go to her home.

"Does that imply," demanded Chief Justice Stone, "that she will be loyal in one place, and not loyal in another?"

Solicitor General Charles Fahy urged the court to consider circumstances involved in the cases in the light of sacrifices made by millions of other citizens sa far in the war.

Asks Sacrifices Be Weighed

"Many persons have been required to endure dislocations," Fahy said. "Hundreds of thousands already have been casualties. Those who have been injured, temporarily, in relocation efforts should be asked to view their cases along with the great hardships millions of our people have already endured in this war."

He argued that after the attack on Pearl Harbor evacuation and detention were necessary, said it has always been the Government's plan to restore evacuees to full liberty as soon as circumstancs permit, and stated the people concerned had been treated in a "fair and decent manner."

Mr. Tolson
Mr. E. A. Tamm
Mr. Clegg
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Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Mohr
Mr. Carson
Mr. Hendon
Mr. Mumford
Mr. Jones
Mr. Quinn Tamm
Mr. Nease
Miss Gandy

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Clipped from the
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Closed Shop Ruling Puts Confusion in Labor Picture

Labor and industrial attorneys today predicted that a recent decision of the U.S. Supreme Court will necessitate revision of the Wagner Act's provisions for "closed shop" contracts between employers and unions.

Termed "one of the most perplexing and unsettled decisions in the history of labor legislation," the ruling said, in effect, that an employer may not sign a closed shop agreement with a union if he knows that the union intends thereby to "exclude certain employees from membership in the union because of their prior opposition to the union.

The decision was handed down Dec. 18 in a 5-4 split. Justice Jackson, in dissenting, expressed belief that the majority opinion, if carried out, "denies the right of each union to control its own admissions to membership," and permits the employer to "police" the internal affairs of the union.

Must Open Roster.

In the majority opinion, Justice Black said, in effect, that an employer must see that the union with which he has been ordered to bargain, after an election had been held, makes proper terms for admission into that certified union of all employees, including the union's former enemies and rivals.

The case arose after an election at the Wallace plant, in which an independent union was the victor over a C.I.O. union in a plant election. Prior to the election, the company contracted to accept a closed shop with the union that won the election. After winning, the independent union executed the closed shop contract and then denied membership to 43 of the 83 employees who voted for the other union.

In accordance with the contract, the company was then forced to discharge these 43 employees who were not admitted to union membership. The company protested the discharge on the grounds that the loss of such a large number of experienced workers would hamper production, but the union was adamant.

Discharges Ruled Out.

The Supreme Court then decided that the discharges were illegal, despite the closed shop contract, and ordered the company to reinstate the discharged workers and pay them for the time lost. It also, in essence, abrogated the closed shop contract, in the eyes of most labor attorneys.

Francis Heisler, counsel for several C.I.O. unions, declared today that the majority opinion "is not a body blow to labor or to the closed shop, as some attorneys seem to think."

Most unions, Heisler explained, do not restrict their membership only to those who were members before an election, but welcome all employees who desire to join after a contract has been signed, regardless of their prior antagonism to the union.

Called Club on Labor.

On the other hand, Daniel Carmell, counsel for the Illinois and Chicago Federations of Labor, assailed the majority opinion as a bludgeon in the hands of employers who want to obstruct a closed shop in their plants.

He asserted, further, that the decision conflicts with the Wagner Act in that, by requesting employers to make sure that unions do not restrict membership in a closed shop, the employers are violating the "unfair practices" provision of the labor law.

According to several attorneys for industrial corporations, the effect of the new decision is one of "confusion and chaos." Hitherto, lawyers for both management and unions have believed that once an election has been held, a union recognized as a bargaining agent, and a closed shop contract signed, then the company's responsibility ends insofar as union membership is concerned.

'Motives' Under Scrutiny.

But, in light of this decision, it is presumed that the employer must examine the "motives" of the union before agreeing to a closed shop provision in the contract; and that he may refuse to sign such a contract unless the union admits all employees to membership.

Because of this ambiguity of interpretation, labor relations experts agree that the next move is up to Congress, which must amend or clarify the National Labor Relations Act in conformity with the decision.

"As things stand now," one attorney pointed out, "the employer is in the middle. If he interferes and tells the union he won't sign a contract for a closed shop unless membership is inclusive, under the law he is guilty of unfair labor practices.

"Contrariwise, if he does not compel the union to broaden its eligibility to membership, he is guilty of an unfair labor practice under the Supreme Court decision. At present, no employer can know what he is to do about the closed shop provision."

CHICAGO DAILY NEWS
12-28-44
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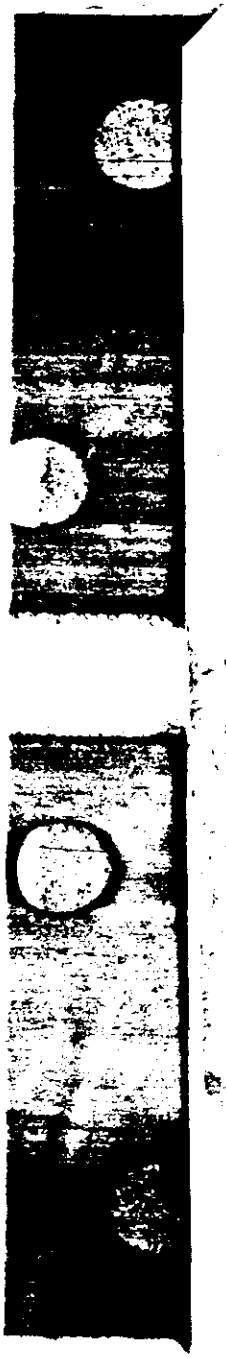

Wage-Hour Law Covers Piece Workers, Supreme Court Rules

WASHINGTON, Jan. 2 (UP).—The Supreme Court held in an 8-1 decision today that the federal wage-hour law applies to piece-rate workers.

The Perfect Garment Co., Los Angeles, charged with minimum wage and overtime violations, had won dismissal of the allegations as to piece workers in California district court.

Justice Frank Murphy, who read the ruling interpreting the act, said, "We cannot assume Congress meant to discriminate" against piece workers when it enacted the minimum wage and hour standards.

Under the wage-hour law, employer must pay piece workers the 40-cents an hour minimum rate, even though they do not earn that amount at piece work rates.

Justice Owen J. Roberts dissented without an opinion.

The court agreed to review the question whether bituminous coal miners must be paid underground wages on a portal-to-portal basis. It accepted a case in which the Fourth Circuit Court of Appeals reversed a Virginia federal court ruling against the Jewel Ridge Coal Co.

The court also decided to review an anti-trust action against collective bargaining agreements between an electrical workers union, electrical contractors and electrical equipment manufacturers in the New York City area.

The court in two Ohio cases unanimously affirmed the exemption of low-cost housing projects owned by the Federal Public Housing Authority from local and state taxation.

The court also agreed to review a suit in which the federal government has attacked a collective bargaining agreement between labor unions and employers as being in violation of the Sherman anti-trust law. The case involves the millwork and pattern lumber industry in the San Francisco bay area.

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Date 1-3-45

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Supreme Court Upholds Unions, Outlaws State 'Regulation'

By Federated Press

WASHINGTON, June 11.—State laws regulating labor unions must not conflict with the provisions of the Wagner Labor Relations Act giving workers the right to bargain collectively through representatives of their own choosing, the U.S. Supreme Court held in a major decision today. The court acted on the Florida statute requiring union organizers and business agents to register with a state board and also calling on local unions to file financial reports and lists of their officers.

Associate Justice Hugo Black read the majority decision with Justices Felix Frankfurter and Owen J. Roberts dissenting while Chief Justice Harlan Stone dissented in part.

Stone agreed with the majority that the Florida provision requiring the licensing of business agents and organizers by a board that passes upon their qualifications, morals and citizenship was in direct conflict with the Federal labor law.

But Stone dissented from the majority opinion that the requirements that local unions file financial reports and other data is in irreconcilable conflict with the collective bargaining relations of the Wagner Act.

Black reviewed the case in which business agent Leo H. Hill of Local 234, United Association of Journeymen Plumbers (AFL) was restrained by Florida from operating until he and the local complied with the state law.

The Florida Supreme Court upheld the conviction of Hill and the local, and Black found that the state law had been "so construed and applied that the union and its selected representative are prohibited from functioning as collective bargaining agents, or in any other capacity, except upon conditions fixed by Florida."

Black said that the declared purpose of the Wagner Act "is to encourage collective bargaining, and to protect the 'full freedom' of workers in the selection of bargaining representatives of their own choice."

The majority of the court said that the Florida law substituted Florida's judgment for the workers' judgment as to the selection of a bargaining agent.

As to the licensing of the local union, Black found that the penalty provision of the statute, prohibit-

ing the local from functioning as a labor union unless it complied, is "inconsistent with the federally protected process of collective bargaining."

Specifically, the Court did not object to the regulation that local unions file reports, but rather to the sanction imposed.

Two Alabama cases, filed by the AFL and CIO, were dismissed by the court in opinions read by Chief Justice Stone. The Alabama (Bradford) Act does not provide any penalty that would prohibit a union or a union official from functioning as such in event of non-compliance. It simply provides criminal penalties, and the unions did not challenge the right of the state to regulate labor unions.

The Supreme Court also affirmed, 8 to 1, a lower court decision that a National Labor Relations Board certification of a union as bargaining agent may not be reviewed by a Federal court.

The ruling was made in a complaint filed by five AFL local sawmill unions over an NLRB order certifying rival CIO unions as the bargaining agent for the employes of five lumber plants at Potlatch Forests, Inc., Lewiston, Idaho.

The high court meanwhile allowed the back overtime wage claims of maintenance employes in one New York City office building, but rejected the claims of those in another building.

The court, in a 7 to 2 verdict, allowed claims by employes of the Borden Building (350 Madison Ave.) on grounds that the building housed central offices of plants engaged in Interstate Commerce in other cities.

High Court Deals New Blow at AFL Race Bars

By GEORGE MORRIS

Labor and progressives scored heavily during the Supreme Court term that just ended but the final session was a "jackpot."

In addition to the decisions reversing the Bridges deportation order and declaring the Associated Press a trust, was a decision declaring that the anti-discrimination clause in New York State's civil rights law applies to unions.

The ruling coming on the heels of a whole series of decisions by the high court invalidating basic sections of "Christian American" laws that have been passed in several states, the Supreme Court retired for the summer with the field clearer than ever for extension of labor organization. There is no doubt, however, that coming months will see a feverish effort by reactionaries to mend their fences with new anti-labor legislation.

AFFECTS UNION

The ruling affecting race discrimination came in the case of the Railway Mail Association, AFL, which has a constitution requiring members to be "of the Caucasian race, or a native American Indian." Defying the union's national constitution, the New York City branch of the Association adopted a constitution declaring that "all" in the trade were eligible for membership. The branch inducted Negroes and stood its ground against national office orders to exclude them. The branch cited the New York state laws prohibiting discrimination.

The New York State's civil Rights Law (Sec. 43) declares that: "Discrimination by labor organizations is prohibited. The term organization to mean any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances or conditions of employment. No labor organization shall hereafter deny a person or persons membership in its organizations by reason of his race, color or creed."

Basing itself on technical claims that the "Association" is not a labor union, the leadership of this AFL affiliate fought the state court decisions upholding the local.

The Supreme Court's unanimous decision declared:

"We see no constitutional basis for the contention that the State cannot protect workers from exclusion solely on the basis of race, color or creed by an organization, functioning under the protection of the State, which holds itself out to represent the general business needs of employes."

The court added that "in their very nature, racial and religious minorities are likely to be so small in number in any particular industry as to be unable to form an effective organization for securing settlement of their grievances and consideration of their group aims with respect to conditions of employment."

The decision is a strong buttress to a series of rulings the high court already handed down barring discrimination policies in unions.

HITS COLLUSION

Still another decision in the case of New York electrical firms, voided collusive contracts between unions and employers for the purpose of keeping out certain manufactured goods from an area. Such collusion, often represented as "protection" for an industry, has more often established illegitimate ties between a labor union and employers and has served as a jurisdictional weapon against another labor organization.

In this particular case, involving an agreement of New York manufacturers and Electrical Local 3, AFL, excluded manufactured equipment made outside of New York. The net effect was to exclude supplies made under CIO contracts. AFL building trades leaders, now preparing to wage new wars upon the CIO, are expected to make use of such practices more extensively.

FILE

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Supreme Court Decision

High Court Deals Another Blow at AFL Race Bars

The final session of the Supreme Court when the justices retired for the summer following a decision on the important Bridges case, also marked a number of other important victories for labor and all progressives.

The ruling declaring that the Associated Press is a monopoly that has restrained the free flow of news and news pictures, was a heavy blow to the royalists of our "Brass Check" press.

The unanimous decision upholding the case against national officers of the Railway Mail Association (AFL) who insisted on applying the union's race bar despite a New York law barring such discrimination in unions, was another blow against union-labeled carriers of Nazi-like race theories.

The ruling invalidating a contract between AFL Electrical Workers Local 3 and New York electrical equipment manufacturers not to use goods made in other cities, was a blow at illegitimate relations with employers which have so often corrupted unions and the practice of using such relations as a jurisdictional weapon against another union. In this case the obvious target was the CIO, predominant in the fields of electrical equipment manufacture.

PROFITABLE BUSINESS

The AP, declared the opinion read by Justice Black, is "engaged in business for profit exactly as other businessmen," and has no claim for special immunity from the laws regulating business. The claim to be a protector of the "free press" that the AP has built up for itself, was shattered. "Freedom of press under the first amendment does not sanction repression of that freedom by private interests," declared the opinion.

The AP followed the practice of denying service to newspapers which may be in competition to its members in various cities. The court decision will open AP to purchase without restraint.

The ruling involving the Railway Mail Assn., came as a result of the refusal of the New York City branch of the union to carry out the national constitution requiring members to be "of the Caucasian race, or a native American Indian."

The branch held to its position on the ground that the New York State's Civil Rights Law which prohibits race bars in a union. When Negroes were publicly inducted into the union, the national leaders opened court proceedings both challenging the validity of the New York law against unions and claiming that the "association" is not a union. The Supreme Court, affirming the lower court decisions, declared that a state has a right to protect its citizens against discrimination and that minority groups within industries need such protection.

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Labor Wins Favored Place Before Court

A Double Standard of Justice Now Seen as Established

By John H. Cline.

There has been some suggestion that the Supreme Court, in refusing to approve the order for the deportation of Harry Bridges, was influenced by a deeply rooted prejudice against doing anything contrary to the interests or wishes of labor leaders. The record does not support this conclusion. But the record does reveal that the court twisted its own concept of the law to fit the Bridges case and refused to apply a rule which it has often enforced to the benefit of unions and the disadvantage of employers.

In decisions beneficial to unions, the court has said time and again that it will not go behind the findings of administrative agencies if they are supported by some evidence. And it has said that this is consistent with the intent of Congress, for which the court professes a tender regard. The order for the deportation of Bridges was issued by the Attorney General under an act of Congress which unquestionably was intended to fit the Bridges case, and which provided specifically that the decision of the Attorney General should be final. Nevertheless, and despite its past professions, a majority of the court proceeded to override the expressed intent of Congress, and through a process of reasoning reminiscent of Alice in Wonderland, to overrule the Attorney General's findings of fact, although they were undeniably supported by evidence. In brief, one can only conclude that the court majority, believing that Bridges should not be deported, substituted its own judgment for the judgment of Congress, and invented a double standard of law to achieve that purpose—one standard for Bridges and a diametrically opposed standard for employers accused of violating some regulatory statute.

* * * *

But aside from the fact that Bridges is a conspicuous and radical labor leader, the facts of his case were only remotely connected, if at all, with the troublesome issue of employer-employe relationships. And the Bridges decision is relevant to this issue only to the extent that it is an exceptionally clear illustration of the lengths to which some of the members of the Supreme Court will go in using their judicial power to make the law conform to what has been called the "predelictions of the judges." On the day of the Bridges decision, however, two other rulings were announced which show beyond any possibility of doubt that the most fundamental concepts of justice have been impaired by the interpretations which the court has placed on acts of Congress. Primarily, the issue rests with Congress and its attempt to give effect to two conflicting policies in the anti-trust laws. On the one hand, Congress has sought to prevent business monopolies. And on the other it has sought to recognize certain labor monopolies which produce effects just as harmful to the public interest as any industrial monopoly. But the court, in its zeal to promote the interests of labor, has gone to such extremes in "interpreting" the intent of Congress that neither employers nor the public have any protection against the most vicious union abuses, provided only that the union acts on its own account. If there is any way out of this dilemma short of congressional intervention, it is not apparent to the layman, for, as Mr. Justice Roberts says, the court "as a result of its past decisions, is in the position that whatever it decides must entail disastrous results."

The first of the two labor rulings is known as the Allen Bradley case. A union of electrical workers in New York City agreed with New York manufacturers and contractors, in return for contracts granting high pay and excellent working conditions, to bar all outside electrical products from the city. The plan was successful, and one result was an unconscionable increase in the price which New Yorkers had to pay for electrical equipment. Since the manufacturers and contractors were parties to the monopoly, and benefited from it, the court struck it down. But the opinion stated very bluntly that the union, acting alone, could have done the things which became unlawful when done in concert with employers. In other words, the interests of the people of New York count for nothing because the court says Congress intended to sanction a course of conduct by unions which becomes illegal only when employers are brought into the picture.

* * * *

The other decision dealt with what is known as the Hunt case, in which a union, with the court's approval, put an employer out of business, not in the course of a labor dispute but because the union thought that the employer ought to be punished. Hunt was a trucker, one of a number working under contract in Philadelphia for a chain grocery. In 1937 a local union called a strike to enforce a closed shop. There was a great deal of violence, and a union man was killed. A member of the Hunt firm was tried for the homicide and acquitted. Some time later, however, the union secured a closed-shop contract with the grocery concern, and all of the truckers were notified that their employes must become members of the union. But the union refused to admit the Hunt employes, and demanded that the grocery cease doing business with the trucker. This was done. When Hunt secured another contract with another employer the union repeated the process, with the result that Hunt was forced out of business. The union was punishing the Hunt firm for an alleged past offense of one of its members—a complaint on which the accused had been tried and acquitted.

But five members of the Supreme Court said that Congress also intended to shield that sort of union activity.

Chief Justice Stone and Justices Jackson, Frankfurter and Roberts dissented. Justice Jackson, writing the dissent, declared: "Those statutes which restricted the application of the Sherman Act against unions were intended only to shield the legitimate objectives of such organizations, not to give them a sword to use with unlimited immunity. The social interest in allowing workers to better their condition by their combined bargaining power was thought to outweigh the otherwise undesirable restriction on competition which all successful union activity necessarily entails. But there is no social interest served by union activities which are directed not to the advantage of union members but merely to capricious and retaliatory misuse of the power which unions have simply to impose their will on an employer. * * * This court permits to employes the same arbitrary dominance over the economic sphere which they control that labor so long, so bitterly and so rightly asserted should belong to no man."

In other words the scales of justice have become unbalanced. No correction will come from the Supreme Court as presently constituted. This means that Congress must act if anything is to be done. And judging from what the court did with the "intent of Congress" in the Bridges case, the legislators, should they decide to intervene, will have to speak in language that is direct and conclusive on the judges.

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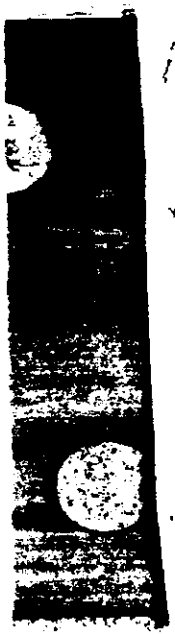

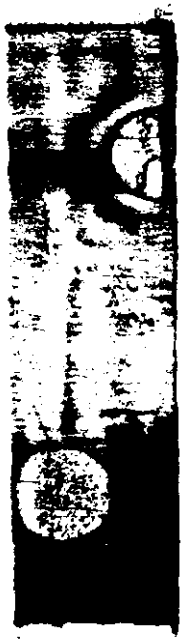

High Court Frees 2 Civilians Convicted by Army Tribunal

Rules Bench Set Up Under Martial Law Has No Authority in Civil Law Cases

Civil courts and their safeguards are "indispensible to our system of government," the Supreme Court said yesterday in ordering release of two civilians convicted by military courts established in Hawaii after Pearl Harbor.

In a six-to-two decision, the court held that the military courts set up under martial law lacked authority to try civilians charged with violating civil laws.

Two More Ordered Freed

It ordered release of Harry E. White, Honolulu stock broker charged with embezzling stock, and Lloyd C. Duncan, Honolulu shipfitter charged with assaulting two marine sentries.

The majority decision was written by Justice Black. Justice Burton wrote a dissent in which Justice Frankfurter concurred. Chief Justice Stone and Justice Murphy wrote special opinions concurring with the majority.

The court upheld a $360,000 verdict awarded to an independent Chicago theater which charged nine motion picture companies deprived it of "first-run" films.

Chief Justice Stone delivered the court's 7-1 decision. Justice Frankfurter wrote a dissent. Justice Jackson did not participate.

Sued on Antitrust Charges

The Jackson Park Theater sued the nine companies on antitrust charges. It asserted the companies maintained a system of giving Chicago Loop theaters first use of the new pictures. No other theater could show first-run pictures until weeks after conclusion of the Loop run, it said.

The theater contended that this reduced its profits by $120,000. It asked triple damages under the Sherman Antitrust Act, and won in the U. S. District Court.

The defendant companies were: RKO Radio Pictures, Inc., Loew's, Inc., Twentieth Century-Fox Film Corp., Paramount Pictures, Inc., Balaban and Katz Corp., Vitagraph, Inc., Warner Bros. Pictures, Inc., Warner Bros. Circuit Management Corp., and Warner Bros. Theaters, Inc.

Other Decisions

The court also:

Ruled that social security deductions can be taken from "back pay" awards, just as they are from current wages. The case directly involved Joseph Nierotko, a Ford Motor Co. employe, but it may affect back pay awards to many thousands of employes throughout the nation.

Reversed for the second time the convictions of E. E. Ashcraft and John Ware of Memphis, sentenced to life imprisonment for the murder of Ashcraft's wife, on grounds they still had not been given a fair trial.

Invalidated a Richmond, Va., city ordinance requiring salespeople to obtain a $50 solicitor's license.

Partnerships Ruled Out

Ruled that two business partnerships of married couples were not bona fide for income tax purposes. The cases involved Mr. and Mrs. A. L. Lusthaus, Uniontown, Pa., funiture dealers, and Mr. and Mrs. Francis E. Tower, Greenville, Mich., iron works manufacturers.

Held that Helen C. Poff was entitled to collect liability damages in the death of her cousin, John B. Welshans, of Pennsylvania, who was killed while on duty as a Pennsylvania Railroad engineer.

Set aside a lower court injunction that would have relieved 66 freight forwarders in the New York city port area from answering a U. S. Maritime Commission questionnaire on past business transactions.

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kson Black Foud May Bring Congressional Probe of Court

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Miss Gandy

By United Press

The unprecedented spectacle of open warfare between two members of the U. S. Supreme Court today hurled Congress into a feud involving Justices Robert H. Jackson and Hugo L. Black.

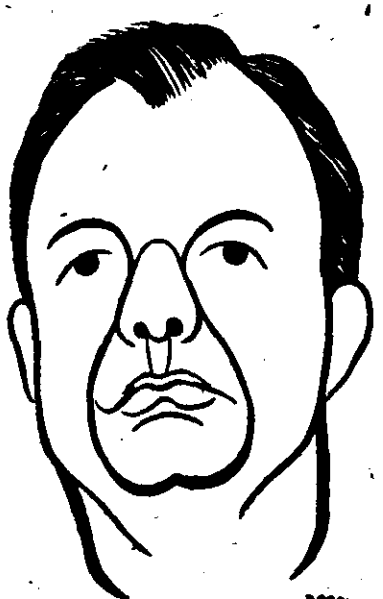
It raised the possibility of a congressional investigation and public linen-washing such as the staid old court never has experienced since it was founded in 1789.

The ramifications conceivably could involve impeachment proceedings against one or both of the brawling members of the nation's highest tribunal. And it could stall the pending nomination of Fred M. Vinson to be chief justice.

The feud between Justices Jackson and Black had been smoudering with unofficial congressional cognizance for more than a year. An angry blast by Mr. Jackson, questioning his associate's judicial policy if not his honor, brought it forcefully into the open.

NO COMMENT

Mr. Black received the news with stony silence. So did members of President Truman's official family.



MR. JACKSON
Congress should have facts

Congress, despite stunned incredulity that a Supreme Court justice could shatter the traditional serenity with public charges against a colleague, reacted vocally.

There were demands for an investigation into the entire factional strife between New Dealers and conservatives on the high bench along with the peronal vendetta between the two members. Mr. Black, acting chief justice, heads the New Deal bloc. Mr. Jackson often votes the conservative line.

HERE'S THE LINEUP

Charging that the private war among the justices goes as far as impeaching "the reputation of the court for nonpartisan and unbiased decision," Mr. Jackson named the feud lineup as:

On Black's side: Associate Justices Stanley F. Reed, William O. Douglas, Frank Murphy and Wiley Rutledge.

On Jackson's side; Associate Justice Felix Frankfurter and former Justice Owen J. Roberts.

WON'T DELAY

Some Congressmen expressed fears that unless the matter is solved swiftly and completely it may jeopardize public faith in the court set up in the Constitution as the model of impartial jurisprudence.

Chairman Pat McCarran (D., Nev.) of the Senate Judiciary Committee said Mr. Jackson's charges "naturally will be looked into." He saw no reason, however, why the committee shouldn't act as scheduled this week on the Vinson nomination.

Mr. Jackson loosed his blast against Justice Black from Nuremberg, Germany, where he has been serving as war crimes prosecutor. He cabled copies to the Senate and House Judiciary committees.

PORTAL-TO-PORTAL PAY

His complaint was based principally on the fact that Black participated in a court decision in 1945—involving the famed Jewell Ridge, Va., coal company "portal to portal" mine pay case.

Mr. Jackson felt that Mr. Black should have disqualified himself since the United Mine Workers Union, successful litigants in the case, was represented by Black's former law partner, Crampton Harris of Alabama.

The deep-seated difference between the two associate justices was evident at the time. But a recent column by Doris Fleeson in The Washington Star on President Truman's problem in filling the chief justiceship was the final straw that evoked Mr. Jackson's outburst.

PRESIDENT'S DILEMMA

It credited a Senate source with quoting Mr. Truman to the effect that "Black says he will resign if I make Jackson chief justice and tell the reasons why; Jackson says the same about Black."

Mr. Jackson withheld comment until Mr. Vinson's nomination because, he said, he didn't want to be put in the position of pleading for the post. He stressed that his statement should in no way be considered an objection to the selection of Mr. Vinson.

But, he said, he wanted to set the record straight in regard to his own feud with Mr. Black and particularly to denounce the charge that he had voiced any threats to the President.

TIME FOR FACTS

"If war is declared on me I propose to wage it with the weapons of the open warrior, not those of the stealthy assassin."

Mr. Jackson said he made no charge that Mr. Black's participation in the coal case involved "lack of 'honor.'"

Supreme Court

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MR. BLACK
In stony Silence

It was rather a "question of judgment as to sound judicial policy," he declared.

DECISION IN QUESTION

Mr. Jackson recalled that when defeated litigants in the coal case requested a rehearing last year and asked that Mr. Black be excluded from participation because of his past relations with the opposing attorney, the court argued about the decision to be rendered.

All agreed that the petition should be denied and that there was no judicial power to disqualify a court member.

Mr. Jackson wanted the decision written so it would set forth clearly the fact that altho the court was unanimous in denying a rehearing, it wasn't unanimous on the question of Mr. Black's participation under the circumstances. He said Mr. Black wanted a simple denial which would not draw attention to his participation or the other circumstances.

"There may be those who think it quite harmless to encourage the employment of a justice's former law partners to argue close cases by smothering the objections which the bar makes to this practice," Mr. Jackson said. "But in my view such an attitude would soon bring the Court into disrepute."

His statement also indicated—by reference to "my future work on the Court"—that he has no intention of resigning now.


Mr. Murphy


Mr. Rutledge


Mr. Reed


Mr. Douglas

Lined up for Justice Black


Mr. Roberts


Mr. Frankfurter

On Jackson's side

Congressional leaders believed that if Mr. Jackson had any intention of leaving the Court he would have submitted a resignation, along with his formal statement. Former Senate colleagues of Justice Black likewise doubted that he would quit under fire. His status appeared to hinge principally on the gravity with which Congress views Mr. Jackson's charges.

"It is high time these stories of feuds cease to be mysteriously and irresponsibly set out and that Congress had the facts," he said.

If any impeachment proceedings do result from the affairs, it would be thru cumbersome machinery provided in the Constitution. Impeachment proceedings against a Supreme Court justice must be initiated by the House and tried by the entire Senate.

Only once has impeachment action been taken against a member of the High Hourt. That was in 1803 when Associate Justice Samuel Chase was accused of misconduct in the trial of persons charged with violating the sedition law. He was acquitted by the Senate after a trial that lasted from Nov. 30, 1804, to March 1, 1805.

Supreme C[illegible]ll Review Lewis and U.M.W. Injunction

Right of Justice Goldsborough to Issue Order To Be Tested at Jan. 14 Hearing

The Supreme Court yesterday agreed to decide whether Federal District Judge T. Alan Goldsborough had a legal right to issue a preliminary injunction against ~~John L.~~ Lewis and the United Mine Workers (AFL) during the recent coal strike.

This issue was added to those the high court will consider in its review of the contempt of court convictions against Lewis and the union. The tribunal will hear arguments in case January 14.

Lewis and the U.M.W. asked the court to include the injunction in the issues for review in a petition filed earlier in the day.

Other Actions

In other actions the court:

1. Agreed to hear two cases involving the collective bargaining rights of industrial plant guards under the Wagner Act. The guards affected are employes of the Otis Works Division of the Jones & Laughlin Steel Corporation at Cleveland and two plants of E. C. Atkins & Co., Indianapolis. Lower Federal courts have refused to enforce a National Labor Relations Boards order directing the companies to bargain with unions representing the guards.

2. Refused to review a suit challenging validity of the Tennessee poll tax. Repeal of the tax by the Tennessee legislature has been unconstitutional by the Tennessee supreme court.

3. Unanimously ordered new trials for two members of the Jehovah's Witnesses sect who deliberately violated orders of the draft boards in order to test validity of their contention that they were entitled to deferment as ministers. Lower courts had held the men could not lawfully raise the classification issue as a defense in their trials for violating the Selective Service Act.

4. Denied a hearing to three crepe paper companies who appealed from a Federal Trade Commission order directing them to abandon as unfair trade practice a system of uniform rates they had agreed on. The companies were the Dennison Manufacturing Co., Framingham, Mass.; the Reyburn Manufacturing Co., Philadelphia, and the Fort Howard Paper Co., Green Bay, Wis.

5. Upheld the National Relations Board in certifying an AFL union to bargain for employes of the A. J. Tower Co., raincoat manufacturers, at Roxbury, Mass. The decision was based on the rule that challenges against votes must come before and not after an NLRB election.

Draft Boards Upheld

6. Upheld unanimously the right of local draft boards to follow the recommendations of official theological advisory panels in classifying draft registrants. Losers in that case were Harry Horowitz and Jacob S. Samuels, New York city rabbinical students, who were inducted into the army on the recommendation of their theological advisory panel.

7. Ruled that the Federal Government has priority over State governments in collecting social security and unemployment insurance taxes from bankrupt firms. Illinois raised the issue when it tried to collect from the bankrupt Chicago Waste & Textile Co., before the Federal Government got its taxes.

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Mr. Ladd
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High Court Justices Quarrel Over U. S. Employes as Jurors

By JOHN FISHER

Aroused justices of the Supreme court yesterday taunted each other and relentlessly grilled lawyers arguing the fitness of government employes to sit as jurors in a Communist contempt case.

During the lively hearing Justice Jackson expressed alarm that the large number of government employes residing here might compel a person to be tried by a jury consisting wholly of government employes. In such a case a change of venue would be warranted, Jackson indicated.

He and Justice Black, long-time antagonists, clashed over a flippant remark by Jackson that a man with a poor case probably needs a fair jury more than one who has a good case.

"It's not a question of a good or poor case," angrily snapped Black. "Under our Constitution every defendant is entitled to have a fair jury."

Solicitor General Philip Perlman, brunt of the most intensive grilling, agreed with Black, saying he hoped the time never would come when the quality of a case determined the selection of a jury.

Concerns Red's Appeal

Undaunted, Jackson retorted later:

"If he (the defendant) can't get anybody but government employes to try him maybe he's entitled to a change of venue as far as I'm concerned."

The hearing concerned the appeal of Eugene Dennis, secretary general of the Communist party, from a contempt of Congress conviction. In 1947 Dennis refused to obey a subpoena directing him to testify before the House committee on un-American activities. After a jury trial in District court here Dennis was sentenced to a year in jail and fined $1,000, the maximum penalty. The United States Court of Appeals affirmed the conviction.

Different Case

The case before the Supreme court has no relation to Dennis' recent conviction in New York, along with 10 other top Communist leaders, on charges they conspired to overthrow the United States government.

George W. Crockett jr., Negro attorney, appeared before the court yesterday to argue Dennis' case. He contended that because of the President's loyalty order against employment of Communists in the government, the seven government employes on the jury which tried Dennis were biased against him as a Communist and fearful of losing their jobs if they failed to convict him.

Perlman vigorously denied this, declaring the jurors swore to judge the case on the evidence and claimed no bias or fear.

Mr. Tolson
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Mohr
Mr. Pennington
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~~Highest Court~~ Takes Loyalty Program Case

By Chalmers M. Roberts
Post Reporter

The Supreme Court agreed yesterday to consider a charge that the Government's loyalty program—and especially the Attorney General's subversive list—is unconstitutional.

The charge turned down in the lower courts, was brought to the high court by the Joint Anti-Fascist Refugee Committee, one of the groups listed as Communist.

The Court has yet to act on a similar petition by the National Council of American-Soviet Friendship, Inc., also seeking to have its name stricken from the subversive list.

Justice Clark, who compiled the list while he was Attorney General, took no part in yesterday's action and presumably will not sit in the case.

Upheld in Appeals Court

The Government contended it is unnecessary to consider constitutionality and that the league failed to allege any specific threat to its members of discharge from Government service. Membership in a group called subversive is one ground that "may" be cited for discharge.

The United States Court of Appeals here last August ruled, 2-to-1, that the loyalty program was perfectly legal. The Court noted that President Truman's executive order setting up the program was designed to carry out the provisions of the Hatch Act and it held that the Attorney General was acting for the President. The majority added:

"Had the President performed the task himself, his acts could not have been challenged legally."

A dissent by Judge Henry W. Edgerton contended that the facts in the case—the reasons why the league was placed on the subversive list—had not been tried. This, in part, was the league's contention in asking the Supreme Court review. The league also argued that the listing "stigmatized" its members and that because of the constant addition of names to the list all groups in the Nation must "beware of offending the political sensibilities of the Attorney General."

Other Actions Taken

In other actions yesterday, the Supreme Court:

1. Agreed to hear an attack by two members of the Jehovah's Witnesses on the Havre de Grace, Md., "custom" of requiring licenses to speak in the city park. The two were arrested and fined for attempting to speak on religious subjects after the city council refused permission. Councilmen stated the sect was made up of "people who refuse to salute the flag" and would not bear arms "in defense of the country."

2. Turned down a Texas request to defer the already long-delayed argument in the tidelands oil case. Both the Texas and Louisiana cases will be heard March 27. The Justice Department, in opposing the Texas request, contended the State was engaging in "dilatory tactics."

3. Ruled, 8-to-0, that the Circuit Court of Appeals had acted wrongly in releasing an American soldier serving a prison term in Atlanta, Ga., after a murder conviction by a court martial in Germany. Justice Clark's opinion said the lower court should not even have reviewed the case of Pvt. Eugene Preston Brown. Clark said the civil courts, in a habeas corpus proceeding such as this case, "exercise no supervisory or correcting power over the proceedings of a court martial."

State Court Upheld on Strike

4. Threw out an appeal by an AFL union from a Minnesota State Supreme Court decision upholding that State's right to forbid a strike intended to force an employer to compel his workers to join the union. The high court merely dismissed the appeal with the statement that the State court decision was based "upon a non-Federal ground adequate to support it."

5. Refused to consider an international child custody fight involving the Roman Catholic Church and Soviet Russia. Attorneys for Hamportzoon Choolokian, once an

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American citizen, had sought to force two church institutions in New York to release his three American-born children so they could join him and his wife in Soviet Armenia. The Soviet Government in a memorandum to the State Department charged this nation with "detaining" the three children "in spite of their parents' categorical demands." The church institutions contended the parents signed affidavits asking the children to be baptized and raised as Catholics. That is what now will happen.

6. Ruled, 7-to-1, that California may prevent residents of that State from willing gifts to the Federal Government. Justice Reed delivered the opinion in a case involving a $35,000 bequest and Justice Black dissented.

Railroad Liability

7. Ruled, 6-to-1, that railroads are liable for damages to shipments originating in foreign nations. Justice Minton delivered the opinion, Justice Frankfurter dissented and Justices Jackson and Douglas took no part.

8. Held, 5 to 3, that the New York, Chicago & St. Louis Railroad is not entitled to a new trial in a damage suit. An injured switchman was awarded $80,000. Justice Clark spoke for the majority with Justices Reed, Frankfurter and Jackson dissenting.

9. Refused to review a Washington State Supreme Court ruling that pinball machines are gambling devices as forbidden in a 41-year-old State law. The Supreme Court dismissed the appeal on the grounds it had no jurisdiction to consider the case, an interpretation of State law.

10. Declined to enter a case in which Parisian Countess Anne Vilberg de Sairigne has been attempting to collect $400,000 from Frank Jay Gould. She contended Gould, son of the famous financier, gave her a check for that amount for protecting him from the Nazis but that he later stopped payment. The lower courts threw out her suit.

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High Court Agrees to Consider 2d Attack on Loyalty Program

The Supreme Court yesterday agreed to consider a second attack on the President's loyalty program.

The case is that of the National Council of American - Soviet Friendship. Like the case involving the Joint Anti-Fascist Refugee Committee, accepted by the Court in March, it challenges in general the loyalty program's constitutionality and specifically the Attorney General's subversive list. Both groups are on that list.

The two cases will not be argued until next fall, with a decision unlikely for some months after that.

A third, involving the dismissal of Dorothy Bailey from a Government job after a loyalty investigation, is still on the court's docket for consideration. The court has yet to announce whether it will take the case. The loyalty program was sustained by the lower courts in all three instances.

The high court yesterday also agreed to consider an allied case, involving three persons sentenced to jail for contempt of court in Denver after they refused to answer grand jury questions about Communist activities. The three are Jane Rogers, former Denver Communist Party treasurer; Irving Blau and his wife, Patricia.

Mrs. Rogers refused to say to whom she had turned over the party's books when she gave up the treasurer's job. Blau refused to answer questions on his alleged connections with the Communist Party and his wife refused to describe party records. He was asked if he was a Communist but she was not.

All three contended the Constitution gives citizens "the right of privacy and silence against any effort to compel disclosure of political associations and beliefs."

This plea of refusal to answer on grounds of self-incrimination is based on the Fifth Amendment's provision that no person "shall be compelled in any criminal case to be a witness against himself."

The jail sentences, ranging from four months to a year, were upheld by the Circuit Court of Appeals in Denver last January. But in a similar case, another circuit court of appeals (in San Francisco) announced a conflicting decision. The Supreme Court presumably would resolve that conflict and clarify rights under the self-incrimination plea.

Justice Clark, former Attorney General, took no part in the Denver or Council of American-Soviet Friendship actions yesterday. It was Clark who put the two organizations on the subversive list.

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G.I.R.-1

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No Place for Politics

EVERY TIME MR. TRUMAN gets into trouble with his Cabinet, or when one of his policies goes sour, the name of Fred M. Vinson, Chief Justice of the Supreme Court, looms into the news as a political personality.

This is all wrong.

The Supreme Court should be above politics. Partisanship or even the suspicion of taking part behind the scenes in matters unrelated to its proper business is out of place.

A man has freedom of choice in this country. He does not have to accept an appointment to our highest court. But once he enters its portals as a Justice, he should, in all decency, cast aside the ladder by which he rose and place himself on the pedestal of rigid impartiality.

When Charles Evans Hughes left the bench to run for the Presidency, he lessened his reputation, only to regain it on his return to the bench.

James Byrnes lost prestige when he left the bench to meddle in the pettiness of Mr. Truman's politics. Though he ascended to so lofty a position as Secretary of State, he reverted to the "Jimmy" of give-and-take of roustabout politics. And that is where he is today.

Owen Roberts, while on the Supreme Court bench, was sent by Franklin D. Roosevelt to investigate the Pearl Harbor fiasco. The course of events and subsequent investigations reflect unfavorably on his report. There is evidence that it was doctored in the White House and that Justice Roberts made no public protest.

Robert H. Jackson was sent to the Nuremberg trials, where he had no right to be.

William O. Douglas aspires to be President of the United States and plays partisan politics. He is so actively involved in CIO affairs that he ought never, in conscience, to sit on a case involving labor matters.

Felix Frankfurter and Stanley Reed testified in the first Alger Hiss trial in a manner which brought discredit on the court. Justice Frankfurter, in particular, made rather a vulgar show of himself.

It is of the utmost importance that the Supre Court of the United States be safeguarded fi this sort of conduct. When its justices are p ticians, the people have no confidence in th decisions.

The first place to start is with the appointm of Justices, avoiding as far as possible the use that office as repayment for political services.

Of the present court of nine, Fred Vins Stanley Reed, Robert H. Jackson, Tom Clark a Sherman Minton were politicians, as was the c ceased Frank Murphy. They were appointed, some postmasters are, to satisfy political obli tions. None was an outstanding jurist of the calil of Holmes, Brandeis, or Cardozo.

Hugo Black was appointed out of spite.

The only outstanding jurist of distinction the present bench is Felix Frankfurter, whetl you like him or not. Robert H. Jackson has ma an enviable reputation since his appointment, l appointing Attorneys-General and Solicitors-G eral to the Supreme Court has become too habitu

These are political appointees. They have place on the Supreme Court bench.

And the final duty is to stop using the Justi to pull political chestnuts out of the fire.

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High Court Shifts By Truman Seen

Move Likely as Pay-off In Amerasia Case

Reports of an impending shuffle of the Supreme Court by President Truman to pay off Administration favorites for the Amerasia case fix were gaining credence throughout official Washington last night.

Informed sources said President Truman is preparing to toss out Justice Frankfurter and that Attorney General McGrath will be elevated to the high court bench.

James M. McInerney, McGrath's assistant who prosecuted the Amerasia case, would then move up as a reward to the attorney generalship.

In the event Mr. Truman is persuaded against asking for the resignation of Frankfurter, who went to bat for Alger Hiss, the convicted perjurer, next lamb in line for the slaughter is Justice Minton, the same sources said.

Minton, a personal friend of Mr. Truman, was appointed to the Supreme Court last October to fill the vacancy caused by the death of Justice Rutledge.

The political expediency of making either his friend or Frankfurter the goat in the pay-off is bolstered by the fact that both wear their "liberal" labels openly.

The Amerasia case involved classified secret government files which were found in possession of Amerasia, a magazine with Communist connections, by the OSS during a raid of the publication's offices in New York in 1945.

McInerney, as government prosecutor, brought the case to court but skipped over the Communist aspects of the wartime theft of government files.

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DON C. MILLER, FORMER FOOTBALL HERO AND NOW U.S. ATTORNEY IN CLEVELAND, WAS ADMITTED TO THE SUPREME COURT BART TODAY. HIS SPONSOR WAS SOLICITOR GENERAL PHILIP B. PERLMAN.
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He resigned!

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MAR 1952

WASHINGTON CITY NEWS SERVICE

The Rosenbergs, B..dges and Justice Clark ...mself

Three Cases Are Placi... High Court in Headlines

By CHARLES LUCEY Scripps-Howard Staff Writer

The Supreme Court was in the public eye today as it hasn't been since the 1937 court-packing try on the basis of three events of this week:

Dismissal of an indictment charging Harry Bridges, West Coast labor leader, with perjury and conspiracy in connection with naturalization proceedings. He and two co-defendants were charged with testifying falsely he was not a communist.

The court held the statute of limitations had run out and the indictment came "too late to be effective."

The action of the last 72 hours in the cases of Julius and Ethel Rosenberg, condemned atomic spies, which for the fourth time was before the court, meeting in extraordinary session yesterday and today.

CLARK BALKS

The refusal of Supreme Court Justice Tom Clark to appear before the House Judiciary Committee to testify on his activities as Attorney General—specifically on much-criticized cases in which he figured—because he said it might endanger the "complete independence" of the courts. The House committee may yet subpena Justice Clark, who did send in writing, along with his refusal to appear, a summary of his part in each of the cases in question.

Much criticism of the court concedes the complete legal obligation of attorneys to exhaust every possible resource in behalf of clients, and similar propriety by the justices in affording defendants every area of appeal.

There is some remarking of the fact that, altho Justice Robert H. Jackson is assigned in organization of the court to the New York judicial district where the Rosenbergs were tried, it was Justice William O. Douglas who granted the stay. Justice Jackson was in the city at the time.

But criticism was directed mostly at the lengthy processes and almost interminable maneuvering which occur in many cases in their routes through the high courts.

THIRD WIN FOR BRIDGES

Despite years of furore about Harry Bridges, the ruling this week was the third time he had defeated Government attempts to deport him. The court split, four to three, in deciding the applicable limitations statute ran for three years, whereas the indictment was not returned until four years after naturalization proceedings took place in 1945.

In that case, Justices Douglas, Hugo L. Black, Felix Frankfurter and Harold Burton were the majority and Chief Justice Fred M. Vinson and Justices Stanley Reed and Sherman Minton the dissenters. Justices Jackson and Clark, former attorneys-general, abstained. The decision washed out a five-year prison sentence.

The indictment against the Rosenbergs was returned Jan. 31, 1951. They were charged with conspiring in wartime to transmit national defense information to the Soviet Union—with passing atomic and other secrets to Russia from June, 1944, to June 16, 1950.

President Eisenhower, denying a pardon, concluded the Rosenbergs were "worse than murderers" because a murderer usually kills only one person. The President said the Rosenbergs "betrayed an entire nation."

That is the view, it is believed widely here, most accepted by the country. The question before the Supreme Court is not guilt or innocence, but whether prosecution should have been under the espionage law or the 1946 atomic energy act.

In the matter involving Justice Clark and the House Judiciary Committee, it is contended that there is no relationship whatever to his Supreme Court judicial duties. It is denied that any question of separation of powers is involved. Rep. Kenneth Keating (R., N.Y.), head of the subcommittee investigating the Justice Department said yesterday:

AMERASIA INVOLVED

"The power of a duly-constituted and duly-authorized committee of Congress to call a judicial officer before it to testify regarding facts seems to me clear. If there is doubt on the point it should be cleared up authoritatively now."

One of the cases involved is the Amerasia wartime stolen documents case. Another is the 1946 Kansas City vote fraud case, in which the Justice Department under Mr. Clark was criticized severely. A full-scale investigation of this case was blocked in a Senate committee by a single vote.

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THE NINE FUDDLED

The Supreme court has recessed summer and its members have t Before it got away, it was forced into extraordinary session by the stay of execution granted in defiance of the court majority by Justice Douglas to the Rosenberg atomic spies. The court had to reconvene in order to decide, by 6 to 3, that the legal point discerned by Douglas as "substantial" was, in fact, nonexistent.

Douglas, of course, dissented and was joined by Justice Black and Frankfurter. Whatever the majority might say, Douglas insisted, he remained "right." Black agreed. It took Frankfurter several additional days to work up an opinion which he modestly submitted as a contribution to "history." This contribution consisted of a suggestion that the court should have taken more time, tho Frankfurter would not promise that he would have voted in support of the spies in the end.

With this, it might have been supposed that the court could safely be forgotten for the summer, but it kept bringing itself to notice. The next incident concerned only one justice—Tom Clark, Mr. Truman's former attorney-general. When the House judiciary committee decided it would like to hear Clark testify concerning nine different matters which came up during his tenure as attorney-general, the justice drew his robes about him and assumed an admirable counterfeit of haughtiness.

Clark responded that a justice should keep himself aloof from mundane affairs of legislative life and partisan politics. Oddly enough, the committee accepted this stuffy reproof, deciding not to slap a subpoena on the justice and hold him in contempt if he refused to appear. An objective view would be that Clark's pretenses were hollow. The acts concerning which the congresamen sought to inquire had nothing to do with his service on the bench, but involved sundry instances of fixing and crookedness when he himself was deeply involved in partisan politics.

Tho the past session of the court is receding in time, its curious decisions still glimmer with a dim phosphorescent light. They are not still alive, but neither are they wholly dead. They have a sort of half-life.

One of these that still sputters faintly is the decision by which the court, for the second time in eight years, saved Harry Bridges from prison and deportation as an alien Communist. The boss of the Longshoremen's union was convicted of conspiracy in the perjured affirmation that he had never been a Communist when he acquired his papers as a citizen.

The facts were not vulnerable to challenge, but the court turned up a way to get Bridges off the hook. It said the statute of limitations had run on the offense before he was indicted and that a war-time suspension of the statute did not apply in this case. Here the decision was 4 to 3, with Justice Burton, the only Republican on the court, writing the majority opinion. Black, Frankfurter, and Douglas again were on the side favoring softness for Reds.

As Chief Justice Vinson and Justices Reed and Minton constituted the minority upholding the conviction, it might be thought that this makes them look good. But the fact is that this trio distinguished itself with one of the goofiest and most dangerous doctrines ever enunciated by any group of justices on the court. They constituted the minority which tried to assert that Mr. Truman's seizure of the steel industry was proper tho the Constitution specifically forbade it and tho there was no statute authorizing it.

The thesis written for the group by Vinson contended that inasmuch as the Senate had ratified the United Nations charter, the United States thereby had accepted "in full measure its responsibility in the world community." From there Vinson contended that this responsibility entailed an obligation "for the suppression of acts of aggression." Consequently, Vinson argued, when U.N. called on its members "to render every assistance" to repel aggression in Korea, the President was thereupon authorized to take every action to render that assistance, including the seizure of private property.

In face of this decision, there are still people who say there is no need for the Bricker amendment to the Constitution, which says positively that no domestic application of a treaty is of any force or effect unless it would be constitutional and lawful in the absence of a treaty.

From the absence of his name, it might be assumed that Justice Jackson did not share his colleagues' penchant for being on the wrong tack some time or other. But to concede this much would be to ignore Jackson's magnificent perversity as the American agent in drafting the infamous ex-post facto war crimes "charter" under which the defeated leaders of Germany and Japan were hanged for being on the losing side of the last great war. Jackson's contribution to hypocrisy and injustice may exceed even that of his associates.

So that's the lot. Which is your favorite?

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BRANIGAN

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(COURT)

THE SUPREME COURT MEETS AT NOON TODAY WITH SEGREGATION IN PUBLIC SCHOOLS HEADING THE LIST OF UNDECIDED CASES.

THE CONSTITUTIONALITY OF THE FEDERAL LOBBYING LAW AND FEDERAL JURISDICTION OVER NATURAL GAS PRODUCERS ARE ALSO QUESTIONS AWAITING THE COURT'S RULING.

AFTER THE JUSTICES READ TODAY'S OPINIONS THEY WILL RECESS UNTIL APRIL 26.

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(COURT)

THE SUPREME COURT RECESSED UNTIL APRIL 26 WITHOUT RULING ON THE PUBLIC SCHOOL SEGREGATION CASES.

4/12--JE1247P

WASHINGTON CITY NEWS SERVICE

New Rules Adopted By Supreme Court; Black Has Objections

By Robert K. Walsh

The Supreme Court has adopted new rules to help it interpret the laws, but one justice fears the revision will make matters harder for lawyers and litigants.

In point of size, if not scope, the 82-page book of rules was the biggest thing handed down yesterday before the tribunal recessed to April 26. There was no decision on the issue of racial segregation in public schools, and no indication when or whether it will come before adjournment in June.

Justice Black, who objected to most of the rule revision, also joined Justice Douglas in dissenting from the major decision of the day. This was a 7-2 opinion upholding validity of a New York-New Jersey compact for regulation of employment on the New York waterfront.

The unsigned majority opinion affirmed a special three-judge Federal court in New York City rejecting a request by an International Longshoremen's Association local to bar enforcement of the compact. The lower court found that the compact setting up a water-front commission was a reasonable exercise of the police power of the States and did not violate Federal constitutional rights.

Black and Douglas Protest.

Justices Black and Douglas protested that the Supreme Court at least should have heard arguments on the cases and produced a written opinion giving reasons for its decision.

They noted that the compact gives the commission discretionary power to prevent employment registration of Communists, persons deemed a danger to public peace or safety, and persons convicted of major crimes. They said this raises questions as to whether constitutional standards are applied and whether a person might be barred from work without a hearing.

In a companion case, also decided 7-2, the court upheld a provision of the compact barring "public loaders" from operating on New York piers. A New York State crime commission report last year described the system as a racket. The system originated during the wartime labor shortage when laborers available at the piers were hired to load and unload trucks. Later many of the laborers formed corporations or partnerships as "public loaders."

Soldier Burial Case.

Among the cases accepted for argument, probably next fall, was a damage suit filed by the widow of Sergt. John Rice, an American Indian killed in Korea but refused burial in a Sioux City, Iowa, cemetery. Sergt. Rice was buried in Arlington Cemetery with military honors at the direction of former President Truman.

Mrs. Rice sued the cemetery for $60,000 damages after burial of her husband was barred there because of a covenant restricting cemetery privileges to members of the Caucasian race. The Iowa Supreme Court said it could not void a private contract containing a restrictive covenant. It also rejected Mrs. Rice's contention that the action of the cemetery violated guarantees of the United Nations treaty.

The Supreme Court ruled several years ago that restrictive property covenants cannot be inforced in Federal of State courts. It has never said whether such a covenant can legally be offered as a defense in a damage suit.

In two cases that began in Federal courts here the Supreme Court yesterday refused to review—and therefore left standing—decisions against the National Labor Relations Board in connection with non-Communist affidavits.

Review Refused.

The Taft-Hartley Act provides that a union is not entitled to NLRB assistance in collective bargaining procedures unless the union's officials file non-Communist oaths. In a case involving the United Electrical Workers Union and the American Communications Association, the court yesterday refused to review a finding that the board lacked authority to require such officials to file later statements affirming the truth of their affidavits.

In the other case, involving

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the International Fur and Leather Workers Union, the court refused to review a decision that the board cannot withhold certification of the union as a collective bargaining agent even though its president was indicted for falsely making a non-Communist affidavit. Ben Gold, the union president, was convicted here last month on that charge.

The Supreme Court's new book of rules, first general revision since 1939, is required reading for lawyers but too technical for most laymen.

One of the many changes it makes will require that printed copies of lower court opinions must accompany all requests for Supreme Court review. The new rules take effect July 1. The court said it received expert assistance from Warner W. Gardner, Charles A. Horsky and Frederick B. Wiener, members of the District bar; former Acting Solicitor General Robert L. Stern, Prof. Henry M. Hart of Harvard Law School, Prof. James M. Moore of the Yale Law School, Prof. Herbert L. Wechsler of Columbia University Law School and Supreme Court Clerk Harold B. Willey.

Justice Black said the new rules contain many improvements but that it would have been better to amend the old rules instead of adopting a whole new set.

"New rules without settled meanings breed mistakes and controversies that frequently make the way of litigants unnecessarily perilous," he declared. "I particularly object to the present revision because a number of the changes put unnecessary burdensome conditions and restrictions on rights of review and appeal. Our rules should make appellate review easier, not harder. Finally I have never favored the almost insuperable obstacles our rules have put in the way of briefs sought to be filed by persons other than actual litigants."

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Top Cases Due For High Court Rulings Today

Edicts May Involve Civil Rights, Loyalty And Integration

The Supreme Court returns to the bench today amid signs that history is in the making on several legal fronts, even if the tribunal defers a pronouncement on how and when racial segregation must cease in public schools.

The Justices are confronted with 16 already argued cases, including the five school suits from the District, Virginia, South Carolina, Delaware and Kansas. This concentration of unusually difficult and controversial questions, as well as a pressing array of review petitions such as a Communist Party attack on the Subversive Activities Control Act, was expected to delay the term's final session until next Monday.

Whether or not anything is said today about school integration, the session could offer plenty of other matters to produce opinions of more than ordinary interest and importance—and also a longer than usual array of dissents.

Oral Arguments Heard

The most eagerly awaited judicial statements—although the court has never said exactly how or when or what it will decide in the matter—involve the manner and timetable for implementing the tribunal's May 17, 1954, unanimous decision against enforced racial separation of school children in public schools.

Oral arguments and suggestions by attorneys for both sides in the five specific cases and by the Justice Department were heard less than two months ago. Most of those attorneys believe the high court will announce something authoritative, possibly today, and in any event before adjournment until October.

Few, if any, predicted that the court would hand down detailed decrees at this time, at least in some of the cases, or set a hard-and-fast obedience deadline.

Any such decrees or mandates, issued now or later, would apply to the five cases. So too, would orders remanding any or all of the cases to the lower Federal courts with instructions to frame appropriate and equitable procedures for conforming to the integration principle established in the 1954 decision.

"Pattern of Compliance"

But any action by the Supreme Court will be viewed in court jurisdictions, as well as States and communities not directly or immediately involved in the pending suits, as providing at least the start of a Nation-wide "pattern of compliance" and procedure.

Here are some of the other main questions that might be answered today:

Federal loyalty program: Was Dr. John P. Peters, senior professor of medicine at Yale University, denied Fifth Amendment guarantee of due process of law when dropped from a part-time consultant job with the Public Health Service because of a Loyalty Review Board finding against him? He contends that, in such loyalty hearing procedures, an employe is denied constitutional rights if barred from knowing the identity of witnesses against him and cross-examining them. The court conceivably

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could decide the Peters case without passing on the constitutional question.

Court-martial of civilians: Did Congress have the power, in enacting the Uniform Code of Military Justice, to provide for the court-martial of a civilian for a crime allegedly committed while he was in the service? Former Air Force Sergt. Robert W. Toth, a Pittsburgh steelworker, honorably discharged in 1953, was arrested later and flown to Korea by military authorities for court-martial on charges of having murdered a South Korean civilian in 1952.

Yonkers Case Cited

Peace rally: Was the Yonkers (N. Y.) education board right in refusing use of a public school building for a "forum" by an organization known as "Yonkers Committee for Peace?"

Radio broadcasting: Did a Federal court exceed its power and "substitute its judgment" for the Federal Communications Commission in setting aside an FCC order permitting a competing radio station in Easton, Pa.?

Civil rights: Was a Georgia Negro illegally convicted in a murder case where the jury was chosen from a panel where names of white persons were on white paper slips and those of Negroes were on yellow slips?

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Dept. U.S. Supreme Court file

N. Y. DAILY NEWS

SEP 30 1955

CAPITOL STUFF

By JOHN O'DONNELL

Washington, Sept. 29.—When the august Supreme Court of the United States starts its new term Monday, the nine dignitaries will be faced with the embarrassing suggestion that they are becoming symbols of senile delinquency—judicial, that is, not personal.

Four of the associate justices—Frankfurter, Black, Reed and Minton—by their age or years of service on the federal bench will have reached or be well beyond the date on which under the law they can step down and enjoy for the remainder of their lives their full $35,000 a year salary in carefree retirement.

Before the national conventions are held next summer, this will be an accomplished fact. The all-important choice of their successors will have been *made* either by President Eisenhower, if he recovers sufficiently to perform the duties of a Chief Executive, or by a President Nixon if Ike decides, because of "inability," as the Constitution puts it, to resign and turn over *his office* to the Vice President.

Ike Can't Delegate Appointment Power

This power of appointment to the high court, according to all the Constitutional authorities, is one that cannot be "delegated" by an ailing Chief Executive to a temporary standin. And the selection of four new justices of the Supreme Court, the greatest turnover since F.D.R.'s second term, will be the most important decision of the Eisenhower Administration. It probably will determine the judicial and Constitutional course of the nation for another generation.

In his almost three years in the White House, Ike has named two members of the supreme bench—Chief Justice Earl Warren of California and Associate Justice John M. Harlan of New York. F. D. R., during his first New Deal term, had no chance to replace any of the Nine Old Men when he took office—a situation that

(L. to r.) Supreme Court Justices Black, Frankfurter, Minton and Harlan.

irked him and finally resulted in the impetuous and politically disastrous gesture of trying, without success, to jam his court-packing bill down the throats of a resentful Congress. To the credit of the Senate, it should be remembered that the lawmakers, for the first time in their New Deal careers, got up enough courage to defy F. D. R. and kill his proposal.

But they did absorb some of F. D. R.'s ideas and this, too, is to be marked on the credit side of the ledger. Going along with F. D. R.'s plea for "new and younger blood" on the high bench Congress passed a law that permits the justices to retire on full pay at 70, or at 65, if they've been on the bench for 15 years.

Frankfurter Shrugged Off Idea of Retiring

So we are now faced with this situation:

1—Justice Felix Frankfurter, second foreign-born Supreme Court member in the history of the republic, will be 74 next Nov. 15. When he reached 70 and became eligible for retirement (a topic that some of his fellow court members who don't like him didn't hesitate to call to his attention), he tartly retorted that he was feeling fine that his idol, the late Justice Oliver Wendell Holmes, wrote his best opinions after he was 75.

Furthermore, said Frankfurter, he wasn't quite sure that President Harry Truman could be trusted to pick as his successor a man who would carry out the New Deal philosophy of a liberalized democracy. (Liberalized democracy is silk-hat slang for Fabian socialism, which in turn is hypocritical goose grease for what the boys really mean—creeping Communism.). But in the last few months, either the justice or his doctors have updated the retirement prescription. Expect the mustard-tongued Frankfurter to be out by Christmas.

2—The two really ailing members, who are frank about the tough medical regime imposed on them and now look forward to gracious leisure in the twilight of their lives, are Justice Stanley Reed, 72, a charming easy-going Kentuckian whom Roosevelt named to the bench 17 years ago, and Justice Sherman Minton, a Truman appointee, who has been in failing health for a year and makes no bones about his determination to prolong his life by doffing the cares of office. Minton will be 66 next month but his previous years on the federal bench make him eligible for full retirement pay.

Black to Practice While He Can

3—The other justice getting ready to bow out is F. D. R.'s first Supreme Court selection—the long-time controversial (KKK Klux Klan membership), surprisingly competent former Senator from Alabama, Hugo La Fayette Black. Justice Black will be 70 in February and has told friends that since the intent of the judicial retirement law was to clear the road for new and younger blood, he will show by personal example his support of the measure for which he fought while in the Senate.

So far as the other five members of the court are concerned there will be *no* change. Chief Justice Warren has made it clear that no pressure will make him retract his "irrevocable" announcement of last April that under no circumstances would he become a candidate for elective office.

The other members, Roosevelt's New Deal Justice (Wild Bill) Douglas, Truman's Republican Justice Harold H. Burton, Texan Tom C. Clark and Eisenhower's Harlan will continue on—and probably for many years.

But the four vacancies coming up during next winter's session of Congress will confront either Ike or his White House successor with tough political, as well as judicial, problems. For the first time in more than a half century there will be neither a Catholic nor a Jew on the high bench. On geographical grounds, the West will want a native son to sit with California's Warren.

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BOOKS

A Useful Volume On the U.S. Supreme Court

Fred Rodell, "Nine Men, A Political History of the Supreme Court from 1790 to 1955" Random House, $5.

By HERBERT APTHEKER

Mr. Rodell is Professor of Law at Yale University. His book is a spritely-written and brief recording of the highlights in the history of the U. S. Supreme Court. Its point of view is liberal and, from the viewpoint of the present-day struggle to preserve the Bill of Rights, the volume will be found useful. The work demonstrates the basically reactionary role which the Court has played throughout American history—with its central concern being the protection of vested propertied interests and the maintenance of white supremacy. It shows also that the Court has been keenly responsive to varying political winds, both in its makeup and in its rulings; and that, where relatively progressive decisions have been wrung out of it, this has been the result of mass pressure.

Of greatest interest to most readers will be Mr. Rodell's handling of the court in the recent past, especially when presided over by the late Fred Vinson. The author finds the Chief Justice of the Cold War Court one who "understood the real meaning of American democracy less than any other man who ever headed the Court." Especially despicable, he writes, was that Court's action in railroading to their executions Ethel and Julius Rosenberg. The terms of the rendering of law Professor Rodell finds the decision upholding the Smith Act convictions of Eugene Dennis and other Communist leaders to have been "the biggest blot on the Vinson's Court blot-marked ledger," since it "make a mockery of the First Amendment." This finding he reports despite the marked anti-Communist outlook which he displays at every possible opportunity.

Mr. Rodell does not fail, in his account of the Dennis case, to pay his respects to the "prosecution" role of Judge Medina and to say that a reading of the record makes one blush because of the clear bias displayed by His Honor.

Mr. Rodell closes his book with a positive estimate of the present Chief Justice, Earl Warren, and the hope that "under the inspiration" of Justice Douglas and Black "and the aegis of a potentially great Chief Justice, the American dream of freedom may be reborn." His preceding pages, however, demonstrated that it was not the inspiration of any particular Justice which was decisive—for good or ill—but rather it was the degree of organized strength achieved by the democratic forces in the country. Most certainly, that which was true in this regard in the past is true in our own day and will be true, increasingly, in the future.

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Our Top Tribunal

SENATOR SMATHERS of Florida has given Congress a proposal with respect to the United States Supreme Court which deserves the serious consideration of all Americans.

The Southern Democrat would make it a matter of law that future appointees to the high bench could not have fewer than five years' experience in the lower courts.

The Senator supports his idea with two arguments of cogency. First, he would have the Supreme Court elevated to the plane where it belongs—"out of the political arena." Second, he feels that Supreme Court justices, whose edicts become the unappealable "law of the land," ought to be trained and experienced jurists.

Under these conditions, he believes, the recent tendency of the Supreme Court to usurp the legislative responsibilities of Congress would cease.

Regarding political appointments, Senator Smathers is curt and to the point. Under his plan, the Supreme Court would no longer serve as "a refuge for appointees drawn from the ranks of politicians, professors or friends of the influential."

With reference to judicial training, he notes that at present only three of the nine members of the Supreme Court were judges before their appointments, and one of this trio had been merely a local police magistrate.

As for judge-made law, Senator Smathers recognizes that the growing practice violates the constitutional principle of the separation of official functions. "All legislative powers" in the Federal Government are vested in the Congress by the Constitution itself, and the Congress is an elective body, directly answerable to the people, whereas Federal judges are appointed for life-long terms, and some of them have been social or economic theorists, willing to foist their doctrines upon the public in the guise of judicial decisions.

Senator Smathers holds that judges "should not labor under the erroneous belief that it is their duty to legislate or determine policy, or in any way invade the legislative fields."

"Men," he declares, "who desire to determine policy and legislate should seek endorsement of their views from the people by running for office."

Although the Constitution is silent on this situation, it is certain that the founding fathers, in providing for an appointive judiciary, hoped and believed that judicial experience would be a major qualification. Otherwise why did the 1787 Convention repose complete legal authority in the Supreme Court?

Most Presidents have sought to maintain the contemplated standards, and the biographies of the great justices comprise a resplendent chapter in the history of the country. It is Senator Smathers' wish to revive this faith in the foremost tribunal and thus restore the former luster of the entire Federal judiciary. In his words:

"The Supreme Court should be the finest collection of trained and experienced jurists which can be assembled."

1956

Mr. Tolson
Mr. [illegible]
Mr. Boardman
Mr. [illegible]
Mr. [illegible]
Mr. Mohr
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. Nease
Mr. Winterrowd
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Mr. Holloman
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Newspaper: BOSTON DAILY RECORD
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Supreme Court Record Seen on Cases Handled

By ROBERT K. WALSH

The Supreme Court provided proof today that it intends to stay in session well into June.

The tribunal normally ends its term the first or second week of that month but still has 24 argued cases and scores of petitions to dispose of. It handed down only two written opinions yesterday, relatively minor in comparison to several intensely controversial issues remaining.

One was a 5 to 4 opinion allowing States and local communities to tax military housing built and operated by private firms on Federal land in accordance with the Wherry Act of 1949. The other held that an employe must pay an income tax on the gain from stock he bought at a reduced rate from his employer.

Record Expected

The court also acted on some 90 other appeals or motions. This strengthened earlier published predictions that the tribunal will set an all-time record at the current term. At the close of business yesterday it had disposed of 1,440 cases on its appellate and miscellaneous dockets. The final total seems certain to exceed the record of 1,520 in 1946.

Besides ruling on the housing case from Nebraska and the tax question from Pennsylvania the court yesterday:

1. Announced it would hear an appeal next term from a decision of the United States Court of Appeals here that the National Labor Relations Board lacks authority to determine the truth of falsity of non-Communist oaths filed by union officers under the Taft-Hartley Act. This case involving the International Union of Mine, Mill and Smelter Workers will be heard with a previously accepted appeal by the Meat Cutters union. The latter case raises a question whether a union can receive NLRB benefits if one of its officers is convicted of filing a false non-Communist oath.

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Rejects Teacher Case

2. Refused to reconsider its 5-to-4 decision of April 9 that Dr. Harry Slochower was improperly fired from Brooklyn College because he invoked the Fifth Amendment in refusing to answer some questions of the Senate Internal Security subcommittee. The court, however, struck a sentence from the original opinion in "the interest of accuracy." The sentence contained a comment that "neither the subcommittee nor Dr. Slochower was aware that his claim of privilege would result in his discharge." The court explained that additional information indicated the statement was inaccurate although it did not affect the decision.

3. Denied a hearing to two West Virginia railroad workers who face loss of their jobs because they said the Puritan Brethren to which they belong prohibits membership in labor unions and other organizations. They contended that State "right to work" laws banning the union and closed shops apply to the railroad industry. The Supreme Court ruled last week that the National Railway Labor Act, permitting union shop contracts, supersedes such State statutes.

Refuses Segregation Case

4. Refused to interfere with Federal district court judges in Tennessee and Louisiana who ruled against public school segregation but refused requests for creation of special three-judge Federal courts to pass on the issues. The Federal court judges in Memphis and New Orleans held that a basic constitutional question no longer existed because of the Supreme Court's May 17, 1954, decision declaring public school racial segregation unconstitutional. The high court's action yesterday was in line with the method it outlined last May for lower Federal courts to determine, in general, the timing of integration programs.

See Tax Interference

The 5-to-4 decision upholding the Nebraska Supreme Court's finding in favor of local taxation of privately operated military housing under the Wherry Act was delivered by Justice Frankfurter. Justice Douglas, joined by Justices Reed, Burton and Harlan, dissented. They warned that "taxation by local authorities of a housing project is a sure way of increasing its cost and hampering the Federal program."

The decision apparently affects directly the 159 projects, with 53,000 dwelling units, constructed in various States. But the court dealt only with the Wherry Act and did not indicate any broader application to public housing.

The scope of the opinion concerning tax liability on stock purchased at a reduced price from an employer was not immediately evident. Lawyers remarked informally that the opinion seemed limited in some respects to the particular case of a division manager of the Michigan Chemical Corp. who contended he did not have to pay tax on income from 340 shares because it was not a gift but rather a "proprietary interest" in the business.

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BAUMGARDNER

Many Rulings Disputed In Final Court Session

By ROBERT K. WALSH

The Supreme Court's final session until October supplied lawyers, laymen and probably Congress today with a vast array of rulings to fight over all summer.

The Justices spoke for four hours yesterday in saying the last judicial word in almost a score of written opinions and dozens of orders. The deluge of decisions, accompanied generally by caustic dissents, laid down the law on these subjects:

1. **Courts-martial.** Civilian dependents accompanying American servicemen stationed overseas can be tried by military courts-martial for crimes committed in those foreign countries.

2. **Deportation.** An alien who admittedly belonged to the Communist Party during some of the time he has lived in the United States cannot avoid deportation despite his claim that Federal officials used secret evidence as a basis for refusing to suspend a deportation order.

3. **Employer liability.** Additional groups of railroad employes, including women file clerks, may sue for damages in certain circumstances under the Federal Employers' Liability Act.

4. **Cellophane.** The E. I. Du Pont de Nemours and Co. did not illegally monopolize the cellophane industry.

5. **Offshore oil.** The State of Louisiana cannot block the leasing of oil-rich submerged lands within the 10.5 mile offshore border claimed by the State. At the same time, pending Supreme Court action next term, neither the State nor the Federal Government is allowed to lease or begin the drilling of new wells

6. **"Fair trade."** McKesson & Robbins, Inc., cannot fix prices under "fair trade" laws on drug products it distributes through its own wholesale outlets in 35 States and also through independent wholesalers.

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7. **Inheritance.** The illegitimate son of the late George "Buddy" DeSylva is entitled to royalty rights on his father's musical compositions, despite a contention by Mrs. Marie DeSylva that sole control over copyright renewals belong to her as the composer's widow.

8. **Freight rates.** The Interstate Commerce Commission properly required the Union Pacific Railroad to establish a transfer rate, involving millions of dollars in freight charges, on connection shipments with the Denver and Rio Grande Western Railroad at the Ogden, Utah, gateway to the Northwest.

Those were only the highspots of one of the Supreme Court's most voluminous last-day productions in several years. But even they were somewhat overshadowed by the decision affecting the Federal Security program.

Many Dissents Recorded

There were dissents in practically every case where a written opinion was handed down. Chief Justice Warren and Justices Black and Douglas most frequently teamed together in objecting to majority rulings.

They were the dissenters in the opinions written by Justice Harlan in the courts-martial cases. Those opinions specifically upheld the courts-martial convictions and life sentences of Mrs. Dorothy Krueger Smith and Mrs. Clarice B. Covert. Mrs. Smith, daughter of retired Gen. Walter Krueger, was convicted of having murdered her husband, Col. Aubrey D. Smith, in Tokyo in 1952. Mrs. Covert was found guilty of having slain her husband, Air Force Master Sergt. Edward Covert in England.

Both women challenged constitutionality of the Uniform Code of Military Justice provision for courts-martial of American civilians who accompany the armed forces overseas and commit crimes there. Justice Clark wrote in the majority opinion that there was "no constitutional defect" in the code's provision for such military trials.

Fear Effect on Law

Chief Justice Warren and Justices Black and Douglas joined in a dissent from the Du Pont case opinion delivered by Justice Reed. They attacked that opinion as "virtually emasculating" the anti-monopoly section of the Sherman Anti-Trust Law. Justice Reed declared in a 28-page opinion that "Du Pont should not be found to monopolize cellophane when that product has the competition and interchangeability with other wrappings that this record shows."

The decision doomed court efforts the Justice Department has made for almost seven years to have the Wilmington, Del., firm judged guilty in a civil anti-trust suit.

Dissenting Opinions

The deportation issue was decided by a 5 to 4 vote in which the dissenters again were Chief Justice Warren, and Justices Black and Douglas, along with Justice Frankfurter.

The case reached the Supreme Court in an appeal by Cecil R. Jay, a 64-year-old alien who came to the United States in 1914 and admittedly was a Communist Party member from 1935 to 1940 in California.

He conceded that under the Internal Security Act he could be subject to deportation. But he protested that his request for suspension of the deportation hearing was illegally rejected by Attorney General Brownell mainly on the basis of confidential undisclosed information.

Justice Reed delivered the opinion upholding the action of the Federal authorities in basing their refusal on such secret evidence. In an unusual move, each of the dissenting Justices wrote separate opinions. Chief Justice Warren declared that "in conscience I cannot agree with the opinion of the majority." He complained that "it sacrifices too much the American spirit of fair play in both our judicial and administrative processes."

Income Tax Case Rejected

In still another 5-to-4 opinion, where the Warren-Black-Douglas combination was augmented by Justice Clark, the court rejected the protest of George B. Parr, South Texas political boss, for being indicted on income-tax evasion charges in Federal court in Austin, after he originally had been indicted in Corpus Christi on the same charges. He had obtained a transfer from Corpus Christi to Laredo. The Justice Department obtained a dismissal of the original indictment in Federal court in that city, and then got an identical new one at Austin.

Chief Justice Warren delivered the court's opinion in the "fair trade" case. Justices Harlan, Frankfurter and Burton dissented. The decision reversed a New York Federal Court decision in favor of the company's price maintenance agreements for its own wholesalers and independents.

The Chief Justice stated: "Congress has marked the limitations beyond which price fixing cannot go. We are not only bound by those limitations but we are bound to construe them strictly, since resale price maintenance is a privilege restrictive of a free economy."

District Lawyer's Plea Denied

The Supreme Court's only important action in a District case affected Dorsey K. Offutt, an attorney here who for several years has been fighting a contempt of court charge.

The high court refused his request to dismiss all such charges against him. He first was held in contempt by District Court Judge Alexander Holtzoff for conduct at a trial in 1952. The Supreme Court last year ordered a new hearing for him before another judge. Judge McLaughlin later held him in contempt but was reversed on technical grounds by the United States Court of Appeals here. Mr. Offutt complained that he still faced the possibility of another hearing. In any event, he asked the high court to dismiss the whole thing once and for all because the proceedings have dragged on more than three years. This the high court refused to do.

American Communists

The Supreme Court has reached a new high in irresponsibility in its recent decision that prevents the executive branch of the government from dismissing subversives in government employ. This is apparently based on the theory that a man has a right to a government job. It also shows an appalling lack of knowledge of the true nature of Communism.

The nation would be the gainer if the Court, which since the appointment of Chief Justice Warren seems to have no pattern or plan, had read the address given by George Meany, president of the AFL-CIO, before the FBI National Academy.

Mr. Meany is a progressive labor leader. He cannot be accused of being a red baiter or a liberal hater. When he attacks Communism as a philosophy his words carry weight.

Mr. Meany points out that all dictatorships Communist, Nazi, Fascist, Falangist, Peronist or Titoist have only one aim, the grabbing of all power for the total destruction of all free institutions. He calls attention to the fact that "good old Joe," as Khruschchev has exposed, debased all society, outraged every human value and ruled by savage brutality instead of law.

Communism, Mr. Meany contends, is the worst of all dictatorships because it poses demagogically as a higher form of democracy. It poses as a political movement though it is anything but a political party in the normal democratic sense. The only loyalty the Communist knows is loyalty to the clique or despot who happens to be at the helm of the Russian dictatorship at any particular moment. The Communist smile does not make Communists safer. Communist criminals, says Mr. Meany, are more dangerous when masked just as ordinary criminals are.

So at the same time that the Supreme Court opens the executive branch of the government to subversive activity, Mr. Meany points out that "Communists and their dupes are calling for an end to every legal effort to curtail their subversive activities and their efforts to infiltrate our free institutions." Mr. Meany points out that it is a matter of self preservation that we protect ourselves from subversive movements and activities. He contends that a man is no liberal who does not believe in safeguarding democracy and its liberal institutions. Finally he says, "There are no American Communists —there are only Communists who live in America."

Mr. Meany has drawn a realistic picture of Communists and their dupes and fellow travellers in America. His exposition shows the need for immediate legislation to protect the executive branch of the government from judicial decisions based on the whims of men who have had no judicial experience or training.

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Editor: KINGSLEY GILLESPIE

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Norwalk Hour, p. _____
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Submitted by New Haven Office

GUARDIAN

The decision Court that the ployе security carried far bej — umits intended by Congress is a judicial way of saying one of the things that lay critics have been saying all along. The high tribunal, in an opinion written by President Eisenhower's latest appointee, Justice John M. Harlan, held that summary suspension and unreviewable dismissal of Federal employes as security risks could apply only to those in sensitive jobs, not indiscriminately to any or all employes of the Federal Government.

The effect of this major pronouncement of a majority (6—3) of the court is not in any way to destroy the security program, but to impose upon it the common-sense limitation that a Federal employe holding a position that had nothing to do with the national security could not be fired under existing security-risk procedures. The court took pains to point out that he could be fired by other methods if need be. Since about half of the Federal employes dismissed as "security risks" were in non-sensitive positions, the far-reaching application of the decision can readily be appreciated.

In this case—involving one Kendrick M. Cole, a former Federal food and drug inspector—the nation's highest court has once again affirmed "the need for procedural safeguards * * * in the absence of some overriding necessity"; and it has thus once again proved itself the bulwark of individual rights against undue extensions of either administrative or legislative power. It was a fitting end to the 1955-56 term, which saw the court consistently restating the principles of liberty, dignity and justice that are the spark that gives to American democracy its unique meaning in the world.

In a number of instances during the past eight months the Supreme Court has reinforced its historic anti-segregation decision of 1954, not only in the field of education but also by outlawing segregation in, for example, public recreational facilities. The court has repeatedly reminded the country that the Constitution still stands as the fundamental law, with all its guarantees to the individual. In the Ullman case it upheld the Immunity Act, but restated the importance of the Fifth Amendment; and in the Slochower case it reiterated that the individual must be protected through "due process" from arbitrary action. Civilian rights were reaffirmed in the Toth case restricting the jurisdiction of military courts.

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it thought of professio [illegible] who have been accused of perjury (but who had been used by the Justice Department) by ordering the Subversive Activities Control Board to reappraise their testimony, before the constitutionality of the law under which the Communist party is being prosecuted could be determined.

A number of these decisions have, in fact, been so unpopular in some quarters—coming as they have on top of [illegible] of [illegible] some of them and generally to limit the power of the court. We think that Congress would do well to approach such legislation with the most extreme caution, and not let the passions of the moment cloud its judgment of an institution that through the years has demonstrated time and time again that its independence is one of the most fundamental safeguards of our nation and one of the most effective—probably the most effective—guarantors of our liberties.

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N. Y. TIMES

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U.S. Supreme Court

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Anonymous, "Guardian of Liberty," New York Times, June 13, 1956.

The Supreme Court, by a vote of 6-3, held that a Federal employee holding a position that had nothing to do with national security could not be fired under existing security-risk procedures, but he could be fired by other methods if need be. About half of the Federal employees dismissed as "security risks" were in non-sensitive jobs.

In a number of instances during the past eight months the Supreme Court reinforced its historic anti-segregation decision of 1954. In the Ullman case it upheld the Immunity Act. In the Toth case the jurisdiction of military courts were restricted. The Supreme Court in the Nelson case held the Government had pre-empted the field of anti-subversive activities. The Supreme Court has consistently restated the principles of liberty, dignity and justice of American democracy, and this has caused some members of Congress to criticize it.

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THESE DAYS:

The President And Congress

By GEORGE E. SOKOLSKY

THE SEPARATIONS OF POWERS, inherent in our Constitution, cannot possibly mean a conflict over powers between the President and Congress, and between the Congress and the Supreme Court. Yet such a conflict over powers has developed during the Eisenhower Administration. A deliberate effort has been made to reduce Congress to a ratifying body, accepting instructions from the President, issued not directly by him but by his various assistants. His illnesses have had nothing to do with the growth of power among the White House staff. It is a theory of governmental operations arising out of the President's military experience and based on the assumption that what works in the Army can work in civil life.

The rejection of such instructions over the foreign aid issue was the first assertion by the House of Representatives during this Administration that it intends to function according to the Constitution. It was a major political setback for President Eisenhower, but that is hardly as important, one way or the other, as that Constitutional, orderly government should prevail.

The British parliamentary system functions more effectively, even in a period of crisis, than our division of power system under the Constitution. The French parliamentary system sometimes does not function at all because of proportional representation which lessens responsibility. The American method, when first designed, was an inevitable consequence of Colonial history and of the fact that this is a federation of sovereign states, each state possessing all powers of government except such as are granted to the Federal government by the Constitution. War and economic depressions encouraged public opinion to permit an expansion of Federal authority which really resulted in an expansion of Presidential authority.

States Look to Court

No state may secede from the Union as a consequence of the War Between the States, which was fought on that issue just as World War II was fought over the sanctity of treaties! On the other hand, the Constitution should protect the states from usurpation of power either by the President or the Congress. In a word, the states must depend upon the Supreme Court to defend their rights. Whenever the Supreme Court has exceeded its Constitutional authority and has become a third house of Congress, legislating by judicial decision, the confusion in the land has become very tense. Such tension now exists in both South and North over the Negro question. Although some of the decisions of the present Supreme Court over Communist cases have been as much an invasion of the Constitutional rights of the states, they did not stir much excitement.

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Except in the South, the expansion of the authority of the Supreme Court during the past year made hardly any impression. In fact, the Slochower decision was probably the most significant invasion of local authority by the Supreme Court and, in the opinion of many lawyers, the Court showed a lack of understanding of what is involved in their decision which is that a state legislature may not lay down the rules governing the employment of persons by the state or any agency thereof, such as a municipality or a Board of Education. If the Supreme Court is correct in this decision, what employment policy may a state, municipality or Board of Education adopt?

Data Withheld

The Executive has adopted an attitude toward Congress with regard to the provision of information which is obviously unsound and is, under any other system, untenable. How can Congress legislate without data and if the Executive is to withhold data, either Congress must legislate on order of the Executive or must withhold authorization for funds until the data is provided. It is usual, in the British system, for responsible ministers to answer questions in Parliament, although Sir Anthony Eden refused to answer questions about the Frogman accused of spying on a Russian ship.

The illegal practice of some Executive departments to keep unexpended balances, which under any correct bookkeeping system should be returned to the Treasury, is indicative of the Executive distrust of Congress. The departments which withhold unexpended balances, often by incorrect accountancy methods, assume that such funds may be used for purposes other than Congressional appropriations, which is clearly against the law.

This Constitutional situation must sooner or later lead to adjustment or to a breakdown of Constitutional government because any Executive official can expand his power without fear unless either the Courts or the People object.

These Days . . . . . By George Sokolsky

The President and Congress

THE SEPARATIONS of powers, inherent in our Constitution, cannot possibly mean a conflict over powers between the President and Congress, and between the Congress and the Supreme Court. Yet such a conflict over powers has developed during the Eisenhower Administration. A deliberate effort has been made to reduce Congress to a ratifying body, accepting instructions from the President, issued not directly by him but by his various assistants. His illnesses have had nothing to do with the growth of power among White House staff. It is a theory of government operations arising out of the President's military experience and based on the assumption that what works in the Army can work in civil life. The rejection of such instructions over the foreign aid issue was the first assertion by the House of Representatives during this Administration that it intends to function according to the Constitution. It was a major political setback for President Eisenhower, but that is hardly as important, one way or the other, as that constitutional, orderly government should prevail.

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BAUMGARDNER

COURT

THE SUPREME COURT'S RECENT TERM, ONE OF ITS BUSIEST, SAW THE EMERGENCE OF A REVIVED "LIBERAL WING" THAT INCLUDED CHIEF JUSTICE EARL WARREN.

ON 11 ISSUES THE FORMER CALIFORNIA GOVERNOR SIDED WITH JUSTICES HUGO L. BLACK AND WILLIAM O. DOUGLAS AGAINST A COURT MAJORITY. IN FOUR OF THOSE CASES THEY DREW THE SUPPORT OF JUSTICE TOM C. CLARK.

BLACK AND DOUGLAS, LONG KNOWN AS THE COURT'S OUTSTANDING LIBERALS, HAVE BEEN MOSTLY ALONE IN THEIR VIEWS SINCE THE DEATH IN 1949 OF JUSTICES WILEY B. RUTLEDGE AND FRANK MURPHY.

IF FOUR LIBERAL-MINDED MEMBERS OF THE COURT LINE UP TOGETHER, CASES ARE LIKELY TO BE ACCEPTED FOR REVIEW WHICH OTHERWISE MIGHT NOT GET IN. THIS IS BECAUSE FOUR VOTES ARE REQUIRED TO GRANT REVIEW.

ANOTHER GROUP THAT SHAPED UP SOMEWHAT LESS RIGIDLY ON THE CONSERVATIVE SIDE CONSISTED OF JUSTICES STANLEY F. REED, HAROLD H. BURTON AND SHERMAN MINTON. THESE THREE DISSENTED TOGETHER FROM THE DECISION WHICH STRUCK DOWN STATE SEDITION LAWS. IN SOME OTHER CASES THEY CARRIED WITH THEM EITHER JUSTICE JOHN MARSHALL HARLAN OR FELIX FRANKFURTER.

DOUGLAS ALSO FREQUENTLY JOINED IN DISSENTS WITH ONE OR MORE OF THE CONSERVATIVE GROUP. HE WROTE 12 DISSENTING OPINIONS, MORE THAN ANY OTHER JUSTICE DURING THE PAST SESSION.

THE WARREN-BLACK-DOUGLAS COMBINATION DISSENTED IN THE ANTI-TRUST CASE LOST BY THE GOVERNMENT AGAINST THE DU PONT CO.; IN THE AFFIRMATION OF MILITARY COURT-MARTIAL JURISDICTION OVER CIVILIAN DEPENDENTS ABROAD; IN THE DISMISSAL OF AN APPEAL BY A CALIFORNIA COMMUNIST WHO WAS DENIED JOB REINSTATEMENT; AND IN THE BACKING OF STATE POLICE POWER OVER UNRULY STRIKERS.

FRANKFURTER WROTE MORE OPINIONS THAN ANY OTHER JUSTICE--33. SOMETIMES HE SPOKE FOR THE MAJORITY, SOMETIMES FOR DISSENTERS AND AND SOMETIMES FOR HIMSELF ALONE. HE LABELED AN OPINION A "RESERVATION." DOUGLAS CAME NEXT WITH 24 OPINIONS. HARLAN FOLLOWED WITH 19.

CLARK, WHO STARTED HIS SUPREME COURT CAREER SEVEN YEARS AGO AS ONE OF THE MOST SILENT MEMBERS OF THE BENCH, ENDED THIS PAST TERM WITH THE HEAVIEST LOAD OF MAJORITY OPINIONS--11. DOUGLAS WROTE 10. FIVE OTHER JUSTICES WROTE NINE EACH.

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Supreme Court And Security

The Supreme Court, already under attack from several quarters, last week handed down a security case decision that many observers believed would set off new pressures to restrict its powers. Almost immediately, an attempt was announced in Congress to veto the ruling with legislation—a course increasingly popular among Congressmen who disagree with a court decision.

In ruling that only those Federal employes in sensitive positions may be dismissed as security risks, the high court delivered a major blow to the Eisenhower administration's security system. The 6-3 decision, written by President Eisenhower's most recent appointee to the court, Justice John M. Harlan, said in effect that the President had violated the law in applying the security program to all Government workers. The 1950 law which is the foundation of the program, the justices said, legally covers only the jobs "concerned with the Nation's security."

About half of the so-called "risks" fired under the system, set up in 1953, were in non-sensitive positions. All those persons now may sue for reinstatement, or they may ask the Court of Claims to order Uncle Sam to pay them their back salaries.

Administration Acts

On Friday, Attorney General Herbert Brownell issued an order suspending the application of the program to non-sensitive employes. He said that the action was taken to assure that the Executive Branch "complies fully" with the court's decision. The announcement gave fresh impetus on Capitol Hill to earlier demands that Congress enact legislation which, in effect, would overturn the ruling.

Representative Walter, security-conscious Democrat of Pennsylvania, immediately got busy after the decision and wrote a bill which he said would make applicable to all Government agencies and all Government activities the 1950 Internal Security Act allowing summary firing of Federal employes designated as security risks. Senator James O. Eastland, Democrat of Mississippi, also an advocate of iron-clad security procedures, announced at the same time that he would introduce a similar bill in the Senate.

The court's dissenting opinion, by Justice Tom C. Clark, who was joined by Justices Sherman Minton and Stanley F. Reed, said, "By striking it (the executive order) down, the court raises a question as to the constitutional power of the President to authorize dismissal of executive employes whose further employment he believes to be inconsistent with national security."

The majority opinion, however, made a special point in saying that such an employe could be fired by other methods, if need be.

'Good Sense' Says Cain

Former Republican Senator Harry P. Cain, an outspoken critic of the President's handling of security cases and a member of the Subversive Activities Control Board, hailed the decision as "American good sense." Mr. Cain added that "the court has affirmed what many of us have been saying—that it is neither sensible nor honest to apply the security system to non-security jobs."

On Tuesday, the day after the court's decision, Mr. Cain told the Senate Subcommittee on Constitutional Rights that Mr. Eisenhower revealed to him in a recent White House conference that he did not know that there was no distinction between security risks and loyalty risks in the application of the law. He told the subcommittee about the case of Irving I. August, Korean war veteran who was dropped from his Red Cross job after the Army had called him a security risk. Mr. Cain said he had told the President about the August case, and that the President had become indignant. The next day it was reported that Mr. Cain's appeal to the President had won Mr. August a hearing in his case—he had been given none by the Army, which had labeled him a risk in answering a Red Cross job questionnaire.

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N. Y. Daily News
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From "Review of the Week" on Editorial Pg

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Court-Martialing Civilians

The general jubilation over the recent action of the Supreme Court in curbing some of the abuses and inequities of the Administration's security program has deflected popular attention from what was probably an equally momentous ruling. This ruling, applied in two separate cases, upheld the right of the military authorities to try under the uniform code of military justice cases involving crimes committed by civilian dependents living with American servicemen overseas.

One of the cases was that of Mrs. Dorothy Krueger Smith, daughter of an American general, who in October, 1952, stabbed and killed her husband, an Army colonel, in their residence at Tokyo. The other was that of Mrs. Clarice B. Covert, wife of an Air Force master sergeant stationed in Great Britain, who in March, 1953, attacked and slew her husband with an ax. Each was convicted of murder by a military court.

General Krueger, in an action in behalf of his daughter, sought to have this verdict nullified on the ground that she had been deprived of her constitutional right to trial by jury. A District Court in West Virginia, before which the case was brought, declined to order her release from the Federal Reformatory and this judgment was affirmed by the Supreme Court. A similar plea was brought here in the District of Columbia in behalf of Mrs. Covert. Judge Tamm, basing his decision on the celebrated case of Pvt. Robert Toth, ruled that the military had no authority to try Mrs. Covert. This judgment was reversed by the Supreme Court, which found the Toth case to be irrelevant to the questions at issue. Mrs. Covert, however, is to be given a new trial by court-martial, ordered by the Military Court of Appeals on the ground that certain evidence concerning her mental condition was improperly excluded from the original trial in England.

The position of the Supreme Court, as set forth in the majority opinion by Mr. Justice Clark, is based in part on certain precedents involving actions of consular courts, enforcement of maritime law on the high seas, and cases arising in American territories outside the continental limits of the United States where the right of jury trial has been held inapplicable. It is also based on the respective agreements with Japan and Great Britain to waive jurisdiction in cases involving "persons serving with, employed by, or accompanying the armed forces" of the United States in those countries. The court implies that the purpose of such agreements and of the code itself is to assure "that American servicemen and their dependents throughout the world would not be subject to widely varying standards of justice unfamiliar to our people."

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BALTIMORE SUN

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This ruling, we suspect, will increase the uneasiness of those who, like Senator Bricker, are frightened by the possibilities of the treaty-making power, and of those who are alarmed by every extension of the judicial powers of the military. In fairness to the court it must be observed that the juridical and constitutional problems involved in these cases are new, complex and difficult. This, however, seems to us all the more reason to deplore the haste with which they were resolved and the doubtful analogies and shaky reasoning by which they are supported.

The desire of the court to clear its calendar is understandable; but in a case so important it would have been better to wait at least until the objections of the dissident judges, Messrs. Warren, Black and Douglas, had been formulated. This seems to have been much in the mind of Mr. Justice Frankfurter, who, though he refrained from voting on the decision, was greatly perturbed by the court's acknowledged evasion of "the immediately pertinent constitutional provision bearing on the difficulties raised by these cases." In other words the court by refusing to reexamine the basic power granted to Congress "to make rules for the government and regulation of the land and naval forces," and to determine whether civilian dependents can properly be considered part of these forces, has greatly confused the whole grave constitutional question.

NEW YORK DAILY (JNE 18th - (Editoria

SUPREI SCORE CARD

In the term that ended a week ago today, the Supreme Court decided -- usually by split votes - 13 cases having to do in one way or another with governmental efforts to smash the criminal Communist conspiracy to overthrow the U.S.Government by force and violense.

We offer here a casey-by-case score card, for any use you may care to make of it.

In seven of these instances the American side won. The court -

(1) Sustained the Federal Immunity Act, guarangeeing a witness against prosecution if he testifies in a security case; and making him liable for contempt if he doesn't;
(2) Declared Communist Party membership just cause for a California chemical manufacturer's firing of an employe;
(3) Endorsesthe Attorney General's right to use evidence from secret informers in deciding on suspension of an order of deportation;
(4) Okayed use, in a Los Angeles deportation proceeding, of affidavits concerning Communist Party membership from two persons in Hawaii;
(5) Held that an employer, in an unfair labor practices case before the NLRB, may bring up a charge that a union representative has not filed a non-Communist affidavit as required by the Taft-Hartley Act;
(6) Refused to interfere with Attorney General Herbert Brownell's plan to declare the National Lawyers Guild a subversive organization;
(7) Declined to consider an appeal by a teacher fired from San Diego, Calif., State College for refusing to answer two questions concerning Communist Party membership.

So far so good. But now kindly have a look at six decisions which could not but give aid and comfort to the criminal Communist conspirators. The Supreme Court -

(1) Threw out the conviction of Aommunist Steve Nelson under the Pennsylvania state sedition law. This automatically knocked over 42 states' sedition laws, and left it to the Federal Government alone to prosecute Commies for plotting its overthorw - and too bad if some day we have an Attorney General who is soft toward Reds;
(2) Overrode the New York City Charter provision for automatic dismissal of any city employe who clams up on Communism behind the Fifth Amendment.
(3) Held that the President's federal employe security program cannot be invoked against employes in non-sensitive Government jobs;
(4) Declined to interfere with two lower-court rulings that tenants in federal housing projects cannot be required to sign loyalty oaths.
(5) Ruled that a U. S. Attorney, starting a denaturalization proceeding, must produce affidavits showing "good cause"for such action;
(6) Decided that a union which has refused to obey the Taft-Hartley non-Communist affidavit requirement nevertheless retains its right of peaceful picketing.

Quantitatively, to use a statistician's $7 word, the American side won by a score of 7-6 in the Supreme Court's recent term. Qualitatively, to use another jawbreaker, the Communist side won heavily.

That is to say that the firstthree cases in the second list printed above far outweighed all seven cases in the first list, as regards their crippling effect on governmental efforts to smash the Communist supremacy.

Indignation in Congress over this Supreme Court perofrmance is approaching the flash point. That in all likelihood means most Americans are angry and getting more so, since Congress almost without fail reflects the prevailing mood of the people at any given time.

Proposals to curb the Supreme Court and reverse several of these pro-Communist decisions by Act of Congress are being offered in scads.

We hope these high judicial errors (as we see them) may be remedied somehow - without any extremist measures which could prove worse than the evil at which they were aimed.

If extremists do force such measures onto the statute books, though, it looks to us as if nobody but the nine eminent gentlemen on the big bench will be to blame.

Attorney General Brownell Is Opposed To Judicial Reforms

We are not greatly surprised that Attorney General Brownell has announced his opposition to judiciary reform proposals sponsored by Mississippi's Senator John C. Stennis and others in Congress alarmed by the rapid deterioration of Supreme Court integrity.

These proposals would require at least five years judicial experience of all prospective nominees to our highest court of law. Speaking before the National Press Club in Washington the other day, General Brownell took what seems to us as a most unusual stand.

This official who heads the U. S. Department of Justice went on record against the proposed reforms because he thinks the President "should have latitude to make his own choice for the high bench. "The suggested limitations, in General Brownell's own words, "might bring results that are unforeseen."

The U. S. Attorney General apparently forgets or ignores the tragic fact that inexperienced, politically-minded judges have already brought "unforeseen results" so calamitous as to place the nation's highest court into the worst disrepute of its entire history. It is difficult to see how requiring a judge to have at least five years experience could be harmful in any way, except of course from a standpoint of politics.

In this connection, General Brownell's repeated use of his high office for political purposes — that of currying favor with the NAACP — has given rise to the suspicion that he places party interests above the national welfare. This suspicion is greatly heightened by General Brownell's avowed opposition to badly needed judicial reforms. Perhaps he fears that a less liant Court might jeopardize his own position and alienate the votes of those organized minority pressure groups which he has served so consistently.

Mr. Tolson
Mr. Nichols
Mr. Boardman
Mr. Belmont
Mr. Mason
Mr. Mohr
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. Nease
Mr. Winterrowd
Tele. Room
Mr. Holloman
Miss Gandy

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Solid Reason Why Court Should Have Able Judges

Supporting testimony to a recent proposal of Senator Stennis that appointees to the United States Supreme Court should be required to have had several years of judicial experience, can be seen in the case of the railroad brakeman and his $90,000.

The Supreme Court, by 5 to 4, reversed its previous 5-to-4 decision affirming the grant of $90,000 in a damage suit brought by the brakeman.

The issue now goes back to the original district court that heard the trial. If the matter is tried again and it goes against the brakeman, he would be forced to return the money.

But he has already spent a good piece of it, and as the minority opinion in the latest reversal said, "there should be a finality somewhere."

This ring around the rosy adds to the number of split decisions and reversals that gives Supreme Court verdicts, as the supreme law of the land, a terrible beating in the public's estimation.

It emphasizes the fact that eight members of the court have had little or no judicial experience.

And of course it emphasizes the need of having on our highest tribunal men matured by actual experience on the bench.

Nowadays, even astute constitutional lawyers are bewildered as to what exactly is law in many instances.

That is certainly not a warrant of continued public confidence in the august body which, by interpreting the Constitution, gives final direction to the administration of justice.

There is a slow awakening throughout the nation to the fact that the Supreme Court is now usurping the lawmaking function instead of sticking to its job of interpreting the law.

The "Black Monday" ruling on segregation was a glaring illustration of this usurpation of power, and unless Congress is awakened to what the Supreme Court is doing it will soon find itself wholly deprived of lawmaking powers.

T. M. HEDERMAN, EDITOR
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Has Chief Justice Warren Joined Court's Liberal Bloc?

By MAX GORDON

IT IS THE contention of the New York Daily News that the current howl of Senators McCarthy and Eastland for curbs on the Supreme Court "reflects the prevailing mood of the people."

The howl is taking the form of various bills to put limits on the court because of its recent decisions to restore a measure of the democracy lost during the era of McCarthyism, to spread democracy to the Negro people, and to give back some of labor's lost rights.

Accompanying the Daily News editorial of June 18 on the "Supreme Court Score Card" is a smiling picture of Chief Justice Earl Warren. The editorial carefully refrains from discussing Warren's attitude in the decisions it condemns.

Warren, it will be recalled, was the man to whom the Republicans turned in fright and desperation last fall when President Eisenhower's heart attack made it seem he was out of the picture. The various polls of public opinion confirmed Warren's popularity. Some even showed he would be more popular as a candidate than Ike.

Warren categorically refuses to run. But the point here is that Warren was revealed as being very much in tune with "the prevailing mood of the people."

And on the major decisions of the Supreme Court which have enraged the News, McCarthy and Eastland, Warren has regularly lined up with the court liberals.

We submit there is a connection between Warren's liberal position on the court and his pull among voters.

★

A LOOK AT THE line-up in recent major decisions has led commentators to note that the erstwhile consistently liberal duo of Justices Hugo Black and William Douglas has now become a trio. One leading news columnist has figured out that in seven major dissents from majority decisions, Justices Warren, Black and Douglas stood together. On five others, they were joined by either Clark or Frankfurter.

But the Daily News and the reactionary congressional bloc are not so much concerned with dissents as with democratic and pro-labor majority decisions. And in these, the Warren-Black-Douglas trio almost invariably formed the nucleus for the majority.

The decision on desegregation of schools, delivered by Warren, was, of course, unanimous. But other court decisions on civil rights, civil liberty and the right of labor were not. Most were either five-to-four or six-to-three.

A few of the most important which have aroused the ire of McCarthyite reaction are the Nelson decision outlawing state sedition laws; invalidation of the McCarran Act decision outlawing the Communist Party; a ruling that the Taft-Hartley "cooling off" provision did not apply to strikes against unfair labor practices, the Slochower decision barring limitations on the Fifth Amendment; the ruling against "security" purges in non-sensitive government jobs.

In all of these, Warren sided with Black and Douglas to form the nucleus of the majority.

★

LEADING dissents in which [illegible] three joined include the Kohler decision in which the majority [illegible] held state bars to mass picketing; the Cutter Laboratory decision, in which the majority said it was okay to fire an alleged Communist; the majority ruling that DuPont had not monopolized the cellophane industry illegally, etc.

Chief complaint of reactionaries against court decisions favorable to democracy is that they undermine "states rights."

The way is thus set for a coalition of anti-labor Republicans and Dixiecrat Democrats to try to [illegible] the court's wings in behalf of reaction. The "prevailing mood of the people" against any such effort will need to be put to work to block it. Not that the court is a consistent and reliable champion of liberty. It has, however, been somewhat responsive to the current anti-McCarthy atmosphere and needs to be kept going in that direction.

JUSTICE WARREN

Times Herald
Wash. News
Wash. Star
N. Y. Herald Tribune
N. Y. Mirror
N. Y. Daily News
Daily Worker
The Worker
New Leader

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Eastland, McCarthy and Mun
In Attack on U.S. Supreme C

WASHINGTON, June 26.– Sen. Joseph R. McCarthy (R-Wis) charged today that Chief Justice Earl Warren has "become a hero" to the Daily Worker.

"I don't say that he is a Communist, but there is something radically wrong with him," McCarthy said.

McCarthy attacked Warren at a Senate Internal Security subcommittee hearing on bills to nullify a recent Supreme Court ruling which prohibited security risk firings in "non-sensitive" Federal jobs.

"I think it is extremely unfortunate he was ever confirmed as Chief Justice," McCarthy said.

He said Warren "had practically no legal background" and "much of his political background was left wing."

Subcommittee chairman James O. Eastland (D-Miss) and Sen. Karl E. Mundt (R-SD) also attacked the Supreme Court ruling on security risks. The three Senators are authors of different bills to overturn the ruling. (See story, page 7).

McCarthy said the court "is presenting one of the gravest threats to our system of government" at any time in the nation's history.

"Willful, irresponsible judges are handling our Constitution like it was a meaningless scrap of paper," McCarthy said.

He demanded that Congress "prevent" the court from "usurping" legislative and executive powers.

On the security risk decision, he charged that the court made a "spurious" distinction between sensitive and non-sensitive jobs. He said Congress should make security firings applicable to all Federal jobs, rather than leaving it up to the executive branch to do so, "because we don't know what kind of a President we will have in the future."

Eastland said the Supreme Court "seems to be issuing just one pro-Communist decision after another."

"It appears that a majority of the judges are being influenced by some secret, powerful, pro-Communist element," he said.

He accused the court of writing a "pro-Communist provision" that worker in a non-sensitive job "doesn't have to be loyal."

Mundt said the Supreme Court's security risk decision "strikes a mortal blow at our security system."

He said Congress would be neglecting its duty if it failed to approve legislation to "patch up the security system after the Supreme Court ripped from it a security shield."

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BAUMGARDNER

Strange Companions:

High Court's 'Friends'

By E. F. TOMPKINS

REP. KENNETH KEATING, N. Y. Republican, was in strange company the other day as a defender of the U. S. Supreme Court.

Against him stood Sens. Eastland, McCarthy and Mundt, with many other Republicans and Democrats in Congress, and the Governors of nearly all the States. On his side were the American Civil Liberties Union, the Americans for Democratic Action, and the Communist "Daily Worker."

Under discussion were certain recent decisions by the Supreme Court. Some of these have debilitated the Nation's internal security systems and are benefiting Communists. Others have violated the constitutional principle of States' Rights. And all of the decisions have either usurped the legislative powers of Congress or invaded the executive powers of the Presidency. But Rep. Keating deplored such "serious charges" because the Judiciary is also "a branch of our Government."

"That sort of thing," he said, "undermines the people's confidence in our highest Court and menaces our Liberty."

The nub of dispute is, of course, that unconstitutional Court decrees are the real danger.

Consequently, Congressman Keating's statements must be gravely regarded, especially for the reason that Mr. Keating is ranking Republican Member of the House Judiciary Committee, which at this time was considering proposed legislation to nullify the Supreme Court's actions. In fact, about 100 corrective bills have been introduced, and one of them had already been approved by Rep. Keating's own Committee. This is a Bill permitting each of the 48 States to enact and enforce anti-sedition laws, thereby rescinding a Supreme Court decision which held, unwarrantably, that Congress had "pre-empted" the field by passing the Smith Act.

On June 27, the Conference of Governors at Atlantic City unanimously adopted a Resolution criticizing the Supreme Court for it decision invalidating State "right-to-work" laws, as well as the decision canceling State loyalty legislation. The Conference declared:

"Judicial interpretations of this character seriously handicap the States in the regulation and administration of their internal affairs."

The Governors called upon Congress to pass the pending States' Rights Bills.

Conversely, the ACLU, the ADA and the "Daily Worker" coincided in opposing a Bill to reverse the Supreme Court decision "debarring security dismissals of Government employes in non-sensitive positions."

And on June 28, the "Daily Worker" revived its smear-word "McCarthyism" to besmirch the 48 Governors and 100 Members of Congress. It denounced Sens. Eastland, McCarthy and Mundt for an "obscene" or "imbecilic performance."

Characteristically, the Communist organ accused the supporters of constitutional government of a "conspiracy against the Supreme Court."

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Supreme Court Controver[illegible]
—Within and Without

By ARTHUR KROCK

WASHINGTON, June 13—The current term of the Supreme Court has ended in one of those heated public disputes over its rulings that recur from time to time. And once again the court's harshest critics have been its own dissenting justices who have charged the majority with inferences unsupported by the facts and with assumptions of jurisdiction unwarranted by Constitution or statute.

These attacks on the court majority, and comparable or more severe criticisms in Congress and among the public, have been countered with lavish praise of the tribunal by a group, particularly in the East, which has great influence on national opinion because its members are skillfully articulate and many have access to important channels of public information. Between these critics and defenders of the court is the great unorganized, inarticulate mass of the people. No Supreme Court referendum is available to this mass such as the polls provide it with in the cases of candidates for office. Hence there is no index to its prevailing opinion.

Divided on all but one of the findings below, the tribunal proclaimed the following to be "the law of the land":

¶Though the author of the Smith anti-sedition act in the House debate disavowed the intent of Congress therewith to pre-empt the field for the Federal Government, and the act was incorporated in a section of the Federal code prefaced by the statement that nothing in that section precludes similar state activity, Congress must be assumed to have intended to pre-empt the field. Consequently a sister law in Pennsylvania was unconstitutional. (Justices Reed, Burton and Minton, dissenting, said: "The majority's position in this case cannot be reconciled with [the] clear authorization of Congress" of state legislation to the same purpose.)

Civil Rights Decisions

¶The summary dismissal by New York State of a Brooklyn College professor for taking the Fifth Amendment before a Senate subcommittee violated his right of "due process." (Dissenting were Justices Reed, Burton, Minton and Harlan, the latter asserting that the majority had "unduly circumscribed the power of the state to insure the qualifications of its teachers.")

¶By "national security" Congress in the 1950 act meant to authorize dismissals in that interest only for activities of Government personnel directly concerned [illegible]

valid under [illegible] except for incumbents of "[illegible]e" positions, not otherwise defined by the court. (Dissenting, Justices Clark, Reed and Minton charged the majority with having "stricken down the most effective weapon against subversive activity available to the Government," and that the act and the orders were "subverted by the technical interpretation" made by the majority.)

¶Compulsory unionism, as authorized by Congress in the Railway Labor Act, may be enforced on railway employes who object to being unionized or lose their jobs, and this compulsion infringes none of their privileges in the Bill of Rights. (Unanimous.)

¶A plea of indigence was sufficient under the Fourteenth Amendment to require Illinois to furnish a convicted burglar with a free transcript of his trial court record. (Dissenting Justices Harlan, Burton, Reed and Minton said that nothing in the amendment justified the ruling, which also "is beyond the province of this court to tell Illinois.")

Communism and the Fifth

¶The Federal law of 1954 is constitutional that compels a grand jury witness to testify in national security cases in exchange for immunity from criminal prosecution. (To this ruling by Justice Frankfurter, Justices Douglas and Black dissented, maintaining that "the right of silence" as guaranteed by the Fifth Amendment "is beyond the reach of Congress.")

¶Membership in the Communist party was "just cause," a term in the contract between Cutter Laboratories and the union, for the dismissal of a woman employe. (Dissenting, the Chief Justice and Justices Douglas and Black asserted that, when such a dismissal comes before the courts, the courts "may not be implicated in such a discriminatory scheme" because that affixes the "imprimatur of the Government." Also the dismissal violated the First and Fourteenth Amendments, "since the Government may not disqualify one, political group from employment."

These are a few of the more controversial, and far from "clear-cut," decisions, and it will be noted that when the court divided the split was 5 to 4 twice, 6 to 3 three times and 7 to 2 once. And when in a rare affirmation of state sovereignty the majority held that the Taft-Hartley Act did not deprive Wisconsin's courts of the power to enforce the state law against union violence and intimidation toward non-striking employes, the Chief Justice and Justices Douglas and Black accused the majority of "opening the door to [illegible]

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MINTON'S SUCCESSOR

ORDINARILY, the average citizen could think of two common denominators for three of our more prominent Republicans—Thomas Dewey, John Foster Dulles, and Herbert Brownell. They are all reactionary Republicans and citizens of New York state.

To these another common characteristic has been added—each of them has been prominently mentioned as a possible successor to Associate Justice Sherman Minton, who will resign from the Supreme Court as of Oct. 15.

- Dewey would bring to the court the odor of the money changers' counting room—the Chase-Manhattan Bank, whose darling he is.
- Dulles would press the court's decisions in line with the brink-of-disaster theory, at which he has declared himself so adept.
- Were Brownell appointed, the judicial robe would be draped on that man who shares with Vice-President Nixon the role of administration witchhunter.

The democratic struggle in the nation today—centered on the civil rights of the Negro people—points the direction that the appointment of Minton's successor should take.

The challenge of the racists in the South—attempting to intimidate Negro and white children from attending school in accord with the Supreme Court decision—should be met by the appointment of a Negro justice.

Such an appointment would, furthermore, remove a blot that has endured for the life of the court—there has never been a judge from among the one-tenth of our population that is Negro.

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THESE DAYS:

Supreme Court Faces Criticism

By GEORGE E. SOKOLSKY

IT HAS happened before and it is happening now that the Supreme Court of the United States is a controversial factor in a Presidential election. Nobody can vote for a Justice of the Supreme Court. He is appointed by the President, is confirmed by the Senate and holds office for life, unless impeached for misconduct or retires for old age. Once appointed, for whatever reason, a Supreme Court Justice sits no matter how often the Administration changes during his life-time. The present Chief Justice, Earl Warren, former Governor of California, had never before had any judicial experience. His appointment was obviously political. While that in no way reflects unfavorably upon his capabilities, he has become a subject for controversy since he was elevated to the bench.

The principal criticism of the Court and the cause of its being an issue in this election is the old American quarrel over states' rights. Historically, the issue is a simple one. The United States is not a nation that grew out of the soil; it was formed. It was formed by the 13 colonies that rebelled against Great Britain in 1776 by enunciating the Declaration of Independence. They attempted to govern themselves under the Articles of Confederation which were so loose that practically speaking no national government could function. Under the influence of the Federalist Party led by Alexander Hamilton, the Constitution was written and adopted and this has been our law since.

Authority Expanded

While the Constitution does establish a central government with specific authority, it protects states' rights by the 10th Amendment which declares.

"The powers not granted to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people."

The War Between the States settled the question of the right of a sovereign state to secede from the United States if it so chooses. Although the War Between the States did strengthen the federal government, it did not abolish states' rights and no amendment was ever adopted limiting the 10th Amendment or abolishing it.

Over the years, particularly during depressions and wars, the authority of the central government tended to expand and powers employed in such periods rarely were returned to the states of the people thereof.

Recent Supreme Court decisions have been regarded as tending to deprive the states of rights to which they are entitled by the Constitution. The Southern states, for instance, claim that they were making great progress in the solution of the Negro question, but that a Supreme Court decision aroused such passions in the South that it set back racial relations in the South several decades. This decision is definitely an anti-states' rights decision.

Another example is the rejection of the conviction of the Communist Steve Nelson under the sedition law of the State of Pennsylvania. Under this decision of the Supreme Court, the sedition laws of 42 states were nullified. The attitude of the Court was that as long as a federal law covering a subject exists, a state law is unnecessary. Many constitutional lawyers regard this decision as bad law.

New Lease of Life

Another such instance was the decision over-riding the provision in the New York City Charter for the automatic dismissal of any city employee who declines to discuss his relations to the Communist Party on the grounds of the protectives of the Fifth Amendment. Many lawyers hold that the Supreme Court exceeded its authority in this case.

Out of 13 decisions dealing with Communist cases, the Supreme Court decided six in such a manner that the Communist cause has gained a new lease of life. If the Supreme Court pursued abstract justice as an end in itself, it is beyond and above criticism; in that case, however, the Court must recognize that it is not a third legislative chamber and that the Constitution does not provide for such a body.

On the other hand, no government agency can altogether flout public opinion. The current Supreme Court has run counter to public opinion and thereby has become a political issue in the country. If the Court is highly respected, as it was when Edward D. White or William Howard Taft or Charles Evans Hughes was Chief Justice, it could pursue a course which caused men to pause in their attitudes. Earl Warren has not yet won such confidence or respect.

CAPITOL STUFF

By JOHN O'DONNELL

Washington, Sept. 10.—Vacation memoirs of a political reporter sunning himself on the Cape Cod Beach of Dennis and the Nantucket hideaway at Wauwinet:

At the moment, the reporter was trying to sit on page one of a Boston newspaper and to forget the national conventions at San Francisco and Chicago. He was meditating on nothing more important than whether it was worthwhile to take another swim, drive out to the golf course or just take a nap on the beach. Then came the voice:

"Mind if I ask you a question?"

Instead of being honest and saying "Yes," this reporter just grunted and then got an earful, all about the Supreme Court and the November election. It went this way:

"See you've got the paper there about Supreme Court Justice Sherman Minton resigning three weeks before the election. How do you figure this one? Will it help Ike?"

Well, it turns out that the destroyer of happy vacation dreams is a big shot lawyer and should be listened to and answered. So this reporter paws some of the sand out of his swimming trunks and grunts:

"About Ike I wouldn't know. But about Harry Truman I'll bet you everything we've got on this beach. If there's one professional politician who's sore as hell at his appointee to the high court it's Truman and the man he's sore at is Sherm Minton whom Truman picked back in '49.

Justice Minton
An election plum for Ike

"Minton was strictly a political payoff to the high bench just as every other Supreme Court justice was a political payoff from the time F.D.R. made his first appointment of Hugo Black back in 1937.

"Now Minton resigns just before the election and hands Eisenhower on a platter the juiciest election plum and vote getting nomination possible. If Ike plays his cards right he can add hundreds of thousands of votes to his count come next Nov. 6. And now Truman is tearing his hair wondering why his appointee Minton didn't make his resignation effective Nov. 15 instead of Oct. 15."

From the Days of Justice Marshall

Sad but true, Presidential appointments to the Supreme Court have smacked heavily of partisan politics—even back to the days when the great John Marshall (1755-1835) was named chief justice by President John Adams. But from those days of the infant republic there had never been such a political debauchery of federal judiciary, from bottom to top, all the way from U. S. attorneys to the Supreme Court, than that which existed in the long stretch of years from 1933 to 1953 under the White House regimes of F.D.R. and Harry Truman.

The result of this judicial disaster is that the federal judiciary, whose years and experience on the bench should have given them training for a high court position, are now for the most part the intellectual, the social incompetents named by F.D.R. and Truman strictly on the basis of political award.

Also, it should be borne in mind, F.D.R.—even before his abortive effort "to pack the court" in 1937 after it had outlawed some of his pet New Deal doctrines—went along with the idea that membership on the high tribunal should be decided along geographical, religious and racial lines.

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Thin Pickings for Ike's Selection

Because he thought the eastern section of the nation had too many representatives on the high bench, F. D. R. 20 years ago passed over such outstanding federal jurists as New York's Justices Learned and Augustus Hand, Dean Roscoe Pound of Harvard Law School, former New York State Court of Appeals Justice Samuel Seabury, and the brilliant chief judge of the U. S. Court of Appeals, John J. Parker of North Carolina.

Ike would like to get away from the geographical limitations if possible. He wants to escape from the New Deal idea that it is politically necessary to have a Catholic and a Jew on the high bench. Two years ago, talking at his press conference about his nomination of the then Gov. Earl Warren of California as chief justice, Eisenhower did some thinking out loud and came up with the observations:

"From my viewpoint in the average case, the normal case for chief justices, I should think it would be a good practice to bring in people who have had real experience on the courts. I do believe that the Supreme Court as a whole ought to offer great opportunity to judges who have served on the courts."

Now the problem becomes ever more difficult—so far as picking a Supreme Court justice by reaching down into the federal judiciary or the state Supreme Courts or deans of outstanding law schools to fill the vacancy created by Justice Minton who retires at 65.

Another justice who wishes to bow out of the picture is 73-year-old Stanley Reed, the charming, easy-going Kentuckian whom F.D.R. named to the bench 18 years ago. But neither Reed nor Black intends to retire until after the election next November and Frankfurter at 75 points to the mental alertness of famed octogenerians and intends to hold down his seat to the end.

You hear the names of three New Yorkers as possible Eisenhower selections. These are former Gov. Thomas E. Dewey, Attorney General Herbert Brownell and—most likely—Circuit Court Judge Harold R. Medina, now 68, famed for his judicial pose and forebearance during the trial of the Communist leaders.

But here comes the ancient political handicap. All are from New York. And Ike's last selection to the high bench was New Yorker John Marshall Harlan. The politicians are suggesting a middle westerner preferably from the Senate whose confirmation would be easy. They bring up the name of Ohio's Sen. John Bricker.

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NIXON SEES SENATE O. K. OF NEGRO ON HIGH COURT

By a Star Staff Correspondent

ON NIXON CAMPAIGN TOUR.—Vice President Nixon believes that a Negro, if nominated for the Supreme Court, would be confirmed by the Senate.

This was the view he expressed in answer to a double-barreled question put to him at a midnight press conference in Nashville, Tenn., last night. The question was put by a reporter for a Nashville Negro newspaper.

The reporter said there had been reports that Judge William Hastie of the United States Court of Appeals in Philadelphia might be appointed to an upcoming vacancy on the court. (Justice Sherman Minton is resigning next month.) He wanted to know if President Eisenhower might appoint a Negro to the bench.

Mr. Nixon said he had often discussed the tests he would apply in filling high offices and those tests were on the basis of qualifications regardless of race or color. He thought the Senate would do likewise.

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These Days . . . . . By George Sokolsky

Policy and the Courts

I CAME across a startling sentence in a very interesting article on "Judicial Self-Restraint," by John P. Roche of Haverford College, which read:

Sokolsky

". . . Since the intention of the framers is essentially irrelevant except to antiquarians and polemicists, it is unnecessary to examine further the matter of origins."

This is not taken out of context, for the following sentence is: "The fact is that the United States Supreme Court and the inferior Federal courts under the oversight of the high court, have enormous policy-making functions."

What all this amounts to is that the Supreme Court, in fact, all the Federal courts are daily making policy by judicial decisions and when to them are added the burgeoning administrative agencies of the Federal Government, the intent of the framers of the Constitution that legislation should be the function of Congress is being violated. The explanation that an unsatisfactory decision of the Supreme Court can be rectified by a constitutional amendment gives little encouragement to those who fear encroachment by the court.

FEDERAL judges do enter upon political policy-making decisions which can cause damage and which do not reflect public opinion, as Federal judges are appointed by the President for life or good behavior and in no manner need to reflect or pay attention to public opinion. Some of the recent decisions of Federal judges in immigration, passport and Communist cases are neither good law nor do they reflect public opinion, but they follow a pattern of liberalizing the law and of lessening the effectiveness of administrative procedures which, it would seem from the Constitution, are functions of Congress and not of the courts. In the passport cases, the courts have assumed an authority over the executive which it was never intended that they should have.

If the Congress rejects public opinion, the voters can, at elections, change their representation in Congress, but the citizen has no means of expressing opposition to a judge; nay, he may even be held in contempt of court for questioning the omniscience of one who wears the robe, even if he knows in detail how the judge came to be appointed and that his qualifications as a lawyer and a judge were not even considered, but that all that mattered was political expediency. I personally witnessed such maneuvers in the 1952 Republican Convention, as I supposed dozens of other persons did.

IN THE 1956 campaign, the principal issue was made not by the President, a political official, not by Congress, elected representatives of the people, but by the Supreme Court. That issue is segregation and what the candidates of both parties proclaim is that everybody must abide by the decision of the Court. In a word, they, the candidates, are ducking the issue entirely and are hiding beneath the black robes of judical fiat.

That that leads to rioting, to boycotts, to the disturbed lives of young people, to dissent and dissatisfaction makes no difference to the judges. They have spoken. Perhaps, from the standpoint of the law, they have spoken correctly. But from the standpoint of the political situation, these judges have taken a political action, broader than the law, far beyond the demands of public opinion, and they have created a political plateau upon which the candidates for public office must walk.

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CHIEF JUSTICE WARREN —The Supreme Court seemed to warm up when Earl Warren became its presiding officer on Oct. 5, 1953. He is a genial, gentleman who combined dignity with affability. He makes lawyers feel that they are welcome at the bar of the court.

Justice Warren, now 65, served three terms as Governor of California. He was the Republican Vice-Presidential candidate in 1948.

His natural talents for getting along with people were refined in the crucible of politics. He brought with them to the high bench a discernible tough-mindedness undoubtedly annealed in fires of political and administrative strife.

The Chief Justice carried his political liberalism to the court and it has been reflected in his decisions and his dissents. He has shown, thus far, a keener awareness of the humanities than the complex profundities of the law.

His written opinions say with clarity and force what he wants to say. His questions, asked from the bench during arguments, seldom lack legal or philosophical significance.

His colleagues like him and there is no doubt of his strong influence on the Court.

HUGO L. BLACK—The transition of Justice Black from the [illegible] to the [illegible] bench [illegible] of modern [illegible] Those who knew him as a Senator from Alabama in the fighting New Deal days often wonder at it.

Justice Black appears never to be in doubt as to the meaning or the application of the law. He listens more than he talks. His questions, asked quietly and infrequently, reflect an understanding of the issues of the case under consideration and sometimes a tinge of impatience with lawyers who project different concepts from those that have a direct bearing.

Justice Black's opinions are forceful and clearly stated. In some respects he is the court's best phrase-maker, perhaps lacking the classical gift, but with no circumlocutions.

The Alabaman works hard and has few interests except the court. He is now 70, with nearly twenty years of service; his retirement is the not too distant future is foreseeable. As long as he is on the court, however, he probably will spearhead its "liberal" element and remain the champion of the "underdog" in many cases.

[illegible] United States when Roosevelt selected him for the high judicial post.

Justice Reed [illegible] thorough. To [illegible] times seems [illegible] indicate that all the [illegible] legal citations [illegible] counsel he set forth [illegible] art of the case.

But that is one [illegible] tice achieves the [illegible] he requires to form his judgments. He marshals his facts and his precedents before deciding. Lawyers call this [illegible] of a good craftsman.

Justice Reed's opinions are often dry reading and not always models of lucidity. Careful study of them is prerequisite to understanding of their content. Lawyers as well as laymen acknowledge this to be true. He can be more sharp in dissent than in stating the judgment of the court.

Although he was appointed by a New Deal President, his background was generally conservative and he is probably now the least venturesome member of the court.

FELIX FRANKFURTER — Justice Frankfurter asks more questions, gets into more discussions with lawyers, expounds more of his own knowledge and ideas of the law during arguments thany any other member of the Supreme Court. He chooses, more often than any other member of the court, to express his concurring opinions in his own words; he is a frequent but not a chronic dissenter.

Lawyers say that Justice Frankfurter is quick to catch the nuances of any legal argument. They credit him with more legal erudition than any other member of the court.

Justice Frankfurter has written, individually and in collaboration with others, several books about the court, its past Justices, and some of its great doctrines and decisions. He holds degrees from Harvard, Amherst, Oxford, Chicago and other

His background is what he would call an "admixture" of Government service, college professor, litterateur and jurist. His experience as a practicing lawyer was limited.

Justice Frankfurter is almost 74 and has been on the court since 1939. There is not the slightest indication that he intends to retire.

WILLIAM O. DOUGLAS — Sometimes Justice Douglas will appear to be entirely absorbed in other matters while arguments are in progress in the high court. He may hand over writing or send a page boy to the library for a law book.

But then he will confound observers by asking a question that bears directly on a point at issue in the case being heard. He asks few questions, but those he does ask have a point to them.

Court attendants portray Justice Douglas as the least burdened by court labors of any of his colleagues. He works fast and avoids drudgery. His agile mind grasps problems quickly.

Some say this makes for efficency if not for profundity and some regard him as more the bureaucrat than the judge. Before President Roosevelt named him to the bench in 1939 he was a member, and later chairman, of the Securities and Exchange Commission.

His knowledge of the intricacies of financial operations is probably the reason he often writes decisions involving complex financial questions.

He and Justice Black are the court's leading dissenters. He can state his minority views with vigor and sharpness lacking in some his own majority opinions.

HAROLD HITZ BURTON — Justice Burton has taught law, practiced law and now expounds the law. He also has been a public official, serving as Mayor of Cleveland, a member of the Ohio Legislature and a United States Senator from the Buckeye State.

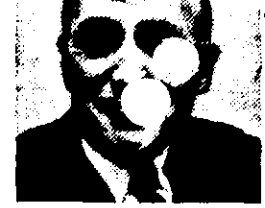
In his practicing days his clients often were corporations with large interests. Such clients seldom look for flamboyant counsel.

Justice Burton budded in New England and flowered in the Middle West. Out of his environment, education and legal experience he did not develop any tendencies to grab the ball and run rampantly down the field.

He was appointed by President Truman in 1945.

On the high court he is quiet, attentive and hard working. He is more likely to write opinions in heavy, technical cases than in civil rights cases. He has one characteristic not shared by his fellow Justices.

When he writes an opinion he first states the questions the court is called upon to decide and tells how the court has decided them, in the good journalistic fashion of writing his lead first. After that he expounds the rationale and the legal basis for the decision.


Photographs by The New York Times, Associated Press

TOM C. CLARK—When this tall Texan came to the Supreme Court there were many who felt that he lacked the qualifications a judge should have.

Justice Clark had been in the Department of Justice for a dozen turbulent years, serving four years as Attorney General. His own actions and policies, and those of several of his subordinates, had been widely criticized. His skill as a politician and his shrewdness as a lawyer were acknowledged, but many detected few signs of what they considered the ideal judicial equipment.

Some of these fears have been dispelled. His judgments have been criticized by some but regarded as sound by many others. He most often votes with the majority, usually leaning toward the conservative side. When he dissents he can state his views with vigor and clarity.

Generally, the feeling seems to be that Justice Clark's judicial powers are still developing. He was appointed to the court in 1949, is now only 57, and still has years of service before he will even be eligible to retire.

JOHN MARSHALL HARLAN—Justice Harlan came too recently to judgment to provide a basis for appraising his judicial qualities. He was sworn in March 28, 1955 and has sat through only one full term of court. He had served briefly as a Federal appellate judge in New York and had a long and successful career as a New York lawyer.

From the bench he asks "lawyer's" questions with obvious perception of their application to the judicial issues to be decided. His opinions have been logical and well reasoned.

He demonstrated a degree of independence last term when, although he was appointed by President Eisenhower, he wrote the opinion in the so-called Cole case that struck down a key provision of the Administration's internal security program. He does not hesitate to dissent from majority views and his votes have decided some cases for the liberal wing and others for the conservative wing of the court.

Justice Harlan has a military bearing that goes well with judicial robes.

WILLIAM JOSEPH BRE[N]NAN JR.—The eight men wi[th] will be his colleagues, and off[i]cials and employes of the cou[rt] await with interest the adve[nt] of Justice Brennan. He is e[x]pected to take his seat immed[i]ately after Justice Minton r[e]tires on Oct. 15.

No one will know until he h[as] been on the bench a while wh[at] qualities Justice Brennan w[ill] add to the high court. He is l[it]tle known in Washington.

The judicial problems he w[ill] face differ to a large exte[nt] from those he has dealt with [as] a member of the Supreme Cou[rt] of New Jersey.

He will bring to the benc[h] however, a wider experience [as] a trial lawyer than most of t[he] sitting members possess. H[is] six years on the New Jers[ey] court constitute a longer judici[al] experience than any other mem[b]er of the high court, excep[t] Justice Minton, had at the tim[e] of his appointment.

He is known as a defender [of] civil rights. Only time and [his] future conduct can tell whet[her] he will become an addition [to] the group of so-called "liberal

CAPITOL STUFF

By JOHN O'DONNELL

Washington, Oct. 11.—In an unofficial and strictly personal decision, the nine justices of our Supreme Court have ruled 5 to 4 that it's perfectly proper and ethical for them to cast their ballots in the coming Presidential election. But the decision of the majority is not binding and will not be binding on the minority. They are not going to vote.

Their decision is based on the idea that the top members of the third branch of the government, whose decision affirm or deny the validity of laws passed by the legislative branch in Congress and pass on the Constitutionality of actions by the White House and all executive branches of the nation, should withdraw completely from the stormy battlefields of political elections—so far as their individual votes next Nov. 6 are concerned.

The division is interesting. Perhaps the one who feels most deeply on the personal issue that a member of the Supreme Court should cut off for all time his Eisenhower nominee Justice John Marshall Harlan. On mounting the high bench, Justice Harlan automatically erased his voting residence in New York and wrote himself down as domiciled in the non-voting District of Columbia. This was done deliberately because Justice Harlan believes that members of the Supreme Court should banish all thoughts of party politics from their minds and emotions.

Justice Harlan
Erased his voting residence

Agreeing with Justice Harlan in this new and for the first time explored judicial-political situation are:

Associate Justice Hugo Black, senior member of the bench and Franklin Delano Roosevelt's first appointee to the court—an appointment which aroused story opposition at the time because of Black's onetime membership in the Ku Klux Klan. The report to Cap Stuff from the justice's office is direct: "Justice Black has not cast a vote since he became a member of the bench 19 years ago. He feels that this imposed abstinence from participating in elections leaves him more impartial in his judicial duties."

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They Don't Take Part in Elections

Associate Justice Felix Frankfurter, appointed by Roosevelt in 1939 and the first foreign born (Austria) member of the high court. Briskly, the office of Frankfurter raps back: "The justice does not vote; he never takes part in elections."

Associate Justice Stanley Forman Reed, the 72-year-old gracious Kentuckian appointed by Roosevelt in 1938 and slated soon to join Frankfurter in voluntary retirement, also gave up his voting residence when he mounted the bench. "Just a matter of personal ethics," his friends observe.

The five members of the high bench who have different opinions and who will vote next Nov. 6, according to a personal check by Cap Stuff are:

Chief Justice Warren, President Eisenhower's first nominee to the bench, will cast his absentee ballot in California. As a successful candidate for Governor in that state, the Chief Justice won the nomination of both the Republican and Democratic parties.

Associate Justice Harold H. Burton, former Republican U. S. Senator from Ohio and appointed by Truman in 1945, will cast an absentee vote in Ohio.

Associate Justice Sherman Minton, an Indiana Democrat appointed by Truman in 1949 and now retiring because of poor health, will vote in person in his native state.

Associate Justice William O. Douglas of the State of Washington, youngest (41) member back in '39 whtn he was picked by F.D.R., will cast an absentee ballot.

Associate Justice Tom Clark, a Truman nominee, will vote in his native Texas.

Strictly Devoted to the Law

This division of ethical opinion among the nine justices is interesting. Of the four justices who are deliberately absenting themselves from the polling places next November, three have never engaged in active politics and have never been a candidate for public or elective office. Their careers from start to finish have been strictly devoted to the profession of law, either in practice or on the bench.

These are Harlan, Frankfurter and Reed. Justice Black went to the Supreme Court while a Senator from Alabama with only the record of a police court magistrate behind him for judicial experience.

Justice Frankfurter came to the court from Harvard Law School; Justice Reed was a former solicitor general of the United States; Justice Harlan was elevated from the Federal Court of Appeals, Second Circuit.

The five justices who have decided to take part in the coming elections have throughout their previous careers always been up to their ears in the hurly-burly of state and national election campaigns.

The Chief Justice was victorious in all the state campaigns which decided the governorship of California during the 1943-1953 decade. Justice Clark was an important figure in Texas politics and won a district attorneyship during the hot oil battles. Justice Burton is a former mayor of Cleveland and U. S. Senator from Ohio. Justice Minton won a touch battle for the Senate in the turbulent Hoosier State and carried the banner for F. D. R. on Capitol Hill in the latter's drive to pack the Supreme Court.

Justice Douglas never had to do his political fighting in the open but his political victories during the savage infighting of the early New Deal, back in the days of Tommy Corcoran, Ben Cohen and the Roosevelt brain trust, were as toughly won.

SCORE FOR AMERICA

Ruling Setback for Reds

By LEON RACHT

CONGRESSIONAL Committees dedicated to preserving our national security and smashing the criminal Communist conspiracy to overthrow the U. S. by force got a much-needed shot in the arm last week from the Federal Court of Appeals.

Acting in the cases of two witnesses who had balked at questions relating to Communist affiliations, the court ruled that Congress has the right to inquire into the political beliefs and associations of suspected subversives "in the exercise of legislative duty."

The ruling was in conjunction with the court's unanimous affirmation of the contempt of Congress convictions of Harry Sacher, the loudmouth legal front for domestic Reds who served six months for his contemptuous antics in the trial of 11 top U. S. Communists; and Lloyd Barenblatt, one-time Vassar College instructor.

BOTH REFUSED to answer congressional questions on membership in the Communist Party. And Barenblatt's brazen claim that Congress had no business sticking its nose into the field of education was slapped down by Judge Walter M. Bastian who snapped:

"It isn't true that persons who happen to be teachers have greater immunity from inquiry into their activities than do labor leaders and screen writers, when those activities relate to matters which are a legislative concern. . ."

The high federal court ruling came at a time when congressional lawmakers were practically on the ropes over a dozen adverse decisions rendered by the Supreme Court in the past year which could only give aid and comfort to the Communist conspirators. On its 1956 scorecard the Supreme Court:

TOSSED OUT the conviction of Communist Steve Nelson under the Pennsylvania State Sedition Law which knocked out sedition laws in 42 other states.

Ordered reinstatment of smart-alecky Brooklyn College Professor Harry Slochower, which invalidated a New York City charter requirement for automatic dismissal of any city employe who clams up on Communism behind the Fifth Amendment.

Held that the President's federal employe security program cannot be invoked against persons in non-sensitive government jobs.

Declined to review two lower-court rulings that tenants in Federal housing projects cannot be required to sign loyalty oaths.

Ruled that a union which has refused to obey the Taft-Hartley non-Communist affidavit requirement nevertheless retains its right of picketing.

Sent the government's case against the Communist Party back to the Subversive Activities Control Board which had found that party was required by law, to register as a Moscow agent. This action was taken when the Supreme Court agreed with a Communist charge that some witnesses' testimony was questionable.

Sacher and Barenblatt have announced they would carry appeals to the Supreme Court. You can bet that Congress, which already has before it proposals to curb the high court, will be watching the decision when the nine black-robed umpires call the play on this one.

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Mr. Boardman
Mr. Belmont
Mr. Mohr
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Mr. Rosen
Mr. Tamm
Mr. [illegible]
Tele. Room
Mr. Holloman
Miss Gandy

BAUMGARDNER

Newspaper: BOSTON AMERICAN
Date: 1/12/57
Edition: Race Charts
Author or Editor: LEON RACHT
Title:
Class. or Character:
Page: 12

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Supreme Court Aide Is Named Deputy Clerk

Edmund P. Cullinan, an assistant clerk of the Supreme Court for 27 years, was promoted today to deputy clerk.

The appointment was one of three changes announced by the Clerk's Office. Richard P. Blanchard, a trial attorney in the Criminal Division of the Justice Department, will become the second deputy clerk on February 18. He will succeed Crombie J. D. Garrett. Mr. Garrett came to the Clerk's Office as deputy last July 1 and is resigning to join the legislative advisory staff of the general counsel of the Treasury Department. Mr. Garrett formerly was assistant dean of the George Washington University Law School.

Mr. Cullinan, who is 51, has lived in Washington since 1924. He attended George Washington University and the Georgetown University Law School.

Mr. Blanchard has been with the Justice Department since 1951 and holds law degrees from the University of Michigan and the Catholic University where he was an associate professor of law from 1947 until 1951.

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Supreme Court Has a Vacancy

Ike Is Scanning Judiciary Again

President Eisenhower probably will choose a successor to retiring Supreme Court Justice Stanley S. Reed from among judges on lower Federal courts, Administration sources said today.

There had been some speculation that Attorney General Herbert Brownell Jr. might be in line to replace Justice Reed, who announced his retirement yesterday after 19 years on the High Court.

In filling two of the three previous Supreme Court vacancies which have occurred during his Administration, Mr. Eisenhower set a pattern of choosing from the ranks of the judiciary—in one case naming a Federal Circuit Court judge and in the other a State Supreme Court justice.

FROM COURTS

Justice John M. Harlan was moved up from the 2d U. S. Circuit Court of New York in 1955, and Justice William J. Brennan Jr. was selected from the New Jersey State Supreme Court last fall.

Mr. Eisenhower's first appointment to the High Court was Chief Justice Earl Warren, former Republican governor of California.

If geographical considerations govern in replacing Mr. Reed, the new justice will come from the South or Mid-West.

Presumably, the President also will look for a Republican successor to Mr. Reed Mr. Brennan, his last appointee, is a Democrat.

POSSIBILITIES

The new appointee could come from among these Republicans Mr. Eisenhower has named to U. S. circuit courts during his Administration:

Elbert Tuttle, 5th Circuit Court, Atlanta; Potter Stewart, 6th Circuit, Cincinnati; Martin Donald Van-Oosterhout, Sioux City, Ia., and Charles E. Whittaker, Kansas City, Mo., both of the 8th Circuit; Warren E. Burger, District of Columbia Circuit; Stanley N. Barnes, 9th Circuit, Los Angeles, and Simon E. Sobeloff, Baltimore, 4th circuit.

Both Mr. Burger and Mr. Barnes are former assistant attorneys general. Mr. Sobeloff is a former U. S. solicitor general.

If Mr. Reed's successor is a Republican, the lineup on the Court will be five Democrats and four Republicans. (LP)

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One Reason Our Courts Are Jammed

If anyone wonders why our courts are log-jammed, why cases drag along for years, why the merry-go-round of court appeals goes on and on, we suggest a thoughtful look at the U. S. Supreme Court decision in the Gold case.

Ben Gold, former labor leader, was convicted of filing a false non-Communist affidavit with the National Labor Relations Board. Gold's conviction was upheld by the U. S. Circuit Court of Appeals. Now the Supreme Court—by a 6 to 3 vote—has thrown out the conviction and ordered a whole new trial.

The reason: Because the FBI investigated charges of jury tampering in the case, and thereby engaged in "official intrusion into the privacy of the jury." The Court majority conceded that the "intrusion" probably was unintentional, but out went the verdict anyway.

The point here is that so long as the high court is inclined to hear all sorts of cases, and shows a readiness to overrule the U. S. Circuit Courts of Appeals and District Courts on technical grounds such as these, it invites litigants—who can afford it—never to take "No" for answer from any other court in the land.

The present trend is making the Circuit Courts of Appeals more and more of a fifth wheel in our judicial system. It might make sense to abolish them since the chances are strong that most cases they hear will land in the Supreme Court anyway, unless the picture changes.

This disposition of many courts—not only the Supreme Court—to give the defense every break while demanding a doctrine of perfection from the prosecution is certain a big factor in many clogged court dockets today. The defense may roam all over the legal lot. For example, the attorney who represented Gold before the Supreme Court was himself convicted of contempt, and fined $100, for sending questionnaires to members of the grand jury which indicted Gold. But let the prosecution make the slightest technical error—or what might be construed as one—and the whole case may be thrown out and all the legal labor of two lower courts over months and years tossed into the waste basket.

The Gold decision is but one example of a trend. If that trend continues, every case with a faint shadow of Federal character will wind up in the U. S. Supreme Court—so long as the litigant has the money and the court is eager to listen.

After all, when our high tribunal seems to have such scant regard for the decisions of the lower Federal courts—why should litigants have any either?

PHILADELPHIA, PA.
INQUIRER ✓
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0-39 (Rev. 9-7-56)

WASHINGTON

By ROSCOE DRUMMOND

A Word for the Supreme Court

WASHINGTON.

Nearly every President has had to defend his constitutional powers from Congressional encroachment. Mr. Eisenhower had a hard time keeping his authority to police the Federal personnel from slipping into the hands of eager Congressmen.

Nearly every Congress has had to defend its independence—sometimes not too successfully—from Presidential encroachment. For a considerable period during Franklin Roosevelt's dominance Congress found itself more a subordinate than a co-ordinate branch of the government.

Drummond

It seems to me time somebody raised a voice to defend the third branch of government, the United States Supreme Court. The President can defend himself. Congress can defend itself. But the justices of the Supreme Court, speaking only through their opinions, can never speak in their own behalf.

The court is today the target of some turbulent controversy because of its trend of opinions on racial questions even as it was the target of turbulent controversy twenty years ago when it was striking down some of the early New Deal legislation as unconstitutional.

• • •

Criticism of the court's rulings is healthy and desirable. The legal opinions of judges should be no more sacrosanct than the political opinions of politicians. That the opinion of the Supreme Court is legally final does not make it infallible; it isn't. Judge Jennings Bailey, a rugged individualist on the Federal district bench in Washington, put it rather nicely when, informed that the Supreme Court had sustained one of his rulings, he remarked: "Huh! I still think I was right."

But criticism of the authority of the Supreme Court seems to me unhealthy and dangerous.

The Constitution does not spell out the precise role the Supreme Court shall play. It remained for the court itself to define its function and it was largely through the force and cogency of the opinions of Chief Justice John Marshall that the court established itself as the interpreter of what laws, state and Federal, are constitutional and what are not.

• • •

When some deeply resent a decision of the court, they often attack the jurisdiction of the court. But the fact remains that while the court originally asserted its role as interpreter of the Constitution, no action has ever been taken, either by Congress or by the people, to alter or restrict its authority one iota. Such a course has been open to us for nearly 150 years but the jurisdiction of the court remains untouched. When, in 1937, President Roosevelt tried to mold the opinions of the Supreme Court more to his liking by his "court-packing" plan, he suffered the severest defeat of his career. The Senate overwhelmingly rejected his scheme and in the Congressional elections next year the country took some eighty Democratic seats in the House of Representatives away from him.

Above all else the court does two things:

It prevents the Federal govern-

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ment and the state governments from encroaching upon each other, thus preserving the balance of our Federal system.

It protects the constitutional liberties of all the people from encroachment by either the states or the Federal government.

We should never forget that if we undercut the right of the court to determine what is constitutional, then any majority of Congress at any time can pass any law it wishes without having it measured against the Constitution. That way, constitutional government would go out the window.

* * *

The quality of President Eisenhower's appointments to the Supreme Court contribute to its continued strength.

With the retirement of Justice Stanley F. Reed, Mr. Eisenhower has now to make his fourth appointment to the high bench in four years. In naming Chief Justice Earl Warren and Justices John M. Harlan and William J. Brennan jr., he has set a high standard to maintain.

If the President decides to go outside the judiciary for his nominee, it is not at all unlikely that he would name Attorney General Herbert Brownell jr. There would be some elements of controversy in such an appointment but they would be outweighed by Mr. Brownell's able administration of the Justice Department, his persistent efforts to expand and strengthen the judiciary and his large role in recommending to the White House the highest caliber of men for judicial appointment.

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Senate's Red Inquiry Rebukes Supreme Court for 2 Decisions

This is the first of six articles by Don Whitehead, chief of the Washington Bureau of the Herald Tribune.

By Don Whitehead

WASHINGTON, Feb. 27.—The Senate Internal Security subcommittee issued an extraordinary rebuke today to the United States Supreme Court for decisions which were described as "judicial setbacks" for government agencies seeking to halt Communist penetration in this country.

The Senators' sharply-worded criticism of the court was contained in the first two of a series of twelve documents summarizing months of study into "Soviet penetration of the United States."

Urges Stricter Curbs

In this study, the committee, headed by Sen. James O. Eastland, D., Miss., reported evidence that the Soviets' secret agents are as hard at work as ever to filch this government's secrets—and it was recommended that "the United States should take steps to limit more effectively the movements and activities of Russian and other Communist diplomatic and semi-diplomatic personnel in this country."

The Supreme Court was given critical treatment primarily for the decision holding that Federal interest in the field of sedition "is so dominant that the Federal system must be assumed to preclude enforcement of state laws on the same subject."

The committee also took a dim view of the court's decision holding that the executive branch's dismissal of security risks must be confined to those persons holding "sensitive" jobs.

One report said: "The Soviet apparatus here continued to function without diminution of effort. This effort had two general purposes: (1) To undermine the nation's strength and particularly to beat down the barriers already erected, both legal and in public outlook, against Communist penetration; and (2) to assist in Soviet expansion abroad."

Sees Threat Ever-Present

Is the Communist movement in this country still a threat? The Senate group's answer is—yes.

"The Communist movement here," said one report, "is a threat principally because it is an extension of Soviet strength within our borders. If it were an indigenous menace it would have an entirely different nature. A Communist or a Soviet agent becomes formidable because he represents Soviet power and has behind him the full force and resources of that mighty empire. The fluctuations then of the international machinery must be known to

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understand fully the individual's capacity."

While the Communist party's prestige in the United States slipped after the Russians used armed force to put down the Hungarian uprising, the committee said it learned of "few, if any, important defections from the party and an examination of the old Communist redoubts and reservoirs of power indicated that . . . there was no noticeable impairment of their power."

"The current fall in prestige," the report said, "has been accompanied by numerous declarations on the part of the Communists themselves that professed weakness. It cannot be ascertained . . . whether the Communists are simply preparing a new form of organization that is calculated to avoid further prosecution or make further exposures more difficult."

The committee is handicapped in its work, the report added, because of "the psychological phenomenon that it generally takes three or more years for a Communist agent or party member to disentangle himself emotionally from his past sufficiently to testify against the conspiracy—so our direct evidence is at best that old at its point of origin. . . ."

According to these studies, there is still an "appalling amount of propaganda pouring into the United States from several Communist countries" and this should be controlled by legislation.

The committee recommended:

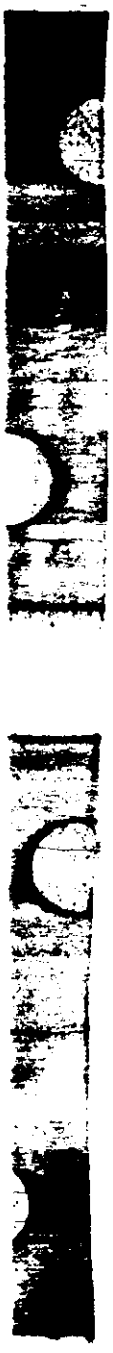
"The Congress should enact legislation prohibiting the importation and distribution by foreign diplomatic or consular personnel, of propaganda material from the U. S. S. R. or its satellite Communist countries.

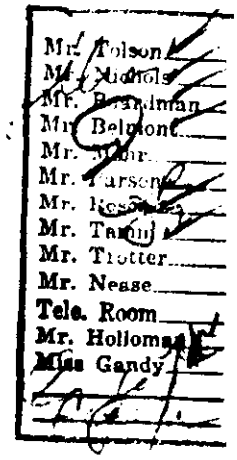
"The Department of State should officially rule that dissemination of Communist or other subversive propaganda in the United States is an improper activity for foreign diplomatic or consular personnel."

Warns of Corporation Control

And the Senators reported that their inquiries showed evidence indicating "that control of an impressive number of American corporations, including some holding a unique place in the realm of national defense, had been acquired by anonymous accumulations of capital held abroad—notably in Canada and in numbered accounts in Swiss banks."

It may be desirable, they said, to pass legislation that would "compel disclosure of the true ownership of Swiss bank accounts exercising a controlling voice in American industry . . . (and) . . . to limit the extent of foreign influence, if not of foreign control, over American corporations."





BAUM GARDNER

Blow to Enforcement?

Subject to one slight protection that can be afforded by the courts, the Monday decision by the United States Supreme Court may deal a death blow to an important factor in defense against crime. The government, says the court, can not keep secret the identity of an undercover informer if "the identity becomes relevant and helpful" to a defendant in a criminal trial.

Clearly no defendant should be judged by testimony that is not given in open court. But the mere identity of an informer is not necessarily germane to the trial. It is of decided interest both to the criminal world and the subversive world. So the degree of protection accorded such an informer by the court's view of whether his identity is relevant and helpful to the defense will be important indeed.

A defendant has a right to be confronted by an accuser. But where law enforcement is merely tipped off as to crime, the informer is not an accuser. The FBI uses every effort to build up its court cases without exposing its undercover men. Once forced to testify, their usefulness, achieved perhaps after years of training, is lost.

There is no disposition here to judge the Monday decision as bad unless it proves so in practice. It can, you know.

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"Dallas Morning News"
Dallas, Texas, 3/27/57

William B. Ruggles, Editor

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BAUMGARDNER

ON EXPOSING INFORMERS

Our ever-more-peculiar Supreme Court, by a 6-1 decision, has ordered a retrial for a convicted, self-confessed dope peddler, because the Government at the original trial refused to disclose the name of an informer who had given evidence against the defendant.

The majority opinion huffed and puffed about "fundamental rights" of accused persons. Associate Justice Tom Clark, the lone dissenter, snapped: "Once an informant is known, the drug traffickers are quick to retaliate. Dead men tell no tales."

Clark stated the common sense of the matter, we're convinced, and the reason why it is essential to protect informers in many cases if justice is to be done. It's to be hoped the Supreme Court will think better, before too long, of the dangerous principle laid down in this case.

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N. Y. TIMES

MAY 7 1957-

In The Na on

Formula or Nominations to the Supreme Court

By ARTHUR KROCK

WASHINGTON, May 6—Before March 20 of this year the President successively named, and the Senate confirmed, three members of the Supreme Court with prior judicial experience—Harlan and Whittaker on the Federal, and Brennan on the state, bench. General satisfaction was expressed that the President was recruiting the Supreme Court from the judiciary on a scale far exceeding that of his two Democratic predecessors.

The date of March 20 was cited because on that day an associate justice appointed by President F. D. Roosevelt made a public address in which he reviewed "• • • the assumption that prior 'judicial service' is not only a desirable but an indispensable qualification" for a member of the Supreme Court and concluded:

> One is entitled to say without qualification that the correlation between prior judicial experience and fitness for the functions of the Supreme Court is zero.

This associate justice is Felix Frankfurter, who was appointed to the high tribunal from the Harvard Law School, and his address was at a Philadelphia memorial ceremony for the late Associate Justice Roberts.

The 75 and the 16

The length of this lecture, and the profound study that obviously was its background, make it difficult in this space to present an adequate summary. What follows is an earnest attempt to give the principal points in balance:

¶Ninety men have served as Supreme Court justices. Of seventy-five considered by Frankfurter (omitting contemporaries), twenty-eight "had not a day's prior judicial service." Current legislative proposals that five years on a lower Federal or high state court be made prerequisite to Supreme Court appointment would have barred at least thirty-five of the seventy-five. A ten-year requirement would have barred forty-five.

¶Among those without any prior judicial service were Wilson, Washington, Marshall, Story, Taney, Curtis, Campbell, Miller, Chase, Bradley, Waite, Fuller, Moody, Hughes, Brandeis, Stone and Roberts. Of the twelve Chief Justices in the period, five had none at the time of their appointments.

¶"Of the [illegible] justices whom I deem pre-eminent, only one had previous judicial experience. The [illegible] Marshall, Taney, Bradley, White, Holmes, Hughes, Brandeis, Cardozo, Curtis, Campbell, Matthews and Brown. "• • • It would demand complete indifference to the inclusive and intractable factors in tracking down causes [of their distinction] • • • it would be foolish to attribute acknowledged greatness in the court's history either to the fact that a justice had • • • judicial experience or that he had been without it."

¶"Apart from meaning that a man had sat on some court for some time, judicial service tells nothing that is relevant about the qualifications for the functions exercised by the Supreme Court." Also, "there is a vital difference so far as substantive training is concerned between the experience gained on state courts and on the lower Federal courts."

¶Experience on a state court prepares a judge only "meagerly" for the supreme bench. Even Holmes at first "found himself not at all at home." And "on more than one occasion Cardozo complained • • • that he should not have been taken from judicial labors with which he was familiar • • • to types of controversies to which his past experience bore little relation." And those "fresh from a longish and conspicuously competent tenure on the lower Federal courts do not find the demands of their new task familiar."

'Detached and Withdrawn'

¶Membership on the Supreme Court "involves functions and calls for faculties as different from those called for by other judicial positions as those called for by private practice or public service."

¶As Edmund Randolph said, "in a great measure • • • the supreme judges will form themselves after their nomination." "The court • • • breathes life, feeble or strong, into the inert pages of the Constitution and the statute books, Such functions clearly call for capacious minds and reliable powers for disinterested and fair-minded judgment. It demands the habit of curbing any tendency to reach results agreeable to desire or to embrace a solution of a problem before exhausting its comprehensive analysis. One in whose keeping may be the decision of the court must have a disposition to be detached and withdrawn."

¶The search for justices "should be made among those men • • • who give the best promise of satisfying the intrinsic needs of the court, no matter where they may be found, no matter in what professional way they have manifested the needed qualities. • • • The significance of the greatest • • • with prior judicial experience • • • derived not from that experience but from the fact that they were Holmes and Cardozo." And "Bradley and Brandeis had the pre-eminent qualities • • • they brought to the court without any training that judicial experience could have given them."

In The Nation

Formula for Nominations to the Supreme Court

By Arthur Krock

(NY Times, May 7)

Washington, May 6----On March 20 an associate justice appointed by F.D.R. made a public address in which he reviewed "...the assumpt that prior 'judicial service' is not only a desirable but an indispe qualification" for a member of the Supreme Court and concluded:

"One is entitled to say without qualification that the correlati between prior judicial experience and fitness for the functions of th Supreme Court is zero."

This associate justice is Felix Frankfurter who addressed a Phil memorial ceremony for the late Associate Justice Roberts. What follo is an attempt to give the principal points in balance: Ninety men ha served as Supreme Court justices. Of 75 considered by Frankfurter, 28 "had not a day's prior judicial service." Current legislative prop that five years on a lower Federal or high state court be made prereq to Supreme Court appointment would have barred at least 35. A ten-ye requirement would have barred 45. "Apart from meaning that a man had on some court for some time, judicial service tells nothing that is relevant about the qualifications for the functions exercised by the Supreme Court." The search for justices "should be made among those who give the best promise of satisfying the intrinsic needs of the co no matter in what professional way they ha[illegible] the needed qualities. ...The significance of the greatest...derived not from tha experience but from the fact that they were Holmes and Cardozo." And "Bradley and Brandeis had the pre-emi[illegible]...they [illegible] to court without any training that jud

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WP151

(REGISTRATION)

THE SUPREME COURT ORDERED MORE ARGUMENTS IN A CASE CHALLENGING A LOS ANGELES ORDINANCE REQUIRING PERSONS CONVICTED OF A CRIME TO REGISTER WITH THE CHIEF OF POLICE.

THE COURT INVITED CALIFORNIA'S ATTORNEY GENERAL TO TAKE PART IN THE NEW ARGUMENTS. NO DATE FOR THEM WAS SET IN TODAY'S BRIEF ANNOUNCEMENT. PRESUMABLY THEY WILL BE HELD NEXT FALL.

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Keeping Records Open

It will take time—perhaps a lot of it—to determine clearly full implications of the Supreme Court's historic ruling yesterday on revealing secret information in criminal trials.

Justice Tom Clark, in a vigorous dissenting opinion, reads dire meaning into the majority holding to say: "Unless Congress changes the rule announced by the court . . . those intelligence agencies of our government, the FBI, for instance, may as well close up shop for the court has opened their files to the criminal and afforded him a Roman holiday rummaging through confidential information as well as vital national secrets."

Closer reading of the opinion doesn't seem to show it means the government, and particularly the FBI, must henceforth throw open its secret files to a person prosecuted by the government. The meaning would appear to be much narrower than that.

The case arose under the Taft-Hartley law that if a union is to get the protection of government in dealing with an employer, its officers must file an affidavit they are not Communists. Clinton Jencks took such an oath, but the government charged that he lied and prosecuted him. FBI undercover agents testified in support of the government's contention, saying they had written many notes to the FBI while they were watching the labor leader. The notes weren't produced at the trial and the trial judge refused to call them from FBI files.

The high court in its decision grants Jencks a new trial, holding his attorneys should have been able to examine the notes before even the trial judge saw them.

It appears to put the government at a disadvantage when it finds it necessary to prosecute on basis of vital or secret information supplied by witnesses the government is using to prosecute. Whether the ruling holds the government must show all the secret information it has in hand isn't quite clear. Justice Clark's concern is based in that premise.

Such could make quite a difference in effectiveness of agencies charged with national security, but holdings that government must operate open-handedly in dealing with its citizens —even to the point of prosecution for alleged violation of its laws—are in the interest of protecting civil rights not to be dealt with lightly.

There has been a disturbing trend on the part of government to withhold information in the name of classification, or something equally whimsical, and any time the Supreme Court brings governmental operations into the clear light of publicity that should be in the interest of better government and fairer dealing with all its citizenry—even if that price at times appears high.

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Mr. Bel
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RE: SUPREME COURT DECISION

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Supreme Court Decisions

The Supreme Court of the United States rendered two decisions on Monday which will make history in the United States.

In one, it applied a sociological rather than a legal yardstick to the question of inter-corporate relations; in the other, it made it absolutely impossible for any police force, from the FBI to the local constabulary, to find a criminal and bring him to trial.

Whereas the first decision affecting the Du Ponts and General Motors will undoubtedly be back in the courts for a practical solution, the second, involving law-enforcement, is so absurd as to require immediate legislation or every heroin pusher, every kidnaper, every gangster will have an open season.

The FBI decision was written by Justice William J. Brennan, Jr., who was bitterly opposed by Senator Joe McCarthy before the Senator died.

Section 7 of the Clayton Act was made to apply to the Du Pont case and this bars stock acquisition by one corporation in another where such a purchase tends to create a monopoly in any line of commerce.

This decision could be applied to all the recent take-overs, if it can be proved that the raids are not for profit only, but to create a merger or to build a monopoly. It is such a far-reaching decision that it could be applied to many phases of trade and commerce and it will take years before, by decisions, the whole of it will be established as law.

One of the most serious problems facing the Du Ponts, General Motors, the Department of Justice and the Supreme Court is what to do about the Du Pont stock. If dumped on the market, it could so depress the value of General Motors stock as to cause a calamity.

Apparently Wall Street does not know the answer, for the stocks affected first rose, then gave ground.

WILLIAM BRENNAN, JR.

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Also, if the Du Ponts are forced to sell this stock now and to accept a capital gains, they would be faced by the necessity of an enormous capital outlay for taxes and their individual stockholders will face the same problem. Too many people could go broke.

A further problem is raised: since 1938, the Government of the United States has been advocating the diversification of industry as a war measure.

The atom bomb alone required the facilities of about 2,000 manufacturers.

Does this decision under Section 7 of the Clayton Act mean that when a company invested its money in a defense project not normally germane to its business and it so turned out that this side-line developed, for one reason or another, into a monopoly, that the relationship between the two companies must be dissolved?

What then becomes of diversification? And how does a company, in a swiftly changing world, protect itself from manufacturing only obsolescent products?

It needs to be noted that the Du Ponts went into General Motors when that company was on the skids. They rescued General Motors by buying 23 percent of its stock.

This question does not enter into the argument. What does arise is whether General Motors preferred to buy its paint from the Du Ponts because the Du Ponts owned 23 percent of General Motors.

The Brennan decision raises one of those abstract and doctrinaire opinions for which the present court is becoming famous or infamous, depending upon how you look at it. It lays down as law that a defendant is entitled to know and see what evidence a law-enforcing agency has in its possession against him. If law-enforcement agencies do that, they will be unable to function.

One suggestion is that the next time there is a kidnaping, the FBI issue a statement as follows: "In view of Judge Brennan's decision in the Supreme Court we have to let this kidnaper go his way to kidnap some more. The alternative is to place in jeopardy some fine American citizens who aided law-enforcement agencies by providing needed information. Let Judge Brennan catch the kidnaper his own way!"

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b6; b7C

UP126

(CIVILIANS)

THE SUPREME COURT RULED THAT SOME 450,000 U.S. CIVILIANS NOW WITH THE ARMED FORCES IN 83 FOREIGN COUNTRIES ARE NOT SUBJECT TO COURT-MARTIAL BY THE MILITARY.

6/10--RH239P

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WP126

ADD 1 CIVILIANS

THE RULING REVERSED A 5 TO 3 DECISION ON THE ISSUE DELIVERED BY THE HIGH COURT AS RECENTLY AS LAST JUNE. AT THE BEGINNING OF THIS TERM THE COURT AGREED TO RECONSIDER. MEANTIME THE MEMBERSHIP ON THE HIGH BENCH HAS CHANGED.

THE GOVERNMENT HAD TOLD THE COURT THAT CIVILIAN EMPLOYES AND DEPENDENTS MIGHT HAVE TO BE BARRED FROM ACCOMPANYING THE ARMED FORCES ABROAD IF COURT-MARTIAL JURISDICTION WERE DENIED.

6/10--RH242P

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UP131

ADD 2 CIVILIANS

THE VOTE TODAY WAS 6 TO 2, WITH JUSTICE BLACK SPEAKING FOR THE COURT. JUSTICE CLARK WROTE THE DISSENT, WITH JUSTICE BURTON JOINING.

SEPARATE CONCURRENCIES WERE WRITTEN BY JUSTICES FRANKFURTER AND HARLAN. JUSTICE WHITTAKER DID NOT HEAR THE CASE AND THEREFORE DID NOT PARTICIPATE IN THE JUDGMENT.

THE DECISION PERMANENTLY FREED TWO WOMEN WHO HAD BEEN CONVICTED BY COURTS-MARTIAL OF MURDERING THEIR HUSBANDS WHILE ON OVERSEAS ASSIGNMENTS.

ONE IS MRS. DOROTHY KRUEGER SMITH, DAUGHTER OF LT. GEN. WALTER KRUEGER, RET., CONVICTED IN 1953 IN TOKYO OF THE FATAL STABBING OF COL. AUBREY D. SMITH.

THE RULING REVERSES A DECISION AGAINST HER BY CHIEF JUDGE BEN MOORE OF FEDERAL DISTRICT COURT IN CHARLESTON, W.VA., WHO UPHELD THE CONSTITUTIONALITY OF THE DISPUTED SECTION OF THE MILITARY CODE.

MRS. SMITH HAS BEEN SERVING A LIFE TERM IN THE FEDERAL REFORMATORY FOR WOMEN AT ALDERSON, W.VA. HER FATHER BROUGHT SUIT ON HER BEHALF IN MOORE'S COURT.

THE OTHER CASE INVOLVED MRS. CLARICE B. COVERT OF ATLANTA, GA., CONVICTED IN 1953 IN ENGLAND OF THE AX-MURDER OF M/SGT EDWARD R. COVERT.

MRS. COVERT CHALLENGED THE CODE IN A LAWSUIT BEFORE FEDERAL DISTRICT JUDGE EDWARD A. TAMM OF THE DISTRICT OF COLUMBIA WHILE SHE WAS AWAITING RE-TRIAL AT BOLLING AIR FORCE BASE HERE. THE COURT OF MILITARY APPEALS HAD REVERSED HER CONVICTION ON A TECHNICALITY.

TAMM'S JUDGMENT IN MRS. COVERT'S FAVOR WAS UPHELD BY TODAY'S DECISION. SHE HAS BEEN FREE ON $1,000 BOND.

6/10--RR52P

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ADD 3 CIVILIANS
"WE SHOULD NOT BREAK FAITH WITH THIS NATION'S TRADITION OF KEEPING MILITARY POWER SUBSERVIENT TO CIVILIAN AUTHORITY, A TRADITION WHICH WE BELIEVE IS FIRMLY EMBODIED IN THE CONSTITUTION," BLACK SAID. "THE COUNTRY HAS REMAINED TRUE TO THAT FAITH FOR ALMOST 170 YEARS.
"OURS IS A GOVERNMENT OF DIVIDED AUTHORITY ON THE ASSUMPTION THAT IN DIVISION THERE IS NOT ONLY STRENGTH BUT FREEDOM FROM TYRANNY. AND UNDER OUR CONSTITUTION COURTS OF LAW ALONE ARE GIVEN POWER TO TRY CIVILIANS FOR THEIR OFFENSES AGAINST THE UNITED STATES."
BLACK SAID THE GOVERNMENT HAD URGED THAT THE EXPANSION OF MILITARY JURISDICTION OVER CIVILIANS IN THIS CASE IS ONLY SLIGHT AND THE PRACTICAL NECESSITY VERY GREAT.
"THE ATTITUDE APPEARS TO BE THAT A SLIGHT ENCROACHMENT ON THE BILL OF RIGHTS AND OTHER SAFEGUARDS IN THE CONSTITUTION NEED CAUSE LITTLE CONCERN," HE SAID. "BUT TO HOLD THAT THESE WIVES COULD BE TRIED BY THE MILITARY WOULD BE A TEMPTING PRECEDENT.
"SLIGHT ENCROACHMENTS CREATE NEW BOUNDARIES FROM WHICH LEGIONS OF POWER CAN SEEK NEW TERRITORY TO CAPTURE."
MILITARY TRIALS DO NOT AFFORD THE ACCUSED A JURY TRIAL, INDICTMENT BY GRAND JURY, BAIL, THE 5TH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION AND OTHER CONSTITUTIONAL GUARANTEES FROM WHICH THE CIVILIAN BENEFITS.
TAMM'S DECISION RESTED ON THE HIGH COURT'S NOVEMBER, 1955, RULING IN THE CASE OF ROBERT W. TOTH, PITTSBURGH STEEL WORKER WHOM THE ARMY SOUGHT TO COURT-MARTIAL FOR MURDER IN KOREA AFTER HE HAD BEEN DISCHARGED. IN THAT DECISION THE COURT STRUCK DOWN THAT PART OF THE CODE GIVING THE ARMED SERVICES JURISDICTION OVER VETERANS FOUND TO HAVE COMMITTED SERIOUS CRIMES WHILE IN UNIFORM.
6/10--RMCE302P

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2 Wives Freed in Killing Soldier-Mates Overseas

Supreme Court Reverses Itself; Ruling May Bear on Girard Case

By The Associated Press

WASHINGTON, June 10.—Two women sentenced to life for killing their soldier-husbands went free today in an unusual Supreme Court reversal of a year-old decision.

Today's ruling, by a 6-2 vote, held that civilians who accompany the armed forces overseas may not be tried in military courts for crimes committed abroad.

Just a year ago, the court, with a somewhat different membership, ruled otherwise by a 5-3 division. The court today directed the immediate release from custody of Mrs. Dorothy Krueger Smith, convicted in Tokyo of fatally stabbing Col. Audrey D. Smith, and Mrs. Clarice B. Covert, convicted in England of the ax murder of Master Sgt. Edward E. Covert.

Civil Courts Ruled Out

Mrs. Smith, daughter of a World War II general, has been in the Federal Reformatory for Women at Alderson, W. Va.

Mrs. Covert has been free on bail since she won reversal of her court-martial conviction on a technicality in a civil court here.

No United States civil court has jurisdiction over either woman as a result of today's Supreme Court opinion.

[The court's ruling, The United Press said, frees the two women from any future American prosecution. Their future depends first on the terms of United States extradition treaties with Great Britain and Japan and, secondly, on whether either country institutes extradition proceedings to force the women to stand trial in its civilian courts]

Speaking for the Supreme Court majority today, Justice Hugo L. Black wrote:

"Ours is a government of divided authority on the assumption that in division there is not only strength, but freedom from tyranny.

"And under our Constitution, courts of law alone are given power to try civilians for their offenses against the United States."

In words that seem certain to be seized upon by lawyers for a United States soldier who has been ordered to trial in Japanese courts for killing a Japanese woman, Justice Black wrote:

It would "be manifestly contrary to the objectives of those who created the Constitution, as well as those who were responsible for the Bill of Rights—let alone alien to our entire Constitutional history and tradition—" to say that the United States may exercise power under an international agreement.

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Wives Free in Killings

(Continued from page one)

"without observing Constitutional prohibitions." He added:

"The prohibitions of the Constitution were designed to apply to all branches of the national government, and they cannot be nullified by the Executive or by the Executive and the Senate combined (in the making of treaties)."

Justice Black did not, of course, take any notice of the case of Specialist 3/c William S. Girard, the soldier involved in the Japanese controversy, and the cases decided today bear on a different issue—except that Specialist Girard was turned over to the Japanese for trial under terms of a United States-Japanese agreement.

Harlan Concurs

In a concurring opinion, Justice John M. Harlan said he joined the majority "on the narrow ground that where the event is capital," civilian dependents of members of the armed forces overseas cannot be tried by court martial in times of peace.

Justice Felix Frankfurter, too, said, "We are dealing here only with capital cases and civilian dependents."

Justice Tom C. Clark, in a dissenting opinion in which Justice Harold H. Burton joined, said the court's decision "releases two women from prosecution though the evidence shows they brutally killed their husbands, both American soldiers, while stationed with them in quarters furnished by our armed forces on its military installations in foreign lands."

Justice Clark said he and Justice Burton still feel the court's original decision upholding the right of the armed forces to try the two women was correct.

For the majority Justice Black said the Supreme Court has "regularly and uniformly" recognized the supremacy of the Constitution over a treaty.

At another point, Justic Black wrote:

"While we recognize that the war powers of Congress and the executive are broad, we reject the government's arguments that present treaties to peace permit militaray trial of civilians accompanying the armed forces overseas in an area where no actual hostilities are underway."

Associated Press Herald Tribune—United Press

FREED BY SUPREME COURT DECISION—Mrs. Clarice B. Covert, left, and Mrs. Dorothy Krueger Smith. Both had been convicted in military trials of murdering their servicemen-husbands while they were on duty in foreign countries.

0-19 (Rev. 9-7-56)

Today in National Affairs

A Supreme Court Decision Seen as Adding to 'Chaos'

By DAVID LAWRENCE

WASHINGTON, June 12.—The Supreme Court of the United States added several complexities to the judge-made chaos of our times last Monday when it handed down a decision freeing two American women who murdered their soldier husbands. The reason for acquitting them is that, because they lived in military quarters overseas, they were denied a civilian "trial by jury."

Lawrence

Maybe Congress now will be encouraged to give the same "civil rights" of trial by jury to both white and Negro citizens in the South who don't commit murder but are merely charged with "criminal contempt" under vaguely worded court injunctions.

Eight justices participated in the decision and the ninth refrained because he had not been on the court long enough to hear the whole case. But the ruling and dissenting opinions which covered more than 25,000 words do not give Members of Congress or any one else the slightest inkling of what is or is not "the supreme law of the land" on this particular issue.

Majority Opinion

Four justices ruled that the wives of service men cannot be tried overseas or anywhere else by court-martial but must be tried by civilian courts—either foreign or specially provided for by the United States.

Two justices in separate opinions agreed to dispose of the case by freeing the two women because they said they had not had a jury trial and that in the matter of a capital offense—punishable by death—there has to be a jury trial. They declared that other kinds of offenses committed by civilians attached to the armed forces might possibly come within military jurisdiction but declined to be specific about future cases.

Two Dissenters

Two dissenting justices said the evidence showed that two women "brutally killed their husbands, both American soldiers, while stationed with them in quarters furnished by our armed forces on its military installations in foreign lands."

These justices wanted to uphold the ruling of the military tribunal which had sent the women to prison for life.

Now it so happens that these two cases were decided the other way—the military court was upheld—in a decision handed down a year ago by the Supreme Court.

The high court seldom reverses itself. If it does, it usually contends that some new facts have been brought out that weren't available before. This time the majority of the justices say frankly their previous decision was wrong. Justice Frankfurter in his separate opinion goes to considerable pains, however, to show that the ruling rendered a year ago was based on a previous decision in another case that really doesn't resemble the facts or circumstances surrounding the present case.

The School Decision

One wonders after reading Justice Frankfurter's explanation why four of the six justices who voted to release the murderers didn't at least give some such explanation when they reversed the famous opinion upholding "separate but equal" facilities in schools. This decision was rendered originally in 1896 and was then reversed in 1954 when the court merely said it believed "sociological" considerations had somehow grown more important—a concession to expediency. Mr. Frankfurter in his opinion last Monday, however, in arguing for the idea of giving explanations when reversals by the court occur, quoted approvingly of the following concept:

"If a precedent involving a black horse is applied to a case involving a white horse, we are not excited. If it were an elephant, then we would venture into thought. The difference might make a difference. We really are concerned about precedents chiefly when their facts differ somewhat from the facts in the case at bar."

The foregoing will be quoted again and again to point out that the Supreme Court in reversing the "separate but equal" doctrine three years ago just didn't have any new facts but decided to go along with the "trend of the times." Justice Frankfurter in his latest opinion warns belatedly that reversals must be based on judicial principle and he adds: "Legal doctrines are not self-generated abstract categories. They do not fall from the sky; nor are they pulled out of it. They have a specific juridical origin and etiology."

Meaning of the Word

Looking up in the dictionary the word "etiology," one finds it means "custom," which makes the phrase mean judicial precedent and the customs of the people—which the supreme court certainly ignored in the integration cases.

The Supreme Court, moreover, ventured into a lot of other fields with its variegated opinion on the two murder cases which it decided last Monday. Four of the justices—Chief Justice Warren, Justices Black, Douglas and Brennan — said a significant thing about how treaties or agreements with foreign governments cannot supersede the Constitution. Presumably even if the United States agreed by treaty, for instance, to let William Girard be tried by a Japanese court, this doesn't mean the treaty or agreement under which such action were taken is constitutional. It could mean that Girard has a right to trial at least by an American military court.

Sen. Bricker, sponsor of the much-discussed amendment to the Constitution to assure that a treaty cannot supersede the Constitution, feels reassured by the new pronouncement but points out that only four justices subscribed to the declaration. It still adds to the bewilderment of the public which is being solemnly told that it must always bow to "the supreme law of the land"—whatever that is today.

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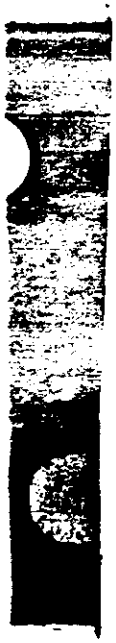

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BAUMGARDNER

SULLIVA

5 NAMED TO WRITE HISTORY OF COURT

Professors to Relate Story of Supreme U. S. Tribunal —Project Honors Holmes

Special to The New York Times.

WASHINGTON, June 15—Five university professors were appointed today to help write a history of the Supreme Court.

The history is to be written as a memorial to Justice Oliver Wendell Holmes and will be financed from a bequest by Justice Holmes to the United States Government. The capital value of the fund is now $425,000, drawing interest at an annual rate of 3½ per cent.

Publication of the history was authorized by Congress in 1955 in a law that established the Oliver Wendell Holmes Devise Fund and set up a permanent committee to administer it. L. Quincy Mumford, Librarian of Congress, is ex-officio chairman of the committee.

Mr. Mumford announced that the following had been named to the staff of editors:

Alexander M. Bickel, Associate Professor of Yale Law School; Charles Fairman, Professor of Law at Harvard University; Julius Goebel Jr., Professor of Law at Columbia University; Phil C. Neal, Professor of Law at Stanford University, and Carl B. Swisher, Professor of Political Science at Johns Hopkins University.

Prof. Paul A. Freund of Harvard Law School was appointed editor-in-chief last September. The administrative editor is Joseph P. Blickensderfer, who also serves as executive officer for the permanent committee.

Seven volumes are now projected. At a meeting next week, the editorial group will discuss the need for additional volumes.

Professor Goebel has been assigned to write the volume to be entitled "Antecedents and Beginnings," covering the years 1787 to 1801.

Professor Swisher will write "The Taney Period," 1836 to 1864. Roger B. Taney served as Chief Justice during that period and died in office.

Professor Fairman wil write "Reconstruction and Reunion," 1864-1888; Professor Neal, "National Expansion and Economic Growth," 1888-1910; Professor Bickel, "Responsible Government and the Judiciary," 1910-1930; Professor Freund, "Depression, New Deal, and the Court in Crisis," 1930-1941.

This schedule leaves a gap for the years 1801-35. These were the years when John Marshall, as Chief Justice, established the role of the Supreme Court as the interpreter of the Constitution and successfully asserted its power to invalidate laws passed by Congress and actions of the Executive branch.

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BAUMGARDNER

(COURT)

THE GOVERNMENT'S DRIVE AGAINST COMMUNISTS AND FELLOW TRAVELERS FALTERED TODAY AGAINST MORE SWEEPING NEW RESTRICTIONS LAID DOWN BY THE SUPREME COURT.

ALARM WAS EXPRESSED IN SOME QUARTERS OF CONGRESS THAT THE COURT HAD GONE TOO FAR. CHAIRMAN JAMES O. EASTLAND (D-MISS.) OF THE SENATE INTERNAL SECURITY SUBCOMMITTEE ACCUSED THE JUSTICES OF "UNDERMINING OUR EXISTING BARRIERS AGAINST COMMUNIST SUBVERSION."

THE JUSTICE DEPARTMENT AND THE FBI DECLINED COMMENT ON THE LATEST DECISIONS BUT WERE KNOWN TO BE DEEPLY DISTURBED.

THE NEW RULINGS ON THE COMMUNIST QUESTION, COUPLED WITH EARLIER ONES IN THE FIELDS OF ANTI-TRUST REGULATION AND MILITARY LAW, SHOWED THE "LIBERAL BLOC" ON THE COURT TO BE CLEARLY IN COMMAND. IN NEARLY ALL THESE DECISIONS, THE MAJORITY HAS CONSISTED OF CHIEF JUSTICE WARREN, TWO LONG-TIME LIBERALS ON THE COURT -- JUSTICES BLACK AND DOUGLAS -- AND TWO COMPARATIVE NEWCOMERS -- JUSTICES HARLAN AND BRENNAN.

YESTERDAY'S DECISIONS BROUGHT RENEWED ATTACKS ON THE COURT FROM SOME CONGRESSMEN. EASTLAND, JOINED IN HIS STATEMENT BY SEN. WILLIAM E. JENNER, RANKING REPUBLICAN MEMBER OF THE INTERNAL SECURITY SUBCOMMITTEE, SAID:

"UNLESS THE CONGRESS AND THE PEOPLE CALL A HALT TO THE BOUNDLESS ASSUMPTION OF POWER WHICH THE SUPREME COURT HAS NOW UNDERTAKEN, OUR LIBERTIES WILL BE VERY MUCH JEOPARDIZED IN THE YEARS AHEAD."

REP. FRANCIS E. WALTER (D-Pa.) OF THE HOUSE COMMITTEE ON UN-AMERICAN ACTIVITIES SAID THE COURT HAD "LEANED OVER BACKWARD" TO IMPEDE THE WORK OF HIS GROUP WITH ITS DECISION GRANTING CONGRESSIONAL WITNESSES WIDER LATITUDE FOR REFUSING TO ANSWER QUESTIONS.

SEN. KARL E. MUNDT (R-S.D.) SAID "THE WHOLE TREND OF RECENT SUPREME COURT DECISIONS" HAS BEEN TOWARD "WEAKENING THE INTERNAL SECURITY OF THIS COUNTRY."

SEN. JOHN L. MCCLELLAN (D-ARK.) SAID THAT "WHAT THIS COUNTRY NEEDS MOST TODAY IS . . . A SUPREME COURT OF LAWYERS WITH A REASONABLE AMOUNT OF COMMON SENSE."

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