FEDERAL BUREAU OF INVESTIGATION

SUPREME COURT

PART 5 OF 14

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Eisenhower Asks Regard For Rulings Of Court

President Notes Own Differences in Calling Independent Judiciary Essential

Associated Press

President Eisenhower said yesterday that Supreme Court decisions—even those which may be hard to understand—should be respected.

Mr. Eisenhower told his news conference the American system of government could not exist without an independent judiciary.

He conceded there has been much criticism of a number of recent decisions and indicated he, himself, might not have agreed with all of them.

Perhaps there have been some decisions, Mr. Eisenhower said, which each of us has very great trouble understanding. He did not specify those, if there were any, which troubled him personally.

Stabilizing Influence

Most of the criticism has stemmed from decisions respecting the rights of individuals in criminal trials and appearances before congressional committees.

Mr. Eisenhower said he still believes that this country respects the Supreme Court and regards it as a vital stabilizing influence preventing great swings of policy under the fluctuations of public opinion.

An independent Supreme Court, Mr. Eisenhower said, is just as essential to the Government as the Presidency and the Congress, and the public should pay respect to the court's duties and responsibilities.

Mr. Eisenhower reverted to the subject of the Supreme Court in connection with another question. It concerned the attitude of the Governors Conference, in session at Williamsburg, Va., toward Mr. Eisenhower's civil rights program.

Mr. Eisenhower said he believes racial integration is primarily an educational program which cannot be solved summarily by laws or decisions.

Notes Responsibilities

Nevertheless, he said, when the Supreme Court declares something to be the law of the land by a 9-0 decision, a Government executive has certain responsibilities.

He said that to find out exactly what these responsibilities are under the Court's decision, he has urged as part of his civil rights program the creation of a commission to explore the question.

Mr. Eisenhower said he believes the leadership of the commission should be vested in the Justice Department to make sure executive action is in line with the intent of the Court.

Mr. Eisenhower said he considers his civil rights program very moderate and reasonable.

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(COURT)

THE SUPREME COURT WAS ATTACKED TODAY AS AN "AID AND COMFORT" TO COMMUNISM AND DEFENDED AS A CO-EQUAL BRANCH OF THE GOVERNMENT DOING ITS PART IN SAFEGUARDING INDIVIDUAL LIBERTIES.

THE MOUNTING CONTROVERSY OVER RECENT COURT RULINGS BROUGHT WITH IT FRESH DEMANDS FOR LEGISLATION TO CURB OR OVERTURN ITS ACTIONS, AND NEW WARNINGS OF THREATS TO LAW ENFORCEMENT.

THERE WERE SOME NOTES OF RESTRAINT. THE NATIONAL

SSOCIATION OF ATTORNEYS GENERAL SOFTENED A PROPOSED CRITICISM OF THE HIGH COURT. AND SOME KEY CONGRESSIONAL INVESTIGATORS DECLARED THE COURT'S RULINGS WOULD NOT HAMPER THEIR WORK.

REP. DONALD L. JACKSON (R-CALIF.), IN A SPEECH PREPARED FOR HOUSE DELIVERY TODAY, DENOUNCED THE HIGH COURT'S CURRENT COURSE AS "LENDING AID, COMFORT AND ASSISTANCE" TO THE COMMUNIST "ENEMY."

HE SAID THE COURT, IN RULINGS ON COMMUNISTS AND CONGRESSIONAL INVESTIGATIONS, HAS STYMIED THE FBI AND RENDERED THE HOUSE COMMITTEE ON UNAMERICAN ACTIVITIES AND SENATE INTERNAL SECURITY SUBCOMMITTEE "AS INNOCUOUS AS TWO KITTENS IN A CAGE FULL OF RAPID DOGS."

ASSERTING THAT JUNE 17, WHEN TWO OF THE MOST DISPUTED COURT RULINGS WERE ISSUED, MIGHT BE CELEBRATED BY COMMUNISTS HENCEFORTH AS A "RED LETTER DAY," JACKSON SAID CONGRESS SHOULD PROTECT ITS COMMITTEES BY SPECIAL LEGISLATION OR ABOLISH THEM.

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By TED LEWIS

Washington, June 26—President Eisenhower made a real college try at his news conference today to keep on the sidelines of the turmoil caused by recent Supreme Court rulings but in the effort came up with possibly the prize understatement of his second term. He allowed as how "in their latest series of decisions there are some that each of us has great trouble understanding."

There were other generalizations that certainly suggested Ike was far from roaring happy over court actions, although he went to considerable pains to explain that in his opinion our system of government could not exist "without an independent judiciary."

The storm over the court touches a sensitive spot with Ike. After all, he named four of the nine justices and three of his four appointees have shown a surprising tendency to vote with the so-called liberal holdovers of F.D.R.'s era.

Caught in Middle Of Judicial Smog

And what is more important, the President now finds himself in the midst of a high-level Administration and Congressional tangle over how the executive and legislative branches of government should interpret cloudy decisions endangering (1) secret FBI files, (2) prosecution of U.S. civilians abroad, and (3) punishment of Reds for either clamming before Congressional committees or conspiring to overthrow the government.

All these problems are going to have to be wrestled with in certain vital respects by the White House—just another chore for the President right at a time when disarmament, budget, civil rights, etc., have piled up enough paper work.

Making matters worse is the fact that no day goes by without a new churning-up of the issues exploded by the courts in the last few weeks. Almost while Ike was sidestepping the court issue before the press, two union members before a Senate committee clammed, falling back on the court's decision restricting Congressional investigating powers.

Top Court Frees Convicted Rapist

An overlooked ruling of the court last week suddenly tossed up a local storm with glaring newspaper headlines that Ike couldn't miss later in the day.

A convicted rapist, Andrew E. Mallory, was ordered freed because the Supreme Court ruled on Monday that the conviction had to be set aside because his confession was obtained before arraignment. In District Court today U. S. Attorney Oliver Gasch said further prosecution was impossible because of insufficient evidence other than the confession.

Earlier this week in the Senate, Sen. Joseph O'Mahoney (D-Wyo.) pointed up the judicial chaos that has resulted from the court's decision in a Communist case that pertinent secret FBI files must be made available to the defense in criminal trials.

O'Mahoney reminded that lower court judges were having trouble interpreting the decision. (Maybe Ike was thinking of that specific ruling when he talked about "great trouble" understanding some of them.)

Judges Offer Two Different Opinions

The Senate was told one judge "seemed to feel that the information gathered by the FBI should be revealed before the case began while in another court it was held that the material should not be made available until after the evidence was in."

This confusion was only a sample, said O'Mahoney, of a host of "contrary interpretations" that could only be straightened

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out by quick passage of a bill, backed by the Justice Department, aimed at "clarifying" the meaning of the disclosure decision.

Some Administration sources thought privately that the President was particularly confused by the courts-martial decision of the court. That ruling freed two women who murdered their husbands overseas and "appeared"—for the court majority split on this interpretation—to ban court-martial of any U. S. civilian overseas with our armed forces.

Defense Department To Wait and See

The Defense Department has decided temporarily to try to sit that problem out. A check today showed that while there will be no more court-martials of overseas civilians for capital crimes, any of the estimated 500,000 dependents and others in civvies abroad who steal, assault or are caught blackmarketing will still be court-martialed in the areas where that is provided for.

And if anyone already so convicted—between 15 and 20 civilians court-martialed abroad are in federal prisons in this country—wants to try for freedom on the basis of the Supreme Court's ruling, well and good. The Pentagon, too, would like to know what's what and as soon as possible.

President Eisenhower's interest in what should be done with overseas civilians who break the law is understandable, since he faced some of the same problems during World War II.

So perhaps the ambiguous court-martial ban by the Supreme Court was what he particularly had in mind when he suggested today that the high tribunal was trying, although not necessarily successfully, to make its opinion crystal clear.

Thinks Court Hopes To Be Understood

"They write their decisions," was the way he put it, "in such a way that they hope at least that even a layman like myself can understand them."

And there was a slight implication that in some of the recent controversial decisions he was more impressed by the minority views than those of the court majority.

U. S. Attorney Gasch
Stymied by court's ruling

Attorneys General Drop High Court Criticism

SUN VALLEY, Idaho, June 26 (AP)—America's state attorneys general refused today to approve resolutions criticizing the United States Supreme Court although a number of them voiced criticism earlier this week.

The National Association of Attorneys General in its 51st annual conference deleted from two proposed resolutions words censuring the court. It then approved both resolutions.

One urged legislation "designed to reaffirm and reactivate Federal and state internal security control."

The other endorsed legislation which would require "that no future act of Congress shall be considered to exclude any state laws on the same subject matter unless such congressional act contains an express provision to that effect."

Removed from the first resolution was a statement saying that internal security controls had been "rendered ineffectual or weakened by recent decisions of the Supreme Court."

The second resolution contained, before it was amended, an expression of alarm "over the increasing tendency of the Supreme Court" to rule that Federal law supersedes state law in the same field.

Attorney General Louis C. Wyman of New Hampshire, retiring association president, had led the criticism of the Supreme Court. But he joined in the final vote to eliminate the reference to the Court.

Attorney General John M. Dalton of Missouri was elected association president for the coming year.

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Today in National Affairs

High Court Seen Hindering Eisenhower's States Plan

By DAVID LAWRENCE

WASHINGTON, June 25.—President Eisenhower unwittingly opened a Pandora's box when he urged the Conference of Governors to assert the rights of the states. He said:

"Never, under our Constitutional system, could the national government have siphoned away state authority without the neglect, acquiescence, or unthinking cooperation of the states themselves."

Lawrence

But the question now being asked is how can the states today assert their rights if the Supreme Court of the United States can pass "laws" or adopt "legislation" that takes away from the states the rights they always thought they had under the Constitution?

Anger In Capital

This capital today has in it many officials and legislators who are angry over the latest Supreme Court decisions—and many of them are in the Administration itself. The President shows an outward calm and urges respect for the court as an institution. He said, however, with remarkable restraint to his press conference this week that "possibly in their latest series of decisions, there are some that each of us has very great trouble understanding."

The Supreme Court has rendered decisions which many officials believe will endanger the security of the nation and make it easier for Communists to infiltrate the American government. Likewise, many officials believe the states have been rendered powerless to carry on effective law enforcement against criminals.

Sense of Frustration

Rarely has there been such a sense of frustration in government as there is today as the Supreme Court goes on releasing Communists as well as various types of criminals, including a confessed rapist, on technical grounds described conveniently as "individual rights." The idea that society as a whole needs protection against traitors and crooks is brushed aside, and the "individual right" is ruled to be supreme.

Congress is told by the Supreme Court that its investigating committees hereafter cannot punish the refusal by a witness to answer questions even if the Fifth Amendment isn't invoked. The edict also is issued by the Supreme Court that free speech includes the right to preach the forcible overthrow of the government and that, only when the conspiracy is well under way and there is an actual step taken to overthrow the government, can effective steps be taken to protect the nation.

Congress Reaction

Naturally this type of reasoning doesn't sit well with Congress, though here and there are so-called "liberals" who are rejoicing over the decisions.

The F. B. I. and police agencies of states and cities, moreover, are worried. For the Supreme Court says detectives' reports about any witness that the defendant's counsel asks for must be made public, or the right of the prosecuting attorney to use the witness must be forfeited. The difficulties this introduces for the law-enforcement agencies of the country are incalculable.

Congress doesn't know now how to proceed with its investigations on any subject. For the court has said that questions directed to a witness must be phrased with the same explicitness and clarity as is required in a law court. The witness must be told just what the purpose of any question is before an answer need be made and then, if the witness chooses, he can regard the question as not pertinent" to the "legislative purpose."

Blow to Localities, Too

This is a virtual sabotage of Congressional procedures. But it is also a crippling blow to investigating committees of state legislatures, cities and counties.

The Supreme Court has certainly taken away many other powers of the states in the last few years. Thus, the court feels it has authority now to say how schools shall be operated, how pupils shall be assigned, how admission requirements shall be written, and to pass upon what parents of children in a community may say in urging other parents what to do about their children's attendance at certain schools. This amounts to virtually complete regulation of the schools under the jurisdiction of the Supreme Court. This power is one that the states for generations have thought was reserved to them.

Thurmond's Proposal

Senator Thurmond, Democrat, of South Carolina, has a direct solution. He has introduced legislation to define the appellate jurisdiction of the Supreme Court. The constitution gives that power to Congress. A law which says what Federal statutes may be appealed to the high court and what actions by the supreme tribunals of the states can be accepted for appeal to the Supreme Court of the United States would be constitutional. It has been tried for brief periods in American history.

This isn't the whole answer, but the movement to curb the Supreme Court is growing. Bills to provide for re-confirmation of Supreme Court Justices by the Senate after four years of service, bills to provide for selection of only lawyers of qualified experience, and bills with other limitations are being introduced in Congress in a general revulsion of feeling against what Mr. Thurmond calls "judicial tyranny" and "judicial usurpation."

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DAVID LAWRENCE

Supreme Court and the States

A-22

Tribunal Viewed as Taking Away Powers of the Commonwealths

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"Never, under our constitutional system, could the National Government have siphoned away State authority without the neglect, acquiescence, or unthinking co-operation of the States themselves."

But the question now being asked is how can the States today assert their rights if the Supreme Court of the United States can pass "laws" or adopt "legislation" that takes away from the States the rights they always thought they had under the Constitution?

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Barry Goldwater

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JACKSON SAID IN HIS PREPARED HOUSE SPEECH THAT THE SUPREME COURT "IS SLOWLY PUTTING THE CONGRESS...OUT OF BUSINESS."

"THE COURT," HE SAID, "IS ASSUMING FUNCTIONS WHICH ARE CLEARLY LEGISLATIVE...IT IS TO BE HOPED THAT CONGRESS WILL MOVE PROMPTLY TO THE REESTABLISHMENT OF ITS POWERS AND AUTHORITY...."

HE SAID CONGRESS FACES A "CONSTITUTIONAL CRISIS" IN WHICH IT HAS TWO CHOICES.

"THE CONGRESS CAN EITHER TAKE THESE DECISIONS LYING DOWN, AND BE STEAMROLLED INTO COMPLIANCE, OR IT CAN EXERCISE ITS PREROGATIVES AS A CO-EQUAL BRANCH OF GOVERNMENT AND BRING FORTH THE NECESSARY LEGISLATIVE DEVICES TO CURB THE EXPANDING AUTHORITY OF THE JUDICIAL BRANCH."

JACKSON SAID THE COURT'S DECISION ON DISCLOSURE OF FBI FILES GAVE THE COMMUNISTS "A VICTORY GREATER THAN ANY ACHIEVED BY THE SOVIET ON ANY BATTLEFIELD SINCE THE CONCLUSION OF WORLD WAR II."

HE SAID COMMUNISTS FREED BY THE COURT'S SMITH ACT RULING "ARE NOW BACK IN THEIR SECRET MEETINGS, PLOTTING THE DESTRUCTION OF THE AMERICAN SYSTEM, GLOATING OVER THEIR NEW-FOUND LIBERTY, AND WAVING WITH UNRESTRAINED GLEE THEIR RENEWED LICENSE TO DRIVE THROUGH OTHER MEN'S LIBERTY WHILE DRUNK."

THE COURT DECISIONS, HE SAID, "HAVE NULLIFIED AND VITIATED THE ATTEMPTS OF THE CONGRESS TO INQUIR INTO MATTERS RELATED TO THE NATIONAL SECURITY OF THE UNITED STATES AND THE SAFETY OF OUR PEOPLE AGAINST THE GREATEST AGGRESSION SINCE THAT OF ADOLF HITLER.

"WHILE TYING THE HANDS OF THE CONGRESS, THE COURT HAS MADE IT IMPOSSIBLE FOR THE FEDERAL BUREAU OF INVESTIGATION TO DO THE JOB EXPECTED OF THIS GOVERNMENT AGENCY BY THE CONGRESS AND THE PEOPLE...."

THE TRIBUNAL, HE SAID, ALSO HAS MADE IT POSSIBLE FOR THE COMMUNIST TO "THUMB HIS NOSE AT THE CONGRESS AND THE COURTS" UNTIL HE IS CAUGHT TRYING TO OVERTHROW THE GOVERNMENT BY FORCE AND VIOLENCE.

"IT IS UNFORTUNATE THAT THE CONGRESS HAS NOT MOVED TO OUTLAW THE COMMUNIST CONSPIRACY," HE SAID.

"CONSPIRACY TO BURN DOWN A HOUSE FOR THE INSURANCE IS A CRIMINAL OFFENSE. BUT CONSPIRACY TO DESTROY A CONSTITUTIONAL GOVERNMENT BY FORCE AND VIOLENCE REMAINS (UNDER THE COURT RULING) IN THE SAME LEGAL CATEGORY AS RUNNING THROUGH A RED LIGHT."

JACKSON SAID LEGISLATION IS CONGRESS' ONLY RECOURSE, AND IT IS HOPED THAT THE CONGRESS WILL MOVE PROMPTLY TO THE REESTABLISHMENT OF ITS POWERS AND AUTHORITY."

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WASHINGTON CITY NEWS SERVICE

DOROTHY THOMPSON

The Passing of a U. S. Threat

Confident View Taken of Supreme Court Rulings as Sign U. S. Traditions Prevail

The Supreme Court decisions have rung down the curtain on what has been called "the witchhunting epoch." The words were never mine. Witches were illusions. Communists are real, and the existence of an international Communist conspiracy is a fact.

But these decisions—releasing five known Communists in California, and demanding retrials for nine others; rehabilitating a discharged State Department official, and exonerating a labor leader who was fined and imprisoned for contempt of Congress because he refused to name former Communist associates—indicates the Supreme Court no longer regards communism as "a real and present danger" or internal threat to the security of the American Government.

It is most unlikely that these decisions would have been given five years ago. The high court would hardly have so ruled during the Stalinist period and the Korean or Indo-Chinese wars. The Committee on Un-American Activities reached its zenith when America was genuinely afraid that communism might sweep the world and engulf the United States, and America was feverishly rebuilding its external and internal defenses. Then the security of the state took precedence over the rights of the individual, as it always does in war. War, hot or cold, is the perennial enemy of personal freedoms and invariably reduces the area of what is considered to be tolerable.

These decisions are, therefore, an expression of restored confidence. They indicate that the highest court of this land, and the ultimate guardian of its Constitution, believes that greater rights of individuals are no longer incompatible with the security of the state; that what were, essentially, war measures can be ameliorated; and that we can safely move back into the great American tradition.

That is what I meant by saying, in a previous column, that the decisions are not revolutionary but the opposite. They give one the comfortable feeling of coming back home, where there have always been cranks, radicals of every color, would-be overthrowers of the social order, ideologists who yearned to shatter the world to bits and then remold it nearer to their heart's desire, tolerated because we were sure they coudn't do it, and regarded by both the state and society, not as dangerous menaces but as nuisances and crushing bores.

The decisions are reminiscent of Jefferson's first inaugural address, uttered at a time when America was suffering from the backwash of the French revolution, the original ideals of which had been drowned in bloody injustices, and whose leaders also were conspiring on an international scale, Jefferson himself being under suspicion. "Reactionaries" were packing their trunks in Washington preparing to flee the coming Red terror, when Jefferson delivered his immortal address as limpid and confident as light.

I find an element of humor in the fact that Justice Tom Clark, formerly prosecuting attorney of President Truman ("Communist charges are red herrings"), was the lone dissenter, and that the rehabilitated State Department official was fired by Truman's Secretary of State, Dean Acheson, idol of the "liberals." Mr. Justice Harlan, who was strongly influential in forming the decisions, is thoroughly conservative.

But, again, the conservative mind has usually been the guardian of personal freedom against the excesses of "democratism" that can be so awfully tyrannous. Edmund Burke was a conservative, and the extent to which he is being revived in American universities is also cheering.

It's a beautiful day up here in Vermont. The heat wave has abated. The weather is sparkling and clear. The woodchucks have been gassed in the perennial beds or departed for other gardens. And the political weather is brighter, too.

Happy Fourth of July! Put up the flag!

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Court Curbs Needed

SOME sort of constitutional amendment is needed to give the people better control over the caliber of men named to lifelong jobs from which they are able to exert a great influence over the lives of the people. We refer specifically to the members of the U.S. Supreme Court. Once a justice is appointed, he serves for life and it is virtually impossible to remove him. The system is good so long as men of unquestioned judgment and legal integrity are named to the high court. But when this is not the case, the results can be tragic for the people—the recent rulings of the Supreme Court being the proof in this instance.

Sen. Eastland of Mississippi and Sen. Johnson of South Carolina have proposed an amendment that would require justices, appointed for life, to reappear before the Senate for reconfirmation every four years. Perhaps this would provide a solution to today's serious problem of a court which has constituted itself as a policy-making body rather than a judicial body.

• • •

ANOTHER PLAN would be to amend the Constitution to provide for limited appointments, say four years, so that a President could refrain from reappointing a man when it became obvious that he blundered in the initial appointment. Thus, President Eisenhower would have an opportunity to replace Earl Warren after four years—and if he did not, the people would have an opportunity to replace the President.

Perhaps it would be better for the justices to run for office just as the President, every four or six years. This, it is said, would put the court in "politics," but it can be argued that the court couldn't get any deeper into politics than the present Supreme Court has of its own volition.

If the final power of government rests with the people, as we believe the founders of our country envisioned, then some system must be worked out to give the people final control over the Supreme Court.

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SAVANNAH MORNING NEWS
SAVANNAH, GEORGIA
JUNE 27, 1957

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No Wonder Russians On Jackson Tour Smiled At Mention Of Supreme Court

Precedent-bludgeoning, Communist-aiding decisions are bringing the Supreme Court under attack today as never before.

And it is passing strange that, for once, the American people find themselves largely unable to take corrective action. Though they are the source of government, their hands are tied.

Nothing can be accomplished at the polls.

For as the founding father's never imagined court abuse of legal doctrine would become so damaging, they fixed life terms for the justices.

Ordinarily the theory of appointive-for-life judges and justices is preferred. It rests, however, on a more basic theory—that the law of the people will be the Bible of the bench. No such devotion to law is evident in the nation's highest tribunal.

On professed assumption that the individual is supreme to national security, the justices have all but wrecked the Smith Internal Security Act. They have attached a ball and chain to Congressional investigations. They have opened the land to new lawlessness by compelling complete disclosure of FBI files to defendants in Justice Department action.

What the court has done is pick up isolated incidents of abuse of individual rights, translate them into a shield against action to flush Communists and crooks from American society.

President Eisenhower is reported shocked that his chief justice, Earl Warren, has so philosophied as to align himself with the nation's most unsavory element, part of whom advocate the violent overthrow of the government.

It is no wonder that the four Russian embassy attaches touring Jackson last week could only smile at the mention of their court allies.

Strange does one review the writings and public utterances of Justices Warren, Felix Frankfurter and Hugo Black before they went to the court. All, in one form or another, lashed any abridgement of official action to squeeze society of its lawbreakers.

As attorney general of California, Mr. Warren blasted the state parole board for letting three murderers go free. They were liberated, he charged, "because they are politically powerful Communistic radicals."

Justice Frankfurter, in 1924, called for "hands off" the congressional investigation of Teapot Dome, defended it against the kind of attacks we hear today when fellow travelers and avowed Communists are targets.

And Justice Black, onetime Alabama Klansman, directed the Senate's expose of public utility malpractices in the mid-1930s. As senator and chairman of the investigation, Justice Black defended his inquiry against all comers.

What is it, one might ask, that the Supreme Court does to the mind of a man?

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Mr. Boardman
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Mr. Mohr
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PAUL TIBLIER, EDITOR-IN-CHIEF
STATE TIMES
JACKSON, MISS.
6/27/57
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Stirred to Indignation

One quick reaction to the recent decision of the U.S. Supreme Court on the "Red" cases has been that of widespread indignation.

When suspected Reds were arrested, indicted, tried and convicted in the lower courts, the general expectation has been that ultimately they'd serve time in jail. Appeals were expected, delays anticipated, as part of the long, cumbersome processes of the courts. But not complete freedom for men who skulked behind the Fifth Amendment to hide their pasts.

• • •

The Supreme Court decisions, sweeping in one sense and narrowly technical in another, have been a shock to many millions of Americans.

These do not view the decisions as upholding freedom and democracy so much as endangering it.

Lawyers and judges can—probably most do—agree with the court decisions. They agree that congressional committee investigations, in their insistence on direct, unequivocal answers; in their threats of contempt of Congress; in their exercise of this power to hold a balky witness in contempt, have gone too far.

But this is not the reaction of millions of Americans, as expressed in many comments, editorials, letters to newspapers.

They are both bewildered and angered by the Supreme Court decisions.

President Eisenhower himself has recognized and commented on this widespread criticism.

• • •

The result is likely to be—certainly should be—amendment of the Federal laws.

Several Congressmen have mentioned this. Eisenhower's comment early this week indicates that he expects it.

The moves in Congress should be made soon, and pushed hard.

The court decisions have freed accused men whose actions certainly have been suspicious; and have encouraged all the "cells" and rings and cliques and groups of sly and subversive characters in our country to continue and intensify their conspiracies aimed at the very democracy the court decisions are supposed to uphold.

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BELMONT GARDNER

Davis Drafts Curb-Court Amendment

Constitution Washington Bureau

WASHINGTON, June 20—Rep. James Davis proposed to the Congress today a constitutional amendment to "curb the Supreme Court in its wild orgy of usurpation of power and destruction of of states' rights."

Rep. Davis

He also advocated on the floor of the House the creation of a commission on constitutional law by the Congress to exercise some restraint over the court through control of the purse strings.

Davis said he planned to introduce legislation to correct "objectionable" decisions by the court. As examples, he said he would offer bills (1) to make it clear that Congress did not preempt the field on prosecution for sedition and that states have the right to try persons for seditious acts, and (2) that the FBI should not be forced to make available its files to attorneys for defendants in trials.

RECENT DECISIONS

Specifically referring to recent decisions reversing convictions of Communists and subversives, Davis sounded this warning on the floor of the House:

"The stealthy and silent suppressions of state functions" by the court, Davis said, constitute "a far deadlier peril to our continued existence as a free self-governing people than all the grisly mass extinction weapons our scientists are working to perfect."

For more than a century and a half, the Georgian said, the court enjoyed public esteem and was above politics and above the philosophy that "to the victor belong the spoils."

CASUAL ACQUAINTANCE

The present court, he said, has justices "whose records and backgrounds reflect only the most casual acquaintance with the law."

He added that the court has handed down decisions that have been hailed by the Communist newspaper, the Daily Worker, with front page headlines.

"The ever-encroaching power of the Supreme Court which President Jefferson warned us against must be curbed," he declared.

THE ATLANTA CONSTITUTION
Atlanta, Georgia
June 21, 1957
Editor: RALPH McGILL

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D-19 (Rev. 9-7-56)

Today in National Affairs

Supreme Court Procedure Questioned in Bias Ruling

By DAVID LAWRENCE

WASHINGTON, June 27.—The Supreme Court of the United States doesn't practice what it preaches.

From time immemorial it has been a rule of law that, when an expert witness testifies in court, he must be present for cross-examination by the other side. The Supreme Court has just said, moreover, that, when the F. B. I. puts on a witness in a criminal case, the other side must have access to anything and everything about the witness which is in the files of the law-enforcement agency so that the credibility of such a witness may be tested in court.

Lawrence

But the Supreme Court of the United States doesn't allow this in its own proceedings. Thus, the famous decision on school integration violated all the rules of modern courts by declaring that it was based on the "authority" of witnesses who never were revealed in court at all.

Some of these "witnesses" were connected with Communist-front organizations, and one of them was a Swedish Socialist who bitterly criticized the American Constitution. The lawyers for the several sovereign states who argued the case before the Supreme Court were not told that the court had any "secret witnesses" or "experts" up its judicial sleeve. Only when the decision was printed did the American people learn what "witnesses" had influenced the Supreme Court's conclusions. Today one of the bitterest controversies in American history has grown out of the same Supreme Court decision, which says candidly that its ruling was based on information derived from certain "experts."

The decision says that "whatever may have been the extent of psychological knowledge" at the time (1896) that the opinion (Plessy V. Brown) was handed down which permitted "separate but equal" school facilities, the new finding "is amply supported by modern authority."

The Supreme Court, in its opinion, then cited six "authorities" and said in a footnote: "and see generally Myrdal, 'An American Dilemma' (1944)."

Sen. Eastland, of Mississippi, Democrat, chairman of the Senate Judiciary Committee, has placed before the Senate a resolution containing information which nobody was evidently permitted to place before the Supreme Court during the time the case was being argued. He says that a "provisional investigation of the authorities upon which the Supreme Court relied reveals to a shocking degree their connection with and participation in the world-wide Communist conspiracy, in that Brameld and Frazier, listed in the group of six authorities, have no less than twenty-eight citations in the files of the Committee on un-American Activities of the United States House of Representatives revealing membership in, or participation with, Communist or Communist-front organizations and activities."

Quotes Myrdal

Mr. Eastland pointed out that Myrdal, the Swedish Socialist, declared—in the book cited by the Supreme Court—that the United States Constitution was "impractical and unsuited to modern conditions" and that its adoption was "nearly a plot against the common people."

Sen. Eastland added that the citation of these "authorities" clearly indicates "a dangerous influence and control exerted on the Supreme Court by Communist-front pressure groups and other enemies of the American republic and individual members thereof that is inimical to the general welfare and best interests of the republic."

Mr. Eastland said he was convinced the Supreme Court has been "indoctrinated and 'brainwashed" by Left-Wing pressure groups."

Whether one does or does not agree with Mr. Eastland's contentions, the fact is that nobody could cross-examine the "authorities" cited by the Supreme Court nor introduce other experts to present a contradictory interpretation. For the court didn't tell anybody who its "witnesses" were. It kept them secret until the decision itself was announced. So there wasn't any opportunity for "confrontation" or "refutation." Yet that's the rule the Supreme Court insists on whenever any one in the lower courts brings in witnesses and no opportunity for cross-examination is given.

Instead of performing a review function, the Supreme Court has introduced its own "experts," and the other side could not cross-examine them or evaluate their expertness or credibility. This certainly wasn't "due process" — the court's favorite phrase, which it used pointedly in a recent decision crippling the powers of Congressional investigating committees.

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Four-Year Judges

Probably everyone will understand that the plans being advanced on Capitol Hill to impeach all members of the Supreme Court and to require reconfirmation of the justices every four years are only means of letting off steam. Nevertheless, they are mischievous. They are calculated to mislead the people into thinking that members of the Court are guilty of high crimes or gross abuse of power. The result is to undermine confidence in the Court and to encourage disregard of its rulings.

The scheme to require reconfirmation of the justices every four years would in effect destroy the Court. Life tenure would be suddenly changed to tenure at the pleasure of Congress. Justice would be at the mercy of senatorial whims, and the constitutional guarantees now upheld by an independent Court would be no more secure than a transient majority in the Senate might want them to be. The shocking thing about proposals of this sort is that members of Congress can bring themselves to urge subversion of our judicial system because they do not agree with some of its decisions. So intemperate and out of keeping with the principles of democracy is this scheme that it is likely to detract more from public confidence in Congress than from public confidence in the Court.

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DAVID LAWRENCE

Judicial Preaching and Practicing

Supreme Court Accused of Having Used 'Secret Witnesses' in Segregation Case

The Supreme Court of the United States doesn't practice what it preaches.

From time immemorial it has been a rule of law that, when an expert witness testifies in court, he must be present for cross-examination by the other side.

The Supreme Court has just said, moreover, that, when the FBI puts on a witness in a criminal case, the other side must have access to anything and everything about the witness which is in the files of the law-enforcement agency so that the credibility of such a witness may be tested in court.

But the Supreme Court of the United States doesn't allow this in its own proceedings. Thus, the famous decision on school integration violated all the rules of modern courts by declaring that it was based on the "authority" of witnesses who never were revealed in court at all.

Some of these "witnesses" were connected with Communist-front organizations, and one of them was a Swedish Socialist who bitterly criticized the American Constitution. The lawyers for the several sovereign States who argued the case before the Supreme Court were not told that the court had any "secret witnesses" or "experts" up its judicial sleeve. Only when the decision was printed did the American people learn what "witnesses" had influenced the Supreme Court's conclusions.

Today one of the bitterest controversies in American history has grown out of the same Supreme Court decision, which says candidly that its ruling was based on information derived from certain "experts."

The decision says that "whatever may have been the extent of psychological knowledge" at the time (1896) that the opinion (Plessy v. Brown) was handed down which permitted "separate but equal" school facilities, the new finding "is amply supported by modern authority."

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Senator Eastland of Mississippi, chairman of the Senate Judiciary Committee, has placed before the Senate a resolution containing information which nobody was evidently permitted to place before the Supreme Court during the time the case was being argued. He says a "provisional investigation of the authorities upon which the Supreme Court relied reveals to a shocking degree their connection with and participation in the worldwide Communist conspiracy, in that Brameld and Frazier, listed in the group of six authorities, have no less than 28 citations in the files of the Committee on Un-American Activities of the United States House of Representatives revealing membership in, or participation with, Communist or Communist-front organizations and activities."

Eastland pointed out that Myrdal, the Swedish Socialist, declared—in the book cited by the Supreme Court—that the United States Constitution was "impractical and unsuited to modern conditions" and that its adoption was "nearly a plot against the common people."

Senator Eastland added that the citation of these "authorities" clearly indicates "a dangerous influence and control exerted on the Supreme Court by Communist-front pressure groups and other enemies of the American Republic and individual members thereof that is inimical to the general welfare and best interests of the Republic."

Eastland said he was convinced the Supreme Court has been "indoctrinated and 'brainwashed' by left-wing pressure groups."

Whether one does or does not agree with Eastland's contentions, the fact is that nobody could cross-examine the "authorities" cited by the Supreme Court or introduce other experts to present a contradictory interpretation. For the court didn't tell anybody who its "witnesses" were. It kept them secret until the decision itself was announced. So there wasn't any opportunity for "confrontation" or "refutation." Yet that's the rule the Supreme Court insists on whenever anyone in the lower courts brings in witnesses and no opportunity for cross-examination is given.

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Court Under Attack

The Supreme Court, not at all surprisingly, is being brought under fire by critics of some of its recent decisions.

Some of the proposals to curb the court are of the hot-weather variety—the kind that will evaporate when emotions cool. In this category we would put such things as the move by two members of the House to impeach all of the justices and the suggestion which has come from Senators Eastland and Johnston that the Constitution be amended to provide for reconfirmation of the justices by the Senate every four years. Proposals such as these will enjoy their day in the news, and then they will be forgotten.

There may be more substance to the criticism which has been voiced by Louis Wyman, who is Attorney General of New Hampshire and head of the National Association of State Attorneys General. In a speech to his organization, Mr. Wyman has charged that the Constitution is being "tortured out of all rational historical proportion" by recent court decisions. Among other things, he urges clarification of the Tenth Amendment, which reserves to the States "all powers" not delegated to the United States by the Constitution, nor prohibited by it to the States. There is considerable feeling that court decisions have reduced the Tenth Amendment to something of a dead letter. Mr. Wyman's colleagues did not join his criticism of the court, but they have urged that certain steps be taken to offset the impact of court rulings.

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Another move, which we think has a great deal of merit, is the introduction of bills by Senator O'Mahoney and Representative Keating of New York to restrict the effect of the court's decision in the Jencks case. That decision apparently opens the FBI files to persons brought to trial in criminal cases if testimony derived from FBI sources is used against them. The O'Mahoney and Keating bills would give the trial judge discretion to determine what material from the files, if any, should be available to defendants, and we see no reason why this would not meet the requirements of a fair trial.

This summarizes a part, but not all, of the criticism being leveled at the court. This criticism may be distasteful to some people. But the court never has been, and we know of no reason why it should be, beyond the reach of criticism. It has made mistakes before and it will make mistakes again. When the court deals with matters which involve issues in which the public is deeply concerned, it is only proper that those decisions should face the test of critical analysis. The essential thing is that the critics should be constructive, dispassionate and informed.

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ATTACKING THE HIGH COURT

THE EXPECTED counter attack is under way. While the country as a whole accepted calmly and even enthusiastically the recent civil liberties decisions of the Supreme Court, the extreme Right did not.

From the lunatic fringe came the usual spate of obscene letters to the various justices. "The mildest epithet in these letters, most of which are anonymous, is 'dirty Communist'," observed Marquis Childs in his syndicated column yesterday.

But far more ominous than these fulminations is the crafty attack by FBI Director J. Edgar Hoover and Attorney General Herbert Brownell on the court's decisions. Faced by the Justice William Brennan's decision in the Clinton Jencks case, Hoover and Brownell are moving heaven and earth to protect their hateful and widely discredited system of political informers.

The Jencks decision said bluntly that when the FBI puts an informer on the stand in a trial, it must be prepared to submit to the defense the informer's written reports. Why? So that the accused can cross-examine the FBI stool pigeon and compare his testimony with his prior written reports.

The court arrived at its decision only after national revulsion at the informer system had set in. Numerous examples of tailored testimony by informers had shocked America. It became clear that undemocratic thought-control laws could only be enforced through a whole system of unscrupulous paid Justice Department witnesses.

Brownell and Hoover fear fair cross-examination of their paid liars. They know that the frame-up system employed against trade unionists, Negro leaders, Communists and other progressives will crumble altogether once the informer system is smashed.

Hence these representatives of the Men of the Trusts in our land are so frantic. That they are making headway is indicated by the official support given them by the White House yesterday.

Americans of all political beliefs who really want to bury McCarthyism had better get into this struggle promptly. Particularly, the labor movement, which has on innumerable occasion been the target of the Justice Department's framenp system, should speak up.

Far from accepting quietly this new attack, labor and all other democratic forces in the nation should launch their own democratic counter-offensive to wipe out the strong remnants of McCarthyism and restore the Bill of Rights for all.

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DECISIONS IN RETROSPECT

Officials Map Strategy To Fight Back at Court

By ROBERT K. WALSH

The Judicial branch of the Government, in Supreme Court decisions this month, limited and lectured the Executive and Legislative branches so severely that members of Congress and Justice Department officials are just beginning to fight back.

This does not mean that President Eisenhower's comments indicate deep dissatisfaction with his four appointees to the tribunal. It does not mean, either, that Attorney General Brownell's plans for legislative proposals aim at reversing or nullifying Chief Justice Warren's views. Nor does it suggest that Congress will either impeach or pack the bench.

Last of a Series

Almost certainly, the High Court rulings in the so-called Smith Act cases and contempt actions against defiant witnesses before congressional committees as well as State commissions will bring counter action. So far as can be determined at this stage, however, the basic import and prime constitutional aim of the decisions seem likely to survive.

Agree on Need for Action

Various Congressional and Executive officials usually at odds with Mr. Brownell on most matters agree that the time and the trend call for something besides talk. The court's severest critics, by no means confined to one section of the country or to one political party, concede it is shaping laws governing individual freedom.

The "counter-revolution" is to see that Congress is not curbed in making laws and in establishing its own rules and procedures for getting information necessary for enactment of legislation.

One important concern of the Justice Department is to make sure that protection of national security and essential investigative methods, especially in fighting subversion or coping with Communist methods, is not outweighed too heavily by the court's insistence on protection of the individual. This is especially a matter of concern for the Justice Department in carrying out programs against possible subversion and in coping with the often devious tactics of Communists.

Temperate Views Emerge

Initial reports that turmoil if not chaos existed throughout the Justice Department and congressional investigation committees have given way to a more temperate appraisal. This is not 100 per cent optimistic, but it is far from desperate.

The decision in the case of the 14 California Communists did not strike at constitutionality of the 1940 Smith Act provision against teaching and advocating forcible overthrow of the Government. The court has not determined decisively in any case how far a congressional committee witness can properly go in invoking the Fifth Amendment guarantee against possible self-incrimination. Nor has it ruled directly on First Amendment issues of freedom of speech and press in such refusals to answer.

The ruling in the Watkins case seemed designed principally to give a witness fair treatment by protecting him from questions not demonstrated to be pertinent to the explicit purpose of the investigation. In a New Hampshire case involving Paul M. Sweezy, a lecturer and editor, the doctrine of "added care" in the propounding of official questions was extended to the State sphere.

Questions Not Forbidden

The court nevertheless did not forbid committees from asking witnesses about persons they may have known as Communists.

Still another facet was brought out in the decision that John Stewart Service was illegally fired by former Secretary of State Acheson from a foreign service job, although Congress had given the Secretary discretionary power to dismiss employes. The court did not invalidate that discretionary power. It confined its ruling to a finding that Mr. Acheson failed to adhere to department regulations when he ousted Mr. Service after clearance by a loyalty board.

These decisions nevertheless fell upon Congress and Government as well as State bodies with sufficient weight to cause rumbling and alarm.

How About Other Reds?

As for questions about the current woes and future moves of Government law enforcers, Federal prosecutors, and congressional law makers and investigators, the shortest answer probably is to be found in asking more questions.

The replies are informal, but they reflect the thinking of many attorneys in and out of the Justice Department and Congress.

In view of limitations and tighter definitions of the Smith Act as enterpreted this month by the Supreme Court, what are the chances of upholding the convictions of some 60 other Communists found guilty under the Smith Act during the last few years? What are the chances of getting indictments against Communist leaders and organizers in the future?

Answer: The chances are slim but not hopeless in cases already tried. The court last Monday, on the basis of the California Communists case ruling of the previous week, reversed Smith Act convictions of several additional defendants. It is uncertain whether those can be tried again. It is certain that practically everyone else convicted under the Smith Act since 1951 will attempt to get reversals.

It will be harder to convict Communists in the future because of the new necessity of proving "concrete action" in advocating the overthrow of the Government. On the other hand, when convictions are obtained under the new restrictions and requirements, they will stand up better before the Supreme Court.

Outlawing of Reds?

Will the court's voluminous and sometimes vague pronouncements on questioning of witnesses about prior Communist acquaintances, the scope of the 1940 Smith Act, and the prime responsibility put on the Government for "a measure of added care," make it practically impossible to outlaw the American Communist Party, prove it is a creature of the Kremlin, and prevent it from expanding, infiltrating and conspiring?

Answer: It will be more difficult but not necessarily impossible. Some attorneys advise a wait-and-see policy. See what happens at the new trials ordered for nine of 14 California Communist leaders. See what the high court decides next term about the Smith Act clause that permits prosecution of persons who belong to the Communist Party while knowing it teaches and advocates violent overthrow of the Government. See what happens in such cases as that

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of Ben Gold, former labor union official and Communist, who gets a new trial because FBI agents investigating another case talked with members of his jury and their families.

Will U. S. Drop Group Cases?

Will the Justice Department have to give up trying Communists in wholesale groups, such as the 11 convicted in New York in 1951, and the 14 found guilty but later freed or granted new trials in California?

Answer: No, but it might be safer although slower and more expensive to seek piecemeal convictions.

Can congressional investigation committees—including those concerned with labor rackets and frauds of one kind or another against the Government—be confident of getting facts, punishing balky witnesses and exploring entire fields or patterns of possible corruption, subversion and inefficiency?

Answer: Not entirely confident. But, according to a prominent House leader, specific legislation may not be necessary to enable committees to revise or reform their rules and procedures in a way to assure pertinent questions about past associations.

How Far Can Witness Go?

Did the Supreme Court in the Watkins case mean that a witness before a congressional committee can determine for himself what he thinks is a pertinent question, and whether he thinks his constitutional rights or privilege of privacy would be violated by specific questions?

Answer: Such a witness has more protection—as well as more leeway—than before. But if he assumes too much or claims too much he might well be in trouble. A witness takes a risk if he challenges committee's questions which now must be more precise and pertinent than in the past. Fishing expeditions by committees should decrease. It is doubtful whether this will make certain witnesses any more co-operative.

What about the future of the Federal employes loyalty and security system and the discretionary authority of the Secretary of State to fire employes?

Answer: The future may depend to a large extent on what the administration and Congress do about the security system overhaul recommended by the Wright commission. As for Mr. Service, there is no way of knowing now whether he will be reinstated and given back pay to 1951 in the State Department. Perhaps he or the Government may return once more to the Supreme Court. The court did not rule on validity of the secretary's discretionary power as such.

Effect on Subversive Board?

Does the Subversive Activities Control Board have any future to speak of?

Answer: Yes, but it will be mostly talk for the time being. For more than six years the board has been hearing arguments and recommending that the Communist Party of America be adjudged guilty of violating the Subversive Activities Control provisions. The Communist Party has been fighting it all this time in the courts and it has not come up for a decision in the Supreme Court. Meanwhile, SACB goes ahead with hearings to determine whether various groups cited by the Attorney General as Communist fronts are Communist fronts.

Questions about the impact of the decisions will go on indefinitely. Answers would be almost as varied as the individual views of persons consulted. This shows, if anything, that Supreme Court decisions this term raised almost as many problems as they settled. This shows, too, that even the highest echelons in the executive and legislative branches are not yet quite sure what to do about it.

That, however, does not relieve the Justice Department of the immediate headache of doing something about the spread of lower court actions as a result of Supreme Court opinions this term.

Some Affected Cases Pending

Here are some of the cases that have caused Federal prosecutors to pause and ponder:

The Government had planned to use several FBI witnesses in a price-fixing case in Pennsylvania. It is unwilling to produce FBI files because disclosure of requested material might do harm elsewhere. Similarly, in a narcotics case in Federal Court in Georgia, the Government decided that disclosure of FBI reports would endanger informants.

John Kasper, segregationist facing trial in Federal Court in Tennessee on contempt charges, was quick to demand that FBI files on its investigation of racial disturbances in Clinton, Tenn., be made available to the defense. It is uncertain whether he will be able to get all the reports he wants, or whether the Government will reveal any. That would not necessarily stop the trial.

In United States District Court here Judge Burnita S. Matthews ruled early this month that counsel for James R. Hoffa, Teamster Union official, was entitled to examine certain FBI documents before his trial for bribery and conspiracy. But in Federal Court in New York a few days later Judge Edmund L. Palmieri refused a defense request to make FBI files available before trial of charges of filing fraudulent statements with the former Economic Co-operation Administration.

Some Appeals Filed

The outcome of appeals of several New York newspapermen convicted of contempt of Congress for refusing to answer congressional committee questions may be determined eventually by the Watkins case decision. Dr. Otto Nathan, executor of the estate of Albert Einstein, and Mrs. Mary Knowles, a Plymouth Meeting (Pa.) librarian, are among numerous others whose appeals are in lower courts. Still others have been carried to the Supreme Court in recent months.

There are bound to be delays, unavoidable and manufactured, as well as confusion, natural or deliberate, as a result of the Supreme Court's 1957 term. But it is the term, not the world, that has ended.

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DORIS FLEESON

What to Do About the Court?

A-11

Lawmakers' Respect and Recognition Of Change Seen Curbing Sharp Action

Now that practically everybody has had his say about the Supreme Court's far-reaching defense of individual rights, the question is what will be done about it.

Those members of Congress who are in a position to affect, if not actually control, the course of events there without exception reply: Not much.

Asked if Congress might investigate the court, the doughty Speaker of the House, Sam Rayburn, grunted: "Hell, no—investigate ourselves, first." It was clear he didn't think that would happen, either.

There is sentiment, shared by Rayburn, for greater protection for the FBI files than the court's rulings suggest. Significantly, however, the Senate Judiciary Committee, hard core of anti-court sentiment on a wide front, opened hearings on such a bill with a promise they would be constructive and not a blast at the court.

There are many reasons why Congress likes to talk big about the Supreme Court but hates to cast votes which could be interpreted as attempts to intimidate or hamper it.

First of all, its members have a real respect for it and a genuine reluctance to interfere with it. As working politicians, they understand—and often envy—its relative detachment from the political pressures of the moment. Thus they do not actually believe extreme statements about the nine justices coming from any source.

At the same time, members of Congress realize that the court does change with the political climate but at a safe distance behind the election returns.

The court today is not killing the extreme repression of civil liberties known as McCarthyism. It is only ratifying the change of voter mood demonstrated when Congress was returned to Democratic control in 1954, which automatically ousted McCarthy as chief inquisitor. The change was underscored in 1956 when Congress remained Democratic despite the Eisenhower landslide. The court was not in at the kill; it is mopping up on the edges. Politicians see this very clearly.

On the partisan level there is little to be gained for either side by an attack on the court. Justices appointed by Eisenhower and Franklin Roosevelt are equally involved in the new rulings. Ironically the chief dissenter, Justice Tom Clark, was the appointee of President Truman who was scapegoat-in-chief of the McCarthy era. It is not the first time Justice Clark has been singularly indifferent to his benefactor.

Then there are wheels-within-wheels in the current court-Congress hassle.

The biggest head of steam behind attacks on the court unquestionably is among the Southerners who are fighting its ban on segregation. Its natural allies would be those anxious about the new court rulings limiting present Communist investigations and slowing down Communist trials.

But the two groups are mutually exclusive to a very large degree. No one in the administration camp and few of the Communist inquisitors want or can afford to be in the position of pulling any segregation chestnuts out of the fire for the Southerners.

The liberals in Congress who have been on short rations lately are of course very happy and ready to man the barricades for the Supreme Court any time it becomes necessary.

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Storm Over Court Recalls FDR Days

By Marquis Childs

NOT SINCE the early days of the New Deal has such a storm broken around the Supreme Court as is now raging over the civil liberties decisions.

The parallel is striking. While the wind comes from a different direction, its force is similar to that which blew up in the early 1930s as the Court threw out one New Deal act after another.

Childs

What the New Dealers were saying then about the Court and specifically about Chief Justice Hughes and his conservative associates, Justices Van Devanter, McReynolds, Sutherland, Butler and Roberts, is just what right-wing critics are saying today about Chief Justice Warren and the justices making up the majority. It adds up in baseball language to, "Throw the umpire out."

The Court in the 1930s did not hesitate to invalidate one alphabetical agency after another when public opinion was most aroused, as shown in successive elections, over the need for Government intervention to rehabilitate the economy.

THE ANGRY outcry grew in volume until, following his 1936 triumph, President Roosevelt put forward the Court-packing plan. The proposal was defeated after a long and bitter fight that split the Roosevelt ranks. But the New Dealers contended that it was the advancement of this plan which brought a shift in the Court, with New Deal laws subsequently upheld.

In the postwar era the Supreme Court waited a long time to come to grips with the Communist versus civil liberties issue. Opportunity after opportunity was passed up to decide the question raised in the appeal of John T. Watkins, who for reasons of conscience refused to give names of former associates who had long since left any association with communism. One can imagine the reaction if, say, at the height of the Army-McCarthy hearings the Court had handed down a decision like that in the Watkins case.

One of the measures put forward by extreme right-wing critics of the Court is to require the reconfirmation of justices every four years. That would require a constitutional amendment, since under the Constitution all Federal judges, from the District courts up to the highest tribunal, hold office for life.

At his press conference President Eisenhower was given an opportunity to defend the Court from its critics, a reporter asserting that this was the only one of the three coordinate branches of Government lacking the capacity for self-defense.

BUT THE President did not agree with this assertion, expressing his belief that in their opinions the justices argued for their viewpoints and often in language which even a layman could understand. He added that almost everyone might find something to criticize in one or the other of the decisions.

The extreme critics are, for the most part, those on the right who hold that Congress has the power to expose Communist activity without any restraint in the interest of thwarting and defeating the Communist conspiracy.

It was the right to expose for the sake of exposure, apart from any legislative objective, that Chief Justice Warren held contrary to the constitutional guarantees of freedom contained in the Bill of Rights. This is believed to be the source of the vituperative mail pouring in on the justices, the mildest epithet in letters, most of which are anonymous, being "dirty Communist."

There are more reasonable critics, among them lawyers of a generally liberal outlook, who feel that the civil liberties decisions were too sweeping and too generalized. They are fearful of preachments which go beyond points of law.

The Court decisions were bound to start a tempest. But coming in an atmosphere calmer than that of three or four years ago, it is a tempest soon likely to subside.

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JUSTICES WITHOUT A MEMORY

We have devoted rather extended discussion to the astounding doctrines enunciated by the supreme court in the recent series of decisions in favor of Communists and against the power of Congress to deal with subversion either thru the Smith act or thru investigations. One of the most remarkable things about these decisions is that the court and its members seem incapable of remembering anything they have said on the subject in the past.

For instance, the new doctrine of the court is that membership in the Communist party is a right of association and assembly in which there is nothing wrong per se. In freeing five California leaders of the Communist party, previously convicted by a jury fof conspiracy to overthrow the government by force and violence, the court, speaking thru Justice Harlan, said of these admitted Communists:

"So far as the record shows, none of them has engaged in or been associated with any but what appear to be wholly lawful activities."

Yet as recently as in 1951, in Dennis vs. the United States, when the court upheld the conviction of 11 national leaders of the Communist party under the Smith act, the majority opinion of Chief Justice Vinson said:

"But the Court of Appeals held that the record supports the following conclusions: By virtue of their control [over the Communist party] . . . petitioners [caused it to resume] . . . a policy which worked for the overthrow of the government by force and violence; that the Communist party is a highly disciplined organization, adept at infiltration into strategic positions, use of aliases, and double meaning language; that the party is rigidly controled; that Communists, unlike other political parties, tolerate no dissension from the policy laid down by the guiding forces, but that the approved program is slavishly followed by the members of the party; that the literature of the party and the statements and activities of its leaders, petitioners here, advocate, and the general goal of the party was, during the period in question, to achieve a successful overthrow of the existing order by force and violence."

"The formation by petitioners of such a highly organized conspiracy," the 1951 decision continued, "with rigidly disciplined members subject to call when the leaders, these petitioners, felt that the time had come for action, . . . convince us that their convictions were justified on this score. . . . It is the existence of the conspiracy which creates the danger."

But, six years later, what the court acknowledged to be a conspiracy directed toward overthrow of the government by force and violence becomes "wholly lawful activities."

Equally curious are some of the new attitudes of the court expressed in a decision reversing the conviction of John T. Watkins, union organizer and communist collaborator, of contempt of Congress. Here Chief Justice Warren, with the concurrence, among others, of Justice Black, held that "there is no congressional power to expose for the sake of exposure."

But in February, 1936, while still a senator, Justice Black defended congressional investigations with which he was associated as follows:

"But most valuable of all, this power of the probe is one of the most powerful weapons in the hands of the people to restrain the activities of powerful groups who can defy every other power.

"Public investigating committees . . . always have been opposed by groups that seek or have special privileges. The spokesmen of these greedy groups never rest in their opposition to exposure and publicity. That is because special privilege thrives in secrecy and darkness and is destroyed by the rays of pitiless publicity."

Query: Does not the communist underground thrive in secrecy and darkness and is that not the reason it resists exposure and publicity? Then why do Warren, Black, and their colleagues deny to Congress the right of exposure, once celebrated by Black, and maintain that there is no congressional power to expose for the sake of exposure?

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Managing Editor-
W.D.Maxwell

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CONSTERNATION OVER the Supreme Court and its decisions has ceased to be a "sectional" thing. In recent days, expressions of disagreement with the justices have sounded forth from officials and law scholars in many states. Alarm is at last being felt over the real danger threatening constitutional government, caused by the deliberations of the group that shows no concern over the legality or constitutionality of a point of law.

Were it not such a critical period, this "turn-about" by so many who have been shouting about the Supreme Court being "the law of the land," this could be a satisfying spectacle for Southerners who have been disturbed since Black Monday's school segregation decision. But there is no humor in a threat to the republic. There is no feeling of elation in this awakening of the South's critics to the fact that the present trend of the highest court in the land will surely and quickly lead to an end of freedom of our people, guaranteed by laws based on the Constitution.

In the bleakness of the present day situation can be found hope and encouragement that the Congress will soon attend to the greatly needed matter of correcting the badly mistaken gentlement who sit on the court.

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THESE DAYS:

Court Decisions Outlaw Security

By GEORGE E. SOKOLSKY

I HAVE before me a fat volume of 840 pages, entitled "Commission on Government Security." The question is: to read or not to read it. It is a hot Summer and it does not seem the time for futile reading.

There may be something useful in this report. The Commission contains very distinguished names and I see on it my old friend, James P. McGranery who used to be Attorney General of the United States and who knows very much about security. There is also Representative Francis E. Walter who heads the House Committee on Un-American Activities.

But what is the use? The Supreme Court has already settled most of the questions that this report deals with. The Supreme Court has really outlawed security. It has taken the position that when there is a conflict between the freedom of the individual and the security of the nation, the conflict shall be resolved in favor of freedom of the individual even if that individual believes that the major problems of this nation are to be solved by the conspiratorial Communist Party. In the Jencks decision the Supreme Court lessened the usefulness of the FBI which remains the only effective governmental agency to fight this type of conspiracy; in the Watkins decision it made it practically impossible to establish the conspiracy by evidence.

Wants a Big Job

So, I look at the Summary of Recommendations in this massive volume and I find that someone wants a big and expensive job because what is recommended is a Central Security Office. But what good is a Central Security Office if it is impossible, because of Supreme Court decisions, to prove the main conspiracy? Look at this sentence: "A man who talks too freely when in his cups, or a pervert who is vulnerable to blackmail, may both be security risks although both may be loyal Americans." Is a man loyal to his country who permits himself to become a prey of spies? Here again the resolve is to safeguard the individual "from an unjust stigma of disloyalty," but nothing is said of the very great peril to the nation.

At any rate, it would seem as though this expensive job need not be made just to save perverts from the unjust charge of disloyalty and under the Supreme Court decisions, there is little else that the Central Security Office can do.

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As for the recommendations concerning the so-called "Attorney General's List," the Commission's recommendations are also futile. It wants the listing of wicked organizations to continue but only "after FBI investigation and an opportunity for the organization to be heard by examiners of the Central Security Office, with the right of appeal to the Central Review Board. Decisions of the examiners and the Central Review Board would be advisory to the Attorney General."

Of course, the first part is pure bunk. Naturally, no Attorney General has ever issued a list that was not a product of the investigations of the FBI. The second part of the recommendation is snide: it really takes the listing away from the Attorney General and reserves it to the Central Security Office. Well, why not say so openly and directly and let's all watch a fight because no long-existing part of the bureaucracy wants to hand over to a new agency any of its functions? Herbert Hoover could have told this Commission all about that had they asked him. At any rate, I note at the end of the book, a dissent by Judge James P. McGranery who in it says: "There is no substitute for sound administrative procedures and the exercise of commonsense. The time has come for emphasis to be placed on the spirit of the law."

Does He Like CSO?

He also seems to dislike the Central Security Office and lays down this principle:

"...It is essential to recognize that no individual has the absolute right to be employed by the Government and it is equally essential to recognize that the people of these United States have an absolute right to a constitutional government secure from infiltration by even one disloyal employee. Any reasonable doubt as to the loyalty of an individual employee must be resolved in favor of the Government..."

McGranery makes it clear that the Central Security Office is not needed. Perhaps it would be best to forget this report altogether as an unnecessary expense of time and money.

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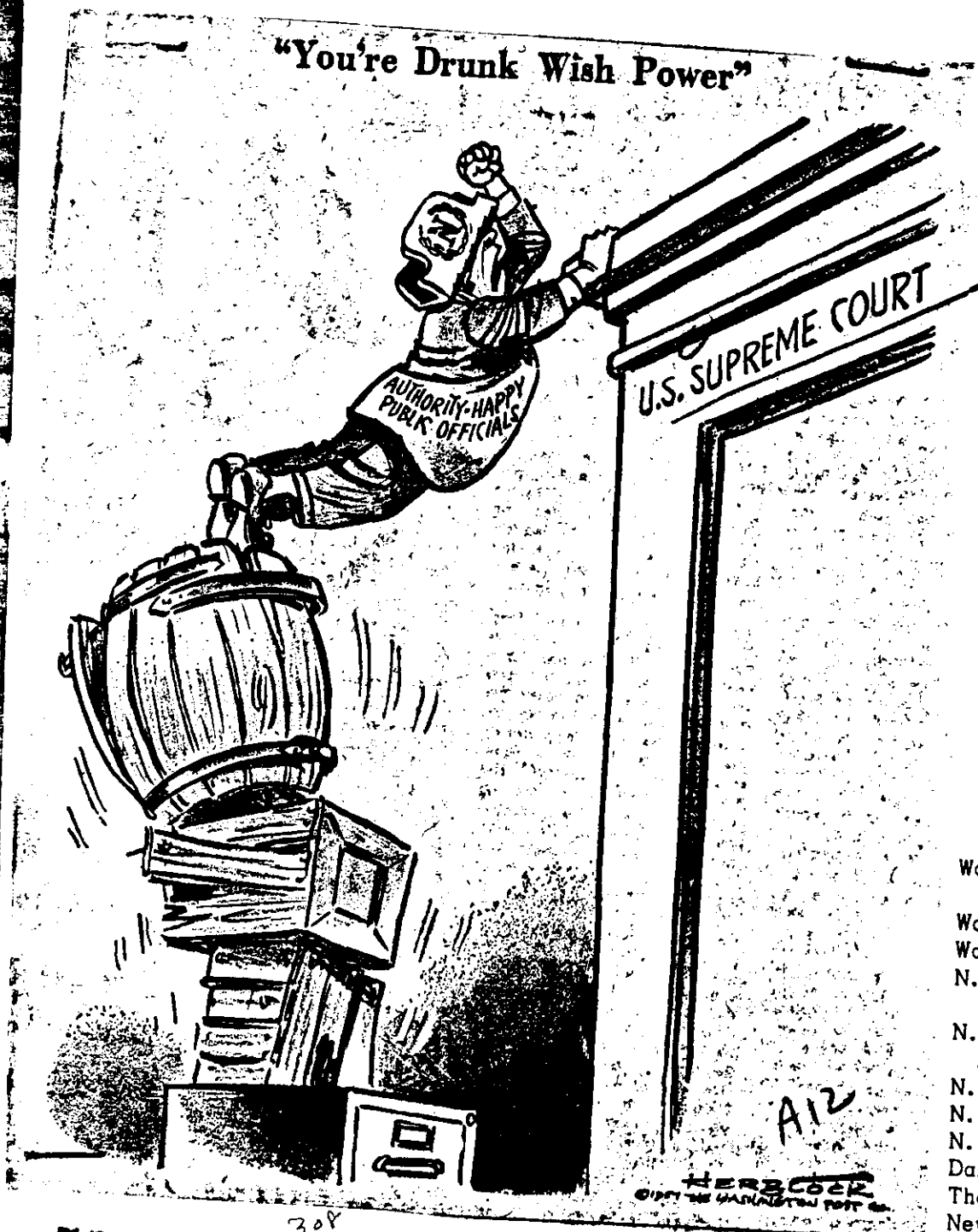

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Supreme Court Decisions

TO the N. Y. Herald Tribune:

Any Congressman who votes to deprive United States citizens of a jury trial in cases of accusation of violation of civil rights, or any other law violation, has no right to criticize the Supreme Court "power grabbing."

I agree that the Supreme Court has of late been grabbing power in a most terrifying and dictatorial manner, but when the United States Congress gives Federal courts the right to rule by injunction without jury trial, they are ill advised in criticizing the Federal Supreme Court. The only reason the Supreme Court can "grab" power is because an emasculated Congress is weak enough to relinquish its powers.

JOHN G. W. ROBERTSON.
New York, June 27, 1957.

TO the N. Y. Herald Tribune:

You uphold the Supreme Court's distinction between "abstract" discussion of violent overthrow of the government and actual overt acts to that purpose. You say that is free speech and cannot be assumed to incite to criminal action. That is chuckle-headed reasoning if I ever saw any.

Do you honestly believe any discussion by a Communist is without ulterior motive? Is not everything they say dictated by the party? Are any of them free to speak for themselves?

The Communist party, aside from a hard core of dedicated Communists, is notoriously recruited from the disgruntled, the misfits, the unbalanced idealists and the weak-minded. Can any purported "abstract" discussion fail to have an impact on these unstable people?

According to the Supreme Court, as long as I confine myself to talk, no matter how subversive, and do not stage a riot, murder a President, or sell state secrets, I cannot be blamed because some fool took my inflammatory speeches literally and went into action. I can assert it was an "abstract" discussion, I did not incite him.

I think it is more than time for Congress to bring the Supreme Court down to earth.

NILLA VAN SLYKE HARDER.
Philmont, N. Y., June 25, 1957.

[The distinction made by the court and by our editorial was not between advocacy and overt acts. It was between advocacy as "mere abstract doctrine" and "advocacy which incites to illegal action." Previous convictions under the Smith Act have been upheld because the judge's charge made that distinction. The mere assertion by a subversive that his discussion is abstract is by no means enough to clear him of incitation to illegal action.—Ed.]

TO the N. Y. Herald Tribune:

I read the letter you printed entitled "End of McCarthyism".

I agree that the Supreme Court has apparently put an end to the era of McCarthyism, but is that good? At least no one could accuse McCarthy of being tolerant to Communists.

The Supreme Court would appear otherwise, judging by its recent decisions. I refer to the decision overruling the Red-case convictions and also the decision to make available the files of the F. B. I. This last seems to be the height of naivete, to put it charitably. These decisions seem to say: "Let's be easy as possible on the Reds." Personally, I prefer Joe McCarthy.

ELIZABETH L. KENT,
Brooklyn, June 24, 1957.

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EDITORIALS — THE DAILY PRESS
NEWPORT NEWS - HAMPTON - WARWICK, VA., SATURDAY MORNING, JUNE 29, 1957

Won't The Court Let Laws Be Enforced?

The most ominous development since the Supreme Court issued its recent rulings that bear on attempts by the government to check the Communist menace is the statement that the Federal Bureau of Investigation is prepared to drop the prosecution of espionage and criminal cases if "such a drastic step should be necessary to protect the confidential nature of its files."

It is an open question, of course, whether the majority ruling in this particular instance has as wide application as some critics are giving it. We have no idea that the high court intended that in just any criminal case the government is compelled, on demand by the defense, to spread out for public view any and every word it has accumulated during its investigation of that particular criminal case.

What we still are convinced that the court did intend is that if the defense demands to see documents related to the testimony of a particular witness, accumulated through the acts of this particular witness, the government either must expose them or drop the case. And we incline to think the court was remiss failing to make such a distinction.

If that be a sound conclusion, then the Supreme Court's majority returned a lamely written opinion. But if it is not a sound conclusion — if in fact the court intended that anything and everything on file connected with the immediate case at bar must be flaunted before the defense at the defense's demand — then Justice Tom C. Clark is totally correct in his somewhat irritated dissent: The government might as well stop prosecuting criminal cases, and (to carry Mr. Justice Clark's thought a little farther) let the crooks, the traitors, and the saboteurs take over.

Bills have been introduced in Congress intended to avoid any such subversion of the

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The Virginian Pilot
Norfolk Ledger Dispatch
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Virginia Beach Sun-News
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Suffolk News Herald
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government's authority to keep order. The question about these bills is whether the Supreme Court based its ruling on statutory law or on constitutional law. The latter, logically, would appear to be the case. And it has to be recognized that the decision was not merely capricious, but was founded on recognition of the American principle that a prosecutor must prove his case beyond any reasonable doubt. Going farther, it was founded on recognition that it is possible for a lawyer — whether for the prosecution or for the defense — to put winning his case ahead of seeing that total justice is done.

In other words, the ruling on which the F.B.I. now bases its reported decision simply to fold up if and when the confidential nature of its files is threatened in court, is intended to guarantee a fair trial. Americans accept the principle that an occasional scoundrel would better escape punishment than that an occasional innocent man be convicted and punished.

Yet a legal interpretation that would break down regulation of crime would be intolerable. If the individual has rights, the whole social structure has the right of protection from the unscrupulous individual. The F.B.I., then, might quite advisably simply proceed cautiously and present the best, the most nearly complete, evidence at its command without exposing hearsay reports or violating confidential information which affords a start toward further investigation.

If any dismissals of cases the F.B.I. considers valid then occur, let the courts do the dismissing. If any appeals occur from convictions, let the F.B.I. continue to prosecute them through regular appeal channels. Ultimately, we suspect that the situation will be clarified — and not necessarily by any new legislation either.

Supreme Court: Aftermath

In the two years from 1866 to 1868, the reconstruction Congress, miffed by Supreme Court decisions that ran counter to punish-the-South sentiment, temporarily stripped the high court of so much of its authority that for a time it no longer was a coequal branch of the Government.

That Congress, the same that started impeachment proceedings against President Johnson, reduced the size of the court from nine to seven Justices to assure more favorable decisions. It also withdrew from the court the authority to issue writs of *habeas corpus*. Any decision that drew censure from the radicals led to widespread demands for wholesale impeachment of Supreme Court Justices.

The court of that day accepted such political curtailment of its authority without argument and with little dignity. The Justices in effect agreed to hew the line.

Last week the court again was under heavy fire from Congress and conservatives, though there was little chance that the current attack would lead to such indignity as was the case 90 years ago.

Southerners have kept up a steady sniping at the court since its decision outlawing racial segregation in public schools three years ago. Their forces now have been joined by others alarmed by recent decisions striking at some basics of conservative thinking.

The business community in general is critical of the court's ruling in the Du Pont-GM case, which added a new, restrictive dimension to anti-trust laws. Those to whom internal communism is still a major threat, fear that the court's decision for 14 Communists convicted under the Smith Act and the ruling in the Jencks case requiring access to the defendant of FBI files containing charges against him constitute a body blow at the Nation's security. The decision in the Watkins case, sharply restricting the authority of congressional committees, added fuel to the fire.

By the end of the week, the administration had acted swiftly to clarify the issue arising from the Jencks decision. Attorney General Brownell came up with a plan for legislation to make available only "relevant" FBI information to defendants in criminal trials. A Senate Judiciary subcommittee approved the proposal on Friday, the day after a House Judiciary subcommittee had approved a similar but somewhat more restrictive plan.

But congressional action working over the court's decisions was not expected to diminish the growing criticism of what has become known as "the Warren court." Senator Eastland of Mississippi suggested impeachment of the Court. The Attorney General of New Hampshire charged that the Constitution was being "tortured out of all rational historical proportion." Much of the press has been critical. And the halls of Congress rang with speeches of castigation.

Much of the criticism, especially that of lawyers, has been based on the charge that the most controversial of the court's recent decisions have blandly ignored the rule of *stare decisis*, by which legal decisions are made according to the precedent of previous decisions.

But failure to rule according to precedent has itself plenty of precedents in Supreme Court history, especially in the past 25 years. The late Justice Holmes minced no words when he wrote: "It is revolting to have no better reason for a rule of law than that it was laid down in the time of Henry IV." Justice Reed, in his majority opinion in *Smith v. Allwright*, noted that "this court has never felt constrained to follow precedent." And Justice Douglas, one of the liberals of the present court, recently wrote "*Stare decisis* has . . . little place in American constitutional law."

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High Court To Get New Red Tests

Issues Up For Decision in Fall

WASHINGTON, June 29 (AP)—The Supreme Court has saved for next fall Communist issues that may heighten the controversy aroused by its far-reaching decisions of the term just passed.

They include another challenge to the Smith Act which the government uses widely to punish Communist conspirators. The law forbids advocating violent overthrow of the government.

Under the fresh interpretation announced by Justice John M. Harlan on June 17, prosecutions will be more difficult from now on. He said preaching this doctrine is not illegal unless the preacher also advocates specific violent action.

Another part of the law makes it a crime to be a knowing member of a group which advocates overthrow of the government by force. Two cases testing the constitutionality of this section were under advisement this term and finally were put over to next fall.

Another appeal to start off the new term deals with the complaint of twenty-three writers and actors that they have been blacklisted by the movie industry for their balky conduct before the House Committee on Un-American Activities. They have brought a $50,000,000 damage suit against a group of film producers and members of the committee.

The court also has agreed to hear a case governing dismissal of twenty-five Philadelphia school teachers. The test appeal was filed by Herman Beilan, found "incompetent" after he refused to answer questions about past Communist affiliations.

This court term saw two of the more junior members—Justices William J. Brennan jr. and Harlan—line up with the liberals on issues of individual freedom.

Warren Leads Group

Chief Justice Earl Warren, appointed by President Eisenhower in 1953, leads this bloc. Other members are Justices Hugo L. Black and William O. Douglas who have demonstrated their liberal outlook for many years.

Justice Brennan delivered some of the court's most controversial opinions. One of them advanced a new interpretation of the anti-trust laws under which a monopoly finding was made against the giant duPont corporation.

Another required the government to withhold criminal prosecutions unless it is willing to produce F. B. I. reports made by informers it puts on the witness stand.

Chief Justice Warren's principal contribution to the liberal output was his opinion in the John T. Watkins contempt case. There the court held that Congressional investigators are required to explain to a recalcitrant witness the purpose of their inquiry and how the questions they are asking him relate to it.

The court also rebuked the executive branch in two big cases. In an 8-to-0 opinion by Justice Harlan it set aside the 1951 loyalty firing of career diplomat John Stewart Service. It also freed two women convicted of murder by overseas courts-martial, on grounds they are entitled to civilian trials.

In the field of race relations the court outlawed segregation (1) on city buses and (2) at Girard College for orphans in Philadelphia, which is administered by state-appointed trustees under a private will.

Justice Tom C. Clark, Attorney General in the Truman administration, emerged as the principal dissenter—sometimes alone—in cases involving individual rights. He often accused the majority of making it hard for Congress and the Justice Department to protect the nation's security.

Justice Charles E. Whittaker, who took his seat in March, wrote only three opinions in relatively minor cases.

Burton Conservative

Justice Harold H. Burton, a Truman appointee whose strong dissent in the du Pont case has been widely quoted, has been known as a conservative.

Justice Felix Frankfurter sustained his reputation as the most talkative member of the court. He wrote thirty-two opinions during the term, including majority opinions, dissents and separate concurrences. Justice Harlan and Douglas, each with twenty-seven, came second.

Members of the court disagreed among themselves more than they did last term. There were 180 dissents of all kinds as against 149 the term before. Justice Douglas headed the list with thirty dissents. Justice Frankfurter had twenty-seven. The court heard 143 cases in all of which ten are to be re-argued next term.

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Not Since 1930s Has Court Made Such Impact

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By Merlo J. Pusey
Associate Editor, The Washington Post

THE Supreme Court is finishing its term on the crest of the greatest floodtide of civil rights decisions in its history. In recent weeks it has hit one major chord of freedom after another. So broad has been the sweep of its opinions in this sphere that the Court is once more a topic of animated discussion in living rooms, on street corners and in the halls of Congress.

The court has not aroused so much interest in its deliberations since it found many of the hastily devised recovery measures of the New Deal to be unconstitutional in the mid-thirties. To some, any analogy between what the Court did then and what it has done in recent months may seem far-fetched. But one has only to listen to the angry outbursts in the Senate to realize the similarity of the reactions.

The Judicial Conscience

OF course there are profound contrasts between the upsetting of the New Deal antidepression measures and the restraints now laid upon Congress and the Executive Branch. The net effect of the Court's action in the middle thirties was to handicap the Government in its use of regulatory power in the economic sphere. The current restraints are laid in large measure on law-enforcement and investigating agencies. This does not, however, alter the fact that both in 1935-6 and in 1957 the Court broadly interfered with the exercise of governmental power for purposes which the elected branches deemed to be important.

It is not to be supposed that in either instance the Court deliberately adopted an offensive against executive and congressional policies. The Court does not work that way. Rather, it renders judgment in isolated cases submitted to it by private individuals as well as by the Government. Its conclusions reflect no studied campaign but only the impact of the judicial conscience on the major legal controversies of the day.

Because of this piecemeal approach, the sweep of the Court's decisions in recent months is especially noteworthy. It has acted to curb the excesses of congressional investigators; to assure trial by jury to civilians who accompany our armed forces abroad; to right the consequences of unfair administrative procedures in loyalty cases; to invalidate the use of confessions exacted through prolonged questioning of arrested persons before they are arraigned or informed of their rights; to upset the conviction of Communists under a loose interpretation of the Smith Act; to require the disclosure of certain FBI reports deemed essential to a proper defense of accused persons; to outlaw segregated seating in city buses; to compel the issuance of a license to practice law to a former Communist, and to strike down excessive censorship in Detroit.

Some Have Pinched

IT IS TRUE that not all of the recent civil rights decisions add to the total of our freedoms. Some appear to have pinched liberty in touchy places, notably the obscenity decisions. But the record in general constitutes an important new chapter in the history of American constitutional rights.

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Court Had Embarrassing Choice

Before looking at the lights and shadows in some of these opinions, it is interesting to note that Justices Hugo L. Black and William O. Douglas, both Roosevelt appointees, still emerge as the Court's leading "freedom firsters," while Justice Tom Clark, a Truman appointee, most frequently dissents on the conservative side, with all four of the Eisenhower appointees and some others in between.

Warren Stood Alone

CHIEF Justice Earl Warren often stands with Black and Douglas, but at the same time maintains a salutary independence. This was pointedly demonstrated when he delivered a separate concurring opinion in the Roth and Alberts cases.

Justice Brennan had written a sweeping opinion for the majority, upholding convictions under the Federal and California obscenity statutes. Douglas and Black condemned the statutes as "community censorship in one of its worst forms." The Chief Justice concluded that the defendants "were plainly engaged in the commercial exploitation of the morbid and shameful craving for materials with prurient effect" and that "the state and Federal governments can constitutionally punish such conduct." He stood alone on narrower ground because he feared (and many share this fear) that the majority opinion may later be invoked against genuine art and literature.

The note that the Chief Justice sounded here may be appropriately applied to various other opinions. The Court has looked toward broad horizons. Some of its opinions will undoubtedly be landmarks in the history of civil liberties. Yet there is a feeling among some lawyers, officials and other observers of the Court that, in staking out new areas of freedom, it has gone too far and moved without the caution which is expected of the Nation's highest tribunal.

In the Watkins case, for example, the Chief Justice seemed oblivious to the sense of restraint which caused him to stand alone in the obscenity cases. This time he carried a majority with him in a tour de force against the Committee on Un-American Activities. In a 35-page opinion, he concluded that "there is no congressional power to expose for the sake of exposure" and that the conviction of John T. Watkins for contempt of Congress was "necessarily invalid un-

See COURT, Page E5, Column 1

COURT, From Page E1

der the Due Process Clause of the Fifth Amendment."

The Court's condemnation of the almost unlimited investigative powers conferred upon the Un-American Activities Committee and its frequent high-handed use of those powers has won much applause. "Who can define the meaning of 'un-American'?" the Chief Justice asked. It is truly amazing that this committee should have probed into many facets of American life over a period of 20 years, sometimes with the utmost recklessness, without encountering any effective judicial restraint.

Perhaps this fact accounts for the scope of the present opinion. Yet some of its generalizations seem to have unnecessarily alarmed Congress, which lays great store upon its investigative powers. In this case it remained for Justice Felix Frankfurter to summarize the ruling of the Court in nondramatic fashion. If the opinion of the Chief Justice had been similarly stripped of nonessentials and generalizations, the chance of inducing Congress to hold a tighter rein on its far-reaching inquiries might have been improved.

One other aspect of the case has disturbed some lawyers. If it had involved some of the more bizarre quests of the probsters, the condemnation of their loose "charter" would have seemed more appropriate. But in this instance the committee, however inept it may have been in stating its purpose, was investigating the infiltration of Communists into labor unions. Undoubtedly, as Justice Clark pointed out in his dissent, Congress has power to inquire into a conspiracy aimed at destruction of the Nation.

OF COURSE, questions asked must be pertinent in the most legitimate of investigations and that pertinence should be made clear to the witness; also, the powers of the investigators ought to be specifically defined. But this gets back to the narrow ground of the Court's ruling and still leaves some puzzlement over its much broader *obiter dicta*.

In the momentous cases of Dorothy Krueger Smith and Clarice B. Covert, both of whom killed their husbands while they were serving with the American military forces abroad, the Court applied a basic constitutional principle in a manner which may have serious repercussions on our military defenses. It said that these women, being civilians, could not be tried by courts-martial. This means they cannot be tried at all, for none of our civilian courts has jurisdiction over crimes committed in other countries.

The Court had an embarrassing choice to make. The United States as Justice Black pointed out in the majority opinion, is "entirely a creature of the Constitution." It cannot act against American citizens abroad "free of the Bill of Rights." Though the soundness of this principle is scarcely open to question, its application to the facts at hand is giving much concern.

IF THE Black-Warren-Douglas-Brennan view prevails, something must "give" somewhere. It would be impossible to bring all civilian offenders abroad to the United States for trial, along with the witnesses, who, in many instances, would be citizens of foreign lands. Nor is it feasible to set up civilian courts to try Americans in other countries. No nation today will tolerate that kind of extraterritoriality.

Justices Frankfurter and John Marshall Harlan accepted the principle laid down by the majority only because these were capital cases. It might be feasible to bring the relatively few capital cases arising among civilian camp-followers abroad to the United States for trial. Yet it is difficult to see how any legal distinction can be made between capital and other criminal offenses when they are all lumped together in the constitutional guarantee of trial by jury.

Two alternatives seem to be open to the Government. It can leave the trial of all American civilians abroad to the country in which the crime has been committed. Or it can forbid military men to take their families along when they are assigned to foreign duty. Either would be a drastic measure. In one case the effect would be to deny civilian camp-followers the constitutional protection which the Court is trying to give them. The other would greatly complicate the problem of maintaining military forces in other lands, and thus might weaken our defenses.

The question here is whether a sound principle has been stretched to the point of producing unsound consequences. Only future experience will provide the answer.

THE TWO CASES which have especially jolted law-enforcement agencies are *Jencks v. United States*, in which the Court ordered release of certain FBI reports, and the reversal of Andrew R. Mallory's conviction of rape. Excitement over the Jencks case flared in part because of exaggerated reports as to what the Court had ordered. Actually it did not call for any wholesale opening of FBI files but only the release of reports made to the FBI by witnesses who had testified in the case.

The Court said, with compelling logic, that Jencks' attorney was entitled to see reports made by Harvey Matusow and J. W. Ford in order to prepare a proper defense. The Government should make available to the defense all the written and FBI-recorded reports from those two witnesses "touching the events and activities as to which they testified at the trial."

Justice Brennan's majority opinion definitely frowned upon the practice of having the judge in the case examine requested FBI papers to determine whether they are relevant. What the Court seemed to overlook is that someone must examine the FBI files in the first instance to determine which confidential reports do "touch the events and activities" about which FBI informers have testified.

Defense counsel could not reasonably be given access to all the data in every report which an informer might have made. So the Justice Department and various members of Congress are seeking legislation to authorize judges to determine, in case of controversy, what portions of the reports requested have a bearing on the case. Material having no relation whatever to the case—unevaluated data which might gravely damage innocent persons—could thus be eliminated.

No doubt this problem can be worked out satisfactorily, but the present confusion among the lower courts as to what is required might have been avoided if the Supreme Court had spelled out its ruling with greater preciseness.

AS FOR the Mallory case, it has brought the individual's right not to be a witness against himself into sharp collision with routine police practices. Mallory was taken to a District of Columbia police station on suspicion, subjected to a lie-detector test and intensively questioned until he confessed. There was no evidence of coercion, but a unanimous Court ruled that he should first have been taken before a magistrate and informed of his right to have counsel and to refrain from saying anything that could be used against him.

As in the Smith and Covert cases, the safeguard which the Court has laid down seems unexceptionable in principle. In application, it gives rise to grave problems.

In a recent unsolved murder, the District police say, they have questioned a thousand or more persons. Some were held several hours while their stories were checked. Obviously they could not have been taken before a magistrate and ordered held in the absence of any concrete evidence. That would amount to false arrest. Yet if one of these persons should confess to the crime, his prosecution would seem to be clouded unless the police could find evidence enough to convict him without the confession.

CONSTITUTIONAL rights should not be impaired, of course, because they make police work more difficult. But no rights are absolute. The great work of the Court lies in maintaining a reasonable balance between individual rights and the interests and welfare of society as a whole.

It seems unlikely that the principle laid down in this case, which the Court first enunciated in the McNabb decision more than 10 years ago, will be altered. But something more will be needed to indicate to law-enforcement officers precisely how they should proceed when they must deal with suspects against whom no susbstantial evidence has been found.

After a survey of the Court's opinions over many decades, Leo Pfeffer concluded in his recent volume, "The Liberties of an American," that it has "in large measure fulfilled its responsibilities as guardian of the Bill of Rights." That comment is even more pertinent today than it was a few months ago.

The Court's recent exuberance in this sphere may require some adjustments, but it has shown a healthy respect for the basic freedoms. The years ahead will give ample opportunity for further working of the rough ground which has been newly plowed.

Two cartoon views of the Supreme Court's individual rights decisions. Left, "You May Come Back Now," by Fitzpatrick in the St. Louis Post-Dispatch. Right, "Caught," by Long in the Minneapolis Tribune.

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What's Wrong with This Picture?

By Burris Jenkins Jr.

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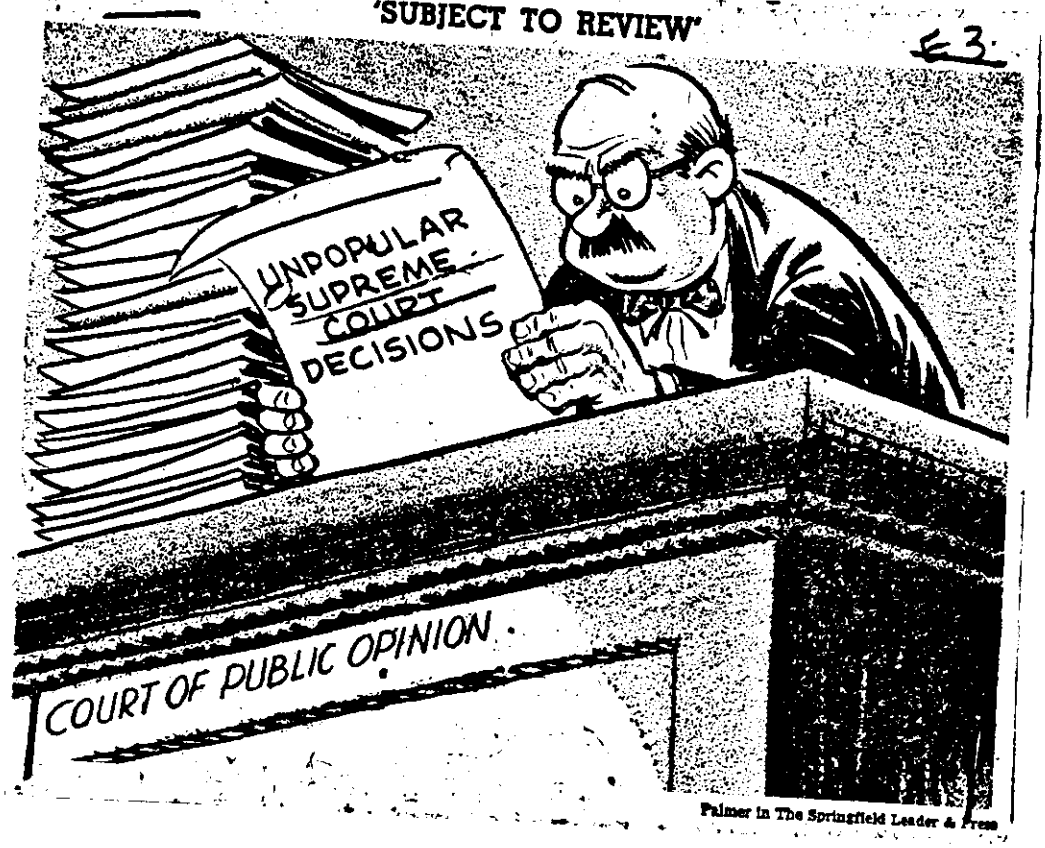
'SUBJECT TO REVIEW'



Palmer in The Springfield Leader & Press

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HIGH COURT'S CRITICS GRUMBLE BUT CONFORM

Congress May Pass a Law on Use of F.B.I. Records But in Other Cases There is Little It Can Do

CHANGES COME WITH TIME

By ARTHUR KROCK

WASHINGTON, June 29—Except for a serious, bipartisan and Administration-backed measure to protect the "raw" confidential files of the F. B. I. from being exploited by criminals, as a possible consequence of the Supreme Court decision in the Jencks case, the prospect is that Congress at this session will not attempt to supervene by legislation recent rulings of the high court that have been widely protested by members of Congress, among others. The likelihood is that, as on a number of previous occasions, the critics will have to content themselves with grumbling and the lower courts and lawyers with hermeneutics.

That is because, though Congress possesses such fundamental powers to curb the Supreme Court as further limiting its jurisdiction and reducing or increasing its membership, the national legislature has shrunk from exercising these in fear that the remedy will be worse than the cause of the complaint. Moreover, Congress, like the American people, has never found a satisfactory substitute for the role of the Supreme Court as final arbiter of the legality of Executive and Legislative actions. And the shifts or reversals in the thinking of the Court under the pressure of public opinion—usually led by a popular President—have occurred frequently enough in history to furnish an answer to those who would curb it legislatively that has been acceptable to Congress thus far. This answer is, that the Court will never take very long to catch up with the political philosophy of a large popular majority.

'37 Fight Recalled

It was a combination of these factors that produced the first great defeat in politics and public opinion suffered by President F. D. Roosevelt (1937). His plan to increase the number of Supreme Court justices in order to put an end to adverse rulings on the constitutionality of the New Deal programs was handicapped from the beginning by the historic reluctance to strong-arm the high tribunal. But its rejection became a certainty only when the Court, under the leadership of Chief Justice Hughes, changed the trend of its constitutional thinking.

Of seven recent Supreme Court decisions that have come under heavy critical fire the ruling in the Jencks case was the only one in which the necessity for immediate legislation was demonstrable and the power of Congress to grant it was unquestionable. Justice Brennan's opinion for the Court, granting the defendant more than he sought, gave the Department of Justice the alternative of abandoning prosecution in a large number of critical security, kidnapping, tax evasion and narcotic cases, or turning over to the defendants all the confidential F. B. I. reports that Government witnesses drew on for testimony. This posed a simultaneous threat to the essential function and value of the F. B. I. and to the protection of the people from heinous crime. And Justice Brennan's language was so broad and generalized that the lower courts at once began to interpret it in different ways in disposing of applicable cases.

Limits to Decision

In this situation it was easy for the Executive to combine with Democrats and Republicans in Congress on legislation which would hold the decision within limits wherein the rights of defendants would be assured the protection of the trial judges without damaging the essential function of the F. B. I.

But that was not true of the other six decisions which have been attacked by individual members of Congress, some very influential, but in a sporadic manner. While the ruling in *duPont* menaces intercorporation investments that were legal when made, and also planned mergers, Congress is politically disposed against helping out big

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business with its problems. The Watkins decision, in which the Chief Justice generalized, as Justice Brennan did in *Jencks*, in setting down constitutional standards for Congressional committees of inquiry, clearly can be tested for its effects only by future committee proceedings. The Supreme Court's reinstatement of John Stewart Service was a somewhat popular finding. In the California Communist cases, where the court released five defendants and ordered new trials for nine, the process was wholly within the area of its jurisdiction that Congress, despite recurrent proposals, has always been loath to restrict.

Sweeping Language

Justice Black's opinion for the Court, that requires jury trials in criminal cases affecting civilian dependents of the armed forces who heretofore have been subject to courts-martial, was another exhibit in the use of sweeping language. It left the possible construction that these dependants must have jury trials for any offenses and, recognizing this, concurring justices carefully limited their approval to criminal cases. But the armed forces have proceeded on the latter assumption. And until or unless this is successfully challenged in the Supreme Court, Congress is content to hold only a watching brief.

The Court, whose spokesman in this instance was Justice Frankfurter, freed a convicted rapist on the ground that Washington police violated the Federal code by "unduly delaying" his arraignment until they had twice obtained his confession, and had not informed him of his other legal rights. This, too, is in the area of judicial process. And while members of Congress assailed a ruling that turned loose on society one convicted of an obnoxious crime, in particularly brutal circumstances, it is plainly out of legislative jurisdiction.

Bipartisan Agreement

The measure to limit the consequences of *Jencks*, therefore, was the only limitation on possible consequences of a Supreme Court ruling on which there was general, bipartisan agreement by Congress with the Executive as to necessity, immediacy and a clearly constitutional means of accomplishment. But there is an undercurrent in Congress to "do something about the Tenth Amendment" that may come to the surface at the next session and produce legislation.

This movement was created by Supreme Court decisions that have canceled long established state jurisdictions, particularly in the Steve Nelson case. In this the Court held that Congress had "pre-empted" for the Federal power legal proceedings against those charged with subversive activities and hence the State of Pennsylvania was barred from this field. In other rulings during the last few years the Court has shown an increasing disposition to read into acts of Congress "intents" which have been denied by sponsors of the measures. These sponsors have also cited committee reports and the trend of debates as proofs to the exact contrary.

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Obscenity in Court

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Any proscription of obscenity that stops all obscene matter is going to endanger free speech and any definition that wholly protects free speech is going to allow some obscenity to escape punishment. It is the long struggle to balance this good and evil that came to crisis in the Supreme Court in three different cases this week. The way in which the Court has shifted the balance is bound to disquiet a great many citizens.

A majority opinion by Justice Brennan upheld one conviction under the Federal obscenity statute enacted in 1872 and another under a California law. In the Roth case, the Justice found sufficiently precise to meet the challenge of "vagueness" the Federal law punishing the mailing of "every obscene, lewd, lascivious or filthy book, pamphlet, picture, paper, letter, writing, print or other publication of indecent character." He found acceptable a charge to the jury describing obscene as "material which deals with sex in a manner appealing to prurient interest," and putting the exact determination up to the jury to decide if the matter as a whole would produce this effect upon "all those whom it is likely to reach."

In the Albers case, the Court was also satisfied with a similar jury charge and with the California statute which punishes anyone who "willfully and lewdly, either: writes, composes, stereotypes, prints, publishes, sells, distributes, keeps for sale, or exhibits any obscene or indecent writing, paper, or book . . ."

Justice Harlan, who concurred in the Albers case and dissented in the Roth case, voiced fears that many will have when he pointed to the danger of encouraging the Federal courts to "rely on easy labeling and jury verdicts as a substitute for facing up to the tough individual problems of constitutional judgment involved in every obscenity case." He wisely cited the greater risks in Federal obscenity laws than in state laws. He warned that standards consented to in the majority opinion might ban "much of the great literature of the world." It is the view of Justice Harlan that "the Federal Government has no business . . . to bar the sale of books because they might lead to any kind of 'thoughts'," and that also is our view.

An even more forthright dissent by Justice Douglas, in which Justice Black joined, denounced the standard followed in these cases. "All it (a literary work) need to do," he said, "is to incite a lascivious thought or arouse a lustful desire. The list of books that judges or juries can place in that category is endless."

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In a third case, the Court, with Justice Frankfurter writing the opinion, upheld the New York use of an injunction to obstruct the distribution of books. A dissenting opinion, in which Justice Douglas was joined by Justice Black, found the New York process "goes far toward making the censor supreme" and "substitutes punishment by contempt for punishment by jury trial." Justice Brennan, also dissenting, concluded that "the absence in this New York obscenity statute of a jury trial is a fatal defect."

When a majority of the Court, in dealing with issues that concern the First Amendment, proceeds on a course that arouses such serious misgivings in the dissenting minority, the anxieties of citizens generally are justified and inevitable.

The Roth case seems to us especially serious, for in the language of Justice Holmes in 1921: "The United States may give up the Post Office when it sees fit; but while it carries it on, the law of the mails is almost as much a part of free speech as the right to use our tongues."

The great flood of dubious printed material that has emerged on the stands and flowed through the mails in recent years is responsible for some sincere apprehension. In some instances this apprehension has led to volunteer, extra-legal, punitive boycotts to impose on the whole community the literary standards of a few persons. Such ventures are always dangerous. But there is also danger when legislators and judges conclude that the normal citizen has need of governmental intervention "to save himself from his own impulses and protect himself from his own ideas."

It is to be hoped that, in subsequent opinions, the Supreme Court will define more clearly the point beyond which the wish to protect the weak from bad literature may not trespass upon the normal citizen's right to read what he pleases.

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Editor's Report: Must Safeguard FBI Files

By WILLIAM RANDOLPH HEARST JR.
Editor-in-Chief Hearst Newspapers

A COUPLE OF WEEKS ago when I undertook in this space to comment on what I thought to be a majority decision by the Supreme Court leaning dangerously to the left (see Burris Jenkins' cartoon on Editorial Page) I thought, perhaps I was dealing with a subject that might be too heavy Summer reading, and unfamiliar.

Needless to say, I did not know that the now famous (or notorious) Jencks decision ordering the files of the FBI to be opened to defense lawyers on demand would be followed within a few days by several more rulings just as harmful to the forces of law and order entrusted with our national security, and giving aid and comfort to Communists.

W. R. HEARST JR.

To my surprise, though, I got more favorable mail on this column, particularly after the subsequent decisions, than I had gotten on any Editor's Report in many a day. The majority of the letters indicated not only disagreement with the decisions and dissatisfaction with the reasoning of the majority of the court, but in most every instance expressed a desire to know what could be done about closing the loopholes the court had opened.

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Let to Cmdr. W. R. Hearst, Jr.
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Editor's Report

Continued from First Page

As most of us know, our Government is composed of three principal parts, namely, (1) the Executive branch, headed by the President and members of his Cabinet, who direct various administrative departments; (2) the Legislative, comprising both Houses of Congress, and (3) the Judicial, which is, of course, the Supreme Court. Its function is to pass upon the legality of acts of the Executive branch or laws passed by the Legislative branch in the interest of our citizens and to interpret the Constitution.

While all three branches of the Government are supposed to be equal, it is the will of the majority of the people which must in the long run prevail. It is through the House of Congress that the will of the people is presumed to be most accurately and directly represented, although it powerfully influences the Executive branch, too, and more subtly the Supreme Court.

* * *

AN EXCELLENT EXAMPLE of how the three branches affect one another when in disagreement was the hassle over the so-called Tidelands, meaning the land under water, but off-shore, of the States bordering the oceans.

California and Texas licensed some oil companies to drill for oil off their shores. Along came the Department of the Interior, representing the Executive branch's point of view, and said that off-shore, under-water land was the property of the Federal Government. If any oil was found the revenue belonged to the Federal Government.

This controversy between two of the three branches of the Government obviously came before the third, the Supreme Court. They ruled in favor of the Federal Government.

However, in spite of the fact that only a few States stood to gain, the question of States' Rights versus Federal control is so zealously guarded by the people's representatives that they passed a law, and passed it by a two-thirds majority over the subsequent veto of President Truman, which specifically gave those Tidelands to the States.

The Supreme Court does not operate in a vacuum, although in recent cases it may have seemed to. It also must respond eventually to the will of the people.

If, therefore, Supreme Court decisions interpret the law in a way which does not meet with the approval of the majority of our citizens, it is up to them to make their views heard by their representatives in Congress, which is most immediately answerable to the people's will. Then it is up to those representatives to override the interpretation of the court by enacting laws so specific as to not permit of interpretation other than that desired by the people.

* * *

* * *

AS I WRITE THIS the will of the people has just won a notable triumph in the joint move by the Administration and Congress to plug up the disastrous ruling of the Supreme Court in the Jencks case.

Attorney General Brownell, obviously speaking for President Eisenhower and FBI Chief J. Edgar Hoover as well as for himself, appeared Friday before the Senate Judiciary Subcommittee to urge correction of what he called the "grave emergency" in the order spilling open FBI and other confidential files to defense lawyers in subversion and other serious criminal cases.

Mr. Brownell gave strong Administration support to the O'Mahoney bill, which is backed by seven Senators. The bill would (1) provide fair and reasonable means for protecting the rights of defendants, (2) the safety of confidential informants, (3) the reputation of innocent persons, and (4) the security of the nation. The subcommittee reported it out unanimously—meaning it has received its first push toward becoming law.

In brief, the bill provides that when defense attorneys demand scrutiny of FBI or other secret information in the interests of their clients, such information first must be thoroughly screened by the trial judge. It will be his obligation to determine what portion of the information, if any, is relevant to the case, and to hold back that which is not.

Furthermore, the legislation would make it necessary that confidential information could not be requested by the defense until a trial was under way and a witness had testified on matters related directly to the files. This would block pre-trial examination of FBI records, which already has been demanded by the defense in several cases as result of the Jencks decision.

* * *

THERE IS NO NEED for me to go into the manifold dangers of opening FBI and similar files without the restrictive safeguards mentioned above. As Mr. Brownell pointed out, such promiscuous freedom would cut off intelligence sources, endanger the lives of informants and imperil the security of the nation. It would cripple enforcement of narcotic laws as well.

The point to cheer about today is that bi-partisan cooperation in the Senate and Administration (Senator O'Mahoney of Wyoming is a Democrat) has been taken to correct a grievous Supreme Court error. In other words, the will of the people has manifested itself quickly and firmly.

Right now, the important thing is to get Administration-Congress legislation through the hopper and into law. Judging from the temper of Congress—once more reflecting the will of the people—it ought to go through without any trouble.

If technical roadblocks should develop, or there are signs of it being shunted into a pigeonhole, I hope you who read this will let your Congressmen know that you want action and want it fast. I consider this a vital piece of legislation.

William Randolph Hearst Jr.

Once Again, Rocks and Roses Are Flung at the Justices

Two points of view: A faceless, monolithic court or one carrying on a great tradition?

THE COURT, CONGRESS, CHAOS

How could a committee of Congress investigate subversion—or anything else?

How could any State Legislature investigate subversion?

How could the government continue to operate the loyalty program?

How could the Attorney General's office prove that anyone was guilty of violating the Smith Act, which outlaws conspiracies to overthrow the government?

There was consternation in Congress and consternation at the Department of Justice last week over a series of deep-reaching decisions by the Supreme Court that raised these and other important questions. There was no quick answer to any of them. All concerned asked "What now?"

Not only the problem of subversion but enforcement of criminal laws and regulation of corporate practices were involved. At the Criminal Division of the Department of Justice, which by the very nature of its work often relies on stool pigeons for evidence, officials wondered if anyone would ever dare inform for them again, because of the Supreme Court's rulings. At the Antitrust Division, lawyers said gloomily that, if the Supreme Court applied its reasoning about the Smith Act to antitrust cases, they would run into almost impossible difficulties in proving that any group of businessmen was in restraint of trade.

The decision that impinged directly upon the traditional powers of Congress to investigate—a tradition accepted since the early days of the Republic—arose from the case of a relatively obscure labor leader named John Watkins. He had refused to answer questions of the House Un-American Activities Committee about former associates, had been cited for contempt and convicted. The Supreme Court, in upsetting the Watkins conviction, said the committee had no right to ask him these questions.

On Capitol Hill, fiercely jealous of its prerogatives, there was an immediate wave of outraged indignation. Current investigations were affected, too—that of the Un-American Activities group, possibly that of the Senate committee on labor-management racketeering.

But the impact on Congress—which had its own means of defending its prerogatives—was far less crushing than the impact on the executive branch, particularly the Department of Justice, of the other major decision of the week. This was the surprising reversal of the 1952 conviction of fourteen California Communists under the Smith Act.

What the High Court did was to draw a fine line between teaching overthrow of the government as a theory and urging overthrow of the government as a course of action. It also construed the word "organize"—in connection with Communist organizing—as meaning the formation of the party itself as distinct from a continuing process of organizing new cells and clubs, recruiting, and the like. It was this latter definition that might well affect the long-established laws governing the "organizing" of monopolies.

Sweezey Upheld: The other two decisions of last week also had their repercussions, too, but they were less far-reaching. One was a corollary to the Watkins case, reversing the conviction of a New Hampshire professor named Paul M. Sweezey, who had balked at answering questions about his beliefs and political activities. The difference was that Sweezey's case stemmed from a State Legislature's investigation.

Then there was the ruling that diplomat John Stewart Service had been wrongfully dismissed by the State Department in 1951. The dismissal had been recommended by a Civil Service Commission loyalty board, though State Department loyalty boards had cleared Service. The Court held that Secretary of State Dean Acheson had no right to disregard his own department's findings.

Inevitably the first reactions in Con-

gress to the week's decisions, particularly that of the Watkins case, took the form of angry outbursts. One of the angriest came from the Democratic chairman of the Senate Permanent Investigations subcommittee, John L. McClellan: "[These decisions] are extremely disappointing and regrettable . . . It is apparent that they have lent much comfort and encouragement to the Communists and the criminal elements in our country. The precedents they establish will seriously hamper all law enforcement agencies of our government and weaken our internal security."

He was echoed by the ranking Republican on the same committee, Karl E. Mundt of South Dakota: "The Supreme Court has crippled both the lower courts and Congressional committees in discharge of their responsibilities."

Dissenting Opinion: On the other hand there were cheers for the Court from Democratic Sen. Wayne Morse: "The Watkins decision is a historical monument in a glorious record of Supreme Court decisions protecting individual liberty."

The committee most seriously affected by the Watkins decision was that on Un-American Activities. If the committee is to continue, it will almost certainly have to have its charter from the House revised. It was the vague wording of the present charter (by which the committee was established in 1938) that was especially criticized by Chief Justice Earl Warren in delivering the Watkins case majority opinion: "It would be difficult to imagine a less explicit authorizing

Associated Press

Service: Victory at last

resolution. Who can define the meaning of 'Un-American'?"

As for the Department of Justice, the prevailing mood was sheer bafflement. That department had not yet recovered from the Jencks case ruling when it was hit over the head by last week's Smith Act decree. Said one haggard Justice lawyer: "Never but never has the government taken so many shellackings from the Supreme Court in one period."

The Jencks decision, which would force the FBI to open its files to defendants against whom such material was used, "cuts right across the administration of justice," one said. His fear: that informants would clam up.

Now the Justice Department also has the Smith Act decision to contend with. Until Congress, the Justice Department and the lower courts could adjust themselves to the highest tribunal's latest decisions, a period of legalistic chaos seemed inevitable. The limits of Congressional inquiry, the efficacy of the Smith Act, the sanctity of FBI files—all of these important aspects of government procedure would rest on suddenly uncertain foundations.

PENNSYLVANIA:

Freedom After Five

On a grimy and deserted street near Philadelphia's waterfront, a policeman was making his routine check of locked doors on a cold Saturday afternoon. The door of the A. & E. Broom Co. was open. Inside, the policeman found two bodies —the factory's owner and a watchman, both with bludgeoned heads. That was in December 1945.

Six months later, the police picked up a gangling, 26-year-old Negro named Aaron Turner, whose 6 feet 4 inches had brought him the nickname of "Treetop." Turner had come to Philadelphia from Marshville, N.C., and worked in the waterfront produce and fish markets. He had no money, no friends, no alibi. Under police questioning, he signed a confession. For Treetop Turner, the future looked not only bleak but brief.

At his trial that September, Turner repudiated his confession, claiming that

Four Major Decisions—And What They Mean for the Future

This is what the Supreme Court did:

▶***The decision:*** Reversal of the conviction of labor leader John T. Watkins for contempt of Congress. Watkins, once an official of a Communist-dominated union, appeared in 1954 before the House Un-American Activities Committee and, while willing to answer questions about himself and about people now known to be Communists, he refused to identify other former associates. The Court's majority (6-1) opinion, delivered by Chief Justice Earl Warren, held that the committee's authority was "vague" and that it had no right to ask the questions it did, that Watkins' rights under the First Amendment had been violated. Justice Tom C. Clark dissented.

The meaning: A stricter limit than ever before on the questions which a Congressional investigating committee can compel a witness to answer. The ruling is expected to upset a number of similar convictions, most notably that of playwright Arthur Miller.

▶***The decision:*** Reversal of the 1952 conviction of fourteen California Communists under the Smith Act. The majority (6-1) opinion delivered by Justice John M. Harlan held that (1) the trial judge had failed to make clear a distinction between "teaching of forcible overthrow [of the government] as an abstract principle" and any "effort to instigate action to that end"; (2) that while the Smith Act bars "organizing" a group for the government's overthrow, the Communist Party had been "organized" in 1945, long enough for the Statute of Limitations to have run out. The court ordered five of the defendants acquitted, a new trial for the other nine. Justice Clark dissented.

The meaning: Future Smith Act prosecutions must be more carefully prepared. It may become so difficult to convict a man under the Smith Act, the law could become a dead letter. The Court's definition of "organize" in this case may also affect other laws, particularly those in the antitrust field.

▶***The decision:*** Reversal of the 1954 contempt conviction of Prof. Paul M. Sweezey of the University of New Hampshire. This was similar to the Watkins case except that it was a State Legislature—New Hampshire's—which Sweezey had defied by refusing to answer questions on his political beliefs and activities. Justices Clark and Harold H. Burton dissented.

The meaning: The implications were the same as in the Watkins case but extended now to State Legislatures.

▶***The decision:*** That diplomat John Stewart Service was wrongfully dismissed from the State Department in 1951 by then Secretary of State Dean Acheson. Service was a target of the late Sen. Joseph R. McCarthy in his campaign against "Communists in the State Department." The Court's ruling (8-0) held that Acheson, in dismissing Service, had overruled his own department's findings and thus violated regulations safeguarding an employe.

The meaning: Reappraisal of the State Department's dismissal procedures

As Pegler Sees It:

Judge Reverses Himself and Law

By WESTBROOK PEGLER

THE SUPREME COURT has clamped another toehold on itself in holding that a union has no right to picket an employer to force him to drive his workers into the union. The lower court decided that Local 695 of the rotten Teamsters union was trying to make the owners of a Wisconsin gravel pit do the union's dirty work. Wisconsin law forbids this as "coercion." The muddy Federal Taft-Hartley Law comes to the same point by relieving employers of the legal obligation imposed by the old Wagner Act to help the union to snare the employees.

By bitter coincidence, the majority opinion in this case was written by Felix Frankfurter, who wrote exactly the opposite in the notorious Cafeteria case in 1943.

Briefly, a union picketed a cafeteria run entirely by members of a family who owned it and had no employees outside the family. In many cases affecting small enterprises, loosely known as "Mom and Pop Stores," unions were demanding that the family members refrain from working in their own employ and put an outsiders dispatched from the union halls.

Numerous obvious effects could ensue. The family members would have to pay initiation fees and dues for union membership and the union workers sent to take their places could insult their customers and, in restaurants, could contaminate the food, break dishes and otherwise sabotage the business. Communists were likely to put a private enterprise out of business as a minute contribution to the "revolution."

Tried to Justify a Wrong

Speaking for the court in 1943, Frankfurter admitted that the pickets told lies about the cafeteria. Nevertheless, he had the cold gall to assert that the pickets were guilty of no wrong in lying about the cafeteria and the persons who owned it. For support of this decision which thus became the law of the land, Frankfurter, who planted Alger Hiss in the Washington labyrinth, relied on the admitted fact that unions had a right to "state their case" and to "make known the facts."

However, in one of those precedents, by which Frankfurter tried to justify an indorsement of malicious, vicious, harmful slanders against innocent victims, the decision also provided that the slogans and outcries must be "truthful." In the Cafeteria case, resort to lies was not denied. But Frankfurter wrote that "to use loose language or undefined slogans that are part of the conventional give and take in our economic and political controversies like 'unfair' or 'Fascist'—is not to falsify facts."

Of course these lies were clearly intended to destroy an honest enterprise of an American working family and that was absolutely clear to all the brutal enemies of the American morality. And they did falsify the facts.

All the New York courts had held that it was a lie to say that the owners were "unfair" to organized labor because the cafeteria had no employees; to say that the cafeteria served bad food and to say that customers by their patronage aided "the cause of fascism." The pickets lied further, according to the New York courts, in representing "that a strike was in progress."

To justify all this corruption, Frankfurter, and the Supreme Court of the United States, held that it was wrong to deny "free speech in the future" because of "isolated incidents of abuse" in the previous record of that picket-line.

The effect which the union and the court desired was to compel the cafeteria to hire union members.

For a long time, this nasty doctrine deterred lawyers for injured American individuals and firms from seeking relief in junior courts.

Now it is reversed until further notice.

7/14/57

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

As Pegler Sees It:

Judge Reverses
Himself and Law

By Westbrook Pegler

(NY Journal American, July 1[redacted]

[redacted] BAUMGARDNER

The Supreme Court has clamped another toehold on itself in holding that a union has no right to picket an employer to force him to drive his workers into the union.

By bitter coincidence, the majority opinion in this case was written by Felix Frankfurter, who wrote exactly the opposite in the notorious Cafeteria case in 1943. Briefly, a union picketed a cafeteria run entirely by members of a family who owned it and had no employes outside the family. In many cases affecting small enterprises, unions were demanding that the family members refrain from working in their own employ and put on outsiders dispatched from the union halls. Speaking for the court in 1943, Frankfurter admitted that the pickets told lies about the cafeteria. Nevertheless, he had the cold gall to assert that the pickets were guilty of no wrong in lying about the cafeteria and the persons who owned it.

For support of this decision, Frankfurter relied on the admitted fact that unions had a right to "state their case" and to "make known the facts." However, in one of those precedents the decision also provided that the slogans and outcries be "truthful." To justify all this corruption, Frankfurter, and the Supreme Court, held that it was wrong to deny "free speech in the future" because of "isolated incidents of abuse" in the previous record of that picket-line. For a long time, this nasty doctrine deterred lawyers for injured American individuals and firms from seeking relief in junior courts. Now it is reversed until further notice.

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Fourth 'R' for Schools

In recent newspaper articles detailing the shocking statistics of sex delinquency in our public schools, the suggested means of combatting this evil was more sex education in the schools. There was one real, positive force which was not mentioned—religious training. How would sex education alleviate these conditions if not accompanied by training as to what is right and wrong morally? Couldn't these children attend religious services of their own denominations where the moral aspects of sexual promiscuity and its dire consequences would be explained to them before they are old enough to experiment and ruin their lives because no one told them of their danger?

As a child, I attended Catholic parochial schools, where we were taught that sexual relations outside of marriage was breaking the Sixth Commandment, a mortal sin.

We were also taught that we, as children, were responsible for the wrong we did, and never thought of blaming our parents or teachers for our misdemeanors. We ought to add the fourth "R"—religion—to the training of young minds.

Gertrude M. Hoyt.

Views of High Bench

Is there any justice in the decision handed down by the Supreme Court whereby a self-confessed rapist is set free to commit the same crime or worse, simply because there was a question of time before his arraignment? And who is best qualified to judge how long it must take for an arraignment to be made? Is it the police who are so diligently working on the case, who are so directly concerned with its just conclusion, or is it a political appointee sitting on the bench of our Supreme Court? From two recent decisions handed down by the Supreme Court, concerning the FBI files and the Mallory case, it seems to me there must be something dreadfully wrong with either our laws or with our Supreme Court. Something should be done—and quickly—to correct the situation.

Reader.

* * * *

A recent column by a noted commentator on the crippling of America in the Communist struggle by the Supreme Court contains this line, "The justices display a curious awareness of the actual operations of Communist subversion."

Why should the respectable cloak of jurisprudence be thrown around these raw decisions, saying that it's all a mysterious science, beyond the understanding of the simple layman who, therefore, is unable to judge?

Baloney to the line that these are all "honorable men" but too dumb to know what they are doing!

Why should not every man who used his power in the court to throw open the files of the FBI to criminals be impeached? Or why shouldn't Congress cut off appropriations to the Supreme Court until each and every one of the gentlemen who raised his hand in favor of this dirty business, has moved out?

Thelma T. Robinson, M.D.
Beverley Hills, Calif.

* * * *

The Supreme Court, in ordering the release of five convicted Communists, said that "advocating and teaching violent overthrow of the Government" is merely an "abstract principle" and not "concrete action" which the Smith Act requires. The court did not trouble itself to explain why the teaching of "concrete action" is not inherent in "violent overthrow." If it meant that there must not only be "teaching" but an effective demonstration of "concrete action" to sustain a conviction, this would be locking the stable door after the horse is stolen; which recalls this recent item in the conservative British weekly, Time and Tide:

"A Northamptonshire magistrate who happens also to be manager of a primary school was rash enough to ask a prospective master whether he happened to be a member of the Communist Party. The chairman immediately ruled the question to be out of order, and the clerk said sharply that such questions must never be asked. And so the whole extraordinary argument begins again—'monstrous interference with liberty of thought' . . . 'McCarthyism' . . . 'Freedom of political and religious views' . . . and so on. In an age of ideological wars I should have thought we would by now have abandoned the curious theory that a man's political and philosophical beliefs have no bearing on what he actually does."

This writer apparently was unaware of the fact that in this country our own Supreme Court has now made this "curious theory" the law of the land. This latest decision of the court was simply one more exercise of its assumed dictatorial powers, from which it cannot refrain even though it gives aid and comfort to our mortal enemy. Like the racial integration decision, by resort to neologism and its own peculiar "interpretation" the court rewrites legislation to substitute its own personal views for existing law.

Old Reactionary.

Tolson
Nichols
Boardman
Belmont
Mohr
Parsons
Rosen
Tamm
Trotter
Nease
Tele. Room
Holloman
Gandy

[redacted]

Wash. Post and Times Herald
Wash. News
Wash. Star ATL
N. Y. Herald Tribune
N. Y. Journal-American
N. Y. Mirror
N. Y. Daily News
N. Y. Times
Daily Worker
The Worker
New Leader

Date JUL 1 1957

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TRIBUNE OF THE PEOPLE

In ancient Rome, some 500 years before Christ, there was a fierce struggle between the rich and the not so rich—or patricians and plebeians, as they were called.

The conflict ended in an agreement under which the plebeians were to appoint two representatives every year, to be called tribunes of the people. These officials' duty was to stand up for the people's rights, such as they were in those times, and they were to be personally exempt from arrest, prosecution or other interference. The reform lasted a long time.

President Eisenhower

We take you now to the United States of America, in the year 1957 A. D.

Here, the people are under attack from two of the three branches of their Government.

The Executive branch, heading up in President Dwight D. Eisenhower, is taking just about all the money it can get out of the people via taxation, and is spending that money for a multitude of purposes, some necessary and some completely cockeyed and crazy.

Forgotten long ago is this Administration's—

1952 CAMPAIGN PROMISE

—to hammer the federal budget down to around $60 billion a year and keep it there or pound it still lower. The amount asked this year is $71.8 billion, with broad hints that the next two or three budgets will be progressively bigger.

Gen. Eisenhower (whom, by the way, we still believe to be an honest, sincere, completely well-meaning man) is against tax reduction nowadays, whereas he once felt and said that taxes had to come far down.

It would be tough enough for the people if only the Executive branch of their Government were attacking them.

But they have also come under attack in the last three years from—

THE JUDICIAL BRANCH

—meaning from the U. S. Supreme Court under the chief Justiceship of Earl Warren, an Eisenhower appointee.

The United States' and the American people's deadliest enemy in the world today is Communist Russia, with its worldwide network of spies, saboteurs, fellow travelers and fifth columnists, all dedicated to Communist conquest of the whole earth.

Earl Warren

In decision after decision, the Warren Supreme Court has befriended the Communists and their Kremlin masters, and has weakened the defenses of the American people against this enemy.

States have been forbidden to enforce their own sedition laws. The Federal Bureau of Investigation's files have been thrown open

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Belmont
Mohr
Parsons
Rosen
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Trotter
Nease
Tele. Room
Holloman
Gandy

Wash. Post and Times Herald
Wash. News
Wash. Star
N. Y. Herald Tribune
N. Y. Journal-American
N. Y. Mirror
N. Y. Daily News
N. Y. Times
Daily Worker
The Worker
New Leader

Date JUL 1 1957

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64 JUL 9 1957