to persons accused of subversion and other crimes. The powers of Congress to investigate anything and anybody in the public interest have been cut down.

These attacks by the Supreme Court do not affect only the people. They also affect the Executive and the Legislative branches of the people's Government. And up to now the Executive branch, as represented by the President, has contented itself with muttering that we must respect the Supreme Court even when its decisions pass our understanding, and with taking fairly vigorous steps toward asking Congress to do something about the FBI-files decision.

It seems to us that the time has come for the—

LEGISLATIVE BRANCH

—meaning the Congress of the United States, to appoint itself the tribune of the American people.

That is Congress' proper and constitutional function.

As tribune of the people, Congress could, and we think should, renew its fight to slash the Eisenhower budget by several billions; and it should take up the fight to clip the overgrown claws of the Warren Supreme Court and restore to both the President and Congress the powers that court has been taking away.

It's Time To Fight

There would seem to be little time to waste in this matter. If things go on in the present direction much longer, the American people can wind up with a bankrupt Government and a galloping inflation, and with the Judicial branch in full control of the White House, Congress and all the rest of us.

That would mean the end of the United States as we have known and loved it. In Congress lies the last hope that we can detect of heading off such a disaster.

0-19 (Rev. 9-7-56)

Today in National Affairs

'Life Tenure' Not Assured Supreme Court Justices

By DAVID LAWRENCE

WASHINGTON, July 1.—What can be done about a Supreme Court that ignores the rights of Congress and the Executive and, in effect, nullifies various provisions of the Constitution itself?

This question has arisen lately because of the extreme nature of some of the decisions of the high court which substantially impair the investigative operations of Congress and the prosecution of criminals and traitors.

Lawrence

It may come as a surprise to many people to find that justices of the Supreme Court of the United States are not assured of life tenure and that nowhere in the Constitution are the words "life tenure" used. Actually the Constitution simply says that justices of the high court shall hold office only "during good behavior."

The Constitution provides for "impeachment" of judges, but solely for "treason, bribery and other high crimes and misdemeanors." In the event, however, that the justices do not commit any such crimes but go beyond their proper judicial functions and actually destroy the right of the nation to protect itself against subversion, can anything be done about it?

Strangely enough, in the entire history of the Supreme Court there never has been a case involving a definition of the words "good behavior" in connection with any Supreme Court justice. Nor has there been any case in which the power of removal of high court justices has been ruled upon.

Refers to 1926 Case

This correspondent the other day recalled the stir made by the famous Myers case in October, 1926, and took occasion to reread the decision because in its 50,000 words is given the most exhaustive discussion of the removal powers of Congress ever presented by the Supreme Court.

But this case and the decision in the Humphrey case in 1935—repudiating the President's removal of a member of the Federal Trade Commission—are confined largely to the question of how far Congress may by law restrict the removal powers of the Chief Executive with respect to executive and quasi-judicial posts. It is clear that the President can remove an official for the causes specified by Congress when fixing the term of office and also for other causes not mentioned by Congress when the post is purely administrative. The decisions are vague and contradictory where no term is specified by Congress—as, for instance, the case of lower court judges.

Opinion Quoted

It is plain from a reading of the Myers case that most of the discussions in the early days of the republic and since then have related primarily to whether the Senate has to be consulted about removals. It seems to be an established fact that for many years the Congress asserted its right to participate in the removal power. Describing this early history, the Supreme Court in an opinion in 1839 said:

"No one denied the power of the President and the Senate, jointly to remove, where the tenure of the office was not fixed by the Constitution, which was a full recognition of the principle that the power of removal was incident to the power of appointment."

Often quoted in these decisions and rebutted is an argument of Alexander Hamilton, who wrote in "The Federalist": "It has been mentioned as one of the advantages to be expected from the co-operation of the Senate in the business of appointments, that it would contribute to the stability of the Administration. The consent of that body would be necessary to displace as well as to appoint."

It seems logical to conclude—as Justices Brandeis, Holmes and McReynolds plainly asserted in their dissent in the Myers case—that the power resides in Congress to control removals by stipulating in a law the basis for such removal.

Congress Power

Hence, if Congress chose to define "good behavior" and provided by law that the President and the Senate could jointly decide on the removal of any or all of the Supreme Court justices and then other justices were nominated and confirmed to replace them, there is enough legislative power vested in Congress to make the action stick despite any attempt by the courts to interfere. For Congress also has the right, specifically given by the Constitution, to determine the "appellate jurisdiction" of the Supreme Court. Through a law of this kind, Congress could prevent any review of its own statutory definition of the phrase "good behavior."

So justices of the Supreme Court can be ousted whenever Congress and a President jointly decide to take that action to protect the country from erratic or irresponsible decisions by a majority of the high court. "Life tenure" is a custom—not an absolute assurance of tenure for supreme court justices. And custom" has been overturned in decisions in more instances in the twenty years since the so-called "liberals" took over the Supreme Court than in all the 148 prior years of judicial history.

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BAUMGARDNER

Poor John Dillinger. He's Had It (Sob)

I MOVE the John Dillinger case be reopened and brought before the Supreme Court. If ever a case lacked due process, that one did. The sneaky FBI collected information on this man and kept it in a secret file without his consent — and didn't send a copy to his lawyer.

The end came when this poor man was cornered by a group of armed FBI men. These barbarous FBI agents shot this lone man down like a dog. Had not the agents acted so cowardly John Dillinger would have faced a court and probably would have been sentenced to death. This, of course, would have been reversed by the Supreme Court and John Dillinger would be alive today.

BILL LOVELACE

FBI/LML

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Mallory Ruling

D. C. Officials Confer on Confessions

District law enforcement officials decided yesterday that additional committing magistrates are not needed as a result of the recent Supreme Court ruling that curbs police power to extract confessions from suspects.

Chief Judge Bolitha J. Laws of District Court, who called the special 50-minute meeting, issued this statement:

"It is agreed there is no problem confronting the police or the district attorney in the matter of availability of a committing magistrate. The United States Commissioner and the various judges to whom access may be had are adequate to meet any problem at the present time."

The Mallory Decision

The Supreme Court held in the Mallory case that the defendant's signed confession was invalid because he was held by police too long before being arraigned and was not advised of his rights.

Yesterday's meeting was called to determine whether there was a need for making a committing magistrate available on short notice at all hours.

United States Attorney Oliver Gasch said immediate arraignment was not the problem, because the Supreme Court's ruling held that police cannot hold a suspect for questioning with the purpose of obtaining a confession.

Gasch to Confer

He said he would confer soon with C. Aubrey Gasch, counsel for a special Senate Judiciary Subcommittee on Improving the Federal Code, about obtaining clarifying legislation on arrest-and-arraignment procedure.

In addition to Gasch, others attending the meeting in Laws' office were Chief Judge Leonard P. Walsh of Municipal Court, Police Chief Robert V. Murray and United States Commissioner James F. Splain.

Murray said police would continue to apply the investigative procedures used before the Mallory ruling.

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DAVID LAWRENCE

Investigating Court Decisions

House Group Studying Rulings' Effects Seen Confronted by Tribunal's Curbs

The Judiciary Committee of the House of Representatives wants to know how far the recent decisions of the Supreme Court go toward limiting or crippling the investigative powers of Congress. So a special committee of five members has been appointed to conduct an inquiry.

But before any such inquiry can be effective, will the House of Representatives accept the Supreme Court's edict and pass a resolution stating exactly what it wishes to investigate, and, if it should decide to call any witnesses, will the committee make clear in advance just what the witnesses are to be asked?

Any investigation probably will be useless unless the House of Representatives is prepared to assert fully its prerogatives under the Constitution, which says each House can make its own rules governing its proceedings.

There are lots of things about the operations of the Supreme Court of the United States which, under the "right to know" doctrine, Congress can seek to learn.

There is, for example, the role of "law clerks." Maybe they ought to be summoned to testify to explain recent decisions. Some of these aides are brilliant students of the law and perhaps know more about the new-fangled reasoning in the so-called "liberal" decisions than do some of the justices themselves.

In the March, 1956, issue of the California Law Review, for instance, there was published an article entitled "The Federal Loyalty-Security Program: A Proposed Statute." One of its three authors was Graham B. Moody, jr., who was described in a footnote as "head law clerk to the Chief Justice of the United States." Moody, in this article, proposed a bill which Congress was evidently urged to enact in place of the executive order setting forth the President's loyalty and security program. It was this order whose scope was subsequently modified by the Supreme Court's decision in the Cole case. Among the recommendations of the suggested bill is the point that a distinction should be made between employes in "security-sensitive" agencies and ordinary employes of the Government.

The Supreme Court itself had under consideration at the time the Cole case and, in a decision handed down on June 11, 1956, made just such a distinction. The Court said the Congress didn't mean to allow nonsensitive agencies to be covered by the President's regulations.

Moody left the service of the Chief Justice a few days after the decision in the Cole case was handed down, as the term of the court ended. Moody, of course, had just as much right to publish his article as the justices, themselves, seem to assert off the bench in making public speeches on controversial issues of the day.

Unquestionably, Moody knows a lot about the powers of Congress in these matters and, in the article in the California Law Review which he co-authored, a footnote occurs: "For what it may be worth, it is the writers' belief that some type of Federal security program is both politically and socially justifiable." But the article points out that Congress should exclude from consideration as charges by any executive department against any employe such things as the signing of petitions, presence "at a gathering of two or more people," use of an alias, attendance at educational institutions, travel outside the United States. It isn't clear from the article whether all questions relative to such points would be barred from inquiry or merely omitted in setting up "standards" to assure that discharges from Government employment would not occur solely on account of their "associations" or "passive activity."

Moody's point of view seems to have been borne out of confirmed in the Supreme Court decisions which followed. This would appear to indicate that, while the justices, themselves, might decline to testify before the new committee of the House, maybe the talented law clerks could shed some light on the reasoning processes of some of the justices. For the court now holds that individual rights virtually supersede the right of the Nation to protect itself against subversion. It accepts the so-called "liberal" view that congressional investigators have no right under the Constitution to compel answers from witnesses if the questions relate to beliefs, past associations or "political" concepts. The word "political" presumably now covers the Communist Party, though Congress has refused to dignify the Communist organization as a legitimate political party in this country but holds it to be the agent of a foreign power hostile to the interests of the United States.

The House Judiciary Committee will not get very far with its inquiry unless it is prepared to investigate the processes of the Supreme Court itself. For the American people have the right to find out who writes the decisions of the Supreme Court today—the justices or their "law clerks." If the "law clerks" have such influence, should not each perhaps be recognized with the title of "assistant justice" and be appointed hereafter subject to confirmation by the Senate, just as are the justices themselves and the "policy-making" officials who assist the top-level members of the executive branch of the Government?

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Would Renovate Courts

To the Editor: According to a recent ruling of our Supreme Court, in which it freed a number of people mixed up with the Communist Party, I naturally wonder just what it would actually take to convict one tried on any charge involving Communism and make it stick.

It appears that our lower courts can never convict and sentence anyone for any of the numerous charges concerned with Communism that our Supreme Court will uphold. Vast sums of money and a tremendous amount of testimony are entailed in order to obtain these convictions and, after all this time and money are expended, it just doesn't mean a thing when it reaches the highest court in our land.

My observations are that every one of these cases that is declared unconstitutional is a green light for everyone thus acquitted to double his efforts and defy our courts to do anything about it. It has always been my solid belief that if anyone admits to being a member of the Communist Party, then he or she is responsible to that party for carrying out any orders issued from the higher-ups and, no doubt, some of these orders call for the overthrow of our present form of government by force if necessary.

If our present laws are inadequate in the prosecution and carrying out of these cases, with all the lawmakers we have in Washington, we shouldn't have any difficulty in passing laws that these "nine old men" could not just cast aside, disregarding the great amount of time and money spent to obtain convictions by judges and juries in the lower courts. I am beginning to think that our entire judicial system could stand a complete renovation.

Louisville WYATT B. WACKER.

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Mr. Nichols
Mr. Belmont
Mr. Mohr
Mr. Parsons
Mr. Rosen
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U.S. Supreme Court

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Louisville Times ✓
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Cong. Andrews Threatens Impeachment Proceedings Against Supreme Court

GEORGE ANDREWS REPORTS from WASHINGTON

WASHINGTON, D. C.—Telegrams and letters from throughout the United States, including such areas of divergent opinion as Oklahoma, New Hampshire, Michigan and California, have poured into the office of Congressman George Andrews in response to his demands that the Supreme Court be investigated or impeached.

"Since I made the suggestion," Andrews said, "a number of Congressmen have indicated their desire to go along with any leadership I might take in this direction. I don't think one man alone can accomplish the right result. But, if enough intelligent and thoughtful members will band together, we might arouse the country to what has happened to the Court."

"Every day," Andrews declared, "we see these judges reverse sound decisions of the lower courts in cases that are tainted with Communism. And I predict that when the Girard case is considered next week, we'll see an American boy turned over to the Japanese for trial. This will be a "State Department decision" rather than a legal opinion. The Girard decision will touch the home of every American boy who is in the armed services. Maybe the people will wake up to what is going on and lend their support to those who are bold enough to question the Court's decisions."

"The big question," Andrews said, "is: Who is exerting influence on the members of the Supreme Court? How many of the men who actually write the opinions of the Judges have Communist leanings or hold membership in the party? These are serious questions. I, for one, think the Congress has a right to ask them, I think the people of the United States have a right to the answers."

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CONGRESSMAN
GEORGE ANDREWS
State of Alabama

Union Springs Herald
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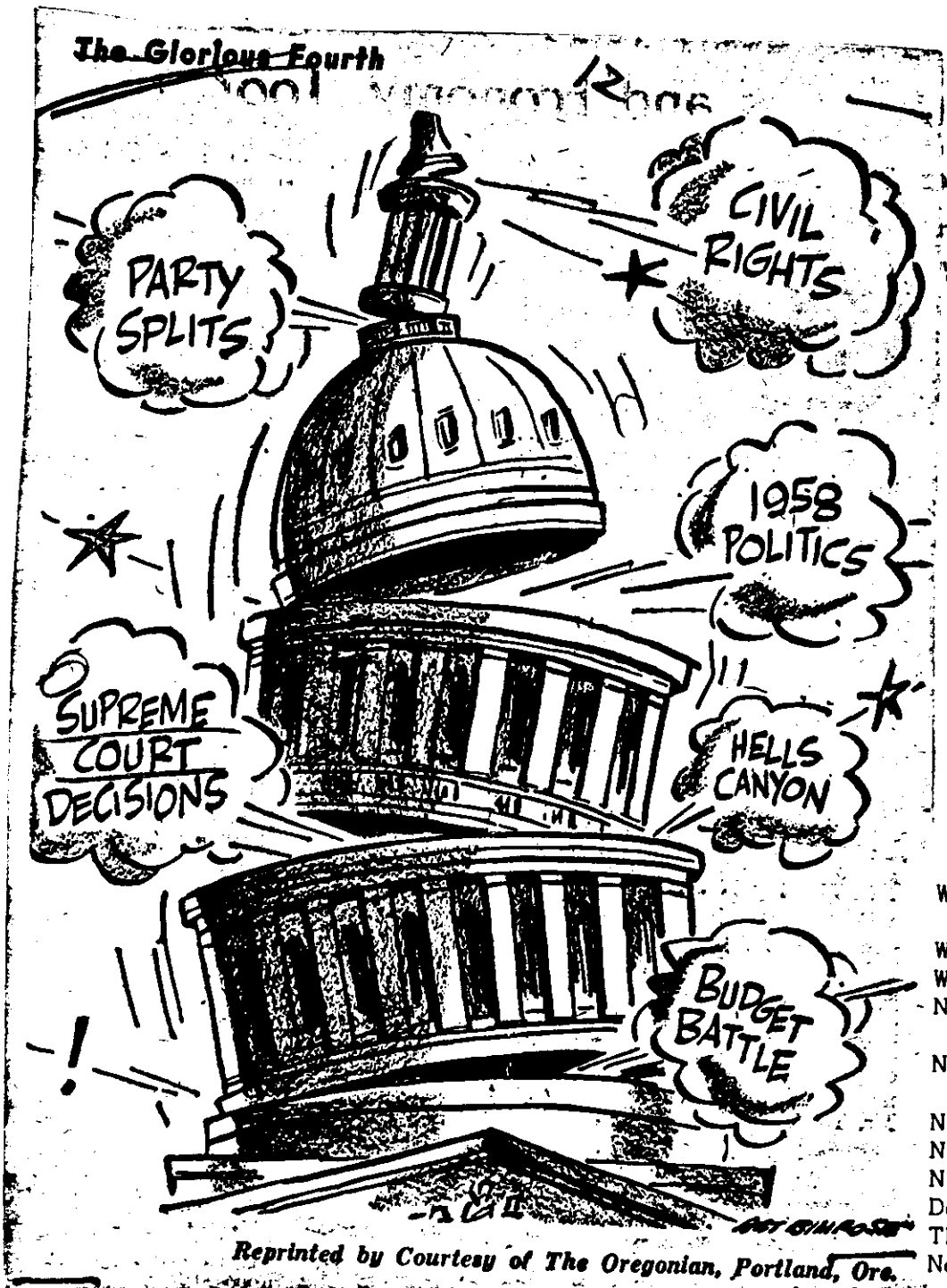

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LATEST THREAT TO LIBERTY

Eternal vigilance, as the old saying has it, is the price of liberty. Or, as the Irish patriot John Philpot Curran put it in 1790:

"It is the common fate of the indolent to see their rights become a prey to the active. The condition upon which God hath given liberty to man is eternal vigilance; which condition if he break, servitude is at once the consequence of his crime and the punishment of his guilt."

Numerous Americans in every generation, we imagine, have had the comfortable feeling that the winning of their liberties had been fully and finally attended to in 1776-89, by the heroic men and women who fought the American Revolution and the masters of statecraft who put together the Constitution. Yet most generations of Americans have had to fight for their liberties in one way or another.

Earl Warren

Some of the threats to our freedom have come from outside the country, some from inside. The latest comes both from outside and inside the United States.

The great mid-20th Century menace to human liberty everywhere is Communism, a conspiracy directed from Moscow for the enslavement of the world. The United States is the biggest single prize the Reds hope to win.

Appallingly, the most effective inside-U. S. A. help now being given this conspiracy comes from—

OUR OWN SUPREME COURT

—a body of nine men sworn to preserve and protect the Constitution.

In a long string of decisions, this tribunal, with Earl Warren as Chief Justice, has given aid and comfort to the Communist enemy.

Americans are in no way obligated to stand by and calmly watch the high court hack away our defenses against Communism—defenses such as the Smith Act of 1940, the various state sedition laws, the investigative powers of Congress, the freedom of operation of the FBI.

Stand Up And Fight

If we want to keep our liberties and have a fair chance to fight victoriously for them should Soviet Russia start a war against them, we'll have to stand up to the Supreme Court now and tell it in unmistakable terms to get back on its own territory.

The proper medium to carry this command to the Supreme Court is Congress. We elect Congress. The Constitution makes it a branch of the Government co-equal with the President and the Supreme Court.

There are, furthermore—

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NUMEROUS WAYS

—in which Congress could clip the claws of the high court.

It could bring impeachment proceedings, to try one or more of the justices for improper conduct on the bench—as the Georgia Legislature has already urged.

Or a constitutional amendment could be offered to the states, requiring that Supreme Court justices be elected periodically; say once every six years, like U. S. Senators.

Court Can Be Curbed

The Constitution provides (Art. III, Sec. 2, Subd. 2) that the Supreme Court shall "have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the Congress shall make."

That provision suggests any number of ways in which Congress could curb the court.

The Constitution also says (Art. III, Sec. 1) that the Supreme Court justices shall hold office only "during good behavior"—not for life, as some people suppose.

To borrow a suggestion from the editor and commentator David Lawrence, why not an Act of Congress setting up some standards and procedures whereby the Senate could register its opinion from time to time as to whether one or more of the learned justices were behaving properly on the bench? A Senate finding of bad behavior would mean automatic dismissal from the Supreme Court.

All these proposals have merit, it seems to us. We are profoundly convinced that now is the time for Congress to look into every suggestion for forcing the court to stop tampering with essential American rights and liberties.

The House Judiciary Committee made a good beginning this week, when it set up a subcommittee to study this whole string of pro-Red Supreme Court decisions. But study without action produces no results. And Independence Day, 1957, looks like an ideal day for a lot of members of Congress to make up their minds to get in there and fight.

O Supreme Court

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These Days . . . 47 . . .

By George E. Sokolsky

The Fourth of July

IT USED TO BE the custom for the great, the near great and aspirants for greatness to appear on bunting-draped platforms to deliver a Fourth of July oration. The custom went out with the popularity of the automobile and radio; the former produced the long weekend on the road; the latter the commentaries and news reports by professionals, many of whom avoid opinions because no matter how you put it, an opinion can be controversial.

Sokolsky

The older custom was better because it brought the neighbors together and therefore stimulated moral approval or indignation. Most of the occasions resulted in moral indignation which is essential in a free society. To remain free, a people must often be angry and they must be angry against their own officials. In this United States, such indignation is usually impersonal because few of us know our politicians and many would not care to know some. But indignation is good for the soul and the ancient adage, "throw the scoundrels out!" applies to even one's best friends in public office.

THIS YEAR, the most controversial department of government is the Supreme Court, a public agency generally regarded as sacrosanct although not always so. Some of the Justices have been outstanding juristic scholars but there have been several political scoundrels on the Supreme Court bench so that the word, sacrosanct, does not apply to it any more than the Presidency or to Congress. When the division of powers is clear-cut, the authority and cleanliness of the bench are at their best.

President Eisenhower has appointed four Justices to the Supreme Court. Warren, Harlan, Brennan and Whittaker. Warren was Governor of California, a politician of enormous magnitude who managed to get both Republican and Democratic votes and who really was not dependent upon either party, although he called himself a Republican and controlled the party machine in his state.

Warren was a candidate for President in 1952 and stood between Eisenhower and Taft. Both sides courted him. When it was clear that Warren could not be nominated, both sides offered him a Supreme Court appointment — the first opening — if he did not flip the California delegation to the other side. It may be recalled that California held out to the bitter end when Eisenhower's nomination was certain. Meanwhile, Richard Nixon had broken away from the California reservation and was made Vice President. When the shooting was over, Warren held the respect of the Eisenhower and Taft elements in the Republican Party and he got the first opening on the Supreme Court bench, which was the Chief Justiceship.

Except as district attorney in Alameda County from 1925 to 1939, and State Attorney General, Warren has had no experience as a lawyer or a judge. His forte is political manipulation and state administration.

BRENNAN has been a judge in New Jersey. He is a Democrat and a Roman Catholic and was appointed for those reasons, it being regarded as politically fortuitous at the moment to appoint such a one to the Supreme Court bench. No one, not even Brennan, has ever been able to explain how among the numerous Roman Catholics and Democrats of the United States, he happened to be the one tagged. The last political act of Joe McCarthy before he died was to oppose the appointment of this obscure New Jersey judge to the Supreme Court of the United States.

There must be other appointments in the near future. Justice Felix Frankfurter, the remaining intellectual of the Holmes-Brandeis magnitude on the bench, is 74 years old. He apparently hangs on as an act of patriotism to prevent another unfortunate appointment. Whoever does the selecting of such men for President Eisenhower is more the politician than a jurist and the Senate has apparently dropped dead.

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The Washington Merry-Go-Round

Supreme Court Put Below FBI

By Drew Pearson

One of the most interesting legislative phenomena in American history is now taking place in Washington. The Supreme Court which was created by the Constitution is being subordinated by Congress to the FBI which was never contemplated by the Constitution.

Pearson

A bill to put the Supreme Court in its place and protect the FBI is being rushed through Congress in record time, with only one witness testifying and with little debate in committee.

The congressional storm was raised by FBI lobbyist Lou Nichols, plus Justice Brennan's 7-to-1 decision in the Jencks case, giving a defendant the limited right to look at statements made by an FBI informer about him.

When Senator O'Mahoney discussed this in a meeting of the Judiciary Committee, it was obvious that only two Senators, he and Butler of Maryland, had read the Jencks decision. The others hadn't bothered to read it, were convinced it opened FBI files to a fishing expedition.

When I phoned several members of the House Judiciary Committee to ask them if they had read Justice Brennan's opinion, they admitted they hadn't. Yet they were rushing through a bill to override that opinion—largely because of the FBI. Attorney General Brownell, over-all boss of the FBI, did not want to go nearly as far as the FBI lobbyist.

Thus the question is inescapable: What is the power of the FBI? How is it able to influence Congressmen? How can it push a bill through Congress in a few days where other bills take weeks or months Does this power rest on efficiency, or on fear?

The question, in a democracy, is highly important, though one which most newsmen hesitate to discuss. For it pays to have the FBI as a friend. Its executives can be helpful news sources—or dangerous antagonists.

It also pays a Congressman to be friendly to the FBI. For it has a complete rundown on every Congressman, his private life and his family. Furthermore, no Congressman if defeated or desirous of another government job, can become a judge or hold government office without clearance from the FBI.

The FBI Build-Up

It so happens that my old partner, Bob Allen, and I were in on the ground floor when it was decided to build up the FBI; so perhaps I can report objectively on the manner in which the FBI has become more powerful with Congress than the Supreme Court.

The buildup dates back to the Lindbergh kidnaping and the rash of crime that went with it. Homer Cummings, then Attorney General, invited Bob Allen and me to dinner, explained that he was worried about the kidnapings and proposed a cure. The cure was to build up the FBI to the point where the crook considered the G-man invincible. If the kidnaper knew he was certain to be caught, Cummings argued, the crime wave would end.

Out of this conversation came the appointment of the late Henry Suydam, then correspondent of the Brooklyn Eagle, later editor of the New-ark News, as public relations expert for the FBI.

Suydam did a great job for the FBI. It had been severely criticized in the Harding Administration when it was under William J. Burns, and scarcely noticed in the Coolidge-Harding administrations.

Publicity-Minded FBI

J. Edgar Hoover during this time had been doing a good job. He had been doing a good job before. But he hadn't understood publicity. Since then he has understood both crime detection and publicity. The combination has worked wonders.

When the Nazi saboteurs landed on the United States coast during the war, the FBI got the credit for catching them. No newspaperman that I know of, including myself, published the real truth, that the saboteurs telephoned the FBI and gave themselves up.

When Elizabeth Bentley, the confessed Russian agent wanted to make a clean breast of it, the FBI again got the credit. We of the press did not publish the fact that the FBI at first wouldn't see her, for weeks refused to believe her story.

When Boston burglars pulled the Brinks bank robbery on Jan. 17, 1950, one of the biggest in history, the FBI let six years go by without catching them. Then when District Attorney Garrett B. Byrne finally got the clue that trapped the robbers, FBI publicity man Lou Nichols rushed out an announcement from Hoover taking the credit.

But as the FBI has expanded from a handful of agents to 13,811 agents and other employes, it, like any other fast growing organization, has picked up some phonies. Some of them have been witnesses in important cases, such as Harvey Matusow, the witness who committed perjury in the Jencks case which the Supreme Court has now thrown out.

And the mystery is how the FBI has reached the point where it has more influence with Congress than perhaps any agency in Government, even regarding a case where the FBI witness was later convicted of perjury.

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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 7-5-57

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63 JUL 19 1957

4-572 (3-29-55)
STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : The Director

DATE: 7-5-57

FROM : J. P. Mohr

SUBJECT: The Congressional Record

Page 5332

Senator Russell, (D) Georgia, extended his remarks to include an article entitled "Supreme Court Relied on Secret Witnesses," written by David Lawrence, and published in the Augusta (Georgia) Chronicle of July 1, 1957. The reference to the FBI contained in this article was set forth in a memorandum prepared earlier this date.

Original filed in: 1

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In the original of a memorandum captioned and dated as above, the Congressional Record for 7-3-57 was reviewed and pertinent items were marked for the Director's attention. This form has been prepared in order that portions of a copy of the original memorandum may be clipped, mounted, and

A MATTER OF INFLUENCE

Can It Really Be Called the 'Warren Court'?

By PHILIP YEAGER

Ever since Chief Justice Earl Warren wrote the 8-to-0 school integration opinion in 1954 there has been a tendency to credit him with a great and growing influence on the other justices of the Supreme Court.

In the wake of the recent series of controversial civil rights and security decisions in which the Chief Justice sided with the majority, there has been frequent reference to the "Warren Court." In fact, one prominent national publication last week asserted that the court has now "made sharply clear how much it has come to reflect its Chief Justice's views."

Among students of Supreme Court history and among lawyers acquainted with present members of the court, statements such as the foregoing are taken with a large grain of salt.

Mr. Warren, by virtue of his office, ability, industry and personality doubtless has influence with his fellow justices. But to suggest that he could succeed at creating a tame court acquiescent to his views—even if that were his aim—is to lapse into fantasy. At least, most experienced lawyers seem to think it is.

Here is an observation by one well qualified to comment:

Justices, as men of mature years and wide experience, undoubtedly have their convictions, political and economic, and their views of the nature and purpose of our Government; but they (are) not the instruments of political manipulation or tools of power. One cannot study their lives and decisions without confidence in their sincerity and independence."

That was Charles Evans Hughes lecturing some years ago at Columbia University. Chief Justice Hughes, widely regarded as one of the three or four best Chief Justices in American history, went on to say:

"In a small body of able men with equal authority in making decisions, it is evident that (the Chief Justice's) actual influence will depend upon the strength of his character and the demonstration of his ability in the intimate relations of the judges. It is safe to say that no member of the court is under any illusion as to the mental equipment of his brethren. Constant and close association discloses the strength and exposes the weakness of each."

Doubts Domination

In essence, Chief Justice Hughes was driving home the point that most Supreme Court justices are too experienced, knowledgeable and firm to be intellectually pushed around by other court members. They may be persuaded by superior legal reasoning, but seldom, if ever, do they merely "reflect" the views of some dominant member.

Influence can be exerted by any member of the court. Associate justices such as Joseph Story and Benjamin Curtis probably had as much influence within the court as any Chief Justice. Conversely, such able Chief Justices as Salmon P. Chase, Morrison Waite and Melville Fuller, according to Mr. Hughes, "gained nothing by their headship of the court over such men as Samuel Miller, Stephen Field, Joseph Bradley, Horace Gray and David Brewer."

Chief Justice Hughes felt these latter associate justices "rose to

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Daily Worker
The Worker
New Leader

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a level of achievement in their judicial work second only to that of Marshall."

In modern times many consider some of the most influential justices (excluding present members) to have been associates—such men as Justices Holmes, Brandeis and Jackson.

Does Earl Warren belong in this select category of internally influential justices? The complete answer is known only to the court itself.

However, no member of the current court at the time of his appointment had a more remote legal background than Mr. Warren. So far as legal scholarship is concerned the Chief Justice has yet to receive wide acclaim from his profession. In fact, lawyers have taken Mr. Warren to task for his "social" approach to the law, and even lay critics have referred to his "emotional opinion" on the recent Watkins case.

Moreover, the acknowledged learning, skill and temperament of such "old hands" on the Court as Justices Black, Frankfurter and Douglas, plus the broader legal and judicial training of the more recently appointed Justices Harlan, Brennan and Whittaker, makes the propriety of the "Warren" label appear even dimmer.

Who Does Influencing?

Some lawyers, in fact, suggest what they think is a greater probability—that the Chief Justice, and occasionally some of the newer court members, may have been taken into the Black-Douglas liberal camp. In this view, the alleged influence is flowing not from Mr. Warren, but to him.

It is true that administrative procedure gives the Chief Justice some added power on the court. Here's how it works:

The court meets on Fridays to discuss cases on which it is ready to decide. The Chief Justice presents each case and says whatever he has to say about it. Then the senior associate justice takes over, and so on down the line to the most junior justice. Apparently the discussion may become more or less general at any point, but each justice in turn has an opportunity to air his views.

When the discussion is concluded the court votes, beginning with the junior justice and back up the line, ending with the Chief Justice.

If the chief justice is a member of the majority, he decides who shall write the opinion. He may assign it to himself or to the justice of his choice. If the Chief Justice is a member of the minority, the senior associate justice in the majority group assigns the writing of the opinion.

Any minority member who desires may write a dissenting opinion. And any member of the majority who agrees with the result of the decision but who arrives at his conclusions by a different route may write a concurring opinion.

The greatest influence accruing to the Chief Justice because of his position doubtless stems from his authority to assign the writing of opinions. In law, this can make a lot of difference. The reasoning behind a decision may be as crucial to future cases as the specific holding or result.

Mr. Warren, it will be noted, has assigned himself the writing of some of the most difficult and far-reaching recent opinions. Still, this must be considered a pretty fragile reason to tag the present court with a "Warren" label.

Hennings Hails Supreme Court For Its Defense of Freedoms

By JAMES DEAKIN
A Washington Correspondent of the Post-Dispatch.

WASHINGTON, July 8—Senator Thomas C. Hennings Jr. (Dem.), Missouri, said today that recent decisions by the Supreme Court have demonstrated that the court "is merely continuing in its historic role" of defending individual freedoms.

It is not the court that should be criticized, Hennings said, but rather "the unconstitutional and unlawful procedures which have been permitted to develop in this country in recent years." He said the court was "striking down" some of these practices.

Hennings, chairman of the Senate Constitutional Rights Committee, predicted that "from the standpoint of civil liberties and constitutional rights, future historians will rate the past term of the Supreme Court one of the most significant in the middle of the twentieth century."

Court Under Attack.

His defense of the court came at a time when it has been under attack for its decisions in the Jencks and Watkins cases and others.

Hennings, considered one of the Senate's leading authorities on the Constitution, strongly assailed various proposals that have been advanced for limiting the court's powers.

Noting that Attorney General Herbert Brownell Jr. has said the decision in the Jencks case created "a grave emergency in law enforcement," Hennings declared:

"What seems to be overlooked or ignored by most of the court's detractors is that if the practices or procedures of the Government, examined by the court in recent cases, had been tailored in the first place to fit the requirements of the Constitution, they would not have been struck down by the court, and no 'grave emergency in law enforcement' would now face the nation.

"In other words, it is not the Supreme Court that should be criticized in the present circumstances. It is the unconstitutional and unlawful procedures which have been permitted to develop in this country in recent years that should be criticized.

"During the past several decades—and particularly with the impetus of the grave threat of Communism during the past 10 years—this nation has adopted a number of practices deemed necessary for the national security, but which would have shocked our forefathers.

"Many of these are being tested now for the first time before the courts and are being found in violation of rights guaranteed by the Constitution."

Hennings, who is recovering from an operation, had planned to make his defense of the court in the form of a Senate speech today. The text of his remarks was released by his office.

Discussing some of the recent Supreme Court rulings, Hennings said: "Without exception, the decisions that have aroused the most outspoken criticism have been those dealing with the basic rights of the individual.

The Jencks Case.

"The decision in the Jencks case, for example, where the court held that the defendant was entitled to see any statements made to the FBI by the witnesses under the time-honored Sixth Amendment right of an accused "to be confronted with the witnesses against him."

"The decision in the Mallory case, in which the court threw out the confession obtained from the defendant while he was being detained by the police for an unreasonable length of time prior to arraignment,

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Author:

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was founded ultimately in the history of the long-established right of an individual not to be compelled to be a witness against himself.

"The Watkins case, wherein the court held that Watkins had improperly been convicted of contempt of Congress, dealt with the due process clause of the Fifth Amendment and the individual's rights under that clause.

"The Smith and Covert cases, in which the court reversed the court-martial convictions of two women for killing their husbands while they were in military service overseas, involved the right of civilians to be tried by civilian courts and not by courts-martial, in the absence of a declaration of martial law.

West Coast Cases.

"The so-called 'West-Coast Communist cases,' where the court ordered the acquittal of five defendants and granted a new trial to nine others after analyzing and applying the Smith Act to the facts of the cases, were decided in the light of the free speech guarantee of the First Amendment."

Hennings said the decisions "in all of these cases seem to be supported by the law and the facts, and to be within the framework of the rights and protections set forth in our Constitution."

Adverse comment on the recent Supreme Court decisions had "ranged from carefully reasoned criticisms of what the court has done and said to malicious vilification of the Justices themselves," Hennings continued.

He said the court had been accused "of seriously interfering with the work of our security forces, including the police, the FBI and the military" and "of attempting to pre-empt the powers of Congress."

Hennings asserted, however, that although the FBI and other enforcement agencies, as well as Congress, will have to alter some of their procedures "to some degree," it was the procedures themselves that were at fault, not the court.

(2)

Supreme Court

Philbrick and Wyman Score Court Views on Red Issue

By DAN CORCORAN

WENTWORTH-BY-THE-SEA—Former FBI counterspy Herbert Philbrick of Rye last night gave his wholehearted endorsement to charges by New Hampshire Atty. Gen. Louis C. Wyman, that the latest decisions of the U. S. Supreme Court are hamstringing government agencies in their efforts to smash the Communist conspiracy in this country.

"It is impossible for me to understand," Philbrick asserted, "how the Supreme Court could come to believe that although the Communist teach violence, they really don't mean it."

"In all of my nine years inside the Communist party and having attended hundreds of Communist cell meetings, I can testify that when a Commie talks about the overthrow of the United States government, he is not kidding. He means every word of it."

Attorney General Wyman, refusing to be silenced by the "gag" rule adopted by the New Hampshire Bar association just over a week ago, also spoke and again decried the play on words in the recent Supreme Court decisions, declaring, "It is a tragedy of the highest order that at this time in history the door should be opened wide to Communists in America."

"Communism is still cancer," Wyman declared. "No matter how strong some may believe we are, neither we nor the world have yet found a cure. The mere asking of pertinent questions under a compulsory process in an effort to keep abreast of subversive activities is a justifiable procedure in the face of a sweep of subversion that has engulfed or undermined country after country."

"This is not to deny the availability of the Fifth Amendment," the attorney general continued, "but beyond the Fifth Amendment there should be no First Amendment rights to refuse to give pertinent information to a congressional or state committee charged with the responsibility of finding out whether there are persons about who conspire to destroy our government and our freedom."

Both Philbrick and Wyman spoke at the "Sounding Board" program sponsored by the hotel for its guests. Philbrick was originally scheduled as the only speaker.

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Supreme Court

Supreme Court Deals A Big Blow To Police Efforts In Our Nation

The U. S. Supreme Court has dealt another staggering blow to law enforcement, through its recent decision which reversed the death sentence of a Negro rapist and set him free, on technical grounds for which our highest tribunal is becoming infamous.

The case involved an innocent woman who was waylaid, beaten, chocked and then ravished in Washington, D. C. Her assailant freely admitted the crime, signed a confession and was sentenced to death after a jury trial in the national capitol three years ago.

In reversing this conviction, the Court held the condemned man's confession, "invalid", ruling that for police to hold and question him seven and one-half hours before he was formally arraigned was a violation of federal law providing that a suspect's right must be explained at arraignment "without unnecessary delay."

As is becoming customary in rape cases, the Court showed a scrupulous regard for the criminal's rights but no concern whatsoever for the rights of his innocent victim. This verdict serves to confirm a growing suspicion that it is virtually impossible to sustain the conviction of a rapist or a Communist before the present tribunal.

Washington Police Chief Robert V. Murray is quoted as saying the Supreme Court decision in this case "ties the hands of the police department and renders it almost totally ineffective. The ruling has thrown all law enforcement officials into a quandary. Many fear this unanimous verdict tells police, in effect, that they cannot question a suspected criminal after they arrest him.

U. S. Attorney General Warren Olney is known to believe that the ruling will have its most serious impact on gangster crimes where hardened professionals will take fullest advantage of it. Another obvious and greater danger is that the decision will be an open incitement to rape by degenerates throughout the entire land, secure in the knowledge that a sympathetic Court is apparently ready and even anxious to abet this hideous offense.

The nation has been rightly disturbed at the recurring spectacle of convicted Communists being freed by its Supreme Court on hair-splitting technicalities. Americans are further disturbed at the sight of a self-confessed rapist swaggering off to complete freedom, perhaps to ravish new victims, as a result of warped judicial reasoning. The Court's decision in this latest case has served to establish a terrifying precedent in favor of brutal criminals and against law enforcement.

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T. M. HEDERMAN, JR.,
EDITOR
THE CLARION-LEDGER
JACKSON, MISS.
7/9/57
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V.

File Jackson

Wednesday, July 10, 1957

The Judges Speak

While there is a wide difference of opinion as to the significance of a series of recent high court decisions, there is one point on which there is complete agreement: they show a discernible trend. This trend points definitely to a judicial concern about preserving the basic tenets of the Bill of Rights.

The judiciary is declaring forcefully that if the civil rights of any individual are denied, the civil rights of every individual are in jeopardy. It is a wider application of the logic of Lincoln when he declared that so long as one human being was held in slavery, the freedom of every man was in danger.

* * * *

There is another factor in these decisions that is becoming crystal clear: they do not represent the view of any party or of leaders with a peculiar social or economic bias. This is indicated by the near unanimity of opinion among the Judges.

For instance, in the reversal of the cases of fourteen men convicted in California under the Smith Act, only Mr. Justice Clark of the Supreme Court dissented. High minded men of liberal views, moderate views and conservative views, agreed in opinions that will be far reaching in their impact on maintaining American institutions.

BAKER/GARDNER

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HONOLULU ADVERTISER
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JUL 10 1957
Editor: Raymond Coll
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This unanimity of opinion is shown even more clearly in the decision of the United States Court of Appeals in Washington. All nine judges united in setting aside orders directing four witnesses, three of them from Hawaii, to appear before the Senate Internal Security Subcommittee to testify.

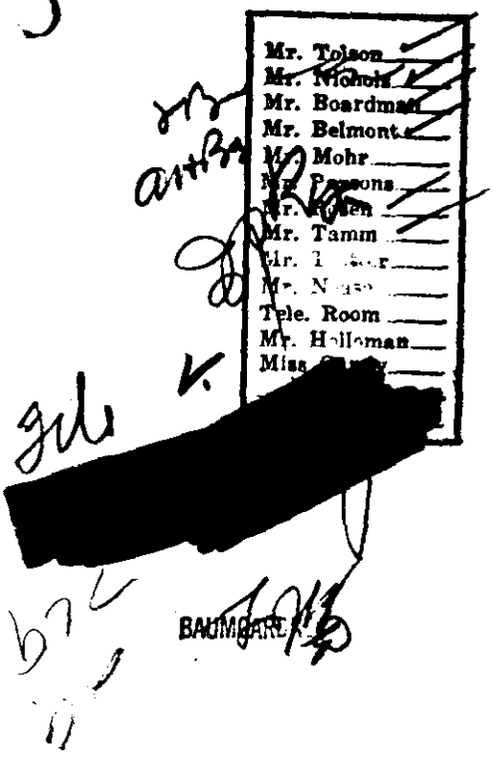
It is doubtful whether eighteen men could be found in America who are more fair minded, or more devoted to the welfare of the Union than the nine members of the Supreme Court and of the Court of Appeals. They are not the dupes of any group from either the right or the left. They would be the last to bow to the will of any individual or clique. They are guided by their knowledge of the law and motivated only by their oath to uphold the Constitution of the United States.

* * * * *

Above all else, these judges are not concerned about specific individuals — they are concerned about principles that are related to all individuals, to the "all men" of the Declaration.

Stubbornness and prejudice have no place in their reasoning. The Constitution is their guide. And it is the Constitution by which we must live. It guards our liberties against all extremes. Liberty, to be effective, must be guided by law, and law is destroyed by tyranny from either the right or the left.

So long as the Courts function on their present basis, American institutions will be secure.



Plain Duty Of Congress

Rather than obey the Supreme Court and open its files for lawyers of defendants to plunder and pillage as they see fit the FBI of the Department of Justice has dropped several narcotic prosecutions, and other criminal cases, rather than open its files.

The Eastland committee has already started work on legislation to slap down this decision and permit the FBI to decline to open its secret files. And the Mississippi senator believes that adoption of his amendment to require re-confirmation of justices every four years would serve as a stabilizing influence to cause the court, instead of seeking to usurp the prerogatives of Congress to legislate, to try to follow the intent of Congress in interpreting the laws enacted by Congress.

Instead of piddling around with the atrocious civil rights bill Congress would show good common sense if it devoted the remainder of this session to putting the Supreme Court in its proper place by enactment of statutes that will check its ruthless usurpation of power it should never possess.

FREDERICK SULLENS, EDITOR
JACKSON DAILY NEWS
JACKSON, MISS.
7/11/57
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A Common Task

It is good to see that friends of the Supreme Court are speaking up strongly in answer to the headlong denunciation which followed in the wake of the series of decisions upholding the Bill of Rights last month.

Senator Hennings, as chairman of the Senate Constitutional Rights subcommittee, had a particular obligation to come to the judiciary's defense and he did it with words of unmistakable clarity. Missouri's senior Senator said:

> What seems to be overlooked or ignored by most of the court's detractors is that if the practices or procedures of the Government, examined by the court in recent cases, had been tailored in the first place to fit the requirements of the Constitution, they would not have been struck down by the court, and no 'grave emergency in law enforcement' would now face the nation.
>
> In other words, it is not the Supreme Court that should be criticized in the present circumstances. It is the unconstitutional and unlawful procedures which have been permitted to develop in this country in recent years that should be criticized.
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> During the past several decades—and particularly with the impetus of the grave threat of Communism during the past 10 years—this nation has adopted a number of practices deemed necessary for the national security, but which would have shocked our forefathers.
>
> Many of these are being tested now for the first time before the courts and are being found in violation of rights guaranteed by the Constitution.

In Fort Worth, a Houston lawyer, George W. Eddy, stood up to challenge the basis of a resolution of the Texas Bar which criticized the group of decisions. Mr. Eddy put the main issue to his associates in the legal profession as follows:

> The historic decisions of recent weeks do nothing more or less than reaffirm the Constitution and the Bill of Rights as the supreme law of the land. Why these decisions should induce hysteria in any segment of the population—much less my brother lawyers—beats me.
>
> If the persons or forces now yapping at the Court for returning to fundamental American precepts want to put the matter to a test let them have the courage of their convictions and sponsor an amendment to the Constitution repealing the Bill of Rights.

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Character:

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Author:

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This is not to say that the law enforcing agencies are without problems. They have their difficulties not to say their frustrations. They are charged with applying the law, with obtaining the indictment of violators and with bringing them to trial on the findings of the grand jury. The law agencies represent the people and their work deserves sympathy and understanding. It is wholly reasonable that the Department of Justice, for example, wants to make sure that its files are not subjected to fishing expeditions on the part of defense counsel. At the same time there is no reason whatever to believe that Justice Brennan, who read the decision in the Jencks case, and his colleagues have any intention that FBI records be opened up recklessly.

In the final analysis, there is no reason why the best interests of the law enforcing agencies and the constitutional guarantees of the Bill of Rights cannot be brought together. That which benefits one in the long run benefits the other.

If the recent Supreme Court decisions reveal any serious legal loopholes let them be plugged by Congress in the interests of the necessary work of the Department of Justice and related agencies. In the same spirit, let the law enforcing authorities study the Supreme Court decisions with the sympathy and understanding which they ask for themselves.

Wild charges that the Supreme Court is setting itself up as a judicial dictator are fantastic on their face. Chief Justice Warren and his colleagues are doing no more than discharging their duty as the supreme appliers of our law—and that makes them guardians of the liberties and freedoms which we all enjoy.

THE BRIGHT YOUNG MEN BEHIND THE BENCH

Here, for the first time, is the story of the 18 young men who make up the "second team" on the U.S. Supreme Court.

These Government employes are called "law clerks." Some critics of the Court contend that the nine Justices rely too much on the aid of their clerks in reaching decisions.

Who are these 18 young men? What are their backgrounds? How are they chosen? Are they experienced lawyers?

These are some of the questions that arise when recent Court opinions are studied.

Facts about these law clerks and the work they perform are reported in this article.

Working with the Supreme Court of the United States are 18 young men. These men are described as "law clerks" and are chosen by the Justices as their personal aides.

The role played by law clerks in administering justice in this country long has been a subject of comment. Reported facts about that role, however, are few. This group of Government employes shows little willingness to discuss the work that they do or even to throw light on their own backgrounds.

All this has given rise to reports in official circles in Washington that sometimes these law clerks exercise an influence upon the Justices that is reflected in the opinions handed down by the Supreme Court.

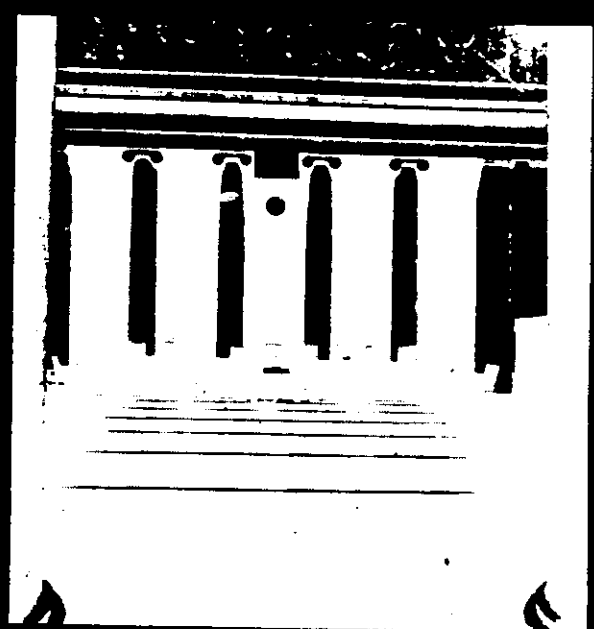
The Supreme Court today is very much in the news. The Court's members have been widely criticized for moving into fields once regarded as reserved for the Congress and for the executive branch of Government. In a period when the Supreme Court is asserting its power in a way seldom experienced in the country's history, all facts about the Court take on special importance.

Who's on "second team." The American people are acquainted with the public lives of the Chief Justice and the eight Associate Justices of the Court. They are not well informed about the 18 young men who handle much of the detailed work of the Court.

Of the Justices on the Court, seven have two law clerks each. Associate Justice William O. Douglas has one law clerk. Chief Justice Earl Warren employs three law clerks. That makes a total of 18.

These young men are chosen by each Justice from among graduates of leading law schools, usually upon recommendation of the deans. They serve, as a rule, for one year. Their pay ranges from $5,500 to $6,500 a year and is drawn from tax revenue. The clerks are Government employes but, unlike most other Government workers, are not subject to the usual security or loyalty checks.

Of the 18 law clerks in the Supreme Court, 12 have been admitted to the bar. Their average age is 27. Nine of them come from cities and towns in the East. Five come from the Middle West, three from West Coast States, one from the South.



USN&WR Photo

WHERE LEGAL PRECEDENT IS ANNOUNCED
. . . the chamber of the Supreme Court

Harvard Law School, long the major source of law clerks for the Justices, provided six for the Court term just ending. Three received their legal education at Yale Law School, and two at the law school of the University of Pennsylvania. Seven others are graduates of law schools ranging from New York University, in the East, to the University of California at Los Angeles.

Details on the backgrounds of these 18 young men are given beneath their photographs on these pages.

Alumni of the brigade of Supreme Court law clerks include some names well known to the public. Among them are Dean Acheson, Secretary of State in the Cabinet of President Harry Truman, who served under Justice Louis Brandeis; James M. Landis, who held several important posts in Democratic Administrations; Francis Biddle, a former U.S. Attorney General, and Alger Hiss, who later was sent to prison as a perjurer.

It is in deciding whether or not to accept a case for argument and in preparing opinions in cases that are heard that the Justices look for help from their young aides. Memoranda provided by the clerks, reports say, sometimes turn up in important decisions of the Court. This has raised the question of whether the clerks, in effect, serve as "ghost writers" for the Justices.

A firsthand account of how the law clerks are chosen and the duties they perform comes from former Justice Sherman Minton, who retired from the Court last year at the age of 66.

The law clerks "are selected individually by each Justice from

among the top students of law schools around the country," Justice Minton said in answer to questions. "I always chose one from my own university, Indiana. After that, I skipped around—Harvard, Yale, Chicago, Northwestern."

Asked exactly what work the clerks do, the retired Justice replied:

"As far as my own were concerned, they prepared memoranda on all certiorari [a writ calling up records of a lower court]. On opinions, they would correct them as to the facts and they would make suggestions on the law with respect to opinions. If I agreed with them, the opinion would be rewritten."

Did they draw up memoranda, citations, precedents, etc., or merely supply a list of pertinent decisions? was another question put to Justice Minton. His reply:

"They prepare memoranda on what is in the certiorari and what the lower court had decided and recommend whether we should take the case. As you know, the Supreme Court is selective in choosing cases to hear."

Asked if his clerks helped in any way in drafting opinions, Justice Minton revealed:

"In my case, after an opinion was written I submitted it to the boys for their comments and criticisms. And if their criticisms were valid the opinion was rewritten."

A former leader in the federal judiciary has commented that his law clerks prepared memoranda "listing the pertinent references for me to check on. That's what the clerk's job is supposed to be—doing the routine spadework, so the Justice won't have to look up every last thing himself."

What you find in a close look at the Supreme Court is that, instead of the popular picture of nine men upholding or changing the laws of the country, there are 18 others who participate more or less actively in paving the way for important decisions.

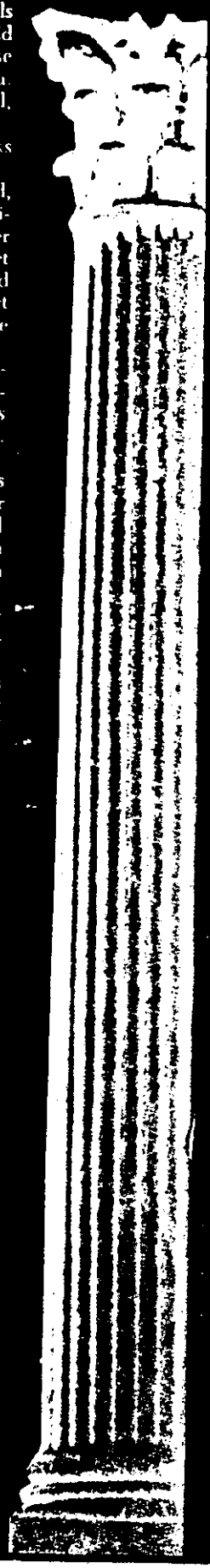
One former high official of the Government with experience in the federal judiciary has this to say:

"Many lawyers feel that law clerks in the Supreme Court and other U. S. courts are too influential in preparing some of the opinions handed down."

This official adds: If a judge "is not aggressive or very able, if he is a very busy or lazy man, his clerk can be very influential.

"It has been the custom of some judges to select their clerks from Harvard or Columbia. These clerks are young men who have served on law journals. They make strong-minded and exceedingly able law clerks. They are usually kept one or two years and there have been

(Continued on page 48)



LAW CLERKS

WILLIAM H. ALLEN, 30
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Law school: Stanford
Not a member of bar

MARTIN F. RICHMAN, 27
Clerk for: Chief Justice Warren
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Law school: UCLA
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PAUL M. BATOR, 28
Clerk for: Justice Harlan
Home: New York City
College: Princeton Univ.
Law school: Harvard
Not a member of bar

NORBERT A. SCHLEI, 28
Clerk for: Justice Harlan
Home: Dayton, Ohio
College: Ohio State Univ.
Law school: Yale
Member of bar in Ohio

U. S. News & World Report

IN U. S. SUPREME COURT

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Member of bar in Alabama

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College: Harvard Univ.
Law school: Harvard
Member of bar in N.J. and D.C.

DAVID E. WAGONER, 29
Clerk for: Justice Burton
Home: Spring City, Pa.
College: Yale Univ.
Law school: Univ. of Pa.
Member of bar in Pa. and D.C.

ROGER CRAMTON, 28
Clerk for: Justice Burton
Home: St. Johnsbury, Vt.
College: Harvard Univ.
Law school: Univ. of Chicago
Member of bar in Vermont

HARRY L. HOBSON, 28
Clerk for: Justice Clark
Home: Wichita, Kans.
College: Univ. of Wichita
Law school: New York Univ.
Member of bar in Kansas

JOHN JACOB CROWN, 27
Clerk for: Justice Clark
Home: Evanston, Ill.
College: Stanford Univ.
Law school: Northwestern Univ.
Member of bar in Illinois

RICHARD S. RHODES, 26
Clerk for: Justice Brennan
Home: Michigan City, Ind.
College: Indiana Univ.
Law school: Indiana
Member of bar in Ind. and Ill.

CLYDE SZUCH, 26
Clerk for: Justice Brennan
Home: Newark, N.J.
College: Rutgers Univ.
Law school: Harvard
Member of bar in New Jersey

MANLEY O. HUDSON, 25
Clerk for: Justice Whittaker
Home: Cambridge, Mass.
College: Harvard Univ.
Law school: Harvard
Not a member of bar

ALAN KOHN, 25
Clerk for: Justice Whittaker
Home: St. Louis, Mo.
College: Wash. Univ. (St. Louis)
Law school: Washington Univ.
Member of bar in Missouri

(continued)

BRIGHT YOUNG MEN BEHIND THE BENCH

some outstanding fellows who have served as law clerks.

"If the judge is a man of strong mind and convictions, he will be exercising his own convictions in writing opinions. However, the reverse can be true.

"There is a well-founded belief among lawyers that some judges rely heavily on their clerks. And the clerks are in a position to direct the judges' attention to certain views and conclusions that may show up in their opinions."

The opposite view. A few present and former law clerks willing to comment on their role in the work of the Supreme Court deny that, in their cases, they wielded any unorthodox influence over the Justices or participated in the writing of any opinions. They contend that, in their experience, the clerks have subordinate roles.

One law clerk, who has just completed a year's "apprenticeship" with the Court, has explained how a Justice and his two clerks team up to review cases, conduct legal searches and write memoranda leading to an opinion.

"Generally," this clerk says, "the clerks write memoranda that lay the groundwork for the opinion of the Justice in cases decided by the Court. Sometimes, their boss takes a view contrary to those presented by the clerks, and then they are told to continue their research and write more memoranda. It is a three-man proposition, with the two clerks working closely with the Justice in preparing his opinion."

This clerk says he and his colleagues value their opportunity highly, even though the work is hard. It was not unusual this past Court term, he reports, for the clerks to work six days and four or five nights a week in the Justice's office.

The biography, "Harlan Fiske Stone: Pillar of the Law," by Alpheus Thomas Mason, published by the Viking Press, sheds some light on the role of law clerks and the possibility that sometimes Justices employ "ghost writers" in preparing opinions.

"I am a good deal troubled," the book quotes former Chief Justice Stone as saying in a note to another Justice, "by the dissenting opinion which Justice [Hugo L.] Black has just circulated in the Indianapolis Water Company case. He states a good deal which counsel did not take the trouble to present. . . . I see in Justice Black's dissent the handiwork of someone other than the nominal author."

A footnote to this paragraph refers to "Washington rumor" that Thomas Corcoran, a key figure in the New Deal Administration of President Franklin D. Roosevelt, was the "ghost." Mr. Corcoran earlier had served as secretary to Justice Oliver Wendell Holmes.

Mr. Mason also writes in another footnote in his book that "much credit for the Gerhardt opinion belongs to Stone's law clerk, Louis Lusky, whose 32-page memorandum sharpened the tenets of the Metcalf opinion. . . ." The author adds that Mr. Lusky wrote to him, in 1952:

"Furthermore, I have little doubt that Justice Stone very often was unconscious, at the time he set an idea on paper, that he had taken it from someone else. He had made the idea his own by adopting it, and it just didn't seem important to him that someone else had thought of it first."

USN&WR Photo

ENTRANCE TO THE SUPREME COURT
Inside, what part do the law clerks play?

The biography also states: "The first draft of the second and third paragraphs of this historic note [footnote 4 to Justice Stone's opinion in the case of *United States v. Carolene Products Company*] was written by Stone's law clerk, Louis Lusky. Stone 'adopted it almost as drafted,' Lusky has recalled, 'simply toning down a couple of overemphatic words.'"

In a footnote to this paragraph, Mr. Mason says:

"It was not unusual for Stone to allow his law clerks to use footnotes as trial balloons for meritorious ideas. 'I have always been very proud of these contributions,' Lusky wrote. 'They are my contributions only in a limited sense. The ideas originated with me, but they became important only because the Justice adopted them as his own. It would be a great mistake indeed to suppose that any law clerk ever got anything into the Justice's opinions which he didn't want there himself. He could not be pushed or persuaded against his own judgment.'"

A comment on security. Interest in the work of the law clerks in the Supreme Court and other U. S. courts also has been aroused by a section of the report issued recently by the Commission on Government Security. In discussing employes of the judicial branch of Government, the report said, in part:

"It is fundamental that there should be no reasonable doubt concerning the loyalty of any federal employe in any of the three branches of the Government. In the judicial branch, the possibilities of disloyal employes causing damage to the national security are ever present. As an example, federal judges, busy with the ever-crowded court calendars, must rely upon assistants to prepare briefing papers for them.

"False or biased information inadvertently reflected in court opinions in crucial security, constitutional, governmental or social issues of national importance could cause severe effects to the nation's security and to our federal loyalty-security system generally."

One member of the Commission, a group of 12 prominent citizens appointed by President Eisenhower, objected to this section of the report.

James P. McGranery, formerly a federal judge and later Attorney General in the Administration of President Truman, protested that "no evidence was presented at Commission conferences" to indicate that any federal judge ever was thus imposed upon.

2,000 cases a term. It is openly acknowledged in Washington, however, that the Supreme Court Justices lean heavily on the shoulders of their young assistants. It is unlikely, say observers of the federal-court system, that the Justices could wade through the 1,500 to 2,000 cases that confront them each term without the benefit of the spadework done for them by their clerks.

The question that is raised at this time, when the Supreme Court is deploying its power in fields formerly controlled by other branches of the Government, is whether the influence of these young law clerks—some not yet admitted to the bar—is reflected in Court opinions.

Congress explores routes to curbing High Court's powers, page 50.

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BAUMGARDNER

FBI Records Bill Interferes With Basic Right

The Senate Judiciary Committee lost little time in approving a bill to "clarify" compliance with the Supreme Court decision in the Jencks case. In this decision the court ruled that the government must make available to defendants in criminal cases secret FBI reports which furnish the basis of testimony or dismiss the charges.

Immediately the Justice Department and the FBI expressed objections. The bill approved by the Senate Judiciary Committee would limit disclosure to reports and statements relevant to testimony previously given by government witnesses; would require the court to review the documents and remove irrelevant matters before giving the report to the defendant; would limit the reports and statements given the defendant to those signed or approved by the witness; and would then give the court the discretion of striking out the testimony or declaring a mistrial in the event the government declines to give the defendant the statement or report asked for.

The bill as recommended does more than "clarify." It enables the government to evade compliance with the Supreme Court decision by permitting the court to continue with the case by striking out the testimony involved instead of requiring, as has been ordered by the decision, the dismissal of the case. And it makes ample provision for secret testimony to be withheld.

The Supreme Court's decision in the Jencks case is in strict conformity to the Sixth Amendment, which includes among the rights of an accused person in criminal prosecutions the right "to be confronted with the witnesses against him. . . ." This is a basic right and ought to be zealously defended, as the court did in its decision. No agency of government, including the FBI, ought to be privileged to deny to the accused the reports which furnish the basis of the testimony against him, whether signed by the witness or not signed.

Both Justice Clark in his dissent and Attorney General Brownell in testimony before the Senate Judiciary Committee seem to have exaggerated the implications of the majority decision. Compliance should present no real problem to law enforcement. It does interfere with the building up of any company of secret informers. The nation can well do without that group. The Senate should reject the bill which interferes with and restricts unduly the rights of accused persons.

Morning Herald
Durham, N. C.
7-12-57
Steed Rollins,
Editor

RE: SUPREME COURT

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Monday Memo:

Little People, Big Government

You hear the questions: "What in Heaven's name has happened to the Supreme Court? Is it trying to protect Commies?"

Answer: Nothing has happened to the Court. It is merely enforcing the Constitution. In its traditional character it is protecting the rights of little people against big government. Only once has the Court departed from that course. In the case of GI Bill Girard it was, strangely, on the side of big government.

Why All the Whooping and Hollering?

In the term now ending, the Court handed down 15 rulings that upset actions taken against real and suspected Communists. The Court reversed or set aside actions taken by Congress, by the Executive branch, by lower courts and by some state governments.

Never before had the Court handed down so many rulings on "rights" cases in so short a time. That's why you hear boos from the box seats . . . threats of impeachment coming from editors and others who have forgotten their American history.

Yet, never before had there been the need to rule on so many "rights" cases. . . . Never before had so many little people been smeared by Congressional committees, "loyalty boards" and high-wheeling lower courts.

"Rights" vs. "Wrongs"

It would require all the pages of this newspaper to review the details of the cases upset by the Court. But in each case the issue can fairly be stated as one in which the rights of people had been ignored or denied by the power of government.

Practically all the people were small potatoes. That some of them were in the same kitchen garden with Red spuds did not void their rights under the law.

Some of the critics of the Court say the rulings make the Red threat more dangerous than ever. Is that true?

PHILADELPHIA, PA.

INQUIRER
BULLETIN
DAILY NEWS ✓

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How Dangerous Are U. S. Commies?

We can measure gasoline by gallons, diamonds by carats and noise by decibels. How measure danger? There is a way.

The Commie apparatus in America has a 3-pronged attack: (1) It can propagandize against the government and for itself. (2) It can try to overthrow the government. (3) It can spy on the government.

Propaganda has been tried. In the darkest bottom of the depression Communism made little headway even among the most distressed part of the population. Failing in that, there was no chance to overthrow the government.

No danger that America can be converted to Communism. No danger Reds can overthrow the government.

Red spying? That is a present and a future danger.

But No Spy Cases Came Before the Court

In the recent cases the Court reversed, none involved espionage. In the past, when Communist spies have been convicted, the Court has never reversed the verdict. The death sentence in the Rosenberg case was an example. The proof against them was clear. The verdict was just. The Court did not interfere.

In the recent cases upset by the Court, the defendants were accused of filing false affidavits, of preaching revolution but not attempting revolution, of questionable associations, of refusing to answer questions.

A good many of them admitted "propagating" Communist ideas.

Phony Ideas Are Not Criminal

Communist beliefs, to most of us, are undesirable, distasteful and phony. But under the Bill of Rights it is not a crime to hold unpopular ideas and to express them.

When the Founders, many years ago in Our Town, guaranteed the right of free speech, it was a bold step—because they lived in a world where oppression was the rule.

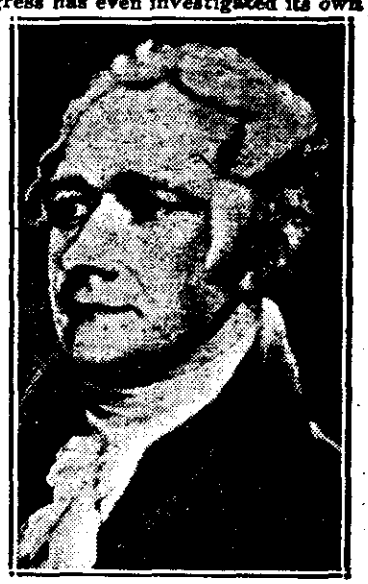
Today, with half the world still oppressed, the Supreme Court goes back to the basis of American liberty. It says, in effect: We must not use the methods of Communism to fight Communism. We must be bold, not fearful.—H.T.S.

CAPITOL STUFF

By JOHN O'DONNELL

Washington, July 14.—In the quarter of a century that this newsman has covered the Capital we have reported formal investigations of every branch of government—with one outstanding exception. This is the Supreme Court of the United States.

The White House—from Harding's Teapot Dome to Roosevelt's Pearl Harbor and Yalta—has been investigated. So has every federal department and agency. Congress has even investigated its own committees—and come up with the interesting information that although committee reports and recommendations were signed by such honest American Senators as Gerald Nye, Harley Kilgore, Claude Pepper, James Murray or Robert LaFollette "they had been written largely by an Alger Hiss, John Abt, Henry Collins or other smart Communists or fellow-travelers."



Alexander Hamilton
He put court in minor place

And come to think of it, before Hiss went to work on the Nye munitions investigation he was the bright young law secretary to one of our most distinguished members of the Supreme Court.

So we've read with warm approval the proposal of National Review editor James Burnham that Congress drop those wild and whirling words about impeachment, etc., and reread Article III, Section II of the Constitution. This flatly states that after the Supreme Court takes jurisdiction over cases involving foreign diplomats and disputes between sovereign states, it is then restrained "by such exceptions and under such regulations as the Congress shall make" when it comes to taking any appellate jurisdiction, as to law and fact.

The heart of the Burnham proposal rests in the paragraphs:

"In a republic there is nothing sacrosanct about the judiciary to exempt it from scrutiny by the legislative representatives of the people. If the judiciary has nothing to hide—as we must presume—it should welcome a serious and public inquiry. If the judges have been inching beyond their due role in a republican system, an open investigation by the sovereign legislature is an ideal means to remind them of the traditional duties and restraints that bind the true judicial conscience.

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Wash. Post and Times Herald
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Does Court Intimidate Congress?

"Is Congress—are Congressmen—afraid of the court? Under the court's galling crossfire Tom Walsh or Pat McCarran would not have waited this long, we can be sure, to propose such an inquiry. And how quickly either one of those tough, fighting Americans would have jumped for the chance to head it!"

Putting aside for the moment the Earl Warren court rulings on school investigation and civil rights, there remains the stinging Watkins case ruling in which the high court told its actual boss—Congress—how Congress should proceed in its investigations and what questions it shouldn't ask. In the Steve Nelson case it told the sovereign states that state laws to control subversion and treason had been tossed out the window because only federal law was permitted by the court to operate in that field. And in the Jencks decision it permitted Communist lawyers to brouse leisurely through the most secret files of the FBI—one of the most amazing and shocking rulings ever handed down.

So far as the decision freeing California Communists convicted under the Smith Act is concerned, it leaves the law enforcement officer, acting to defend his country, in a spot where he knows in advance that his prisoner will be turned free unless he catches him with a hand grenade in his hand or a smoking automatic after he's pulled the trigger.

Who Writes the Decisions?

Burnham emphasizes the propriety of such a Congressional investigation under Congress' Constitutional mandate to "regulate the appellate jurisdiction of the Supreme Court and to provide the funds for maintenance of the judiciary establishment." And he points out:

Then, tartly comes this all-important snapper:

"As directly relevant to such an inquiry the investigative committee would presumably wish to discover the way in which the staffs of the Supreme Court and the inferior courts are selected, the functions of 'law secretaries' and other aids of the judges, the exact manner in which decisions are being prepared and written—and by whom."

The founding fathers never intended to make the Supreme Court or the federal judiciary as a whole a "co-equal" branch of the government. In the first 100 years after the adoption of the Constitution, both White House and Congress at various times defied or ignored high court decisions, or, in the case of Congress, flatly contradicted a Supreme Court decision by passing a law—as it did in March 1, 1863, when it formally nullified the Dred Scott decision.

Court Weakest Branch, Hamilton Wrote

As Alexander Hamilton wrote in the Federalist Papers:

"The judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them . . . the judiciary . . . has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither force nor will, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments . . . It is beyond comparison the weakest of the three departments of power; (and) can never attack with success either of the other two."

F.B.I. AND THE SUPREME COURT

Of all the recent decisions by the Supreme Court on individual rights, the one of most concern to the government is the Jencks case ruling giving defendants in criminal and espionage cases certain access to F.B.I. files.

The court's decision said that where defense counsel is seeking to attack the credibility of witnesses it may search the files looking for discrepancies between information supplied to the F.B.I. and sworn testimony in the courtroom.

Mindful of the F.B.I.'s long-standing insistence that much of police work would be hampered if it were forced to disclose confidential sources of information, methods of procedure and the like, the Supreme Court said the government would have to take its choice between showing the files or not prosecuting.

Reports from the capital say the F.B.I. is threatening to drop out of such cases altogether, rather than permit examination of its files by defendants.

The administration is meantime advancing legislation designed to give trial judges the authority to decide in secret what part if any of F.B.I. reports should be allowed to the defense. Without action on some such measure a good share of the government's work in criminal prosecution seems to stand in danger.

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COSMAN EISENDRATH,
EDITOR
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Congress and the Decisions

In recent weeks, the Supreme Court has handed down decisions which have provoked a thunder of complaint from some congressmen and others.

We have shared the bafflement over some of these decisions. As a long-time member of the court, Justice David J. Brewer, said nearly 60 years ago:

"It is a mistake to suppose that the Supreme Court is either honored or helped by being spoken of as beyond criticism . . . True, many criticisms may be, like their authors, devoid of good taste, but better all sorts of criticism than no criticism at all."

But disapproval of individual judgments of the court and attacks on the court as an institution are two different things.

As an independent branch of our government, the Supreme Court is an integral part of our system of checks and balances—a system imperative to our way of life.

In its long history the court frequently has been the last barrier to the invasion of individual rights, which are paramount to any division of government.

Having said this, we now turn with a comforting feeling to the sober reactions of some of those most directly concerned with the court's recent judgments.

We cite, for instance, the decision of the House Un-American Activities Committee to re-orient its aims, to revise its authorizing law and its procedures, even to change its name—that it may conform to the court's judgment in the famous Watkins case.

The House committee has determined, obviously, that it can live with the Watkins decision, and still pursue the duties for which it was created.

We note that the Justice Department, which said the court's decision in another case had created a "grave emergency in law enforcement," as indeed it did, is moving fast, together with Congress, to remedy defects in the law, as alleged by the court.

It seems to us these orderly efforts, rather than vengeful investigations, or legislation, stewed in reprisal, are more in keeping with our traditional concepts of democratic government.

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Court Critics

I well recall some years back when as a young law student in a certain university our professor asked us why we thought a certain State supreme court, in a famous case, had ruled as they had — reversing the lower courts, completely disregarding the doctrine of stare decisis and holding contrary to all prior judicial pronouncements. When no student could answer, this law professor exclaimed, "Well, students, it's really quite simple. The Supreme Court was Republican—the defendant was a Democrat. The decision was strictly a political one!"

Shortly after this startling observation was made, our professor was elevated by a certain President to the United States Supreme Court. He was duly confirmed by the United States Senate.

I have frequently wondered how many of the United States Supreme Court decisions of late are motivated strictly by political, sociological and private prejudices—in derogation of the express provisions of the United States Constitution. I am of the view that the present court—with it's lopsided 9-0 "liberal" composition may well have succumbed to such chimera in fathering and disseminating such opinions as those rendered in the recent Girard case; in Sweezy v. New Hampshire; Slochower v. Brooklyn College; Yates v. United States; John Stewart Service v. Dulles; Chessman v. Teets; Reid v. Covert; Roviaro v. United States; United States v. Dupont; Butler v. Michigan; Girard v. City of Philadelphia, et al and many others—all of which cases incidentally found the U. S. Supreme Court in every instance reversing the lower court. Is it possible that all the lower court judges—throughout the United States—both Federal and State—are immature lawyers and judges — not soundly versed in the knowledge of the law, wholly lacking in judicial experience—whereas the nine on the present Court—who hear no witnesses, who receive no jury verdicts—are consistently right? It would more logically appear that the lower court judges—most of whom have had years of judicial experience on the bench, who possess tremendous legal backgrounds and who were appointed by different Presidents—were obviously better disposed to render sound judicial pronouncements based on good law rather than those uttered by men appointed for political reasons and whose underlying philosophy seems to be based on political and sociological fantasy.

"Constitutionalist."

* * * *

I read with interest a recent article by David Lawrence, a fine writer, referring to the Supreme Court. Mr. Lawrence is correct in stating that the members of the court hold office during "good behavior" and not for life, as some people seem to think. The members of the Senate are the sole judges of the law and the facts as to what is good and what is bad. The last judge to be convicted was a judge from Florida, who brought his court into disrepute by his conduct. This same conclusion could apply to any court, high or low.

Wade H. Cooper.

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N. Y. Mirror
N. Y. Daily News
N. Y. Times
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Georgia Court Questions Closed-Shop Agreements

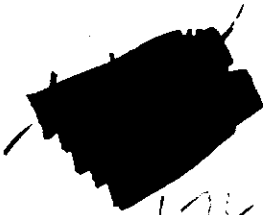
By Lyle C. Wilson

THE State of Georgia has invited the U. S. Supreme Court to reconsider its ruling that closed shop union agreements can be enforced in violation of state law.

The question arose in Georgia in the case of Looper and others against the Georgia Southern & Florida Railway Co. Looper and his associate petitioners are railway employes. They were notified that under terms of the Federal Railway Labor Act they must within 60 days join a labor union or forfeit their jobs.

This closed shop provision has been made effective by the U. S. Supreme Court in all states, including those which have enacted "Right to Work" laws outlawing the closed shop.

The Supreme Court of Georgia expressed its deep distress at being compelled to follow the U. S. Supreme Court's



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lead. But it found comfort in a new avenue of attack against the closed shop.

* * *

LOOPER and his associates complained that compulsory union membership compelled them also to contribute unwillingly to political activities of which they disapproved.

"It is alleged," the Georgia Court said in its unanimous opinion, "that the union dues and other payments they will be required to make to the union will be used to 'support ideological and political doctrines and candidates' which they are unwilling to support and in which they do NOT believe." It said this would violate the First, Fifth and Ninth Amendments to the Constitution.

Ruling for the petitioning railway workers, the Georgia Court said:

"We do NOT believe one can constitutionally be compelled to contribute money to support ideas, politics and candidates which he opposes. We believe his right to immunity from such exactions is superior to any claim the union may make on him."

NOTING the opinion, given last June 10, the right wing weekly magazine "National Review," commented:

"The Supreme Court of Georgia has, in effect, told a number of local railway workers that they need only to prove the political use of union funds to sustain the right to nonunionized employment.

"This poses a nice question for Chief Justice Earl Warren's Court in Washington. We await the fireworks that must inevitably result when Justices Hugo L. Black and William O. Douglas and the others are faced with the words of the Georgia Court."

Movie producer Cecil B. De Mille went to court on such an issue in 1945. De Mille refused to pay a $1 assessment levied by the American Federation of Radio Artists. The levy was to provide a fund to oppose an effort in California to outlaw the closed shop.

Mr. De Mille was suspended by the union. In January 1945, Superior Judge Emmet H. Wilson ruled against Mr. De Mille, holding that the producer must pay up to remain in the union. The Judge said the use to which the levied fund would be put was NOT political.

0-19 (Rev. 9-7-56)

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Congress and the Decisions

IN recent weeks, the Supreme Court has handed down decisions which have provoked a thunder of complaints from some Congressmen and others.

We have shared the bafflement over some of these decisions.

And we are among those who hold that the Court, no less than Congress or the President, is a fair target for adverse criticism. As a long-time member of the Court, Justice David J. Brewer, said nearly 60 years ago:

"It is a mistake to suppose that the Supreme Court is either honored or helped by being spoken of as beyond criticism . . . True, many criticisms may be, like their authors, devoid of good taste, but better all sorts of criticism than no criticism at all."

But disapproval of individual judgments of the Court and attacks on the Court as an institution are two different things. As an independent branch of our Government, the Supreme Court is an integral part of our system of checks and balances—a system imperative to our way of life.

In its long history the Court frequently has been the last barrier to the invasion of individual rights, which are paramount to any division of government.

Having said this, we now turn with a comforting feeling to the recent sober reactions of some of those most directly concerned with the Court's recent judgments. We cite, for instance, the decision of the House Un-American Activities Committee to reorient its aims, to revise its authorizing law and its procedures, even to change its name—that it may conform to the Court's judgment in the famous Watkins case. The House committee has determined, obviously, that it can live with the Watkins decision, and still pursue the duties for which it was created.

We note that the Justice Department, which said the Court's decision in another case had created a "grave emergency in law enforcement," as indeed it did, is moving fast, together with Congress to remedy defects in the law, as alleged by the Court.

It seems to us these orderly efforts, rather than vengeful investigations or legislation stewed in reprisal, are more in keeping with our traditional concepts of democratic government.

U.S. Supreme Court

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A Slap At The Bigots!

The Supreme Court is to be commended for many of its recent decisions—in some instances they have opened up a new world of thought and righteousness in modern America.

Oh, how smug were the racists, the phony patriots and the narrow-minded bigots before the Supreme Court pulled the rug from beneath their feet. In each instance the Supreme Court decided in favor of righteousness: how can we have segregation in America when all men are supposed to be equal—why should anyone accused of a crime be confronted with evidence he cannot inspect—why should an American soldier stationed in a foreign nation, who commits a crime against a citizen of that country, not be tried by a legal court of said country?

Snarl, snap and whimper all you vile bigots, but these decisions will regain the prestige and respect America lost when your kind stifled the highest court in the land.

—J. M. R., N. Y. C.

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LACK OF RESPECT FOR RECENT ACTS OF U. S. SUPREME COURT GENERAL

IT is a fallacy to state under any circumstances that the South is an "isolated" or "segregated" area in the United States critical of recent decisions handed down by the Supreme Court.

Sentiment in the South critical of a group of men, in the majority at least, who have literally torn to shreds or pulverized mandates of the Constitution; by belief in their actions, consent or directive, may be found throughout the country. If more localized in Southern States, it is because these are the principal target of the court as the center of sound and traditional government founded in freedom.

There is a growing sentiment developing from lack of respect for the court accentuated since the "stacked court" era of the Roosevelt (F. D. R.) administration, that if one segment of federal government is in greater need of repair than any other it is the court. It should be made to remain in its own constitutional orbit. Never should it be suspected of applying the rubber stamp of approval to proposed new laws, or changes, in compliance with political warps of selfish twist.

It ought to be good for the country and the court, if the people would amend the Constitution to change the manner of seating men on the court bench for life. By appointment to pay political debts, or for the purpose of security for appointees personally, a number of men have revealed few, if any, qualifying tests for the important work. President Roosevelt did not have a "quorum" in his court to do his bidding to begin with, but before he died he did.

If President Eisenhower hasn't in literal terms a guorum, he is evidently well pleased with recent decisions handed down.

George E. Sokolsky, noted columnist employed by more than 300 newspapers through King Features Syndicate, who knows terribly bad government because he has lived with in Europe (Russia) and fled from it to the haven of the good government that the United States has by basic, if politically abused, construction. He is an American citizen.

In a recent comment on the court, the columnist had this to say, briefly:

"I am so discouraged by recent Supreme Court decisions that it is hard to understand what the Warrant Court really means to do to us."

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Daily Times-News
Burlington, N.C.
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Supreme Court

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ADD 5 CIVIL RIGHTS

KNOWLAND CAME TO THE DEFENSE OF WARREN AND BROWNELL FOLLOWING BYRD'S SPEECH. KNOWLAND SAID BYRD'S ATTACK WAS SO STRONG THAT HE WAS LEFT WITH THE FEELING THAT IT MIGHT NOT BE POSSIBLE FOR PRO-CIVIL RIGHTS SENATORS TO WORK WITH SOUTHERNERS FOR A COMPROMISE BILL.

KNOWLAND SAID, HOWEVER, THAT HE "WILL NOT GIVE UP" HIS EFFORTS TOWARD THAT END.

BYRD TOLD KNOWLAND HE WAS SPEAKING ONLY FOR HIMSELF BUT THAT HE BELIEVED WARREN "HAS DONE AND IS DOING MORE TO DESTROY THE FORM OF GOVERNMENT WE HAVE IN THIS COUNTRY THAN ANY CHIEF JUSTICE IN THE HISTORY OF THIS GOVERNMENT."

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WASHINGTON CITY NEWS SERVICE

Today in National Affairs

Congress' Powers to Curb Supreme Court Reviewed

By DAVID LAWRENCE

WASHINGTON, July 15.—This is the week when the American Bar Association is meeting in New York, and already there are the usual tirades against those lawyers and laymen who have had the temerity to criticize recent decisions of the Supreme Court of the United States. The misleading theory that the Supreme Court is the "last word" and that, once the court has spoken, there is no right of criticism or any opportunity to secure a reversal has been widely propagated.

Lawrence

Actually, Congress has authority over the Supreme Court and can nullify its decisions at will in many instances by the simple method of specifying by law what cases the Supreme Court may or may not pass upon thereafter. The Constitution says:

"In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make."

This means that Congress can issue a set of "regulations" in which it can be stipulated, for example, that the Supreme Court may not review or accept for appeal any cases involving testimony taken by committees of Congress relating to contempt or refusal to answer. The Congress also could by law specify that no cases shall be received by the Supreme Court for appeal involving local law-enforcement problems, such as the right of the Federal government or a state or city or county government to question before or after arraignment persons arrested and suspected of crime. Congress can specify that these shall be hereafter decided by lower courts or specially constituted tribunals.

Congress Has the Power

It is not generally realized that Congress has the power to create or abolish lower courts. The Constitution says:

"The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office."

Not only does the Congress have power to specify by law what "good behavior" means but also what the district courts and the U. S. Circuit Courts of Appeals shall rule upon. Through its power to "ordain and establish" special courts, Congress can deal with particular problems that may arise. The Constitution, indeed, gives a very narrow jurisdiction over cases to the Supreme Court and gives the widest jurisdiction to Congress to declare what cases the highest court may properly undertake to review.

If, therefore, the Congress wishes to pass a law stating that the Supreme Court shall not review any cases involving schools or educational problems, this can be done without violating the Constitution. Education can be left to state courts, and, when a Federal question arises, it can be given to Federal District Courts for final judgment.

The people, therefore, have a right to appeal to their elected representatives in Congress to take steps to curb what they believe is the recklessness and arbitrariness of the Supreme Court. It is an inherent right which the people have to express themselves on these points.

Certainly the right to criticize cannot be denied to the people when the members of the court itself exercise that privilege. It was Justice Clark of the Supreme Court who on June 17 last, in a dissenting opinion in the Watkins case, said:

"As I see it the chief fault in the majority opinion is its mischievous curbing of the informing function of the Congress. . . . My experience in the Executive branch of the government leads me to believe that the requirements laid down in the opinion for the operation of the committee system of inquiry are both unnecessary and unworkable."

Not "Irrevocable"

Here is a Justice who tells the nation that the investigative function of Congress itself has been seriously interfered with. He calls this "mischievous." Yet there are persons who claim that what the Supreme Court has said is sacrosanct and that anyone who criticizes the court is out of order. One President of the United States has said in a public speech that the decisions of the Supreme Court are not "irrevocable." Another President, also in a speech, said:

"Our difficulty with the court today rises not from the court as an institution but from human beings within it. . . . We have reached the point as a nation where we must take action to save the Constitution from the court and the court from itself. . . . The court, in addition to its proper use of its judicial functions, has improperly set itself up as a third house of the Congress — a super-legislature, as one of the Justices has called it—reading into the Constitution words and implications which are not there, and which were never intended to be there."

Certainly this is a legitimate form of criticism, and certainly there still is a right to differ and dissent from so-called "judicial" opinions as well as from Presidential utterances.

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News-Free Press Forum

Supreme Court Judges

Forrest Says No One Safe From Their Clutches

To The Chattanooga News-Free Press:

I trust most of the people are keeping abreast of the Supreme Court's decisions, particularly regarding the decrees on communism, regulating business and rights of the States and people.

Not one Communist who has appealed to the Supreme Court has lost. In fact, the czars in the Kremlin couldn't have helped the Communist party more than the Supreme Court has in its decision freeing the Communists who were indicted for teaching overthrow of the United States by force.

We hear much about respect for the Supreme Court and their stooges, the lower Federal courts, and if you do not bow down you will have a blanket injunction thrown over the countryside making it a criminal offense for voicing disapproval of a dictatorship.

The people in the United States have always had respect for law and order and the courts' decisions when they were based on law, but when a renegade, communistic-influenced ilk attempts to pass laws out of psychology books, protect, give aid and comfort to a foreign enemy bent on destroying our beloved country and freedom, then it is our duty to rebel and resist such an attempt.

The frankenstein monster that President Eisenhower created in appointing Earl Warren to the Supreme Court has already bitten Ike and Atty. Gen. Brownell. They are both decrying the decision regarding the FBI files and impugning the conviction of Communists.

No one is safe from their clutches, not even the political appointers.

It's all right to teach overthrow of the Government for the Communists, but to express an opinion regarding the heritage of our children, their happiness and welfare, is a punishable crime.

NATHAN B. FORREST.

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DAVID LAWRENCE

On Criticizing the Supreme Court

Dissents by Tribunal's Own Justices Cited as Upholding Right to Others

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The misleading theory that the Supreme Court is the "last word" and that, once the court has spoken, there is no right of criticism or any opportunity to secure a reversal has been widely propagated.

Actually, Congress has authority over the Supreme Court and can nullify its decisions at will, in many instances by the simple method of specifying by law what cases the Supreme Court may or may not pass upon thereafter. The Constitution says:

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Certainly, the right to criticise cannot be denied to the people when the members of the court itself exercise that privilege. It was Justice Clark of the Supreme Court who on June 17 last, in a dissenting opinion in the Watkins case, said:

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BALTIMORE SUN

Supreme Court

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COULDN'T HAPPEN HERE

Following the Kremlin's example, Bulgarian and Romanian Reds are busily bouncing high-ranking government officials. Our own Communists can console themselves with the thought that nothing like that could happen here. Any of them who feel mistreated need only get somehow before the U. S. Supreme Court, and all their wounds will be healed.

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Ike Joins Court's Critics

PARDON THE suppressed cheer, but isn't it something that the Chief Executive is now among those who disagree with the infallibility of the United States Supreme Court?

The President, at his Wednesday press conference, joined a healthy majority opinion by pronouncing himself in sharp disagreement with the high court's tenuous decision in the Jencks' case.

We agree with him entirely that incalculable damage is going to result from the court's dictum that government attorneys must reveal the contents of their confidential investigative files.

In Atlanta there is the appalling prospect that the parties indicted in the current lottery cleanup are going to go scot-free as a result of the legal gimmick the Jencks' case gives defense lawyers.

By asking government attorneys to open their confidential files—something the government attorneys cannot do without breaking vows of secrecy—they can get cases against their clients dismissed.

The routine is all too familiar by now.

Certainly there is no intention to prejudge the defendants in the lottery-bribery cases, nor to clamor for their skins. But they should be tried.

We have said before that Congress should unwrite the Jencks' case decision. With the President's remarks on record to encourage them, legislators should now act swiftly on this.

THE ATLANTA JOURNAL
Atlanta, Georgia
July 18, 1957
Editor: JACK SPALDING

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A Public Right

IF WE READ his remarks correctly, Senator Jacob K. Javits, New York Republican, has taken the position that the Supreme Court must be protected against public criticism because such criticism endangers the concept of justice the Court represents. We began this with an "if" clause, because it is an astonishing position to take.

Senator Javits told the American Bar Association meeting here that it was the duty of the nation's lawyers to rally to the defense of the Court against public criticism of its recent decisions "whether one agrees with the individual decisions or not."

It is precisely the individual decisions that make up the complexion of the Court at any one time, just as individual decisions compose the policy of the Administration or individual acts determine the course of Congress.

Certainly, Mr. Javits will not say the President is immune to criticism because it would reflect on the nobility of his office, or that Congress is immune because criticism would lower public esteem of the legislative process. It is equally tenable to respect the Supreme Court as a vital institution and at the same time vehemently disagree with the decisions of several or all of its members.

It so happens that we vehemently disagree with recent Supreme Court decisions which we think give aid and comfort to the Communists by impeding the investigative powers of Congress, by infringing on States' rights and by jeopardizing the security of the nation. To do so is not to advocate that the Court be abolished.

In this Republic there is no institution of government, nor any of its members, exempt from public criticism.

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Public Opinion and Court Opinions

At few periods in American history has the Supreme Court been under heavier fire. Dominant opinion in one whole section of the country charges it with "usurping power and destroying the Constitution" in its school desegregation decision. A good many congressmen from other areas are highly annoyed with the court's recent curbing of abuses in Communist hunting and its opening of FBI files. A score of bills have been offered to reverse its rulings or curtail its independence.

This is not a new situation. Of all the checks and balances in the American system of government, the Supreme Court is the most powerful. It balances the executive and legislative departments and it checks impulsive action under popular pressures. Both functions were well illustrated 20 years ago when the court was digging in its heels against New Deal expansion of federal powers to meet the depression crisis. Recently the court has been restraining governmental invasion of individual rights while dealing with the cold-war crisis.

Many of the court's critics today were its defenders in that earlier conflict—and vice versa. Many who call it "dictator" today will applaud it as "guardian of our liberties" tomorrow. Actually there is more danger that the court may loose its independence than that it will become a dictator. History shows that when public opinion is united and clear the court does not long stand against it. Normally it applies the brakes while emotions cool, added information guides action and common sense interprets the Constitution, easing necessary adjustments.

By definition a brake operates to restrain some force or action. This is difficult to do without some friction. So naturally the Supreme Court may encounter criticism in direct proportion to its performance of its function. Criticism of the court's conclusions, even of its reasoning, is necessary to the democratic process. Often questions of national policy are involved about which any citizen is entitled to an opinion.

But differing from the court's view does not require personal attacks on the judges. Senator Byrd's denunciation of Chief Justice Warren as a "modern Thaddeus Stevens" may excite new passions, but it will not win respect for the supporters of racial segregation. And every citizen who strikes a blow at respect for the court weakens a bulwark which next week or next year may be his own chief defense against injustice.

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BALTIMORE

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Newspaper: CHRISTIAN SCIENCE MONITOR
Date : 7/22/57
Edition : Atlantic
Author or:
(Editor) : ERWIN D. CANHAM
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Of course, the court has its own responsibility in earning respect. It could do much in this direction by fewer reversals, bitter, hair-splitting dissents, and the proliferation of personal views in concurrences. But citizens might well follow the example of David F. Maxwell, retiring president of the American Bar Association. A few days ago he disagreed with a ruling of the court, but at the same time spoke with respect and appreciation of its service. Deploring "loose and vituperative" attacks, he warned that "unbridled ranting could very well result in undermining public confidence in the court as an effective and integral part of our government."

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Law Enforcement Crisis

Attorney General Brownell has injected a note of urgency into the appeal to Congress to "clarify" recent Supreme Court decisions bearing upon the administration of justice in the Federal courts. Mr. Brownell had particular reference to the rulings in the Jencks case, opening FBI files in some circumstances to criminal defendants, and to the Mallory case, which resulted in the release of a rapist because he had not been formally charged soon enough after his arrest.

The Attorney General, in a television appearance, said that the Jencks decision has resulted in a "real crisis in law enforcement," and that the Mallory ruling "has aroused a great deal of controversy." He added that "we would like to see a congressional committee study this whole problem and come up with a solution so that the police and law enforcement officers over the country, when they have to deal with Federal laws, would know exactly what their authority was and what the limitations on their authority are."

This certainly is a restrained and reasonable statement of a very serious situation. For these rulings, in our judgment, needlessly threaten the public interest in effective law enforcement. The court was trying to safeguard the rights of accused persons, in itself a laudable objective. But this can be done without crippling the processes of investigation and prosecution. It can be done, that is, if Congress will enact legislation to remove the confusion created by the court's rulings. Perhaps it is too late for action at this session, but we hope that the needed correction will have a high priority when Congress reconvenes.

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141 AUG 21 1957

Wash. Post and Times Herald
Wash. News
Wash. Star 7-10
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 23 1957

FBI
61 AUG 2 1957

Supreme Court Under Heavy Fire

The recent U.S. Supreme Court decisions on the "Red cases" have brought on the court heavy fire from newspaper readers.

The New York Daily News, whose circulation equals that of all other New York dailies combined, carried this Editor's Note with its letter column:

"This newspaper's policy always has been to print reader's reactions on both sides of major issues. The letters reproduced above are unanimous in their opposition to recent Supreme Court decisions on communism. The reason: Though our mail on this topic has been heavy, we have yet to hear from a reader who favors those court edicts."

Other newspapers, in all parts of the country, are finding that their readers are incensed at the Supreme Court's decision, as shown by letters to the editors.

One result is a rush of moves to get Congressional legislation, strengthening the Government's hands in ferreting out and prosecuting the Reds.

• • •

Several measures are proposed in Congress: Not much will be done at this session, but when the second half of the 85th Congress opens, look for more action.

Meanwhile the Reds are happy.

In several parts of the United States they are visibly delighted at the prospect of propagandizing and plotting unchecked by the prosecuting authorities or the courts.

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

BAUMGARDNER

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Holloman
Gandy

Supreme Court

"If you ask me, this is just another example of government interference in private business."

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14 JUL 31 1957

53 AUG 6 1957

Wash. Post and Times Herald
Wash. News
Wash. Star A-22 FINAL
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N. Y. Journal-American
N. Y. Mirror
N. Y. Daily News
N. Y. Times
Daily Worker
The Worker
New Leader

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